

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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 13606 of 2014 - DB

(Arising out of OIA-RJT-EXCUS-000-APP-94-95-14-15 dated 17/06/2014 passed by Commissioner of Central Excise-RAJKOT)

Jamnagar Police

O/o, Superintendent Of Police,
Police Bhavan, Opp. Ayurvedic Hospital,
Jamnagar, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

.....Respondent

APPEARANCE:

Shri Sagar Shah, Chartered Accountant for the Appellant
Shri A K Samota Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR**

Final Order No. 12705/2023

DATE OF HEARING: 19.07.2023
DATE OF DECISION: 04.12.2023

RAMESH NAIR

The brief facts of the case is that the appellant are engaged in providing services to private persons, for companies for activities like escort of cash, security services to private/ public sector banks , security to individuals, Securities and others. On the said activities certain amount based on the cost recovery concept was recovered by the appellant from the service receivers. The case of the department is that the appellant is providing security agency service as defined under Section 65 (105) (w) of the Finance Act, 1994 and the same is liable for service tax.

2. Shri Sagar Shah, Learned Chartered Accountant appearing on behalf of the Appellant submits that the appellant being a police department of Government providing the security service in the interest of public to maintain the law and order. The services to the public is the sovereign function of the Government which is not liable for the service tax as the

police department is not covered within the definition of person as mentioned in Section 64(94) and is also not a commercial concern and not an undertaking in business activity. Therefore, the activity of the police department is not liable to service tax. He submits that this issue is no longer res- integra as the same has been decided in various following judgments:-

- Deputy Commissioner of Police Jodhpur Vs. CCE & ST, Jaipur-II 2017 (48) STR 275 (Tri.- Del.)
- Mumbai Police Vs. CST 2017 TIOL (1067) (CESTAT- Mumbai)
- Dy. Inspector General of Police Vs. CCE, Bhopal, vide final order No 52286-52287/2017 dated 10.03.2017 (Tri.- Delhi)
- The Superintendent of Police Vs C.C.E.S.T.- Bhavnagar vide final order No. A/11428/2018 dated 13.07.2018 CESTAT-Ahmedabad

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Respondent reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that in the present case the police department of the State Government have provided security service to the individual persons, banks, public sectors organization etc . The department has classified the same under Security Agency Service and contended that the same is liable for the service tax. The identical issue has already been considered in the various judgments cited by the appellant. The same are reproduced below:-

(i) In the case of Dy. Commissioner of Police (Supra) Tribunal delhi has passed the following decisions:

“7. We heard both sides and perused the records.

8. The question for decision is whether the State Police represented by the Superintendents of Police of various districts, would be covered within the definition of

security agency services and service tax will be liable to be paid by them on the amounts recovered by them for providing security personnel to various organizations. Further, they were also sending police personnel for character verifications of candidates selected for various jobs and collecting charges but they neither got the registered with the Department nor did they pay service tax on such amounts recovered.

As per Section 65(94) of the Finance Act, 1994, the definitions of "Security Agency" as well as "Security Agency Service" are given below for ready reference :-

'Security Agency' means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel.'

9. The other relevant circular issued by C.B.E. & C. is Circular No. 89/7/2006-S.T., dated 18-12-2006 is reproduced below :

"The activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of compulsory levy and are deposited in the Govt. Account. However, if a sovereign or public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for consideration (not a statutory fee), then in such cases service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined."

10. The appellants have argued that the term "person" appearing in the definition must be construed to be a natural person as well as a juristic person and by no stretch of imagination, the same will include the State or its officers or the posts created under a statute. They cited the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of West Bengal v. Union of India [AIR 1963 SC 124] in which the Apex Court has held as under :-

"the definition is an enlargement of the natural meaning of the expression 'person', even the extended meaning does not include the State."

Their submission is that Superintendent of Police is an authority of the State Govt. to carry out statutory and constitutional duties. The definition of the term "person", (which does not cover the Govt.) in the General Clauses Act, 1897 is given as follows :-

"42. "Person" shall include any company or association or body of individuals, whether incorporated or not,".

