CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20830 of 2015

(Arising out of Order-in-Original No. TVM-EXCUS-44,45 & 46-14-15 dated 18/12/2014 passed by Commissioner of Central Excise, Customs Trivandrum)

DGP And State Police Chief
The Director General Of Police,
State Police Department,
Police Headquarters,
Vazhuthacaud, Thiruvananthapuram
TRIVANDRUM - 695010
KERALA

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
Trivandrum
T.C.NO.26/334(1&2),
I.C.E BHAVAN,PRESS CLUB ROAD,
TRIVANDRUM - 695001
KERALA

Respondent(s)

AND

Service Tax Appeal No. 20831 of 2015

(Arising out of Order-in-Original No. TVM-EXCUS-44,45 & 46-14-15 dated 18/12/2014 passed by Commissioner of Central Excise, Customs Trivandrum)

DGP And State Police Chief
The Director General Of Police,
State Police Department,
Police Headquarters,
Vazhuthacaud, Thiruvananthapuram
TRIVANDRUM - 695010
KERALA

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
Trivandrum
T.C.NO.26/334(1&2),
I.C.E BHAVAN,PRESS CLUB ROAD,

Respondent(s)

TRIVANDRUM - 695001
KERALA

AND

Service Tax Appeal No. 20832 of 2015

(Arising out of Order-in-Original No. TVM-EXCUS-44,45 & 46-14-15 dated 18/12/2014 passed by Commissioner of Central Excise, Customs Trivandrum)

DGP And State Police Chief
The Director General Of Police,
State Police Department,
Police Headquarters,
Vazhuthacaud, Thiruvananthapuram
TRIVANDRUM - 695010
KERALA

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
Trivandrum
T.C.NO.26/334(1&2),
I.C.E BHAVAN,PRESS CLUB ROAD,
TRIVANDRUM - 695001
KERALA

Respondent(s)

APPEARANCE:
Shri Raghavendra Hanjir, Advocate for the appellant.
Shri P. Rama Holla, Superintendent(AR) for the respondent.

CORAM:
HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER
HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order No. 20071-20073 / 2022

Date of Hearing: 02/03/2022
Date of Decision: 02/03/2022

Per : ASHOK JINDAL

As all the appeals are having common issue, therefore, all appeals are decided by this common order.

2. The facts of the case are as under:-

The appellant is Director General of Police, State Police Department, Thiruvananthapuram. It was found that the appellant is providing police guards to Central Government departments such as Indian Railways, Postal Department, Airport Authority of India, Oil companies, State Government departments, quasi government departments such as Kerala State Electricity Board(KSEB), and private firms/individuals and money escort/guard duty to banks on requisition. The recovery of cost of police guards constitutes a major source of receipts of the police department and the amounts are recovered from the beneficiaries as per the procedures prescribed by the Government of Kerala and DGP, Kerala. The amounts so collected from the clients for supply of police personnel was deposited in the treasury of the Government under the account head 055-001-2-98 in respect of police personnel supplied to KSEB and 055-00102-99 in respect of police personnel supplied to public departments, private companies and persons etc. 26 bills were raised and amounts were deposited in the Government treasury from the service recipients. The security agency services has been brought under service tax net w.e.f. 16/10/1998 and as per Section 65(96) 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 act or activity, whether of a personal nature or otherwise, including the services of providing security personnel". Further as per Section 65(105)(w) of the Act, "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". W.e.f. 01/05/2006, the term 'commercial concern' was substituted with 'any person'. Therefore, various show-cause notices were issued to the appellant for the period June 2006 to June 2012 on the ground that the activity of providing armed police personnel by the appellant falls under the category of Security Agency Service and the same is taxable service on which they have not paid the service tax. Therefore, service tax demands were proposed along with penalties. The appellant contested the same but it was held by the lower authorities that the appellant is providing Security Agency Service, hence they are liable to pay service tax. Accordingly, the demands were confirmed along with interest and penalties were also imposed under various provisions of Finance Act, 1994. Against the said orders, the appellant is before us.

