# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## <u>ALLAHABAD</u>

REGIONAL BENCH - COURT No. I

**Service Tax Appeal No.70444 of 2024**

(Arising out of Order-in-Appeal No.DDN-EXCUS-000-APPL-MRT-160-2023-24 dated 04/01/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Dehradun)

**M/s Universal Protection Services,** **.....Appellant**

(Nawada Road, Chuna Bhatti,
Near Bijli Ghar Cash Counter, Saharanpur)

*VERSUS*

**Commissioner of Central Excise &**

**CGST, Meerut-I** **....Respondent**

(Mangal Pandey Nagar, Meerut)

**<u>APPEARANCE:</u>**

Shri Aalok Arora, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM:** **HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**

**FINAL ORDER NO.70335/2025**

DATE OF HEARING : 05 June, 2025
DATE OF DECISION : 05 June, 2025

**<u>R. MURALIDHAR:</u>**

This appeal is directed against Order-in-Appeal No.DDN-EXCUS-000-APPL-MRT-160-2023-24 dated 04/01/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Dehradun.

2.0 Appellant is registered for providing services under the category of Security Services. On 22.10.2021, a show cause notice was issued to the appellant on the ground that the turnover shown in the ST-3 Return is not tallying with the Income Tax records of the appellant. Accordingly, under the show cause notice the demand for the period 2016-17 and 2017-18 (till June, 2017) for Rs.5,36,642/- was made. After verifying the details, adjudicating authority confirmed the demand of Rs.1,19,474/- alongwith interest and equal amount of penalty and further penalty of Rs.20,000/- was also imposed under Section 70 of Finance Act. Being aggrieved, the appellants have filed their appeal before the Commissioner (Appeals). He has given the benefit of cum-tax to the appellant and modified the service tax payable as Rs.1,03,890/- alongwith interest and confirms the equal amount of penalty plus penalty of Rs.20,000/-. Being aggrieved, appellant is before this Tribunal.

3.0 The Learned Advocate appearing on behalf of the appellant submits that the appellant has provided services to the extent of Rs.3,91,142/- to the various educational institutions on which Service Tax is fully exempt in terms of Notification No.25/2012-ST dated 20.06.2012. He further submits that the demand has been made for the entire amount of invoice value which is inclusive to the amount paid to the various security guards by the appellant. This has resulted in demanding the service tax on Rs.110/- (Rs.100/- paid to the security guard + Rs.10/- paid on account of commission). He submits that this issue is no more *res-integra*. In the case of **M/s Gurubani Security Pvt. Ltd. 2021 (51) G.S.T.L. 404 (Tri.-Del.),** it is held that the amount paid to the security guards is in the nature of reimbursement and hence no Service Tax is required to be paid. Thus, he submits that on merits, the appeal is required to be allowed.

4.0 He also submits that the appellants are registered with the Service Tax Department and they have also filed their ST-3 Returns. The data has been gathered from the Income Tax Department for the turnover declared by them. Therefore, this shows that they have not suppressed any fact. Hence, he prays that the show cause notice issued on 22.10.2021 by invoking the extended period may be held as time barred.

5.0 The Learned Authorised Representative appearing for the revenue submits that appellant was not regular in filing the ST-3 Returns. He further submits that they are not able to produce any proper evidence to the effect that they were providing services to the educational institutions. He submits that only on account of the Income Tax Returns, the Revenue came to know that appellant was not discharging their service tax liability properly. Accordingly, he prays that the appeal may be dismissed.

6.0 Heard both sides, perused the appeal papers and submissions made by both sides.

7.0 I find that the appellant has not charged Service Tax from their clients which has been noted by the Commissioner (Appeals), who has given the benefit of cum-tax in terms of Section 67 (2) of the Act. Further, it is seen that the Service Tax demand is on the total invoice value which is inclusive of their cost on security persons plus the commission rendered by the appellant. In the cited case of **M/s Gurubani Security Pvt. Ltd. 2021 (51) G.S.T.L. 404 (Tri.-Del.)** the same issue was before the Tribunal and the Tribunal vide their Final Order Nos.50958-50959/2019 dated 01/08/2019 has held as follows:-

> *"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 :*
>
> > *In view of above, the contributions made "9. 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*

*<u>discharge of service tax liability.</u> Paragraph 6 of the order which is relevant is reproduced as under :*

*The Employees Provident Fund "6. & 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.*

*As far as the abatement towards deduction 10. 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 :*

*Further, under section 6 of the Maharashtra "4.1 Private Security Guards (Regulation of Employment & Welfare) Act, 1981, following has been provided :-*

***Disbursement of wages and other allowances to registered "31. 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."*

8.0 Once this benefit is granted to the appellant, the confirmed demand gets dropped down to about 15% of the amount decided by the Commissioner (Appeals). From this, if their turnover on account of three educational institutions is removed, it will come down further.

9.0 As all these verifications are difficult at this juncture and may not be useful in view of low value of demand, I have also considered the arguments on accounts of limitation. Since appellant was already registered with the Service Tax Department, in terms of CBEC Manual, the Range Officers are required to scrutinize the Return filed and raise proper queries as has been instructed under the Manual. There is nothing to show that the Returns filed were scrutinized. In this regard, no query was raised between the period from 2017 to 2021. Considering the same along with the fact that the quantification of the Service Tax Department is based on the Income Tax Return filed by the appellant, it shows that they have not indulged in any activity which indicates suppression on their part. The fact that they have not charged Service Tax, shows their bonafide belief. Therefore, I allow the appeal on the ground of time-bar itself.

9.0 Appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in open court)

**(R. MURALIDHAR)**
**MEMBER (JUDICIAL)**

*akp*