CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

Service Tax Appeal No. 50509 of 2017

(Arising out of Order-in-Appeal No. DDN/EXCUS/000/APPL-I/201/2016 dated 31.10.2016 passed by the Commissioner (Appeals)-I, Central Excise, Meerut)

Central Industrial Security Force **Appellant**
CISF Unit, KHEP,
Koteshwar, District Tehri Garhwal,
Uttarakhand.

VERSUS

Commissioner of Central Excise & **Respondent**
Service Tax, Dehradun

AND

Service Tax Appeal No. 50529 of 2017

(Arising out of Order-in-Appeal No. DDN/EXCUS/000/APPL-I/252/2016 dated 08.12.2016 passed by the Commissioner (Appeals)-I, Central Excise, Meerut)

Central Industrial Security Force **Appellant**
CISF Unit, ONGC, KDMIPE, Dehradun

VERSUS

Commissioner of Central Excise & **Respondent**
Service Tax, Dehradun

Appearance

Shri Jitin Singhal, Advocate – for the Appellant.

Shri Rajeev Kapoor, Authorized Representative – for the Respondent

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/Decision : 12/01/2024

Final Order Nos. 50111-50112/2024

Dr. Rachna Gupta

The present order disposes of two appeals arising out of two separate show cause notices and orders but with respect to the same assessee and for the same issue.

2. The facts in relevant for both the appeals are as follows:

2.1 The appellant is registered for providing taxable service as that of "Security Agency Service". Based on an Intelligence, Directorate General of Audit observed that the appellant is not paying the service tax on the gross expenses incurred by their clients on their behalf. The miscellaneous expenses like accommodation, medical expenses, telephone charges, vehicle charges, dog squad expenses, insurance charges etc. were not included for calculating the gross value of the services rendered. Department formed the opinion that till 1st May, 2006 the 'Security Agency Service' was leviable on commercial organisation/agency. However, with effect from 1st May 2006, the word 'agency' was replaced with the word 'person' so that any individual involved and registered under the category of 'security services' becomes liable to tax. Resultantly, vide the following two show cause notices, the demand as tabulated below was proposed against the appellant with interest and proportionate penalty.

Appeal No.	ST/50509/2017 (CISF Unit, KHEP, Koteshwar)	ST/50529/2017 (CISF Unit, ONGC, KDMIPE)
Show Cause Notice	18.09.2014	09.09.2014
Period of Dispute	01.04.09 to 30.09.12	01.04.09 to 30.06.12
Order-in-Original	28.10.2015	24.02.2016
Impugned Order-in-Appeal	31.10.2016	08.12.2016
Amount	Service Tax of Rs. 4,31,392/- along with interest and equal penalty	Service Tax of Rs. 2,00,789/- along with interest and equal penalty

3. The proposal was initially confirmed vide the orders in original as tabulated above. The appeal against the said orders have been dismissed vide the orders in appeal as tabulated above. Being aggrieved, the appellant is before This Tribunal.

4. We have heard Shri Jitin Singhal, learned counsel for the appellant and Shri Rajeev Kapoor, learned Departmental Representative appearing for the Department.

5. Learned counsel submitted that the appellant has been a body constituted by the Central Government under Section 3 of Central Industrial Security Force Act, 1968, as an armed force of Union for better protection and security of industrial undertakings owned by that Government and to perform such other duties as may be entrusted to it by the Central Government. As per Rules made under CISF, 1968 the members of the force are eligible for following:

(i) Free accommodation (Rule 61) ;

(ii) Entitled to free medical facilities (Rule 62) '

(iii) For all other matters regarding conditions of services for which there is no specific rule, the rules and orders for the time being applicable to the officers holding corresponding posts in the Central Government in respect of such matters are made applicable to the appointees of CISF (Rule 77) ;

(iv) As per Rule 73 of CISF Rules, the charges payable by industrial undertaking in public sector for deputation on supervisory officers and enrolled members of force are to be paid for such periods and in such manner as Central Government may from time to time specify.

6. The explanation to this Rule specify the such charges. Finally, it is brought to the notice that the appellant functions under

the direct control and supervision of Ministry of Home Affairs. Therefore, they are not liable to pay service tax on reimbursable expenses. It is mentioned that all the miscellaneous expenses as mentioned in the show cause notice on which the service tax has been demanded and confirmed, are reimbursable expenses. The issue of tax liability on the reimbursable expenses is no more res integra. Learned counsel has relied upon the following decisions:-

(i) CISF Vs. Commissioner of Customs, CE&ST, Allahabad – 2019 (1) TMI 1661 –CESTAT Allahabad;

(ii) Assistant Commandant, CISF Vs. Commissioner of Central Tax, Mysore Commissionerate – 2019 (11) TMI 681 – CESTAT Bangaloe;

(iii) CISF Vs. Commissioner of Service Tax-I, Pune – 2021 (11) TMI 835 – CESTAT Mumbai;

(iv) CGST & CCE, Dehradun Vs. Commandant CISF – 2019 (2) TMI 1175 – CESTAT New Delhi.

With these submissions, orders under challenge prayed to be set aside and appeal is prayed to be allowed.

7. While rebutting these submissions, reliance has been placed on Circular No. 345/1/2007-TRU dated 19.08.2008, wherein it was clarified that CISF being the service provider is required to deposit the service tax on taxable services such as security service, consulting service provided instead of asking the recipient to deposit the service tax. It is mentioned that the miscellaneous amounts have rightly been held to be nothing but the consideration as defined under Section 67 of the Act and thus are rightly included in the gross value for calculating the service tax liability. It is further mentioned that the factum of non-payment of service tax by the appellant came to the knowledge of department pursuant to the information received by the department and the enquiry

conducted based thereupon. This definitely amounts to wilful suppression on part of the appellant. Hence, the extended period should have been invoked. With these submissions and while impressing upon no infirmity in the order under challenge, the department has prayed for the dismissal of appeal.

8. Having heard rival contentions and perusing the entire record, we are of the opinion that the issue involved in the present appeal is as under:

> "Whether the expenses other than salary allowances, initial clothing and equipment charges, cost towards arms and ammunition, leave salary and pension contribution in regard to the service recipient are liable to be included in the gross assessable value for assessment of service tax of services provided by the service provider."

9. For the purpose we observe that Rule 5 of Service Tax (Determination of Value) Rules, 2006 is one provision, according to which the reimbursable expenses paid to the service provider were also made includible in the assessable value. However, Hon'ble Supreme High Court in the case of **Union of India Vs. Intercontinental Consultants & Technocrats Pvt. Ltd. – 2018 (10) GSTL 401 (SC)** while upholding the findings of Hon'ble Delhi High Court in **Intercontinental Consultants & Technocrats** case has held that the said rule is not in accordance with the provision of Section 67 of Finance Act which authorises only such consideration which is received by the service provider for assessment of service tax. In view thereof, the reimbursable expenses are not to be

included in the gross assessable value. Rule 5 was held ultra vires by the Apex Court in the said decision. Pursuant to the said order, there have been various orders following the said decision. The orders are as follows:

(a) F.O No. 70053/2019 dated 09.01.2019 passed in the case of CISF Vs. Commissioner of Customs, C.E. & ST, Allahabad.

(b) OIA No. 367/ST/Alld/2018 dated 26.10.2018

(c) OIA No, MLR-EXCUS-000-APP-082-16-17 passed in the case of the Commandant, CISF, NPCIL, Kaiga, Karwar Vs. Joint Commissioner, Mangalore Commissionerate.

In the appellant's own case CESTAT, Mumbai also vide Final Order No. A/87119/2011 dated 9.11.2021 while taking note of CESTAT, Kolkata decision in the case of **Bharat Coking Coal Ltd. Vs. Commr. of Central Excise & S. Tax - 2021-TIOL-551-CESTAT-Kolkata** held that the expenses incurred towards medical services vehicles, expenditure on Dog Squad, stationery expenses, telephone charges, expenditure incurred by the service recipient for accommodation provided to CISF etc. are not includible.

10. CESTAT, Delhi also was in the case of **CGST, CCE Dehradun Vs. Commandant CISF Unit – 2019 (2) TMI 1175 (Tri.-Delhi)** has held as follows:

"a joint reading of Section 67 of Finance Act and Rule 3 of Determination of Value Rules had held that Section 67 of Finance Act and Rule 3 makes it clear that service tax is chargeable on the value of service provider. In the present case service provided is of providing security personnels by CISF. The liability qua the amount received in lieu of providing said security personnel is to be discharged by CISF.

7. To our opinion, consideration received against providing any service, i.e. as per explanation Section 67, is something which include any amount payable for taxable services provided or to 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 Value of Determination 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."

11. In the present case also since the appellant has admittedly discharged its service tax liability on the amount received for providing the security service, the tax on the other expenses being the expenses reimbursable cannot be demanded from the appellant. We, therefore, hold that the adjudicating authority below has committed an error while confirming the demand even for the normal period.

12. Coming to the plea of the extended period as to whether the same was invokable or not. We hold that suppression of fact is not enough to invoke the extended period of limit under Section 73 (1) of Finance Act, 1994. There has to be a wilful intent to evade the payment of tax while suppressing any fact. In the present case, the service provider is constituted under a statute that is it is

government undertaking. There cannot be a single good reason for a government undertaking to have and intend to evade the payment otherwise also the burden was upon the department to prove the positive act on part of the service provider which may prove the mala fide intent of the service provider to evade tax. But there is no such evidence rather the entire discussion makes it clear that show cause notice has been issued under the notional presumption that the reimbursable expenses should also to be the part of gross assessable value. This Tribunal in the case of **Hospitech Management Consultants Pvt. Ltd. Vs. Commissioner of Service Tax, New Delhi – (2023) 7 Centax 134 (Tri.-Del.).** While following the earlier decision of Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay – 1995 Supp (3) SCC 462** has held that something more must be shown by the department to construe the acts of assessee as fit for the applicability of the proviso to invoke the extended period of limitation. Similar was the observation Hon'ble Supreme Court in the case of **Anand Nishikava Co. Ltd. Vs. Commissioner of Central Excise, Meerut – (2005) 7 SCC 749**. Above all from the decision of **intercontinental Consultants** (supra), it is clear that the issue involved herein is an issue of interpretation of law. With this reason also the extended period should not have been invoked.

13. In the light of entire above discussion, we hold that the appellant is not liable to pay tax on the value of miscellaneous reimbursable expenses. The demand has wrongly been confirmed.

The order under challenge are, therefore, set aside. Both the appeals stand allowed.

(Pronounced in Court)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

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