3.1. The learned counsel appearing on behalf of the appellant submits that the appellant is a police department under the Ministry of Home Department, Kerala State. The main function of the Police Department is to maintain law and order and crime investigation within the state of Kerala. Apart from that, appellant is also providing arms and security guards to various public sector banks / undertakings, Government Departments, KSEB, Oil companies etc. in terms of Section 8 of the Kerala State Police Act. The appellant is charging nominal amount for providing security guards as fixed by the Government of Kerala from time to time and amount so collected is credited directly to the treasury of Government under the specific heads. Therefore, the act of the appellant is in nature of sovereign function of the State and appellant is not engaged in any business activity for providing security personnel but is providing police protection to life and liberty of person and property; therefore, appellant is not liable to pay service tax. He also took shelter of the CBEC Circular No.89/7/2006-ST dt. 18/12/2006 and master Circular No.96/07/2007-ST dt. 23/08/2007. He also relied on certain case laws, which are as follows:-

i. Commissioner of Central Excise and Service Tax, Jaipur-I vs. Superintendent of Police Hanumangarh - 2017 (9) TMI 1671 - SC ORDER

ii. Dy. Inspector General of Police vs. Commissioner of C.Ex., Bhopal - 2017 (11) TMI 346 - CESTAT-New Delhi
iii. Mumbai Police vs. Commissioner of Service Tax, Mumbai - 2018 (4) TMI 418 - CESTAT Mumbai
iv. Superintendent of Police (Rural) vs. Commissioner of Central Excise, Aurangabad - 2021 (10) TMI 1075 - CESTAT Aurangabad
v. Superintendent of Police vs. Commissioner of Central Excise, Jaipur - 2019 (11) TMI 250 - CESTAT New Delhi
vi. The Commandant Home Guard Training Centre, Kir Khera Chittorgarh vs. Commissioner of Central Goods and Service Tax, Excise, Customs, Udaipur - 2021 (7) TMI 195 - CESTAT New Delhi
vii. The Commissioner of Police vs. Commissioner of Service Tax-VII, Mumbai - 2021 (12) TMI 1048 - CESTAT Mumbai
viii. The Deputy Commissioner of Police Jodhpur, Superintendent of Police vs. Commissioner of Central Excise and Service Tax, Jaipur - 2016 (12) TMI 289 - CESTAT New Delhi
ix. The Superintendent of Police vs. CCE & ST., Bhavnagar - 2018 (8) TMI 1103 - CESTAT Ahmedabad

3.2. He further submitted that the show-cause notice dt. 08/06/2011 issued for the period prior to March 2011 is barred by limitation. Therefore, he prayed that impugned orders be set aside.

4. On the other hand, the learned AR supported the impugned orders and drew our attention to the CBEC Circular dt. 18/12/2006 to say that the activity undertaken for consideration is not in nature of statutory fee or levy; then in such cases, service tax would be leviable if activity undertaken falls under the ambit of service tax.

5. Heard the parties and considered the submissions in detail.

6.1. We find that in this case, the appellant is a Police Department governed by the State of Kerala. The appellant is discharging the function of security of property and person. Apart from that, appellant is providing certain security personnel to certain Government agencies, Central/State, public sector undertakings and other private persons and charging the amount as provided under Section 8 of the Kerala State

Police Act. The amounts so recovered have been deposited into Government treasury under different heads. In view of this, issue arises whether providing armed security guards to public sector undertakings, State/Central Government Departments or other persons is covered under Security Agency Service or not?

6.2. The issue has been examined by various decisions cited hereinabove by the learned counsel for the appellant and this Tribunal has an occasion to hold as under:-

> *4.6 After perusal of the facts on record and submissions of both sides, we are of the view that the appellant is performing statutory duties and the amount so collected is being deposited in the government treasury. CBEC has issued a Circular No.89/7/2006-ST dated 18.12.2006 clarifying that wherever the charges collected by any sovereign public authority for carrying out any statutory function, the same is not liable to levy of service tax if following three conditions are satisfied: (a) Sovereign/public authorities perform duties which are in the nature of statutory and 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.*
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> *4.7 Further, there is a CESTAT decision vide Final Order No.55321-55348 dated 25.11.2016 in the case of Dy. Commissioner of Police & Others Vs. CCE, Jaipur & Others, where it was concluded that the police department which is in the agency of State Government cannot be considered to be a person engaged in the business of running security services. The CESTAT in the said decision has held that the activity undertaken by the police is not covered by the definition of security agency under Section 64(94) of the Finance Act, 1994.*
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> *4.8 The same view has been expressed by the Mumbai Bench of the Tribunal in the case of Mumbai Police Vs. Commissioner of Service Tax, Mumbai-I [2018-TIOL-1067-CESTAT-MUM].*

6.3. As the issue has already been settled by various decisions of this Tribunal, therefore, issue is no more res integra. Accordingly, we hold that appellants are not liable to pay service tax being appellants are discharging sovereign functions in terms of Kerala State Police Act. Therefore, demand of service tax is not sustainable against the appellant.

7. In view of the above analysis, we set aside the impugned order and allow the appeals with consequential relief, if any, as per law.

(Pronounced in open court on **02/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

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