

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

Sl. No.	Appeal No.	Appellant	Respondent	Order-in-Original No. & date
1.	ST/459/2012-CU[DB]	Sri Arman Khan	Commissioner of Central Excise & Service Tax, Lucknow	28/COMMR/LKO/ST/2011-12 dated 06.01.2012 passed by CCE & ST, Lucknow.
2.	ST/463/2012-CU[DB]	Federal United 7 Protection Grpup	Commissioner of Central Excise & Service Tax, Lucknow	28/COMMR/LKO/ST/2011-12 dated 06.01.2012 passed by CCE & ST, Lucknow.
3.	ST/466/2012-CU[DB]	Force 7 Securities Pvt.Ltd.	Commissioner of Central Excise & Service Tax, Lucknow	27/COMMR/LKO/ST/2011-12 dated 06.01.2012 passed by CCE & ST, Lucknow.

APPEARANCE

Shri Vineet Kumar Singh (Advocate) for the Appellant (s)
Shri Rajeev Ranjan, (Addl.Commr.) (A.R.) for the Revenue

CORAM:

SHRI ASHOK JINDAL, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION 27.07.2018

FINAL ORDER NO.71780-71782/2018

Per Ashok Jindal :

The appellants are in appeal against the impugned orders wherein demand under the category of 'security service' has been demanded from the appellants.

2. As in all the appeals, the facts and the issue is common, therefore, all the appeals are disposed of by a common order.

3. The facts of the case are that the appellants are engaged in providing security services to the bank as well as cash van to the bank for carrying the cash from one place to another. During the year 2005-

06, an audit took place at the place of the appellant. It was found that the appellants have made a short payment of Rs.4,000/- which the appellant paid along with interest. Thereafter, another audit took place in the year 2008 wherein demand of interest was sought from the appellant on the ground of delay of payments, which appellant also paid. Later on an investigation was conducted in the appellant's premises and on the basis of investigation, it was found that the appellant has shown excess figure of receipt in their bank statement as well as in their profit and loss account and balance sheet whereas they have shown lesser figures in the Service Tax Returns therefore, the differential amount between the documents produced and ST-3 Returns was treated as receipt of taxable service i.e. security service and it is alleged that the appellant was paying short Service Tax on "security services". In view of this, the show cause notices were issued to the appellants on 19.10.2010 for the period 01.04.2005 to 31.05.2010 by invoking extended period of limitation. In reply to the show cause notice, the appellants contended that the appellants are providing cash van to the banks as per the agreement between them and also providing some material. But without considering the same, it was held that the appellants are liable to pay service tax on "Security Services" on differential amount, therefore, the impugned orders had been passed for demanding Service Tax under the category of "Security Service" along with interest and various penalties were also imposed on the appellants. Personal penalty is also imposed on Shri Arman Khan,

proprietor of the appellant. Against those orders, the appellants are before us.

3. The Id.Counsel appearing on behalf of the appellants brought in our knowledge the agreements between the bank and the appellants showing that appellants apart from providing security service to the bank, are also providing cash van services for transportation of cash from one place to another place. The providing of cash van from one place to another place is not security service therefore for that activity, no Service Tax is payable by the appellant under the category of 'security service'. It is further submitted that apart from providing cash van, the appellants are providing certain materials to the bank for that Service Tax cannot be demanded. For providing the 'security services', the appellant is paying Service Tax under the category of "Security Services" for which there is no dispute. Therefore, it is prayed that as the principal service of the appellant is providing cash van to the banks, the same cannot be termed as 'security service' therefore, the demand of Service Tax is not sustainable.

4. On the other hand Id.A.R. submits that cash van cannot be provided without the security guard and security of cash van is the dominant services, therefore, the same do qualify as security service therefore, the differential Service Tax is rightly demanded from the appellants.

5. Heard the parties, considered the submissions.

6. We have gone through the agreements between the appellants and the banks. As per the agreement, which is produced before us, the

appellants are providing security service under a separate contract and also providing cash van to the banks for transporting the cash from one place to another place. Admittedly, the cash vans are having the security guards but the dominant service is to provide cash van for transportation of cash from one place to another. Admittedly, in this case, the main service provided by the appellant is cash van service. Whether this service shall do qualify as "Security Service" or "Supply of Cash Van Service". A similar issue has been decided by this Tribunal in the case of Kingfisher Airlines Ltd. v. Commissioner of Service Tax, Mumbai- reported in 2015 (40) S.T.R. 1159 (Tri.-Mumbai), wherein Service Tax sought to be recovered from the Kingfisher Airlines **on** excess baggage charges. In the said case, the issue was whether the transportation of passenger by air is dominant service or the excess baggage is transportation of goods by air. In that case, it was held by the Tribunal that the dominant service is transportation of passenger by air and Service Tax is not payable on excess baggage charges under the transportation of goods by air. The said order was affirmed by the Hon'ble Apex Court in the case of Commissioner v. Jet Airways (I) Ltd. reported in 2017 (48) S.T.R. 142(S.C.).

7. Therefore, relying on the decision of Kingfisher Airlines(supra), we hold that providing of cash van service with security guard is covered under 'cash van service' and cannot be termed as 'security services' as the dominant service is transportation of cash from one place to another through these cash vans. Therefore, we hold that the

appellants are not liable to pay differential Service Tax under the category of 'security service'. Consequently, no penalty is imposable.

8. In these terms, we set aside the impugned orders and allow the appeals with consequential relief, if any.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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