Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.504 of 2012

(Arising out of OIA-SRP/77-79/DMN/SDMN/2012-13 dated 13/08/2012 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Cops Protection Pvt Ltd **........Appellant**
4 & 5, Cops Circle, Somnath,
Daman

VERSUS

C.C.E. & S.T.-Daman **.......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

WITH

Service Tax Appeal No.505 of 2012

(Arising out of OIA-SRP/77-79/DMN/SDMN/2012-13 dated 13/08/2012 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Surendra M Patel **........Appellant**
Cops Protection Pvt Ltd., 4 & 5, Cops Circle, Somnath,
Daman

VERSUS

C.C.E. & S.T.-Daman **.......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

AND

Service Tax Appeal No.506 of 2012

(Arising out of OIA-SRP/77-79/DMN/SDMN/2012-13 dated 13/08/2012 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Ketan D Patel **........Appellant**
Cops Protection Pvt Ltd., 4 & 5, Cops Circle, Somnath,
Daman

VERSUS

C.C.E. & S.T.-Daman **.......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:
Shri M.G. Yagnik, Advocate for the Appellant
Shri G. Kirupanandan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11075-11077 /2023

DATE OF HEARING/DECISION: 25.04.2023

RAMESH NAIR

These three appeals have been filed by M/s. Cops Protection Pvt Ltd. Shri Ketan Patel and Shri Surendra Patel against the impugned order-in-appeal No. SRP/77-79/DMN/SDMN/2012-13 dated 13.08.2012.

02. The brief facts of the case is that the assessee was engaged in the business of providing security service, the same is chargeable to service tax under Security Agency Service as defined under Section 65(105)(w) of the Finance Act, 1994. It was observed by the department that the appellant assessee had not filed periodical return for the period April, 2005 to March, 2010 and further though they provided the service to client and collected the service tax against the service so provided, yet they failed to deposit the same in the government exchequer and as per the inquiries in this connection from various institutions like Banks, Income tax department, etc. had revealed that the appellant assessee received an amount of Rs.44,67,989/- during the period from April 2005 to March 2010 the service tax calculated was Rs. 4,97,247/- thus a show cause notice for demand of such amount was issued along with interest and proposal of penalties.

2.1 A show cause notice has been adjudicated vide Order-In-Original whereby, the demand was confirmed. Against the Order-In-Original, the appellant filed appeal before the Commissioner (Appeals) who rejected the appeal by upholding the Order-In-Original except for the reduction of penalty on the persons Shri Ketan Patel & Shri Surendra Patel therefore, the present appeals filed by the appellants.

03. Shri M.G. Yagnik, learned counsel appearing on behalf of the appellant at the outset submits that the learned Commissioner (Appeals) has given a categorical finding in Para 7.6 setting aside the Order-In-Original and confirmation of demand, despite the clear finding the appeal was rejected. He further submits that the appellant have paid Rs. 1,52,000/- towards service tax which has not been taken into account. It is his submission that despite providing the bank details regarding the payment of service tax then also the said payment was not taken into account.

3.1 As regard the penalty imposed on Shri Ketan Patel & Shri Surendra Patel, he submits that firstly sub-clause from 1 to 3 was not mentioned moreover, Section 77 as a whole is applicable to the assessee company and not to the natural person. For this reason also the penalty is also not leviable.

04. Shri G.Kirupanandan, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that the learned Commissioner (Appeals) has given a concluding finding regarding the non-payment of service tax and imposition of penalty in Para 7.2 to 7.5 and in para 7.7 therefore, the operating portion of the order does not suffer from any infirmity. He submits that due to clerical error, the matter may be sent back for rectification on this error.

05. I have carefully considered the submissions made by both the sides and perused the record. Without going into the merits of the case, I find that the Commissioner (Appeals) in Para 7.3 given the following finding:-

> *7.3. On merit of the case, I find that the appellant assessee has not contested the assessment of service tax and confirmation of demand made by the adjudicating authority. The only contention from appellant side is that they have paid Rs. 1,52,000/- towards service tax, which has not been taken into account while confirming the demand. The appellant has only produced the ledger account of service tax without any original/attested copy of GAR-7 challans or any other document, evidencing the said payment to the Govt. exchequer. On specific reference to verify the said claim of the appellant, the Jurisdictional Asst/Dy. Commissioner, South Daman Division vide his letter dated 20.07.2012 has reported that there is no record available with them regarding payment of said amount of tax claimed to have been paid by the appellants. Accordingly, I hold that the appellant assessee shall be liable to pay service tax amounting to Rs.4,97,247/-. Now having confirmed the service tax as above, I also find that the appellant is liable to pay interest under Section 75 of the Finance Act, 1994 on the amount so confirmed.*

As per the above finding, the learned Commissioner (Appeals) has categorically upheld the demand however, contrary to the above finding, the learned Commissioner (Appeals) has given contrary finding in Para 7.6 which is reproduced below:-

> *7.6. I find that the original authority has confirmed recovery of service tax on the value of services provided, if any, but not covered in value of services arrived at from appellant assessee's account statement provided by banks and are not known till then. Such findings of the authority cannot be endorsed for the reason that the department has all the resources to unearth any evasion of tax and until a definite and specific figure of demand is computed, the same would not stand in legal test. Confirmation of demand without quantification does not have legal sanctity in the relevant Act/Rules. Therefore, I set aside such order/confirmation of demand.*

With comparison of Para 7.3 and Para 7.6, it can be seen that the Commissioner (Appeals) has given contrary finding. In para 7.3, he has upheld the demand whereas, in para 7.6, he has set aside the Order-In-Original and therefore, the order suffers from serious apparent error on record which needs to be rectified.

06. Accordingly, I set aside the impugned order and remand the matter to the Commissioner (Appeals) for passing a fresh order. All the issues are kept open.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul