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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 26/12/2017

1 Appellant as per address in table below
2 Respondent as per address in table below

Final Order No. ST/A/71898/2017-CU[DB] dated 27/06/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
-	ST/51069/2014	**UP Police** Office Of The SSP.UP Police Collectorate Bhawan GHAZIABAD (IU.P)
		Name and Address of Respondent
		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, (UP) -201002

Copy To
3 Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD, (UP)

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd. 59/32, New Rohtak Road, New Delhi-110005

9 LAW CRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 Taxindiaonline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Max Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/s Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/51069/2014-CU[DB]

(Arising out of Order-in-Original No. 13/COMMR./ST/GZB/2013-14 dated 30/10/2013 passed by Commissioner of Central Excise & Customs, Ghaziabad)

M/s U.P. Police, **Appellant**

Vs.

Commissioner of Central Excise & S.T., Ghaziabad **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/06/2017
Date of Decision : 27/06/2017

FINAL ORDER NO- 71838/2017

Per: Anil Choudhary

The present appeal have been filed by the appellant (U.P. Police) against Order-in-Original No. 13/COMMR./ST/GZB/2013-14 dated 30/10/2013 passed by Commissioner of Central Excise & Customs, Ghaziabad. In the present case service tax demands have been made against the 'Police Department' on the basis of the view entertained by revenue that the police department has provided 'Security Agency Service' Covered under Section 65 (105) (w) read with Section 65 (94) of the Finance Act, 1994.

2. The brief facts of the case are summarized below:-

(i) Superintendents of Police of Ghaziabad in the State of Uttar Pradesh is alleged to have been engaged in providing 'Security Agency Services' covered under Section 65 (105)(w) of Finance Act, 1994 without having the registration for the services. As per Section 65(94) of the Finance Act, 1994, Security Agency means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel.

(ii) As per Section 65(105)(w) of the Finance Act, 1994 taxable service means any service provided or to be provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity. Prior to 01.05.2006, Security Agency Services were taxable only if such services were provided by a 'commercial concern', but with effect from 01.05.2006 the term commercial concern has been substituted with the term 'any person'. The appellants were providing Police personnel to various organizations such as banks and other individuals, on their request, towards security of persons, property, cash, etc. and collecting charges for such services provided by them. They were also sending police personnel for character verification of candidates selected for various jobs and collecting charges for the activity. However, they failed to take registration with the department nor did they deposit the service tax for the charges recovered for providing these services.

(iii) Revenue took the view that the appellants, though an agency/department of State Government and responsible for maintenance of law and order and security to public at large, was providing Security Agency Services in relation to property as well as personal security for a consideration. The Central Board of Excise and Customs, New Delhi has also clarified the issue of taxability in respect of services provided by public authorities vide Circular No.89/7/2006-ST dated 18.12.2006 that:

"activities assigned to and performed by the sovereign / public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of compulsory levy and are deposited in the Govt. Account. However, if a sovereign or public authority provides a service, 'which is not in the nature of statutory activity' and the same is undertaken for consideration (not a statutory fee), then in such cases service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined."

(iv) Accordingly, Show Cause Notices were issued by the Office of the Commissioner of Service Tax, for recovery of Service Tax on the charges recovered by Police under proviso to Section 73(1) of the Finance Act, 1994 along with the interest payable under Section 75 of the Finance Act, 1994 and also penalties under various Sections of the Finance Act 1994.

The Show Cause Notice culminated in the issue of the impugned orders which stand challenged before us in the present proceedings.

3. The main grounds of appeals are summarized below:

(i) The term person appearing in the definition of Security Services will not include the State and instrumentalities thereof. Hence no Service Tax is payable by the State Governments.

(ii) State Police cannot be said to be engaged in the Business of Security Services. Since being engaged in the business of Security Services is a condition precedent, there is no service tax liability.

(iii) They are not engaged in the business of rendering services relating to security.

(iv) The Central Board of Excise and Customs has dealt with the issue of levy of service tax on the charges recovered by any sovereign/public authority carrying out any statutory function in their Circular no. 96/7/2007-ST dated 23.8.2007, wherein it has been clarified that no service tax would be payable if all the following conditions are satisfied:-

(a) Sovereign / public authorities perform duties which are in the nature of statutory & mandatory obligation to be fulfilled in accordance with the law.

(b) The fee collected should be levied as per the provision of relevant law.

(c) The amount collected is to be deposited into government treasury.

In the case of the State Police Department, all the aforesaid conditions are duly satisfied and hence it is clear that the activity in question squarely falls within the corners of the department circular and hence the impugned demand is unsustainable in terms of the Department's own clarification.

(v) The Adjudicating Authority has grossly erred in appreciating the facts properly of the present case. The activity of deploying police force by the Appellant is part of its statutory duty of maintaining law and order. However, the Commissioner, without appreciating the facts, held that the activity in question is not a statutory function and thereon liable to Service Tax. The findings of Commissioner are incorrect and therefore the impugned demand needs to be set aside.

4. Shri Rajesh Chhibber learned Counsel On behalf of the appellants (Police Department), was heard and arguments were advanced.

5. The following case laws were relied upon by the ld. Counsel for the appellant:-

(a) Mumbai Police Vs. CST, Mumbai [2015 (37) STR 483 (Tri.-Mumb)]

(b) Security Guards Board Vs. CCE, Thane-II [2011 (24) STR 391 (Bom.)]

(c) DCP Vs. CCE, Jaipur-II [3024 (31) STR 228 (Tri.-Del.)]

(d) State of West Bengal Vs. Union of India [AIR 1963 SC 1241]

(e) Maharashtra Industrial Development Corporation Vs. CCE, Nasik [2014 (36) STR 1291 (Tri.-Mumb)]

(f) The State of Uttar Pradesh Vs. Mohammad Naim [AIR 1964 SC 703]

(g) State of Bihar & anr. Vs. JAC Saldanha & Ors [AIR 1980 SC 326]

(h) Punjab Ex-servicemen Corporation Vs. CCE, Chandigarh [2009 (13) STR 529 (Tri.-Del.)]

(i) Surat Municipal Corporation Vs. CCE, Surat [2006 (4) STR 44 (Tri.-Del.)].

6. The learned A.R. for revenue has relied on the impugned Order-in-Original.

7. Having considered the rival contention and on perusal of records, we find that the appellant have rendered statutory function, as providing security is a sovereign function. We also find that the service provided by appellant, are not taxable, as clarified by Circular No.96/7/2007-ST. Accordingly, the appeal is allowed and the impugned order is set aside. Appellant will be entitled to consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति
18/01/18
38, एम.जी.मार्ग,
38, M. G. MARG, ALLAHABAD