

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. I

Service Tax Appeal No.50390 of 2017

(Arising out of Order in Appeal no. IND-CEX-000-APP-155-156-14 dated 28.07.2014 passed by Commissioner (Appeals), Central Excise, Customs and Service Tax, Indore)

Superintendent of Police

S.P. Office,
Satna, Burhanpur (M.P.)

..... Appellant

Versus

**Commissioner of Central Goods and
Service Tax, Excise and Customs -
Indore**

208, Corporate House,
B- Block, 169 RNT Marg,
Indore (Madhya Pradesh)

..... Respondent

APPEARANCE:

None for the Appellant

Shri Harshvardhan, Authorised Representative for the Department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: DECEMBER 12, 2023

FINAL ORDER NO.51668/2023

JUSTICE DILIP GUPTA

The order dated 28.07.2014 passed by the Commissioner (Appeals) upholding the order dated 16.01.2013 passed by the Additional Commissioner to the extent it confirms the demand of service tax and orders for recovery of interest under section 75 of the Finance Act, 1994¹ and also remands the matter for examining the penalties imposed under sections 76, 77 and 78 of the Finance Act have been assailed in this appeal that has been filed by the Superintendent of Police, SP Office, Satna in the State of Madhya Pradesh.

1 the Finance Act

2. The issue that arises for consideration in this appeal is as to whether collection of security charges for providing police guards to various banks for their security would entail levy of service tax under the category of "security agency services" defined under section 65 (94) of the Finance Act and made taxable under section 65 (105)w of the Finance Act.

3. The case has been called out, but no one has appeared on behalf of the appellant. Even on the last occasion as no one had appeared on behalf of the appellant it was made clear that if the appellant does not appear on the next date, the matter may be decided on merits. The present appeal is, accordingly, being decided on merits after perusing the memo of appeal and after hearing Shri Harshvardhan, learned authorised representative appearing for the department.

4. The issue that has been raised in this appeal has been decided time and again by this Tribunal in favour of the appellant and against the department.

5. In this connection, reference can be made to one such decision that has been rendered in **Superintendent of Police, Swai Madhopur vs Commissioner of Central Excise, Jaipur²** and the relevant portion of the decision is reproduced below:

"15. The short point to be decided by us is if the Police provides guards to banks or other commercial concerns and charges a fee as per the rates determined by the Government whether service tax can be charged under "Security Agency Services" on such fee or otherwise. The lower authorities have held since the term "business concern" in the definition of "Security Agency Service" has been replaced with "any person" even the Police are covered under the "Security Agency Service". A perusal of the definition of "Security

Agency" shows that it has to be "any person engaged in the business of providing security". **Police provide security as a part of their statutory obligations. In most cases they do not charge any fee for such security but in some cases they charge a fee as determined by the State Government. Merely because they are charging a fee, Police do not become "person engaged in the business of providing security"**. As per clarification issued by the CBEC Circular No. 89/07/2006-ST dated 18/12/2006 charges recovered by any sovereign or public authority for carrying out any statutory function will not be liable for service tax fees if three conditions are fulfilled.

16. The first condition is that the statutory authority must perform a duty which is in the nature of statutory or mandatory obligations to be fulfilled in accordance with law. We have no doubt that the police has a statutory duty to provide security. The Second condition is that the fee should be collected as per law. Section 46 of the Police Act provides for the State Government providing Police Force for fee for user charges in some cases. The present demand is on the amounts collected as user fee which are levied upon the Section 46 of the Police Act, and therefore, the second condition is also fulfilled. The third condition is that the amount so collected must be deposited into the Government treasury. There is no doubt in the entire proceedings that the amount so received was deposited in the Government treasury. **In view of above, we find that all conditions required in the above circular of CBEC are fulfilled. Therefore, no service tax chargeable under Security Agency Services upon the Appellant. The CBEC circular being binding on the department, a demand to the contrary is not sustainable and needs to be set aside.**

17. We also find that similar decisions is taken in case of Superintendent of Police, Udaipur vs. CCE (Supra), Deputy Commissioner of Police, Jodhpur (supra) and DIG of Police (supra). We concur with the aforesaid decisions and set aside the impugned order."

(emphasis supplied)

4. It has been held in the aforesaid decision that merely because the Police may charge a fee it would not become "a person engaged in the business of providing security" and, therefore, no service tax can be levied.

5. For the reasons stated in the aforesaid decision, the impugned order dated 28.07.2014 is set aside and appeal is allowed.

(Order dictated and pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Diksha