CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70037 of 2023

(Arising out of Order-In-Appeal No.NOI-EXCUS-002-APPL-250-2022-23, dated -27/10/2022 passed by Commissioner (Appeals) CGST, Noida)

M/s S S Overseas **.....Appellant**
(Main Road, Surajpur, Opp. Lakhnavani Mod,
Near Arya Samaj Mandir, Greater Noida,
Gautam Budh Nagar, Uttar Pradesh 201306)

VERSUS

Commissioner, Central Goods & Service Tax, Noida
....Respondent
(C-56/42, Renu Tower, Sector 62,
Noida, Uttar Pradesh-201301)

APPEARANCE:

Shri Umesh Sarwal, Advocate for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70313/2025

DATE OF HEARING : 05.05.2025
DATE OF DECISION : 05.05.2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Appeal No.NOI-EXCUS-002-APPL-250-2022-23, dated -27/10/2022 passed by Commissioner (Appeals) CGST, Noida. By the impugned order following has been held:-

ORDER

"In view of the aforesaid findings, I uphold the Order-in-Original No.31/ADC/CGST/GBN/2021-22 dated 31.03.2022 passed by the Additional Commissioner, CGST, G. B. Nagar, Greater Noida and dismiss the appeal filed by the appellant."

1.2 Vide the Order-In-Original dated 31.03.2022 following has been held:-

ORDER

(1) I confirm the demand of Service Tax amounting to Rs.17,55,489/- (Rupees Seventeen Lakh Fifty-Five Thousand Four Hundred and Eighty-Nine only) (including cess) under proviso to Section 73(1) of the Finance Act, 1994 and drop the remaining demand of Rs.1,02,14,376/-.

(ii) I order to recover the interest on amount confirmed mentioned at (i) above at the applicable rate under Section 75 of the Finance Act, 1994;

() impose penalty of Rs.17,55,489/- (Rupees Seventeen Lakh Fifty-Five Thousand Four Hundred and Eighty-Nine only) upon the party under Section 78(1) of the Finance Act. 1994.

(iv) I impose penalty of Rs. 10,000/-(Rupees Ten Thousand only) upon the party for incorrect assessment of Service Tax under Section 77(2) of the Finance Act, 1994.

2.1 The Appellant is registered with the Department for providing taxable service namely "Security Agency Service" as defined under Section 65 of the Finance Act, 1994 and as per Section 65(b)(44) of the Finance Act.

2.2 During the course of verification of the third party-CBDT data for the year 2015-16, 2016-17 & 2017-18 (up to June 2017) a substantial difference in gross value of the services provided as reflected in ST-3 Return and in ITR of Income Tax during the said period was noticed.

2.3 Appellant was asked to submit following information/documents for the period from April 2015 to June 2017:-

(1) Balance Sheet, Profit & Loss A/c., Trial Balance;
(2) Copy of service tax registration certificate (ST-2);
(3) Form 26 AS;
(4) Copy of ST-3 returns filed;
(5) Deposit particulars evidencing payment of service tax, if any;

(6) Reconciliation chart of figures reflected in form 26 AS and P&L Accounts.

2.4 On the basis of comparison of profit ad loss account & Trial Balance submitted by the Appellant it was observed that the Appellant as short paid service tax as computed in table below:-

Period	Gross amount as per 26 AS	Gross amount received against services as per P&L. Account/trial balance	Gross Value for calculation of S. Tax liability	Rate of Service Tax incl. cess	Service tax including cess to be demanded
1	2	3	6	7	8
2015-16	26167100	35868651	35868651	14.5	520095-
2016-17	28953984	36111260	36111260	15	5410084
2017-18 *	5715095	8661570	8661570	15	1299230
Total	60836179	80641481	80641481		119108

* up to June 2017

2.5 It was also observed that during the said period the Appellant as short paid service tax on legal charges under reverse charge mechanism as computed in the table below:-

PERIOD :	AMOUNT TAXABLE	Rate of Service Tax	TOTAL
Oct 2015 to March 2016	114610	14.5%	16,618
April 2016 to March 2017	176461	15%	28,234
April -2017 to June 2017	50836	15%	8,134
TOTAL	341,907	50,140	52,986

2.6 The show cause notice dated 23.04.2021 was issued to the Appellant asking them to show cause as to why:-

"(i) Service Tax including Swachh Bharat Cess and Krishi Kalyan Cess amounting to Rs.1,19,69,865/- (Rupees one crore nineteen lakhs sixty nine thousand eight hundred and sixty five only), should not be demanded and recovered from them under the provise te Section 73(1) of the Finance Act, 1994, as amended, read with Section 174 of the Centra Goods and Services Tax Act, 2017;

(ii) Interest, at the applicable rate(s) on the amounts mentioned at (i) above should be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.

