CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10778 of 2016-DB

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-PRCOM-13-15-16 dated 21.01.2016 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Central Industrial Security Force .... **Appellant**
Unit-RIL, JAMNAGAR
GUJARAT

VERSUS

Commissioner of Central Excise & ST, Rajkot .... **Respondent**
Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot, Gujarat -360001

APPEARANCE :

Shri Vishal Agarwal, Ms. Shilpa Balani, Shri Ramnath Prabhu, Ms. Dimple Gohil Advocates for the Appellant
Shri SS Vikal, Assistant Commissioner AR for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 04.04.2024
DATE OF DECISION: 08.04.2024

FINAL ORDER NO. 10779/2024

C.L. MAHAR :

The brief facts of the matter are that the appellant is an Armed Force of Union of India that discharges sovereign and statutory functions of providing security to various industrial undertakings. The appellant is registered under Security Agency Service and has been discharging service tax liability on the cost of deployment of its forces, which included recurring and non-recurring expenditures. It is matter of record that the service of the appellant was hired by M/s. Reliance Industries Limited for providing protection and security to their industrial units. M/s. Reliance Industries Limited were paying to the appellant expenses such as salary and allowances, initial uniform and equipment charges and arms and ammunitions etc. The department is of the view that the appellant has not discharged their service tax liability correctly as value of certain facilities extended by M/s. Reliance Industries Limited such as charges for accommodation, medical expenses, vehicle running and maintenance, telephone, dog squad etc. has not been included in the taxable value for providing security service to M/s. Reliance Industries Limited.

2. It is matter of record that since the value of certain facilities was not available, the department by invoking the provisions of Section 72 of the Finance Act, 1994 (best judgment method) has calculated the value of above mentioned free services at 25% of the cost of deployment as the value of such facilities extended by Reliance Industries Limited to the appellant. On the above contention, a show cause notice dated 09.04.2015 has been issued to the appellant demanding service tax of Rs. 89,46,991/- by invoking the provisions of Section 71(1) of Finance Act, 1994. Interest and penal provisions have also been invoked in the show cause notice. The matter has been adjudicated by learned Principal Commissioner vide his order dated 21.01.2016 whereunder all the charges as invoked in the show cause notice have been confirmed.

3. We have heard both the sides. We find that the matter is no longer *res-integra* as this Tribunal in the case of M/s. Bharat Coking Coal Limited vs. CCE & ST, Dhanbad reported under 2021-TIOL-551-CESTAT-KOL has decided the same issue pertaining to the appellant. The relevant extract of het above mentioned decision is reproduced below:-

> **"7.** We find that the issue to be decided is whether costs reimbursed by the appellant to CISF for medical & telephone facilities, imprest expenses and notional value for rent free accommodation, free supply of rented vehicles, etc. are to be added to the assessable value for payment of service tax on reverse charge basis. The appellant is

already depositing service tax on reverse charge basis on the cost of deployment, cost of arms and ammunition, cost of clothing items (uniforms), etc. which is not in dispute.

We find that the Allahabad Bench of the Tribunal in the case of *Central Industrial Security Force v Commissioner of Customs, C.E. & S.T., Allahabad, Appeal No. ST/70293/2016-CU[DB]* decided on 9th January, 2019, has already settled the issue in favour of the appellant to hold that expenses incurred towards medical Services, vehicles, expenditure on Dog Squad, stationery expenses, telephone charges, expenditure incurred by the service recipient for accommodation provided to CISF etc are not includible.

Further, the Principal Bench at New Delhi in the case of Commr. of CGST, Cus & C. Ex, Dehradun vs. Commandant CISF, CISF Unit, **2019 (24) GSTL 232** (Tri- Delhi), has also held that free accommodation provided by the service recipient to CISF security personnel providing security services is not includable in taxable value. Service Tax Appeal No.75020/2017 We find that the Ld. Commissioner has merely confirmed the demand, in para 26 appearing in Page 25 of the impugned adjudication order, on the ground that the issue was pending for consideration before the Supreme Court in the case Bhayana Builders (P) Ltd (Supra) and Intercontinental Consultants and Technocrats Private Limited (Supra), on the date of passing the impugned order. Since the issue is no longer res-integra, as the legal position has already been decided by the Hon'ble Supreme Court in both the above judgments, this Tribunal is bound by the said legal position.

We also note that in the Tribunal decision in the case of Impact Communications (Supra) which has been heavily relied by the Ld. A/R for the Revenue, the demand was confirmed for the reason that the reimbursement was not claimed on actual basis and that there was no pre-arrangement with the client for authorising such reimbursement of expenses which is not the case herein inasmuch as there is a specific MOU agreed with the CISF as also appearing in the appeal paper book. There is no dispute in the entire case proceedings that expenses have been reimbursed on actual basis. Hence, the contentions of the Revenue cannot be accepted. In so far as the issue of extended period of limitation is concerned, we do not find any case of fraud or suppression and hence, the notice issued by invoking extended period is not sustainable.

In view of the above discussions, the impugned order cannot be sustained and therefore, the same is set aside. The appeal is thus allowed with consequential relief.

4. Following the above decision, we hold that impugned order-in-original is without any merit therefore, we set-aside the same. Appeal is allowed.

(Pronounced in the open court on 08.04.2024*)*

(Somesh Arora)
Member (Judicial)

(C L Mahar)
Member (Technical)

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