CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 3967 of 2012

[Arising out of Order-in-Appeal No.221/ST/APPL/LDH/2012 dated 18.09.2012 passed by the Commissioner (Appeals), Customs and Central Excise, Chandigarh]

Commander Punjab Home Guards **……Appellant**
Kanjli Road, Kapurthala, Punjab

VERSUS

Commissioner of Central Excise and Service Tax, Ludhiana **……Respondent**
Central Excise House, F-Block,
Rishi Nagar, Ludhiana, Punjab-141001

WITH

(i) Service Tax Appeal No. 57548 of 2013
(The Distt. Commander vs. CCE & ST, Chandigarh-II)
[Arising out of Order-in-Appeal No.59/ST/Appl/CHD-II/2013 dated 20.02.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

(ii) Service Tax Appeal No. 50542 of 2014
(The District Commander vs. CCE & ST, Chandigarh-II)
[Arising out of Order-in-Appeal No. JAL/EXCUS-000-APP-168-13-14 dated 17.10.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

(iii) Service Tax Appeal No. 52032 of 2015
(District Commander Punjab Home Guard vs. CCE & ST, Chandigarh-II)
[Arising out of Order-in-Appeal No. JAL/EXCUS-000-APP-142-14-15 dated 19.09.2014 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

(iv) Service Tax Appeal No. 57566 of 2013
(Rai Singh Dhaliwal vs. CCE & ST, Chandigarh-II)
[Arising out of Order-in-Appeal No. 45/ST/Appl/CHD-II/2013 dated 30.01.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

(v) Service Tax Appeal No. 57916 of 2013
(District Commandant Home Guards Haryana vs. CCE & ST, Panchkula)

[Arising out of Order-in-Appeal No. 58/S./Tax/D-II/13 dated 18/19.02.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

(vi) Service Tax Appeal No. 57917 of 2013
(District Commandant Home Guards Haryana vs. CCE & ST, Panchkula)

[Arising out of Order-in-Appeal No. 58/S./Tax/D-II/13 dated 18/19.02.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

(vii) Service Tax Appeal No. 57918 of 2013
(District Commandant Home Guards Haryana vs. CCE & ST, Panchkula)

[Arising out of Order-in-Appeal No. 59/S./Tax/D-II/13 dated 18/19.02.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

(viii) Service Tax Appeal No. 57919 of 2013
(District Commandant Home Guards Haryana vs. CCE & ST, Panchkula)

[Arising out of Order-in-Appeal No. 59/S./Tax/D-II/13 dated 18/19.02.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

(ix) Service Tax Appeal No. 59306 of 2013
(Punjab Home Guards vs. CCE & ST, Ludhiana)

[Arising out of Order-in-Appeal No. 60/Appl/Cus(D) Camp Chd/2013 dated 08.05.2013 passed by the Commissioner (Appeals), Customs and Central Excise, Chandigarh]

(x) Service Tax Appeal No. 51201 of 2014
(District Commander Punjab Home Guards vs. CCE & ST, Chandigarh-II)

[Arising out of Order-in-Appeal No. LUD-EXCUS-000-APP-569-13-14 dated 31.10.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

(xi) Service Tax Appeal No. 51203 of 2014
(District Commandant vs. CCE & ST, Chandigarh-II)

[Arising out of Order-in-Appeal No. JAL-EXCUS-000-APP-08-13-14 dated 10.09.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

(xii) Service Tax Appeal No. 50520 of 2014
(CCE & ST, Ludhiana vs. Punjab Home Guard)

[Arising out of Order-in-Appeal No.LUD-EXCUS-000-APP-569-13-14 dated 31.10.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-I]

(xiii) Service Tax Appeal No. 56006 of 2014
(CCE & CGST, Jalandhar vs. Deputy Commandant)

[Arising out of Order-in-Appeal No.CCA/CHD/69/2014 dated 01.08.2014 passed by the Commissioner (Appeals), Customs, New Delhi]

APPEARANCE:

Shri Sukhbir Singh, Distt. Commander, Ropar *with*
Shri Bikramjit Singh, Company Commander, Patiala
Shri Rajinder Krishan, Company Commander, Firozepur
Shri Dilbag Singh, Company Commander, Kapurthala
Shri Manpreet Singh, Company Commander, Amritsar
Shri Rawel Singh, Company Commander, Hoshiarpur
Shri Hari Singh, Company Commander, Bathinda
Shri Maninder Singh Hira, Company Commander, Hoshiarpur
Shri Jagseer Singh, Company Commander for the Appellants-Assessee

Shri Aneesh Dewan *with* Shri Raman Mittal *and* Shri Ravinder Jangu,
Authorized Representatives for the Respondent-Revenue

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60603-60616/2024

DATE OF HEARING: 21.11.2024
DATE OF DECISION: 21.11.2024

P. ANJANI KUMAR

This set of appeals is filed by District Commandant of various districts, Punjab Home Guard. The appellants are engaged in providing security to various government organizations like Food Corporation of India etc. It appeared to the department that the appellants are engaged in providing taxable services under the category Security Agency Services; have not registered themselves and have not discharged the applicable service tax; show cause notices were issued and were confirmed by the original authorities as well as the appellate authority. In respect of ST/56006/2014 and

ST/50520/2014, Revenue is in appeal against the orders passed by the Commissioner (Appeals) in favour of the appellants.

2. Representatives of the Home Guards of various districts appeared before us today and submit that the issue is no longer *res integra* having been decided by the Hon'ble High Courts and Tribunals in various cases. They rely on the following cases:

- State of Punjab and Others Vs UOI & Others- CWP No.24698 dated 16.03.2023 (P&H).
- Commandant Home Guard Training Centre Vs Commissioner of CGST and ST, Udaipur – 2021 (7) TMI 195.
- Deputy Commissioner of Police, Jodhpur Vs CCE & ST, Jaipur – 2016 (12) TMI 289 (CESTAT)

3. Learned Authorized Representative for the Revenue reiterates the findings of the impugned orders in respect of the appeals filed by Home Guards and grounds of appeal in respect of the appeals filed by the Department.

4. Heard both sides and perused the records of the case. We find that the Principal Bench of the CESTAT had an occasion to go into the various aspects of the case and it was held that:

> **8.** The question for decision is whether the State Police represented by the Superintendents of Police of various districts, would be covered within the definition of security agency services and service tax will be liable to be paid by them on the amounts recovered by them for providing security personnel to various organizations. Further, they were also sending police personnel for character verifications of candidates selected for various jobs and collecting charges but they neither got the registered with the Department nor did they pay service tax on such amounts recovered.
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> As per Section 65(94) of the Finance Act, 1994, the definitions of "Security Agency" as well as "Security Agency Service" are given below for ready reference: -

'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.'

9. The other relevant circular issued by C.B.E. & C. is Circular No. 89/7/2006-S.T., dated 18-12-2006 is reproduced below:

"The 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."

10. The appellants have argued that the term "person" appearing in the definition must be construed to be a natural person as well as a juristic person and by no stretch of imagination, the same will include the State or its officers or the posts created under a statute. They cited the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of *West Bengal* v. *Union of India* [AIR 1963 SC 124] in which the Apex Court has held as under:-

"The definition is an enlargement of the natural meaning of the expression 'person', even the extended meaning does not include the State."

Their submission is that Superintendent of Police is an authority of the State Govt. to carry out statutory and constitutional duties. The definition of the term "person", (which does not cover the Govt.) in the General Clauses Act, 1897 is given as follows:-

"42. "Person" shall include any company or association or body of individuals, whether incorporated or not,".

In the light of the definition of the term "person" in the General Clauses Act, 1897, which has also been examined and clarified by the Apex Court, it would appear that the Superintendent of Police, which is an agency of the State Govt. does not appear to be covered within the term "person". It is also noteworthy that in the year 2012 when the pattern of levy of service tax was changed and the concept of negative list was introduced with effect from 1-7-2012, a definition was introduced for the term "person" in Section 65B(37), of the Act, which includes the Govt., local authorities, etc. From this, it is evident that such a definition for the term "person" has become part of the statute only from this date. To decide the meaning of "person" up to this date, we will have to refer to the General Clauses Act, 1897 as well as relevant case laws. The Apex Court has clearly held that the definition of "person" cannot be extended to include State. Consequently, we are of the view that the Superintendent of Police will not be covered within the term "person".

11. The second leg of the argument advanced by the appellants is that they are not engaged in the business of rendering services relating to security. Their submission is that the occupation in business by a person is a condition precedent for a security agency. The lower authority has held that the term "business" does not signify any commercial activity for the purpose of gaining something out of the said activities, but the same has been used in terms of the work. He has accordingly held that as long as consideration is being received by police for providing security service, it is to be presumed to be in the nature of business.

The term "business" connotes that it is an activity undertaken with the intent of earning profit. The charges recovered by police are in the nature of cost recovery for the additional police force deployed on request for maintaining security and law and order. It is also the submission of the police department that the deployment of additional police force at the request of banks and other institutions or other events has been done only for maintenance of law and in the absence thereof there could arise major security issues in relation to person or property. In the light of the submissions made, we are of the view that the activities undertaken by the police, for which charges have been recovered, cannot be held to be in the nature of business activity.

12. Now, we turn to the C.B.E. & C. Circular No. 89/7/2006-S.T., dated 18-12-2006. The circular has indicated under what conditions an activity performed by a sovereign/public authority should be categorized as one which is liable to payment of service tax. The circular clarifies that charges recovered by any sovereign/public authority for carrying out any statutory function will not be liable for levy of service tax if all the following 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.

The satisfaction of each of the above three conditions is analysed below :-

(i) A sovereign/public authority performs duties which are in the nature of statutory and mandatory obligation to be fulfilled in accordance with law.