In the light of the definition of the term "person" in the General Clauses Act, 1897, which has also been examined and clarified by the Apex Court, it would appear that the Superintendent of Police, which is an agency of the State Govt. does not appear to be covered within the term "person". It is also noteworthy that in the year 2012 when the pattern of levy of service tax was changed and the concept of negative list was introduced with effect from 1-7-2012, a definition was introduced for the term "person" in Section 65B(37), of the Act, which includes the Govt., local authorities, etc. From this, it is evident that such a definition for the term "person" has become part of the statute only from this date. To decide the meaning of "person" up to this date, we will have to refer to the General Clauses Act, 1897 as well as relevant case laws. The Apex Court has clearly held that the definition of "person" cannot be extended to include State. Consequently, we are of the view that the Superintendent of Police will not be covered within the term "person".

11. The second leg of the argument advanced by the appellants is that they are not engaged in the business of rendering services relating to security. Their submission is that the occupation in business by a person is a condition precedent for a security agency. The lower authority has held that the term "business" does not signify any commercial activity for the purpose of gaining something out of the said activities, but the same has been used in terms of the work. He has accordingly held that as long as

consideration is being received by police for providing security service, it is to be presumed to be in the nature of business.

The term "business" connotes that it is an activity undertaken with the intent of earning profit. The charges recovered by police are in the nature of cost recovery for the additional police force deployed on request for maintaining security and law and order. It is also the submission of the police department that the deployment of additional police force at the request of banks and other institutions or other events has been done only for maintenance of law and in the absence thereof there could arise major security issues in relation to person or property. In the light of the submissions made, we are of the view that the activities undertaken by the police, for which charges have been recovered, cannot be held to be in the nature of business activity.

12. Now, we turn to the C.B.E. & C. Circular No. 89/7/2006-S.T., dated 18-12-2006. The circular has indicated under what conditions an activity performed by a sovereign/public authority should be categorized as one which is liable to payment of service tax. The circular clarifies that charges recovered by any sovereign/public authority for carrying out any statutory function will not be liable for levy of service tax if all the following conditions are satisfied :-

- (a) Sovereign/public authorities perform duties which are in the nature of statutory and mandatory obligation to be fulfilled in accordance with the law.
- (b) The fee collected should be levied as per the provision of relevant law.
- (c) The amount collected is to be deposited into Government treasury.

The satisfaction of each of the above three conditions is analysed below :-

- (i) A sovereign/public authority performs duties which are in the nature of statutory and mandatory obligation to be fulfilled in accordance with law.

The Superintendent of Police is an extended arm/instrumentality/ agency of the State Government and is controlled and managed by the State Government. It is carrying out the activities as entrusted to it vide the Police Act which are statutory and constitutional in nature. The appellant is required to discharge these statutory obligations for public security and maintenance of public peace and order. The appellant cannot carry out any activity beyond the legislative competence. The user charges are levied by the State Government for the deployment of Police Force for the maintenance of public peace, security and law and order as per Section 46 of the Police Act, Section 46 is reproduced below :-

"46. Payment for police service. - The State Government may levy from any person, who carries on any such occupation, gathering, exhibition, sale, entertainment, etc., for monetary gain, as may, for the purpose of public security or for the maintenance of public peace or order, require deployment of additional police force, such user charges as may be prescribed."

- (ii) The fee collected should be levied as per the provision of relevant law.

The State Government, in exercise of powers conferred under Section 46 of the Police Act issued two notifications wherein the charges to be recovered for providing additional police force for the purpose of maintaining public security and law and order have been notified. Notification number 27(2)Home/Gr.-6/84, dated 19-5-2008 which notifies the charges for police arrangement in Central Government offices/institutions/banks and other organizations, and notification number F.1(K)(16)Gr.-2/05, dated 15-1-2008 which notifies the charges to be recovered on providing/deploying/rendering police force for security purposes. In the notification number dated 19-5-2008, the charges fixed per day are as follows :

1	Constable	Rs. 250 per day
2	Head constable	Rs. 300 per day

With this it is wide and clear that the user charges are in the nature of amount collected as per the provision of the relevant law.

(iii) *The amount collected is to be deposited into Government treasury.*

As per the requirement of the General Finance Account Rules issued by the Rajasthan State Government, the Government dues are to be collected and paid into the Government treasury. The appellant, therefore, is required to collect the usage charges and credit the same in the Rajasthan State Government treasury.

The submission made by the police department in this regard is that the fees recovered by them is for provision of additional police force. They have referred to Section 46 of the Rajasthan Police Act, 2007 and submitted that the additional police officers are deployed at the request of any person only for the purpose of public security or for the maintenance of public peace or order. The fees levied and collected for this purpose is strictly as per the notification issued by the State Govt. under the above Section of the Act. The amounts so collected are mandatorily deposited into the Govt. treasury. Accordingly, they have submitted that all the conditions stipulated by the C.B.E. & C. circular are satisfied and consequently the activities are to be considered as statutory function and no service tax can be levied on such fees collected for discharging the sovereign function.

The lower authorities have, however, taken the view that the activity undertaken is not in the nature of statutory duty, but an activity undertaken for a consideration which is not a statutory fee. We find ourselves unable to agree to this stand taken by the lower authorities. The police department has the mandatory duty to maintain public peace and order. For such duty, which is in the nature of sovereign function, no charges are recoverable from the citizens. In the present case, the police department has recovered fees for deploying additional police personnel on request. However, the statutory functions of the police of the State Govt. make it explicit that such activity, even at request of the other person, is to be carried out only for the purpose of public security or for the maintenance of public peace or order. The charge for deployment of such additional force is also prescribed by the statutory notification issued by the State Govt. In view of these facts, we are of the view that the activity of deploying police personnel on payment basis is to be considered as part of statutory function of the State Govt. and the fees recovered are to be considered as statutory. It is also not disputed that such amounts recovered have been deposited into the Govt. treasury.

13. *On the basis of the above discussion, we conclude that police department, which is an agency of the State Govt., cannot be considered to be a "person" engaged in the business of running security services. Consequently, the activity undertaken by the police is not covered by the definition of Security Agency under Section 64(94) of the Act. We also find that in terms of C.B.E. & C.'s circular on this subject, the fees collected by the police department is in the nature of fee prescribed for performing statutory function, which has been deposited into the Govt. treasury. In the light of the C.B.E. & C.'s circular also, there can be no levy of service tax on such activities carried out by the police department.*

14. *Both sides have relied on several case laws. However, none of the cases are squarely covering the present issue of levy of service tax on State Police. Some touching upon the subject have dealt with only stay petitions. As such, we have not discussed them at length.*

15. *In line with the above discussions, the appeals filed by the police department succeed. The impugned orders are consequently set aside."*

(ii) In the case of Superintendent of Police (supra) this Tribunal has passed the following order:

"The fact of the case are that the appellant was engaged in providing the Services to private persons or companies for activities, like Escort of Cash, etc to the public/Private Sector Banks, Security to individuals, Securities for Cricket Matches and other functions

organized etc. On the said activities for providing these services certain amount were recovered by the appellant from the service receivers. The case of the department is that the appellant is providing 'Security Agency Services' as defined under Section 65(105) (w) of the Finance Act, 1994 and same is liable for Service Tax

2. *Shri. N.V.Suchak, Ld. Chartered Accountant appearing on behalf of the appellant submits that the appellant being a Police Department providing the Security in the interest of Public to maintain the Law and order. The services of the Public/sovereign functions not liable for Service Tax. He submits that the similar issue has been raised by the Department, against the Police Department at different part of the country. This Tribunal taking consistent view held that the Police Department is not liable for Service Tax for Security Services providing by them. In support, he placed reliance on the following judgments.*

- *Deputy Commissioner of Police Jodhpur Vs. C.C.E & S.T, Jaipur-II 2017 (48) S.T.R. 275 (Tri. -Del.),*
- *DY. INSPECTOR GENERAL OF POLICE Vs. COMMISSIONER OF C. EX., BHOPAL 2017 (3) G.S.T.L. 259 (Tri.-Del.),*
- *MUMBAI POLICE Vs. C.S.T 2017 TIOL (1067) (CSTAT-MUMI)*

3. *Shri. T.K.Sikdar, Ld. Assistance Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.*

4. *On careful consideration of the submissions made by both the sides and perusal of the records, We find that the issue is no longer Res-Integra in the light of the judgments cited by the Ld. Counsel on the identical issue. Therefore, following the ratio of the above cited judgments, the demand is not sustainable.*

5. *Accordingly, the impugned order is set aside. The appeal is allowed."*

5. In view of the above judgments, it can be seen that the issue in hand has already been settled in the aforesaid decisions. Accordingly, in the present case also, the demand of service tax is not sustainable. Hence, following the above decision the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 04.12.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L.MAHAR)
MEMBER (TECHNICAL)