CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH,COURT NO. 1

SERVICE TAX APPEAL NO. 51256 OF 2017

[Arising out of Order-in-Appeal No. 155 (AK) /ST/JPR/2016 dated 09.05.2016 passed by the Commissioner (Appeals I) Central Excise, Jaipur]

SUPERINTENDENT OF POLICE **Appellant**
Bikaner Rajasthan

Vs.

COMMISSIONER, CENTRAL EXCISE & CUSTOMS, JAIPUR I **Respondent**

Appearance:
Present for the Respondent: None
Present for the Appellant : Shri Harshvardhan, Authorised Representative

CORAM:
HON'BLE Mr.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE Ms.HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)

Date of Hearing /Decision: **10/05/2023**

FINAL ORDER No. 50650/2023

JUSTICE DILIP GUPTA

The Superintendent of Police in the State of Rajasthan has filed this appeal against the order dated 28.04.2016 passed by the Commissioner of Customs (Appeals) Central Excise and Customs, Jaipur[1], by which the order dated 23.01.2014 passed by the Assistant Commissioner confirming the demand of Service Tax of Rs.50,915/- has been upheld and the appeal has been dismissed.

2. The issue that arise for consideration in this appeal is regarding the amount collected by the appellant towards

1 The Commissioner (Appeals)

verification of character or address. According to the Department, the said services are covered under the category of 'security agency service' and therefore leviable to service tax. The Commissioner (Appeals) has held that the amount collected by the appellant is leviable to service tax under section 65(105) (w) of the Finance Act, 1994.

3. No one has appeared on behalf of the appellant when the case has been called out. Shri Harshvardhan, learned authorised representative for the department has made submissions on behalf of the department. The records have also been perused.

4. It is seen that the issue involved in this appeal also arose before a Division Bench of Tribunal in **Deputy Commissioner of Police, Jodhpur vs Commissioner of Central Excise & Service Tax, Jaipur II**[2] and after consideration of the legal position, the Tribunal concluded that the police department, which is an agency of State Government, cannot be considered as a "person" engaged in the business of running security services. Consequently, the activity undertaken by the police department would not be covered by the definition of 'security agency' under section 65(94) of the Finance Act. The Tribunal also observed that in terms of Circular issued by the Board from time to time, the fees collected by the Police Department would be in the nature of fee prescribed for performing statutory function and are required to be deposited in the Government Treasury. This fee collected would, therefore, not be leviable to service tax.

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2 2017 (48) STR 275 (Tri-Del)

5. The aforesaid decision of the Tribunal was challenged by the department before the Supreme Court in a Civil Appeal, which was dismissed on 18.09.2017. The decision is reported in **Commissioner vs Deputy Commissioner of Police Jodhpur**[3]

6. It is also seen from the records that the aforesaid decision of the Supreme Court in **Deputy Commissioner of Police, Jodhpur vs Commissioner of Central Excise & Service Tax, Jaipur II** was followed by the Tribunal in **Superintendent of Police, Swai Madhopur vs Commissioner of Central Excise, Jaipur**[4] **.**

7. The confirmation of demand by the Commissioner (Appeals) on the amount received by the appellant for character verification cannot, therefore, be sustained and is set aside. The appeal is, accordingly, allowed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER(TECHNICAL)

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3 2018 (11) GSTL J 133 (SC)
4 MANU /CE/0344/2019