(iii) Penalty should not be imposed on them under Section 78 (1) of the Finance Act. 1994 for willful suppression of facts followed by not disclosing of Service Tax Liability ST-3 returns and in contravention of the provisions of Chapter V of the Finance Act. 1995 Rules made there-under and notification 30/2012, as amended with intent to evade

payment of Service Tax read, with Section 174 of the Central Goods and Services Tax Act. 2017.

(iv). Penalty should not be imposed on them under Section 77 (2) of the Finance Act, 1991 for the failure to assess their statutory liability of Service Tax for the relevant period in contravention of Section 70 of the Finance Act, 1994."

2.7 The Show Cause Notice has been adjudicated as per Order-In-Original referred in Para 1.2 above.

2.8 Aggrieved Appellant has filed this appeal before the Commissioner (Appeals) which has been dismissed as per the impugned order. Hence this Appeal.

3.1 I have heard Shri Umesh Sarwal, Advocate for the Appellant and Smt. Chitra Srivastava, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:-

- They were providing security agency service which are covered by the Notification No.30/2012 on which service tax was required to be paid by the recipient of the service. The benefit of the said notification has been denied to them for the reason stated in the impugned order in respect of the services provided to individuals or non-body corporate.
- However, the service tax should has been demanded on the entire value of the services provided without allowing for the deduction of the amounts received by them as pure agent for payment of salaries etc. to the personals provided.
- The fact that these amounts are indicated separately on each of the invoices clearly shows that these amounts were received for making these payments. The invoices clearly shows their service charges also the demand of service tax should be limited to the extent of these charges.

3.3 Learned Authorized Representative for the Revenue reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 The demand has been made from the Appellant on two accounts. One in respect of the legal charges, Service Tax on which was required to be paid by them on reverse charge basis. The Appellant do not contest these demand. In fact they have already deposited this amount vide Chalaan No.4622 as recorded in the impugned order.

4.3 The second demand is in respect of the security agency service which have been provided by the Appellant to both corporate and non-corporate bodies. The impugned order records findings as follows:-

> *5.3 I find that the adjudicating authority held that the appellant was registered under the category of taxable services namely "Security Agency Service". He held that supply of manpower or security services by any individual, Hindu Undivided Family, or partnership firm, whether registered or not, including association of persons located in the taxable territory to a body corporate located in the taxable territory, the service recipient is liable to pay service tax payable under reverse charge mechanism under section 68(2) of the Finance Act, 1994 read-with Notification No. 30/2012-ST dated 20.06.2012 as amended on the value of services supplied to them for the period April 2015 to June 2017. Therefore, he held that in case of security services provided by the Appellant to the body corporate or companies, service recipients are liable to pay service tax under RCM and there is no liability of service tax on the appellant in respect of services provided by the appellant to these companies. Accordingly on the basis of the above findings he dropped the demand of Rs. 1,02,14,376/- and confirmed the demand of Rs. 17,02,203/- in respect of security services provided by the appellant to individuals or non-body corporate.*
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> *5.4 Now in the instant appeal the appellant has challenged the demand of service tax of Rs. 17,02,203/-. In this context I find that the appellant in their grounds of appeal, has pleaded that in case of services being provided to Individuals or non-body corporate the service provider is to deduct the amount as pure agent on behalf of the employee and State Government or Central Government and pay service tax on the actual service charges received from the clients along with the salary of the employees and the statutory dues. In support of their contention, they had submitted copies of agreement dated 17.04.2015 entered into with M/s Toyo Ink India Pvt Limited, Plot No.17, Ecotech-III (Udyog Kendra), Greater Noida, District Gautam Buddh Nagar and M/s Arshiya Rail Infrastructure Limited before the original*

adjudicating authority. In their grounds of appeal they have submitted that the service tax liability upon them is only on the amount of service charge and not on the entire amount charged as they have worked as pure agent. I have considered the submissions of the appellant. I find that the adjudicating authority held that the services provided by the appellant to M/s Toyo Ink and M/s Arshiya is also security services, and thereby imposed 100% service tax liability on the appellant. Whereas the appellant pleaded that they have supplied "Manpower Recruitment/supply services to both these above-named firms and accordingly, the service tax liability upon them is only on the portion of service charge as the amount collected by them is as pure agent.

5.5 In the above context I find that Clause 5 of the SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 is as under:-

5. Inclusion in or exclusion from value of certain expenditure or costs-(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

Explanation- For the removal of doubts, it is hereby clarified that for the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.

(2) Subject to the provisions of sub-rule (1), the expenditure or costs Incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service; (iii) the recipient of service is liable to make payment to the third party; (iv) the recipient of service authorises the service provider to make payment on his behalf; (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party; (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service; (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and (viii) the goods or services procured by the service provider from the third party as pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation1-For the purposes of sub- rule (2), "pure agent" means a person who- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing *taxable service; (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service; (c) does not use such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services.*

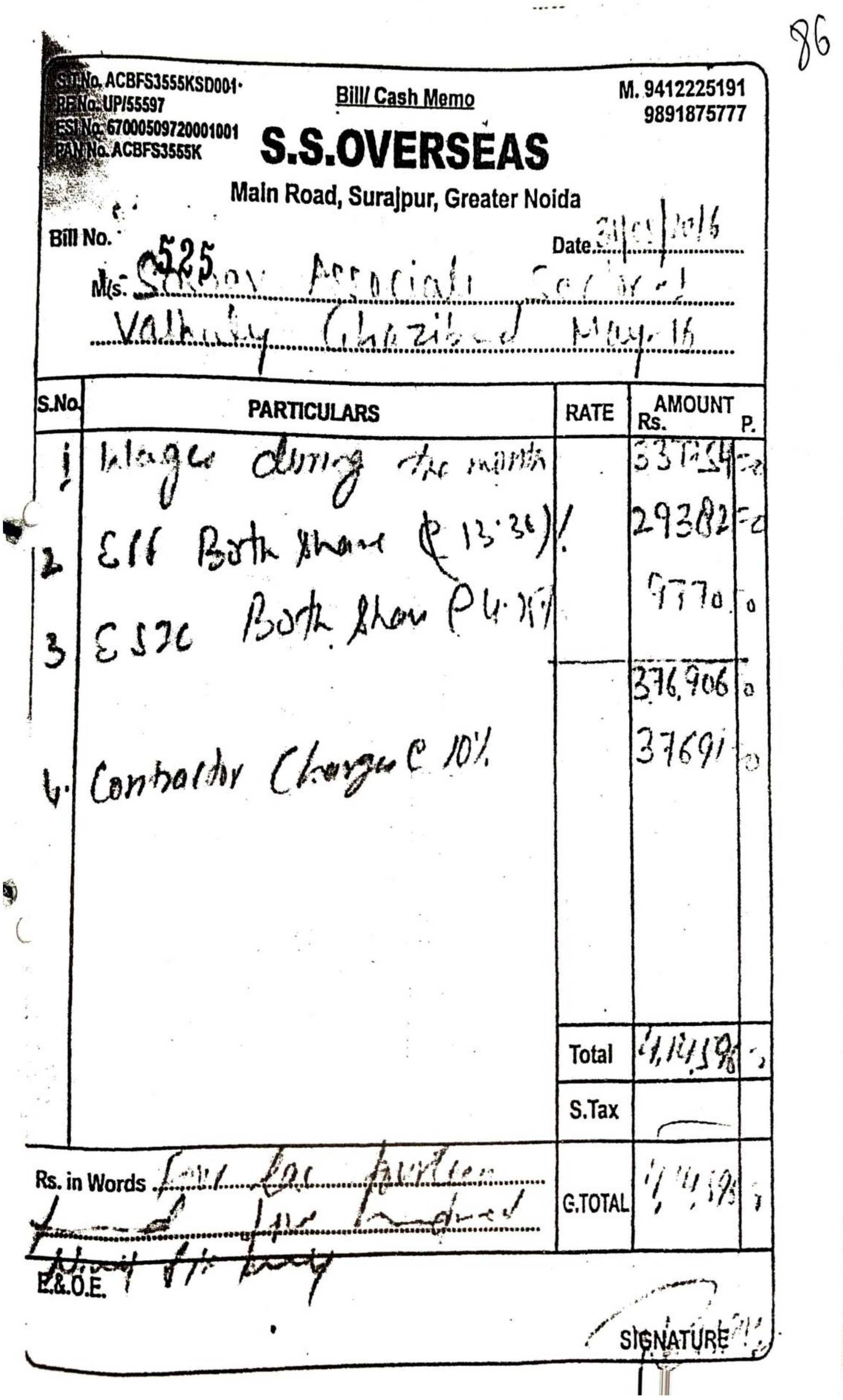
5.6 I observe that, merely from the copies of sample invoices showing reimbursement charges separately, it cannot be ascertained that the appellant was acted as a pure agent of the recipient of service as far as reimbursement of salary to the part time employee of their service recipient is concerned. They have to satisfy all the conditions as per rule 5(2) of the valuation rules and have to adduce documents in support of their claim accordingly.

5.7 I find that on this issue the adjudicating authority has correctly placed reliance on the case of Rajasthan Ex-Servicemen Ltd. Vs. Commissioner of C. Ex., Jaipur-I [2017 (52) S.T.R. 42 (Tri. - Del.)]. In this context I find that the appellant is registered with the department as Security Agency Services, the services provided by them to all body corporate, wherein payment of service tax liability is on the recipients as per Notification 30/2012-ST dated 20.06.2012, is accepted to be security agency service by the appellant. And for the service supplied to individuals or non-body corporate, wherein payment of service tax liability is on the service provider/appellant is "Manpower Supply services" has got no force and is afterthoughts to derail the demand of the department. I also find that the appellant has not deposited a single penny to the Govt. exchequer suo-moto and continued to file NIL ST-3 returns with NIL gross taxable value. It is only after the investigation of the department the appellant accepted their service tax liability under RCM on legal consultancy services.

5.8 Regarding the liability of the appellant for Service Tax under the category of security agency, it is clear that the services rendered are squarely covered by the tax entry. The adjudicating authority examined the issue in detail and I find no ground in the present appeal to interfere with the findings. Similarly, the value for tax purpose has to be the gross amount received by the appellant from their clients is a well settled legal position in terms of Section 67 of the Finance Act, 1994.

5.9 I have taken into consideration the rival contentions, find that the written submission / defence reply which have been adjudicated by the Adjudicating Authority have been made as grounds of appeal before this Appellate Authority without giving any justification and argument as to why the findings of the Additional Commissioner are not sustainable. I, therefore, hold that the grounds of appeal before me are not sustainable and I reject the appeal. The respondent shall be entitled for all the consequential reliefs, as per law.

4.5 The facts are not in dispute that the Appellant do not contest that service tax was required to be paid by them in respect of security services provided to individuals and non-corporate bodies. However, they have claimed that the service tax could not have been demanded on the entire value of the consideration received but only on the service charges. They have produced copy of the invoice issued by them some of which are on sample basis reproduced below:-



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S.T. No. ACBFS3555KSD001
REG. No. UP/55597
ESI No. 67000509720001001
PAN No. ACBFS3555K

Bill/ Cash Memo

M. 9412225191
9891875777

S.S.OVERSEAS

Main Road, Surajpur, Greater Noida

Bill No. 525 Date 31/05/2016

M/s. Sobhav Associate Sector
Vaishali Ghaziabad May-16

S.No.	PARTICULARS	RATE	AMOUNT Rs.	P.
1	Wages during the month		337754	00
2	ESI Both share @ 13.36%		29382	00
3	ESIC Both Share @ 4.75%		9770	00
			376,906	00
4.	Contractor Charges @ 10%		37691	00
		Total	4,14,598	00
		S.Tax	—	
		G.TOTAL	4,14,598	00

Rs. in Words Four lac fourteen thousand five hundred Ninety eight only

E.&O.E.

