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

REGIONAL BENCH- COURT NO. 02

Service Tax Appeal No. 10715 of 2020

[Arising Out Of OIO-AHM-EXCUS-003-COM-005-20-21 Dated- 17/06/2020 passed by the Commissioner, CGST & Central Excise, Gandhinagar)

DEPUTY COMMANDANT **.....Appellant**
Central Industrial Security Force Unit,
ONGC Mehsana Post ONGC Nagar,
Palavasana Mehsana Industrial Estate
Mehsana, Gujarat

VERSUS

Commissioner CGST & Central Excise-Gandhinagar **.....Respondent**
Custom House,Navrangpura, AHMEDABAD
GUJARAT-380009

<u>APPEARANCE:</u>
Shri. Mohit Suman, Assistant comandant & Shri. Jigar Shah, Amicus Curiae for the Appellant
Shri. H.P. Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10716/2025

DATE OF HEARING: 29.08.2025
DATE OF DECISION:29.08.2025

<u>SOMESH ARORA</u>

During audit of the records of M/s CISF Mehsana for the period July 2010 to July, 2012, the officers found that the appellant M/s. Deputy Commandant CISF Unit ONGC had short paid service tax on pension contribution of Rs. 2,09,05,248/- which they had excluded from the taxable value for the period from January, 2011 to November, 2011. The scrutiny of ST-3 return and Cost of Deployment Register (COD) revealed that the appellant had paid service tax on an amount of Rs. 16,97,12,777/- only as shown in ST-3 return but the above amount of Rs. 2,09,05,248/- escaped assessment which resulted in short payment of service tax of Rs. 21,53,240/- + education Cess. It was also alleged that CISF have not paid Service tax of Rs. 4,36,243/- on account of HRA (as per table exhibit ‘c’ in the show cause notice). Accordingly, the department issued show cause notice dated 18.12.2014 demanding the service tax of Rs. 25,89,483/- along with appropriate interest under Section 75 and penalty under Section 78 & Section 76 of the Finance Act, 1994. The said show cause notice was decided by the Commissioner vide impugned order dated 17.06.2020 wherein he confirmed the demand of service tax of Rs. 21,53,240/- along with interest and also imposed penalty of Rs. 11,99,718/- under section 78 of the Finance Act, 1994. He dropped the demand of Rs. 4,36,243/- on account of HRA holding it unsustainable as during this period, ONGC have neither charged nor collected any HRA. Aggrieved with the above order, the appellant filed appeal before this Tribunal.

2. The appellant took the following grounds in their appeal.

a) The service tax amount of Rs. 51,625/- for transport and telephonic facility utilized by CISF unit, ONGC Mehsana has already been paid vide challan No. 00315 dated 21.12.2013. This amount pertains to their VCES declaration.

b) Out of service tax demand of Rs. 21,53,240/-, they had paid Rs. 16,90,418/- vide challan No. 02985/- dated 24.10.2014 and the remaining amount of Rs. 4,62,822/- through regular Cost of Deployment Register (COD) w.e.f July, 2009 to May, 2010. In view of this, they requested for allowing the appeal and to set aside, the impugned order passed by the Commissioner to the extent of interest and penalty.

3. Shri. Jigar Shah, Advocate on his own came forward to assist the Assistant Commandant as Amicus Curiae. He pleaded that the appellant have already paid full service tax amount confirmed vide impugned order and being a Government department, CISF do not have any intention to evade payment of service tax. Therefore, extended period is not invokable and consequently interest, liability, and penalty may be waived by the Tribunal. He stressed that CISF have already made substantial compliance to the Commissioner's order and therefore, their prayer be allowed.

4. Learned AR on the other hand mentioned that the demand was raised on the basis of objection raised by the audit. These facts would not have come to the knowledge of the department, if records maintained by CISF were not examined by the Audit officers. Therefore, extended period of limitation is invokable in this case and consequently, the appellant is liable to service tax, interest and penalty for the violations..

5. We find that in the instant case entire service tax demand has eventually been paid by the CISF which is not denied by the department. Under the circumstances, we find that "intent to evade" cannot be alleged against the Deputy Commandant of CISF. It is settled law that whenever duty is voluntarily paid and there is delay in such payment, then the interest payment will be the normal consequence. Deputy Commandant appearing before us states that he has worked out the periodicity of the payments and there is a submission from his side that there is no delay involved and therefore no interest liability is on them.

5.1. We have considered the rival submissions. We hold that there is no intent to evade payment of service tax and therefore, penalty under section 78 cannot be imposed in the facts of this matter. We however make it clear that if there is any delay in payment of service tax which has been eventually paid voluntarily, the interest liability will be there on the appellant which shall require calculation by the department. The matter therefore deserves remand for working of interest liability, after considering various submissions of the Deputy Commandant in the matter. The same is remanded to the Commissioner of CGST & Central Excise, Gandhinagar. We make it clear that the liability of interest will be confined to the delayed payment of service tax only.

6. Appeal is allowed partly in above terms. The Bench appreciates the efforts of Mr. Jigar Shah, Advocate who volunteered to act as amicus curiae in the matter.

7. Appeal partly allowed.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi