CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Service Tax Appeal No.42703 of 2014

(Arising out of Order-in-Original No.57/2014 (C) dated 12.09.2014 passed by Commissioner of Central Excise, Puducherry Commissionerate, No.1, Goubert Avenue, Puducherry 605 001)

M/s.Central Industrial Security Force, DIG Unit .... Appellant
Neyveli, No.G-14, J.N. Salai,
Block-16,
Neyveli Township,
Neyveli 607 803.

VERSUS

The Commissioner of CGST & Central Excise ... Respondent
Puducherry Commissionerate
No.1, Goubert Avenue,
Puducherry 605 001.

APPEARANCE :

Ms. Shwetha Vasudevan, Advocate, for the Appellant
Shri M. Ambe, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40453/2024

DATE OF HEARING : 22.04.2024
DATE OF DECISION : 22.04.2024

Per: Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is engaged in providing security service and is registered with the Service Tax Department. During the course of audit of accounts of the appellant, it was noted that, apart from the consideration received as reflected in the bills, the appellant had received rent free office accommodation, electricity / water expenses, supply of vehicles, supply of fuel, provision of medical treatment and supply of forms and stationery articles from their client, M/s.Neyveli Lignite Corporation Ltd. (NLC)

2. Section 67 (1) of the Finance Act, 1994 read as under :

> *"Subject to the provision of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such Value, shall, -*
>
> *(i) …..*
>
> ***(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration."***

3. The Department was of the view that appellant has received additional consideration in the form of rent free accommodation, electricity and water expenses, supply of vehicles etc. from their client M/s.NLC during the period 2009-10 to 2012-13 (upto 6/2012) and that the appellant is required to pay service tax on such additional consideration also. Show cause notice dt. 21.02.2014 was issued to the appellant proposing to demand service tax for such additional consideration of Rs.9,40,58,092/- for the period from 2009-10 to 2012-13 (upto June 2012). After due process of law, the original

authority confirmed the demand, interest and also imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

4. The Ld. Counsel Ms. Shwetha Vasudevan appeared and argued for the appellant.

4.1 Ld. Counsel submitted that the appellant has provided security services to their client M/s.NLC. These services were provided as per provisions of the Central Industrial Security Force Act, 1968 (CISF Act). As per Section 14 of the CISF Act, upon a request from the managing Director of an industrial undertaking in a public sector, the Director General shall depute such members of the CISF force as may be necessary for the protection and security of the industrial undertaking and installation attached thereto.

4.2 Being of strategic importance, the security of various units of M/s.NLC was vested with the CISF, and in this connection a Memorandum of Understanding (MoU) dated 27.10.2011 was entered into between the appellant and M/s.NLC. As per this MoU, the appellant has deployed personnel for providing security to NLC's units.

4.3 The payment terms are contained in Clause 23 of the MoU which provides that the deployment of the force will be entirely at the cost of NLC, which *inter alia* includes costs in relation to salary and allowances, pension and leave salary contribution, traveling allowances / daily allowances, proportional cost of raising and continuing training of personnel, supervision and monitory charges, cost of clothing, cost of equipment, cost of arms and ammunitions, taxes and any other charges specifically agreed between the parties to the MoU.

4.4 For the rendition of security services by CISF (appellant) within the premises of NLC, the MoU contained other conditions also. In this regard, specific reliance is placed on Clause 3 of the MoU dealing with provision of infrastructure, office accommodation, security related infrastructure, residential accommodation (married & bachelor), communication facilities (including telephone/wireless/internet), transport, modern security gadgetry, furniture, and other equipment/amenities, for deployment of CISF at the Unit. Further, as per Clause 7 of the MoU, NLC is obligated to provide pre-induction formalities. As per Clause 20 of the MoU medical and other facilities are to be provided by NLC. The department has raised the demand by giving a notional value to these facilities provided by NLC to the appellant. The MoU merely states the facilities to be provided and has not quantified the amount for each facility. These are provided as condition for providing security services and is not in the form of additional consideration. There is no such understanding between the appellant and NLC.

4.5 It is submitted by Ld. Counsel that the issue is no longer *res integra* and has been settled in favour of the assessee. The amount which is contributable to the facilities extended by the service recipient to the appellant is not to be included in the gross amount charged as decided by the Hon'ble Supreme Court in the case of *Commissioner of Service Tax Vs Bhayana Builders (P) Ltd*. - 2018 (2)

TMI 1325- SUPERME COURT wherein it was held that the value of free supplies is not to be included in the taxable value.

4.6 Further, the Tribunal in the case of *CGST, CCE Dehradun Vs Commandant, CISF Unit* – 2019 (2) TMI 1175 – CESTAT NEW DELHI had held that the department cannot include the notional value of the free accommodation to form part of the gross value for discharging service tax.

4.7 In the case of *CISF Vs CCE Allahabad* - 2019 (1) TMI 1661 – CESTAT ALLAHABAD similar issue was considered wherein it was held that such reimbursable expenses provided by the client to CISF cannot be subject to levy of service tax.

4.8 In the case of *Bharat Coking Coal Ltd. Vs CCE* - 2021 (9) TMI 23 – CESTAT KOLKATA the Tribunal had considered the very same issue and held that for the period post-1.7.2012, the said amount incurred in the nature of free services / facilities cannot be included in the taxable value.

4.9 The Tribunal in the case of *Central Industrial Security Force (CISF) Vs CST Pune* – 2021 (11) TMI 835 – CESTAT MUMBAI, followed the decision of the Tribunal in the case of *Bharat Coking Coal Ltd*. (supra) and held that demand cannot sustain.

4.10 Recently, the Delhi Bench of the Tribunal in the case of *Sr. Commandant, Central Industrial Security Force Vs CC & CCE Bhopal* – 2023 (4) TMI 872 -CESTAT NEW DELHI had considered the very same issue for the period from April 2009 to March 2012 and held that by virtue of provisions of Section 67 itself, such reimbursable expenditure or costs cannot form part of value of taxable services for charging service tax prior to 14.05.2015.

5. Ld. Counsel argued on the ground of limitation also. It is submitted that both the service provider as well as service recipient are Public Sector Undertakings. The allegation of suppression of facts with intent to evade payment of service tax on Public Sector Undertakings is highly harsh. There was no suppression on the part of the appellant. The entire details of the service provided to the appellant was available from the accounts maintained by the appellant and from the MoU entered between both the parties.

5.1 Ld. Counsel also submitted that the issue is interpretational in nature as several litigations were pending before various forums as to whether the free services provided by the clients to CSIF should be added to the gross value and be subject to levy of service tax. Therefore, the demand raised invoking extended period ought to have been set aside. Ld. Counsel prayed that the appeal may be allowed.

6. Ld. A.R Shri M. Ambe appeared and argued for the Department. The Memorandum of Understanding entered between the appellant and M/s.NLC was adverted to by the Ld. A.R to submit that it would be clear from the MoU that the appellant has received services in addition to the consideration that has been paid by M/s.NLC on invoices raised by them. The following paras of the MoU was pointed out by the Ld. A.R :

Security and other infrastructure and Equipments

3 The Client Organisation shall provide the infrastructure, office accommodation, security related infrastructure, residential accommodation (married & bachelor), communication (including telephone/wireless/internet), transport, modern security gadgetry, furniture, and other equipment/amenities, for deployment of CISF at the Unit as per the provisions of Central Industrial Security Force Act, 1968 at the norms/scales authorized by MHA and the other applicable orders/instructions issued by Government of India from time to time. The details of such requirements are as per the following Appendix and Annexure I to VII of this MOU:

Appendix	Authorization for Infrastructure and Equipment
Annexure-I	Office and Residential Accommodation (married & bachelor)
Annexure-II	Transport
Annexure-III	Communication Equipment & Accessories
Annexure-IV	Furniture for Office
Annexure-V	Furniture and Equipment for Barracks
Annexure-VI	Cooking utensils
Annexure VII	Tradesmen tools

… … …..

Cost of Deployment :

23. The deployment of the Force will be entirely at the cost of the Client Organisation which, interalia, will include following costs of deployment of CISF personnel in connection with the security of Client Organisation.

i) Salary and allowances;

ii) Pension and leave salary contribution;

iii) Travelling Allowances / Daily Allowances (TA/DA);

iv) Proportionate cost of raising and continuing training of personnel;

v) Supervision and monitory charges;

vi) Cost of clothing ;

vii) Cost of equipment, if not provided by the Client Management;

viii) Cost of Arms and Ammunitions;

ix) Taxes as prescribed by the Central Government, State Government and Local Bodies from time to time; and

x) Any other charges as specifically agreed between the parties to this MOU.

6.1 It is submitted that from the MoU itself it is clear that apart from the agreed consideration, the appellant has received various services from M/s.NLC which is quantified by the department by adopting notional value. The appellant ought to have included cost of these services also while arriving at the taxable value for discharge of service tax. As per Section 67 (1) (ii), the cost of services provided over and above the amount of consideration has to be included in the taxable value.

6.2 Ld. A.R submitted that the evasion of tax would not have come to light but for the audit conducted by Department. For these reasons, the invocation of extended period is legal and proper. It is prayed that the appeal may be dismissed.

7. Heard both sides.

8. The demand of differential service tax has been raised invoking clause (ii) of sub-section (1) of Section 67 of the Finance Act, 1994 alleging that the appellant has not included the cost of services (facilities) received by them while providing the security services to M/s.NLC. It is not in dispute that the appellant has discharged service tax on the consideration received for providing security services. In addition to the consideration agreed by the parties, the appellant has also received certain facilities from M/s.NLC in the nature of rent free accommodation, rent free office premises, vehicles, electricity and water expenses, fuel expenses, medical treatment expenses, expenses for forms and stationery. In the agreement (MoU) the cost

of these services are not quantified. The Department has raised demand adopting notional value for such services.

8.1 The Tribunal has considered the very same issue in *CGST, CCE Dehradun Vs Commandant CISF Unit* (supra). It was held that when there is no evidence forthcoming from the records that the amount of H.R.A was ever paid to the assessee, the department cannot include the notional value of the free accommodation in the gross value so as to subject it to levy of service tax. The issue on limitation was also held in favour of assessee. The relevant paras read as under :

> "**7.** To our opinion, consideration received against providing any service, i.e. as per explanation [to] Section 67, is something which include any amount payable for taxable services provided or to be provided. The bare reading makes it clear that in case any amount is payable *qua* to CISF the accommodation being provided to the security personnels that it shall be the consideration. If it is consideration, then only Rule 3 [of Service Tax (Determination of Value) Rules] will come into picture. But as observed by Commissioner (Appeals) vide the Order under challenge that there is no evidence on the point about any amount either in terms of HRA was ever paid to the respondent/CISF, the question of notional value of the free accommodation provided cannot form the part of the gross value which has to be taxed under Section 67 of the Act. We therefore do not find any infirmity in the findings of Order under challenge.
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> **8.** Also coming to the aspect of limitation as has been raised by the respondent, we observe that the period of demand herein is w.e.f. April, 2009 to June, 2012. SCN is issued on 9-9-2014. It is clear that the entire period of demand is beyond the normal period of one year. The service provider herein is Government undertaking. Service recipient is also a public sector undertaking. There cannot be a single good reason for either

of the two to have an intent to evade the tax, there is otherwise no evidence by the Department to prove any positive act on part of the service provider which may amount as *mens rea* on the part of the provider to evade tax. Rather from the above discussion it is apparent that SCN was issued under notional presumption of free accommodation to be the part of consideration which otherwise was not the liability of the service provider in the given circumstances. Hence, to our opinion, there appears no case of any suppression or mis-representation of facts on part of the service provider (CISF). The Department had no occasion to provisio to Section 73 of the Finance Act, 1994 for invoking the extended period of limitation. Seeing from this angle, SCN is hit by the principle of limitation."

8.2 The Tribunal in the case of *Central Industrial Security Force Vs CC & CCE & ST Allahabad* (supra) considered the very same issue. The facts of the said case reveal that the expenses for medical services, vehicles, telephone charges were incurred by the Airport Authority of India to whom CISF was providing security services. The Tribunal held that the such services are in the nature of reimbursable expenses. Following the judgment of Hon'ble Supreme Court in the case of *UOI Vs Intercontinental Consultants and Technocrats Pvt. Ltd*. - 2018 (3) TMI 57 - SUPREME COURT, the demand was set aside.

8.3 In the case of *Bharat Coking Coal Ltd. Vs CCE Dhanbad* (supra) the Tribunal considered the issue for the period after 1.7.2012 and held that the demand cannot sustain. In the case on hand, the period involved is prior to 1.7.2012.

8.4 In the case of *M/s.Central Industrial Security Force (CISF) Vs CST Pune* (supra) as well as in the case of *Sr. Commandant Central Industrial Security Force Vs CC & CE Bhopal* (supra), the Tribunal had held the issue in favour of the assessee and set aside the demand. Following the above decisions, we are of the view that the demand cannot sustain and requires to be set aside. Ordered accordingly.

8.5 The Ld. Counsel has argued on the ground of limitation also. The Department has alleged suppression of facts with intent to evade payment of service tax. However, there is no positive act of suppression established by the department against the appellant for invoking extended period. Appellant being a PSU, we are of the view that invocation of extended period is without basis. The Tribunal in the case of *CGST, CCE Dehradun Vs Commandant CISF Unit* (supra) had set aside the demand on the ground of limitation also.

8.6 After appreciating the facts, evidence and following the decisions cited supra, we hold that the demand cannot sustain. The issue is decided in favour of appellant both on merits as well as on limitation.

8.7. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Order dictated and pronounced in open court)

sd/- sd/-

(VASA SESHAGIRI RAO) Member (Technical)

(SULEKHA BEEVI. C.S) Member (Judicial)

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