CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70966 of 2018-[DB]

(Arising out of Order-in-Appeal No.94/ST/Appeal/Audit-LKO/2018 dated 16/03/2018 passed by Commissioner (Audit) Central Goods & Service Tax and Central Excise, Lucknow)

M/s Federal Security (P) Ltd., ...Appellant

(25/22A, Madan Mohan MalviyaMarg, Hazratganj, Lucknow-226001)

VERSUS

Commissioner of Central Excise & Service Tax,Respondent

(Lucknow)

APPEARANCE:

Shri Vineet Kumar Singh, Advocate for the Appellant
Shri Shiv Pratap Singh, Authorised Representative for the Respondent

CORAM: **HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-71927 / 2019

DATE OF HEARING : 26 November, 2019
DATE OF PRONOUNCEMENT : 29 November, 2019

PER: ANIL G. SHAKKARWAR

Above stated appeal is arising out of Order-in-Appeal No.94/ST/Appeal/Audit-LKO/2018 dated 16/03/2018 passed by Commissioner (Audit) Central Goods & Service Tax and Central Excise, Lucknow.

2. Brief facts of the case are that the appellants were engaged in providing 'Security Services' to the bank as well as

they were engaged in providing cash van to the Bank for carrying cash from one place to another. The appellant were issued with a show cause noticed dated 14.10.2015 wherein it was stated that the said show cause notice was statement of demand-cum-show cause notice and it was stated that in continuation to earlier demand-cum show cause notice dated 23.12.2013 for the period 2011-12 since the grounds relied upon are the same and therefore the said statement of demand dated 14.10.2015 in the form of statement of demand-cum-show cause notice was issued. It was further stated in the said demand-cum-show cause notice that on the basis of earlier show cause notice for the period from 2011-12 a letter was written to the appellant to seek information. On the basis of information received from the appellant, it was stated that appellant was required to show cause as to why service tax of around Rs.81 lakhs should not be demanded from them for the financial year 2012-13 on the basis of difference between the figures reflected in the balance sheet and those on which service tax was already paid by the appellant and service tax payable against recovery from old debtors. The said show cause notice was adjudicated through Order-in-Original dated 21.03.2017 wherein the demand was confirmed and penalty of around Rs.8 lakhs was imposed on the appellant. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) through the impugned Order-in-Appeal upheld the said Order-in-Original dated 21.03.2017. Aggrieved by the said order, appellant is before this Tribunal.

3. After hearing both the sides duly represented by Shri Vineet Kumar Singh learned Advocate appearing on behalf of the appellant and Shri Shiv Pratap Singh learned Authorised Representative appearing on behalf of Revenue, we note that the said show cause notice referred to in the statement of demand-cum-show cause notice dated 14.10.2015 which was issued for the period 2011-12 was ultimately considered for issue a Final Order Nos.72386-72388/2018 dated 19.09.2018. Both the parties has agreed that the issue is squarely covered by the decision of this Tribunal for earlier period passed through Final Order Nos.72386-72388/2018 dated 19.09.2018.

4. We have considered the submissions made by both the sides and perused said Final Order Nos.72386-72388/2018 dated 19.09.2018. We note that the proceedings initiated through show cause notice dated 23.12.2013 issued for the period 2011-12 ultimately reached this Tribunal and the same were considered along with two other proceedings initiated against the same appellant for the financial year 2006-07 to 2010-11 and all the three appeals were decided through a common Final Order Nos.72386-72388/2018 dated 19.09.2018. Both sides have agreed that the issue involved in the present proceedings which are for the financial year 2012-13 are squarely covered by the said Final Order Nos.72386-72388/2018 dated 19.09.2018. For the sake of ready reference, we reproduce relevant part of the said Final Order dated 19.09.2018:-

"2. In all the appeals the facts and issues are common. The fact 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 cash from one place to another. On 07.01.2010 officers of Central Excise visited the office premises of the appellant and carried out investigations. On the basis of the investigations it appeared to Revenue that appellants were showing 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 their ST-3 returns. Therefore the differential amount between the documents and ST-3 returns was treated as receipt of taxable service i.e. 'security service' and it was alleged that appellant was short paying Service Tax on 'security services'. Accordingly three show cause notices were issued for the period from financial year 2006-07 to financial year 2011-12. In reply to show cause notice appellant contended that the appellants were providing cash van to the banks as per the agreement between them. Without considering the same the original authority has held that the appellant were liable to Service Tax on 'security services' on differential amount under the category of 'security service' along with interest. Further various penalties were imposed. Aggrieved by the said orders appellant is before this Tribunal.

3. After hearing both sides duly represented by Shri Vineet Kumar Singh, ld. Advocate and Shri Rajeev Ranjan, ld. Addl. Commr. (A.R.) we find that the issue is no more res integra in view of the decision of this Tribunal through Final Order No.71780-70782/2018 dated 27.07.2018. Both the sides agreed that the issue is squarely covered by the decision vide Final Order dated 27.07.2018. For the sake of appreciation, the findings in the said Final Order dated 27.07.2018 are reproduced below:-

> "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. J42(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."

4. Following the precedent decision of this Tribunal we hold that the impugned orders are not sustainable. We therefore allow all the three appeals. The appellants shall be entitled for consequential relief."

5. By following our earlier decision, we set aside the impugned order and allow the appeal. The appellant shall be entitled for consequential relief, as per law.

(Pronounced in Court on- 29 November, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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