SIGNATURE

S.T.No. ACBFS3555KSD001
PF No. UP/55597
ESI No. 67000509720001001
PAN No. ACBFS3555K

M. 9312597877
9891875777

Bill/Cash Memo

S.S.OVERSEAS

Main Road, Surajpur, Greater Noida
E-mail: ssoverseas@live.com

Bill No. **557** Date 21/07/2016

M/s. Arti Nursery & firms Ghaziabad [illegible]

1st July-2016

S.No.	PARTICULARS	RATE	AMOUNT Rs.	P.
	Wages during the month July-16		33[illegible]	
	EPF Both Share		34063	
	ESI Both Share		22090	
			39[illegible]002	
	Contractor Charge @ 10%		39600	
		Total	436402	
		S.Tax	Nil	
	Rs. in Words Four Lac Thirty Six Thousand Four hundred [illegible] Two only	G.TOTAL	436402	

E. & O.E.

For S.S.OVERSEAS
SIGNATURE

4.6 From the perusal of the invoices it is evident that the Appellant have clearly shown the amounts received by them for payment of wages, EPF, ESIC etc. to the manpower provided and have also indicated their charges separately which are indicated as contractor charges levied at 10% of wages and other expenses towards EPF and ESIC.

4.7 It has been constantly held by various Benches of the Tribunal that Service Tax could not have been levied on the wages etc paid to the manpower provided. Reference is made to decision of the Chennai Bench in the case of Malabar Management Services Pvt. Ltd. [2008 (9) S.T.R. 483 (Tri. – Chennai)] wherein following has been held:

> *6. Section 67 of the Finance Act, 1994 defines 'value of taxable service' as the gross amount charged by the service provider for such service rendered by him. On the facts of the present case, "the service charges" collected by the appellants from the bank as consideration for the Business Auxiliary Service rendered by the former to the latter constitute "the gross amount charged by the service provider for such service". Other amounts collected by them from the bank under debit notes were only reimbursements of salaries and infrastructural expenses and the same cannot be said to be the amounts "charged" by the service provider. In the case of Bridgestone Financial Services v. Commissioner of Service Tax, Bangalore, 2007 (8) S.T.R. 505 (T) = 2007-TIOL-810-CESTAT-BANG., the assessee was found to have provided a similar service to Citi Bank and it was held that the service fell within the category of Business Auxiliary Service and further that reimbursements of expenses by the bank were not taxable. In that case, the Bench took note of a circular issued in October 2003 by the Director-General of Service Tax, wherein it had been clarified that reimbursements of expenses were not taxable. The same circular was considered by the Tribunal in the case of Scott Wilson Kirkpatrick (I) Ltd. v. Commissioner of Service Tax, Bangalore, 2007 (5) S.T.R. 118 (T) = 2007-TIOL-110-CESTAT-BANG, wherein reimbursements of expenses were held not chargeable to service tax in respect of Consulting Engineers, Service. In the case of B.S. Refrigeration Ltd. v. Commissioner of Service Tax, Bangalore, 2006 (4) S.T.R. 103 (Tri.-Bang.), it was held, in*

respect of Clearing and Forwarding Agents, Service, that service tax was not leviable on the amount of expenses incurred by the C & F agent and reimbursed by the service recipient. In the case of Sangamitra Services Agency v. CCE, Chennai, 2007 (8) S.T.R. 233 (T) = 2007-TIOL-1335-CESTAT-MAD, one of us sitting singly held, in respect of C & F Agents, Service, that Service tax was not leviable on expenditure reimbursed by the service recipient towards freight, labour, electricity, telephone etc.

7. Ld. Counsel for the present appellants has also relied on a few circulars of the Central Board of Excise and Customs. In F.No. B43/1/97, dated 6-6-97, it was clarified, in respect of customs house agents' service and steamer agents' service, that reimbursements of expenses were not chargeable to service tax. In F. No. 343/5/97 dated 2-7-97, it was clarified, in relation to Consulting Engineers, Service and Manpower Recruitment Agents' Service, that reimbursements of actual expenses were not subject to service tax. In F. No. B11/3/98 TRU, dated 7-10-98, it was clarified, in respect of Market Research Agency Services and Security Agency Services, that expenses reimbursed by the service recipient were not subject to service tax. In F. No. B11/1/2002 dated 1-8-02, it was clarified, in respect of Cargo Handling Service, that service tax was not payable on reimbursements as in the case of service of Customs House Agent.

8. Thus the case law cited by ld. Counsel and the Board's clarifications are in support of the appellants' contention that service tax is not leviable on the payments received by them from ICICI Bank by way of reimbursements of expenses. Therefore, the demand of differential service tax raised by the Commissioner on the appellants in respect of Business Auxiliary Service rendered by them to M/s. ICICI Bank Ltd. during the periods of dispute cannot be sustained.

9. In view of the above finding, we need not examine the limitation issue.

The appeal filed by the revenue challenging this order has been dismissed by the Hon'ble Supreme Court as reported at [2019 (22) G.S.T.L. J56 (S.C.)]

4.7 In case of Gurubani Security Pvt. Ltd [2021 (51) G.S.T.L. 404 (Tri. – Del)] Delhi Bench held as follows:

10. It is on record that the appellant has provided the services of manpower supply and security agency to various educational institutes and has been collected service tax during the relevant period i.e. from 2009 to Feb., 2014. The appellant has agreed to the fact that they have not deposited the service tax collected from the educational institute which was not required to be collected in terms of the exemption notification mentioned above. As far as the contribution made towards EPF, ESI and salary, the same stand settled in favour of the appellant in view of the decision of Hon'ble High Court of Allahabad and Tribunal's decision in case of Security Guards Board for Greater Bombay and Thane District v. Commissioner of Central Excise, Thane - 2017 (51) S.T.R. 51 (Tri. - Mumbai). The relevant portion of the two judgments is extracted as under :

"9. In view of above, the contributions made towards EPF and ESI are not liable to be included for the computation of gross amount under Section 67(1) of the Act. We also find that the similar issue had been come up for consideration before this Tribunal in case of Young Brothers Transporters and Contractors v. CCE, Meerut-I - 2017 (6) G.S.T.L. 513 (Tri. - Del.), wherein it is held that employer contribution towards PF, EPF, ESI into Central Govt. account is not required to be included for the purpose of a computation of gross amount for discharge of service tax liability. Paragraph 6 of the order which is relevant is reproduced as under:

> *"6. The Employees Provident Fund & Miscellaneous Provisions Act, 1952 and the Employees State Insurance Act, 1948 created the liability upon the principal employer to contribute to the respective funds, an amount equal to employees contribution. Thus, in compliance of the said provisions, the service receiver M/s. HNGIL had contributed to such funds, the amount towards the workmen deployed by the appellant. The fact is not under dispute that such contributed amount was never given by such service receiver to the appellant. Thus, the gross value for the computation of service tax liability in the hands of the appellant will not take into consideration the amount of contribution made by the service receiver M/s. HNGIL directly into the respective heads of account. Therefore, in our considered view, service tax demand cannot be confirmed on the employer's contributed amount towards P.F., E.P.F. and E.S.I."*

In this order the decision of Hon'ble Tribunal in case of Neerv Jaisawal was also considered, which is referred in the impugned order and held to be inapplicable. In this regard, we also find that the Hon'ble Allahabad High Court in the case of Security Services v. Union of India, 16 (399) in Civil Writ Petition No. 437 of 1998 held that the respondent shall be entitled to charge service tax on the gross except after giving the abatement in respect of statutory levy and the tax is and if the same as the direct relation with the services rendered by the client and charged specifically in the bill.

