

# Clarification on issue of GST on Airport levies

Circular 115 dated 11 Oct 2019



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Various representations have been received seeking clarification on issues relating to GST on airport levies.

**Passenger Service Fee (PSF)** is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Govt. Airport licensee shall utilize the said fee for infrastructure and facilitation of the passengers. **User Development Fee (UDF)** is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, the User Development Fee at such rate as may be determined under section 13(1)(b) of the Airports Economic Regulatory Authority of India Act, 2008.

Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers **by the airlines at the time of issue of air ticket** and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue.

### **Income of Airline Company for collection of PSF and UDF**

For this, collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner.

### **GST Applicability on Airlines for Collection**

The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.



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2.3 The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.

2.4 Section 2(31) of the CGST Act states that “consideration” in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.

### **GST Applicability on Airport Operator on PSF and UDF Charges**

2.5 Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are **LIABLE TO GST**. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is inclusive of service tax.

### **Collection of PSF and UDF by Airlines – Should be included in the value of supply? – Sec 15(2) vs Rule 33**

2.6 PSF and UDF being charges levied by airport operator for services provided to passengers, **ARE COLLECTED BY THE AIRLINES AS AN AGENT AND IS NOT A CONSIDERATION** for any service provided by the airlines. Thus, airline is not responsible for payment of ST/GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. It is the licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay ST/GST on UDF and PSF.



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2.7 Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules.

Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be **excluded from the value of supply**, if all the following conditions are satisfied, namely, -

- (i) the supplier acts as a pure agent of the recipient of the supply, when **he makes the payment to the third party** on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been **separately indicated in the invoice** issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are **in addition to the services** he supplies on his own account.

“Pure agent” has been defined to mean a person who-

- (a) enters into a **contractual agreement** with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) **neither intends to hold nor holds any title** to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does **not use for his own interest** such goods or services so procured; and
- (d) **receives only the actual amount incurred** to procure such goods or services in addition to the amount received for supply he provides on his own account.



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### GST Applicability on Airlines for PSF and UDF Charges

- Airline acting as pure agent of the passenger,
- Airline **separately indicate actual amount of PSF and UDF and GST** payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers.
- Airline shall **not take ITC** of GST payable or paid on PSF and UDF.
- Airline would only **recover the actual** PSF and UDF and GST payable on such PSF and UDF by the airline operator.
- The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST, provided the airline satisfies the conditions for a pure agent under Rule 33.
- The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.





# Thank You