The Superintendent of Police is an extended arm/instrumentality/ agency of the State Government and is controlled and managed by the State Government. It is carrying out the activities as entrusted to it vide the Police Act which are statutory and constitutional in nature. The appellant is required to discharge these statutory obligations for public security and maintenance of public peace and order. The appellant cannot carry out any activity beyond the legislative competence. The user charges are levied by the State Government for the deployment of Police Force for the maintenance of public peace, security and law and order as per Section 46 of the Police Act, Section 46 is reproduced below :-

"46. Payment for police service. - The State Government may levy from any person, who carries on any such occupation, gathering, exhibition, sale, entertainment, etc., for monetary gain, as may, for the purpose of public security or for the maintenance of public peace or order, require deployment of additional police force, such user charges as may be prescribed."

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

The State Government, in exercise of powers conferred under Section 46 of the Police Act issued two notifications wherein the charges to be recovered for providing additional police force for the purpose of maintaining public security and law and order have been notified. Notification number 27(2)Home/Gr.-6/84, dated 19-5-2008 which notifies the charges for police arrangement in Central Government offices/institutions/banks and other organizations, and notification number F.1(K)(16)Gr.-2/05, dated 15-1-2008 which notifies the charges to be recovered on providing/deploying/rendering police force for security purposes. In the notification number dated 19-5-2008, the charges fixed per day are as follows:

Constable	Rs. 250 per day
Head constable	Rs. 300 per day

With this it is wide and clear that the user charges are in the nature of amount collected as per the provision of the relevant law.

(iii) The amount collected is to be deposited into Government treasury.

As per the requirement of the General Finance Account Rules issued by the Rajasthan State Government, the Government dues are to be collected and paid into the Government treasury. The appellant, therefore, is required to collect the usage charges and credit the same in the Rajasthan State Government treasury.

The submission made by the police department in this regard is that the fees recovered by them is for provision of additional police force. They have referred to Section 46 of the Rajasthan Police Act, 2007 and submitted that the additional police officers are deployed at the request of any person only for the purpose of public security or for the maintenance of public peace or order. The fees levied and collected for this purpose is strictly as per the notification issued by the State Govt. under the above Section of the Act. The amounts so collected are mandatorily deposited into the Govt. treasury. Accordingly, they have submitted that all the conditions stipulated by the C.B.E. & C. circular are satisfied and consequently the activities are to be considered as statutory function and no service tax can be levied on such fees collected for discharging the sovereign function.

The lower authorities have, however, taken the view that the activity undertaken is not in the nature of statutory duty, but an activity undertaken for a consideration which is not a statutory fee. We find ourselves unable to agree to this stand taken by the lower authorities. The police department has the mandatory duty to maintain public peace and order. For such duty, which is in the nature of sovereign function, no charges are recoverable from the citizens. In the present case, the police department has recovered fees for deploying additional police personnel on request. However, the statutory functions of the police of the State Govt. make it explicit that such activity, even at request of the other person, is to be carried out only for the purpose of public security or for the maintenance of public peace or order. The charge for deployment of

> such additional force is also prescribed by the statutory notification issued by the State Govt. In view of these facts, we are of the view that the activity of deploying police personnel on payment basis is to be considered as part of statutory function of the State Govt. and the fees recovered are to be considered as statutory. It is also not disputed that such amounts recovered have been deposited into the Govt. treasury.
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> **13.** On the basis of the above discussion, we conclude that police department, which is an agency of the State Govt., cannot be considered to be a "person" engaged in the business of running security services. Consequently, the activity undertaken by the police is not covered by the definition of Security Agency under Section 64(94) of the Act. We also find that in terms of C.B.E. & C.'s circular on this subject, the fees collected by the police department is in the nature of fee prescribed for performing statutory function, which has been deposited into the Govt. treasury. In the light of the C.B.E. & C.'s circular also, there can be no levy of service tax on such activities carried out by the police department.

5. We also find that Hon'ble High Court of Punjab & Haryana in the Writ Petition cited above held as follows:

> Learned counsel for the petitioners has placed on record a judgment passed by Co-ordinate Bench of this Court on 13.09.2018 in CWP- 17118-2018 titled as State of Punjab and others vs. Union of India and others (Annexure P-7), where this issue has been examined and writ petition against the similar show cause notices demanding service tax for providing security guards to the public sector Banks and General Post Office has been set aside and the writ petition was allowed. While allowing the writ petition, it haseen observed that under Article 289 of the Constitution of India that the property and income of a State shall be exempted from Union taxation.
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> As per the reply filed by respondent No.4, the judgment dated 13.09.2018 passed by this Court (Annexure P-7), had attained finality and also had been implemented by the Department and the same had been conveyed vide letter dated 12.03.2019.
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> Since the above said judgment dated 13.09.2018 has been implemented, the writ petition is allowed and show cause notices dated 18.10.2011(Annexure P-1), dated

02.01.2013 (Annexure P-2) and dated 16.04.2014 (Annexure P-3) are set aside.

6. In view of the above, we are of the considered opinion that the issue stands decided in favor of the Home Guards. Accordingly, the appeals filed by the department ST/56006/2014 and ST/50520/2014 are rejected and all other appeals are allowed.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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