10. As far as the abatement towards deduction of wages and salaries paid to the personal employees by the appellant is concerned, the same is covered by the decision of Mumbai Bench of this Tribunal in case of Security Guards for Greater Bom. & Thane Dist. v. CCE, Thane-II - 2017 (51) S.T.R. 51 (Tri. - Mum.), wherein it is held that wages and allowance including salary and administrative charge collected from its client is excludible from the gross value of taxable service in *terms of Section 67 of the Act. The relevant paragraph of order is reproduced hereinafter :*

> *"4.1 Further, under section 6 of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981, following has been provided :-*
>
> *"31. Disbursement of wages and other allowances to registered Security Guards of the Board. - The wage and other allowances payable to the registered Security Guards of the Board every month by the registered principal employer shall be remitted by the registered principal employers by cheque to Secretary, of the Board, within such time after the end of the month, as may be specified by the Board. The Secretary thereupon shall arrange to disburse the wages and other dues, if any to the registered Security Guards of the Board on specified days every month subject to deductions, if any, recoverable from them under the Scheme; Provided that the Board may, if it thinks fit, and subject to such conditions as may be laid down by it, allow a registered principal employer to pay directly to the Security Guards the wages and other allowances after making such deductions as may be authorized and recoverable from them under the Scheme, within such time and in such manner as may be specified by the Board."*
>
> *From the above clause, it is apparent that the wages and allowances are collected by the Board as an Agency for payment to the concerned persons/authorities. Therefore, the wages and allowances are excludible from the value of service tax. Thus, the taxable value for the purpose of levy needs to exclude these charges. The demand is modified to that extent."*

Following the same, we are of the view that the demand confirmed by the impugned order is required to be re-quantified after giving abatement towards the salary and *wages and the contribution made towards EPF and ESI. We also find in this case the appellant is collected service tax which was not required to be collected by him which is unconditionally exempted in terms of Notification No. 25/2012. In the circumstances, we find that the entire amount of the duty of service tax collected is required to be deposited with service tax department which appears to have been done in terms of the submissions made on behalf of the appellant. Regarding the imposition of penalty, we find that the same is settled in favour of appellant by the decision of Hon'ble Punjab & Haryana High Court in the case of Ajay Kumar Gupta (supra). We also find that the decision of Hon'ble Delhi High Court in case of Intercontinental Consultants (supra) has held that for arriving at the gross amount to be charged under Section 67 of the Act, only such amount is required to be included which is attributable towards the services rendered by the appellant, any other element, which is reimbursable in nature, is not required to be included for the purpose of computation of assessable value under Section 67 of the Act, as this decision has been upheld by the Supreme Court, we are of the view that the various statutory deduction the payment made towards salary and wages are, therefore, required to be deducted from the total amount charged by the appellant from the service recipient for the rendition of the service. Thus, the charges attributable to the service element can only to be considered in the gross amount charged. It is, therefore, held that the demand, as confirmed in the impugned order, is required to be re-worked out in view of the findings as indicated above. We also hold that in the given circumstances that there is no justification of imposition of penalty on the appellant. Accordingly, we set aside the impugned orders and allow the appeals by way of remand for limited purpose of computation of service tax demand in terms of this order as held hereinabove.*

4.7 As the amount of service charges are separately indicated the liability to service tax should be related to these charges and the value of the wages etc., should not have been included in the gross value of the services provided.

4.8 To this extent I am unable to uphold the impugned order. For re-computation of the demand after deducting wages etc from the gross value determined matter is remanded back to the Original Authority who should re-compute the demand of service tax accordingly.

4.9 I also uphold that the extended period of limitation would be invokable in the present case. The Appellant have not challenged invocation of extended period of limitation at the time of argument. Appellant has willfully suppressed the fact of providing the taxable services to individuals and non cooperate entities from the department and the same has been unearthed only subsequently during the course of these proceedings. The fact that appellant was claiming that under Notification No 30/2012-ST as amended the service tax was payable on the reverse charge basis by the service recipients in case where the recipients were corporate body. Thus they were well aware of the fact that in respect of individuals and non corporate body the benefit of that notification was not available and they were required to pay service tax on forward charge basis. Thus appellant has willfully and knowingly suppressed the fact in respect of the services provided to individuals and non corporate body with intention to evade payment of tax. Accordingly, penalty under Section 78 etc is justified. However, the quantum needs to be re-determined in terms of the demand confirmed in Para 4.8 above in remand proceedings.

5.1 Appeal is allowed by way of remand to the Original Authority for re-computation of demand and penalty under Section 78, as per the observations made in para 4.7, 4.8 & 4.9.

5.2 Since the matter is quite old, original authority should decide the matter in de-novo proceedings within 03 months of the receipt of this order.

(Operative part of the order is pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal