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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/481 /2006 - CU[DB] Date **13/09/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
BHOOTPURVA SAINIK SOICIETY
502,AVAS VIKAS COLONY,BASTI.

BHOOTPURVA SAINIK SOICIETY Appellant

Vs

C.C.E.ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/457-67 2011 CU[DB]** dated 08.09.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E.ALLAHABAD
38,M.G.MARG,CIVIL
LINE,ALLAHABAD.

2. Adv. / Consult **MR.L.P. ASTHANA & MS REENA KHAIR**
R-163, SECOND FLOOR, GREATER KAILASH-
1, NEW DELHI - 110 048.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

14. M/S AJMER ZILA EX-SERVISE MAN WELFARE CO-OPERATIVE **ST/220/2005**
PLOT NO. 4, MISSION COMPOUND, CIRCULAR ROAD, AJMER (RAJ)

15. **MR.K.K ANAND**
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

16. SIKAR EX-SERVICEMEN WELFARE CO-OPERATIVE SOCIETY LTD ST/1/06
SIKAR (RAJASTHAN) SUPER TOWER, BEHIND S.K. HOSPITAL,
SIKAR (RAJASTHAN

17. **M/S BHARATPUR - DHOLPUR PURVA SAINIK KALYAN** **ST/65, 82/06**
3/475, MATHURA GATE, BEHIND NAGAR PARISHAD,
BHARATPUR (Raj)

18. M/S DESERT HAWKS EX-SERVICEMAN WELFARE COOPERATIVE ST/394/07
SOCIETY LTD.
B-78, VINOBHA BHAVE NAGAR, NEAR VAISHALI NAGAR, JAIPUR

19. INDIAN EX-SERVICEMEN WELFARE CO-OPERATIVE ST/451/07
SOCIETY LTD. JAIPUR
22, K-5, SCHEME, KAHTIPURA SIRSI ROAD, JAIPUR

20. M/S POORVA SAINIK BHAU UDESHYA SAHAKARI SAMITI LTD ST/419/07
NEAR KHARI BAWARI, JHALAWAR

21. M/S EX-SERVICEMEN SECURITY SERVICES ST/680/07
SHOP NO 5, LEELA BHAWAN, PATIALA

22. M/S ZILA PURVA SAINIK BAHUDESHIYA SAHKARI SAMITI LTD ST/695/07
1-KA-16, DADABARI, KOTA(RAJ)

23. M/S PURVA SAINIK WELFARE CO-OPERATIVE SOCIETY LTD ST/490/08
SHOP NO.17, SIRSI ROAD,KHATIPURA, JAI BHAWANI
COLONY, JAIPUR.

24. **C.C.E. JAIPUR I**
N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.

25. **C.C.E JAIPUR-II**
N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.

26. **C.C.E JAIPUR**
N.C.R.BUILDING, STATUE CIRCLE,
"C" SCHEME, JAIPUR 302005.

27. **C.C.E. CHANDIGARH**
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

28. **MR.Vijay Kumar**
C-2/2329, Vasant Kunj
New Delhi

29. Mr. Bipin Garg, Adv,
B-1/1289-A Vasant Kunj
New Delhi

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL, West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing: 02.8.2011
Date of pronouncement: 8.9.2011

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John , Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

S.No.	Service Tax Appeal No.	Appellant	Respondent	Arising out of the order in appeal No. and date	Passed by
1.	481 of 2006	Bhootpurva Sainik Society	C.C.E. & S.T., Allahabad	6/ST/ALLD/2006 dated 20.6.2006	Commissioner (Appeals), Cus. & C.Ex., Allahabad
2.	220 of 2005	Ajmer Zila Ex-Service Man Welfare Co-operative Society Ltd.	C.C.E., Jaipur II	547(HKS)ST/JPR-II/05 dated 4.10.2005	Commissioner (Appeals-II), Cus. & C.Ex., Jaipur
3.	01 of 2006	Sikar Ex-Servicemen Welfare Co-operative Society Ltd.	C.C.E.,Jaipur	368(MPM)/ST/JPR-I/2005 29.9.2005	Commissioner (Appeals-I), Cus. & C.Ex., Jaipur
4.	65 of 2006	C.C.E., Japur I	Bharatpur Dholpur Purva Sainik Kalyan Sahakari Samity Ltd.	450(MPM)/CE/JPR-I/2005 dated 21.12.2005	Commissioner (Appeals-I), Cus. & C.Ex., Jaipur
5.	82 of 2006	Bharatpur Dholpur Purva Sainik Kalyan Sahakari Samiti Ltd.	C.C.E., Japur I	C.No.APPL/JPRI/CE/ST /AL/400/IX/2005 dated 21.12.05/ 8.12.2005	Commissioner (Appeals-I), Cus. & C.Ex., Jaipur

6.	394 of 2007	Desert Hawks Ex-Serviceman Welfare Co-operative Societies Ltd.	C.C.E., Jaipur	57/GRM/ST/JPR-I/2007 dated 14.3.2007	Commissioner (Appeals-I), C.Ex., Jaipur
7.	451 of 2007	Indian Ex-Service Men Welfare Co-operative Society Ltd.	C.C.E., Jaipur	44/GRM/ST/JPUR-I/2007 dated 28.2.2007	Commissioner (Appeals-I), Cus. & C.Ex., Jaipur
8.	419 of 2007	Poorva Senik Bhau Udeshya Sahakari Samity Ltd.	C.C.E., Jaipur	92(GRM)ST/JPR-I/2007 dated 24.4.2007	Commissioner (Appeals-I), Cus. & C.Ex., Jaipur
9.	680 of 2007	Ex-Servicemen Security Services	C.C.E.,Chandigarh	326/CE/CHD/2007 dated 21.8.2007	Commissioner (Appeals), Cus. & C.Ex., Chandigarh
10.	695 of 2007	Zila Purva Sainik Bahudeshiya Sahakari Samiti Ltd.	C.C.E., Jaipur I	118(GRM)/ST/JPR-I/2007 dated 21.6.2007	Commissioner (Appeals-I), Cus. & C.Ex., Jaipur
11.	490 of 2008	Purva Sainik Welfare Co-operative Society Ltd.	C.C.E.,Jaipur I	67/GRM/ST/JPR-I/2007 dated 16.3.2007	Commissioner (Appeals-I), Cus. & C.Ex., Jaipur

Appearance:

Shri L.P. Asthana, Advocate for the assesses at serial No.1, Shri Sanjeev Clerk of Advocate at serial No.2, Ms. Sukriti Das, Advocate at serial No.3, 4, 5, 6, 7 & 8, none at serial No.9 & 11, Shri Vijay Kumar, Advocate at serial No.10

Shri R.K. Gupta, Authorized Departmental Representative(DR) for the Revenue at serial No.1 & 11, Shri Amrish Jain, SDR at serial No.2, 3, 4, 5, 6,7 Shri K.K. Jaiswal, SDR at serial No.8, 9, 10

Coram: Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Final Oral Order No. ST/457-467/11

Per Mrs. Archana Wadhwa:

The present bunch of appeals is being disposed of by a common order as the issue involved is identical. Vide impugned order, the authorities below have confirmed the demand of service tax raised against the appellants on the ground that they have rendered 'security agency' services during the period relevant in each appeal, which is a taxable service. Accordingly, in all the cases, the demands stand confirmed against them by invoking extended period of limitation.

2. Though the facts involved in each of the appeal is more or less identical, for the sake of easy reference, the facts as available in appeal No.481/06, in the case of Bhootpurva Sainik Society are being detailed.

3. The said appellant, i.e. M/s Bhootpurva Sainik Society is an association of ex-service men, registered under the Societies Registration Act, 1860 engaged in activities for the welfare of ex-service men. These include assisting the ex-service men in finding employment etc. The objectives of the society are listed as the welfare of ex-service men as also their family, including economic and social welfare. The pre-requisite for membership of this society is that the person should be an ex-service man and should make an annual payment of Rs.101/- or as per his wishes. The objectives of the society are as under:-

a. to help the ex-service men to get a job in the Government or non Government establishments

b. to assist and make efforts for the families of deceased service men as also for invalid service men.

c. to assist and make efforts for the families of ex-service men in getting a technical education.

d. to propagate national feeling and unity of the families of ex-service men.

e. to assist in securing employment as security guard/driver/ trade men/cook

f. to make ex-service men aware of the benefits granted to them by the Government from time to time.

The appellant, so as to assist its members in obtaining work from Bharat Sanchar Nigam Ltd., entered into an agreement dated 21.12.2000, whereby a monthly amount was to be paid for the services of security guard.

4. The appellants were issued a show cause notice on 21.9.2004 raising demand of service tax of Rs.26494/- for the period April 1999 to December 2003 on the allegation that during the said period, they have engaged themselves in

providing security agency service covered under Section 65(105)(w) of the Finance Act, 1994 which are liable to service tax. In reply to the notice, the appellants denied that they were a security agency as defined under Section 65(94) of the Finance Act inasmuch as they were not a commercial concern engaged in any activity for profit. They also relied upon the Tribunal decision in the case of Kerala State Ex-service League vs. C.C.E., Thiruvanthapuram reported in 2004 (173) ELT 434. The demand was also assailed on the point of limitation.

5. The original adjudicating authority did not find favour with appellants submission and vide his order dated 23.12.2005 held that as the society was taking remuneration from BSNL for paying the salaries of security personnel, they are a commercial concern, liable to tax. Accordingly, he confirmed the demand of service tax along with interest and imposed penalty of Rs.500/- and Rs.1000/- in terms of the provisions of Section 75A and Section 77 of the Finance Act, 1994 respectively. The appeal against the above order did not succeed before the Commissioner (Appeals). Hence the present appeals.

6. We have heard Shri L.P. Asthana, Advocate appearing for the said appellants as also the other Advocate appearing for the other appellants. Shri R.K. Gupta, SDR appeared for the Revenue.

7. We find that the security agency services were liable to pay service tax inasmuch as the provisions of Section 65(105) of Finance Act, 1994 defines "taxable service" as under:-

> ***'Taxable service" means any service provided or to be provided to any person, by a security agency in relation to the security of any property or person by providing personnel or otherwise and includes the provisions of services of investigation, detection or verification of any fact of activity.***

As is seen from above, the service for coming under service tax net is required to be provided by a **security agency**. The security agency stands defined in terms of Section 65(94) of the Act. For the period prior to 18.4.2006, the definition of 'security agency' as appearing in the said Section was as under:

> ***" Security agency" means any commercial concern 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.***

The said definition of security agency underwent a change with effect from 18.4.2006 which read as under :-

> ***" Security agency" means ~~it~~ 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".***

8. The period in all the appeals is prior to 18.4.2006. The definition of security agency as appearing in the said Section 65(94) prior to 18.4.2006 defines the same as service provided by a commercial concern. As such the issue required to be decided in the present appeals is as to whether the appellants, which are primarily and basically registered as co-operative societies or association of ex-serviceman for providing jobs to ex-serviceman and look after their welfare can be held to be a commercial concern.

9. Learned Advocate appearing for the appellants has drawn our attention to the Tribunal decision in the case of Ex-Services Security Co-operative Society Ltd. vs. C.C.E., Belgaum - 2008 (10) STR 319 (Tri-Bang.) wherein it was held that as the appellant was a co-operative society registered under the relevant statute for welfare of ex-servicemen, the demand confirmed against them under security agency services cannot be upheld inasmuch as the appellants cannot be held to be a commercial concern. Similarly, in the case of C.C.E., Mangalore vs. Employ Me - 2006 (4) STR 303 (Tri-Bang.), it was held that since the respondent's

organisation imparting training to youth in leadership and later finding some placement for them against fee charged will not be considered as commercial concern. The Tribunal observed that as there is no definition of commercial concern in the Finance Act, 1994 and Service Tax Rules, the popular meaning of the expression 'commercial concern' is required to be adopted. It was accordingly observed by the Bench as under:-

> ***".......The Oxford Advanced Learner's Dictionary gives the following definitions of 'commercial' as (i) connected with the buying and selling of goods and services; (ii) (only before noun) making or intended to make a profit. The definition used in the statute for Manpower Recruitment is 'Manpower Recruitment Agency' means any Commercial concern engaged in providing service, directly or indirectly, in any manner for recruitment of manpower, to a client. A careful reading of the above definition makes it clear that Manpower Recruitment Agency provides service for recruitment of Manpower to a client. In that case, the Agency receives consideration from the client. The client will be a company or an organization where the youths are given jobs. From the facts of the present case, it is seen that the youth pay some fees to the respondent for training. This fee is definitely not a consideration given by a client to the Manpower Recruitment Agency. Revenue has not shown with evidence that the Organizations where the youth are employed paid any consideration to the respondent. Be that as it may, a Commercial concern, from the popular meaning of the word as indicated in the dictionary, means a concern engaged in any activity with profit motive. Revenue's understanding that profit motive is not necessary for a Commercial concern is not at all correct. The Audited Accounts of the respondent unit reveal that they had not made any profit out of these activities. There is also no indication that fees were being charged specifically for providing employment to the youth. From the facts of the case, we are of the view that the respondent is not a 'Commercial concern'. Therefore, they would not come within the meaning of Manpower Recruitment Agency as defined in the Finance Act, 1994. They are not liable to pay any Service Tax under this category. Hence, we uphold the impugned order of the Commissioner (Appeals) and reject the Revenue's appeal."***

10. Similarly, the Tribunal in the case of C.C.E., Jaipur vs. Sikar Ex-Serviceman Welfare Coop. Society Ltd. - 2006 (4) STR 213 (Tri-Bang.) and in the case of Kerala State Ex-service League vs. C.C.E., Thiruvananthapuram - 2006 (3) STR 400 has held that the association or societies created for welfare of ex-servicemen cannot be held to be a commercial concern.

Further, in the case of Board of Control for Cricket in India vs. CST, Mumbai -2007 (7) STR 384, it was held that BCCI cannot be considered to be a commercial concern so as to be covered by the definition of advertising agency. The said decision of the BCCI vs. Commissioner was referred to and relied upon by the Tribunal in the case of Institute of Banking Personnel Selection vs. C.S.T.., Mumbai - 2007 (8) STR 579 (Tri-Mumbai). While interpreting the expression 'commercial concern', the Tribunal took note of the finding as arrived at in the case of BCCI that the organisation was engaged in control of cricket in India and not having been established with the purpose of making profit, cannot be held to be a commercial concern. The Tribunal also took note of the Apex Court judgement delivered in the case of Additional CIT vs. Surat Silk Cloth Manufacturers Association (SSCMA) - (121) ITR 1 (SC() laying down that the main object of SASMIRA was to promote commerce and art silk, cotton etc. To supplement the main object, the SSCMA was undertaking the activity of obtaining licences for import of foreign yarn and quotas for purchase of indigenous yarn. They, though making profit on the above activity , cannot be held to be a commercial concern, as the object of the said organisation was for general public utility. The relevant paragraph from the said decision of the Apex Court in the case of SSCMA is reproduced below for the sake of clarity and ready reference:-

> ***".................But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for person in charge of the trust or***

institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg J. when he said in Sole Trustee, Loka Shikshana Trust's case (1975) 101 ITR 234, 256 (SC) that: " .. if the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter that charitable character of the trust. This test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity."

11. At this stage, we may also refer to some of the decisions under Sales Tax Act, which stand relied upon by Shri L.P. Asthana, learned Advocate for the appellants in the case of State of Bombay vs. Ahmedabad Education Society reported in AIR 1956 Bom 673, it was found that the Ahmedabad Education Society which was formed for achieving the object of spreading of education and making of education accessable ~~assessable~~ to various section of the people, set up the brick factory with the sole purpose of preparing bricks to be used for construction of the college building and residential quarter for their staff, hostel etc. In the process, they manufactured surplus bricks than the actual number required by them for their own use and inasmuch as there was danger of these bricks getting deteriorated they disposed of the same from time to time to the outside parties. The Sales Tax authorities, by treating the respondents as dealers engaged in sale and purchase of bricks sought to tax them. On matter reaching the Apex Court, it was held by the Hon'ble Court that the object is not to tax any sales but to tax only those sales which are affected by the person who carry on the business of the selling or supplying the goods. As such, it was observed that unless the activity of sale and purchase assumes characteristic of a business, it cannot be held to be an activity liable to tax. It was also observed by the Hon'ble Court that in taxing matters, we must not look to form but to the substance of the transaction. As such, it was held that though there was sale of bricks it was not a

matter of business of the society and such sale cannot be held to be in the context of business activity and cannot be taxed to sales tax.

Reference to the above decision though not exactly on the issue involved, is called for to understand and to arrive at the correct interpretation of the expression 'Commercial concern'. As held by the Hon'ble Supreme Court, it is not an activity in isolation which is relevant for holding an organisation as commercial concern. The entire intent and object is to be looked into. The appellants herein are registered societies or association for the welfare of the ex-servicemen. The appellants are not providing security services by offering non ex-servicemen persons as security staff, neither motive of the said organisation is to earn profit from the said activity. They are only charging 5% commission from their customers for providing such service which in fact is necessary for running and maintenance of the organisation. For bringing the society under service tax net, there must be a person who is running security agency as a business. He may or may not earn profit inasmuch as profit is not earned in all the business activities , but the intention of carrying on the business with the motive of earning should be there.

12. Our above views find support from the another decision of the Hon'ble Supreme Court in the case of State of Tamil Nadu vs. Board of Trustees of the Port of Madras reported in AIR 1999 SC 1647. Without referring to the facts of the case, we would like to reproduce the relevant observation of the Hon'ble Supreme Court as contained in para 40 & 48 of the said judgment:-

> ***"40. On the facts of the case before the Andhra Pradesh High Court, the canteen activity was treated as a requirement of statute and also an integral part of the main activity and was, therefore, not business. If the Andhra Pradesh meant that incident or ancillary sales or sales made in connection with a main activity, (which main activity was not in itself business), in order to escape liability should always be proved by the assessee to be an integral part of the main 'non—business' activity, we are not inclined tod agree. In our view, that would erase the***

distinction between sales which were integral with the main 'non-business' activity and those which were incidental or ancillary or connected. In the first place, if these sales were an integral part of the main 'non-business' activity, they were not incidental or ancillary and would present no difficulty in leading to the conclusion that they were not taxable. But if the sales were connected or incidental or ancillary to the 'non-business' activity, then, as stated earlier, there would be a presumption that they were not intended to be 'business'. It would then be for the revenue, in any exceptional case to prove that, in respect of a non-business' activity the ancillary or incidental sales were independently intended to be carried on a as a separate business. To this extent, we modify the principle stated in the Andhra Pradesh High Court in the Naval Dockyard case.

....

....

48. From the above provisions, in our opinion, it is clear that the Port Trust is not involved in any activity of 'carrying on business' as has been clearly held in Aminchand Pyarelal's, case (supra), and that unclaimed and unserviceable goods are sold in discharge of various statutory charges, items etc. and the sales of these items are also an infinitesimal part of the Port Trust's main activities or services. No doubt, the sales of goods are in connection with, or incidental or ancillary to main 'non-business' activities, but they cannot be treated as 'business' without any plea by the State of Tamil Nadu that the Port Trust had an independent intention to carry on business in the sale, of unserviceable/unclaimed goods. That is not the case of the Department in the show cause notice. Further, from the counter affidavits filed in the High Court if is clear that is not the case of the State that there is any separate intention on the part of the Port Trust, to carry on business in the unserviceable & unclaimed goods. Its contention has been that the main activities of the Port Trust amounted to 'carrying on business'. The argument fails in view of our finding that the main activity is not one amounting to 'carrying on business'.

13. As against the judgements referred supra which are supporting the appellants contention, learned DR has drawn our attention to Division Bench judgement in the case of Punjab Ex-Servicemen Corporation vs .C.C.E., Chandigarh reported in 2009 (13) STR 529 (Tri-Delhi) wherein the Hon'ble Bench has held that the security service provided by the association of ex-servicemen are liable to service tax, having been provided for commercial concern.

14. On going through the said judgment, we find that the Hon'ble Bench has taken note of the precedent decision of Tribunal in the case of C.CE.., Chandigarh vs. Sikar Ex-Servicemen Welfare Society Ltd. and has observed that the said judgment dealt only with the penalty and cannot be of any help to the appellant.

Similarly, in the case of Ex-services Co-operative Society, the Bench observed that since the appellants in that case was a co-operative society which was held to be not commercial concern, in the present case, the appellants are a corporation and not co-operative society and the ratio of the said decision cannot be followed.

Similarly, while dealing with the Tribunal decision in the case of BCCI, the Tribunal observed that since the said decision was based upon the Supreme Court judgment in the case of Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal and others reported in 1995 (2) SCC 161 holding that BCCI is not a commercial concern, the fact of that case cannot be applied.

Similarly, the Tribunal did not follow the precedent decision in the case of Kerala State Ex-Service League on the ground that the matter was remanded for de novo adjudication.

15. We find that the decision of the Tribunal in the case of Punjab Ex-Servicemen Corpn. is the only decision which supports the revenue's views . As against the other catena of judgments discussed by us in the preceding pargraphs, we do not feel convinced with the line of reasoning drawn for distinguishing the earlier decision, which fully cover the issue involved. The decision in the case of

BCCI stands not followed by the Tribunal in Punjab Ex-Servicemen Corpn. on the sole ground that the same was based upon the Supreme Court decision. We are of the view that the said fine distinction drawn by the Tribunal in the case of Punjab Ex-Servicemen corpn would not negate the effect of the precedent decision in the case of BCCI as also the other judgments referred supra.

16. Apart from, we note that the Hon'ble Supreme Court decision discussed by us though rendered under the Sales Tax Act, the details and circumstances for holding the organisation as commercial concern or otherwise, throw light on the issue as to what can be held to be regular business activity so as to be liable to tax. Taking the clue from the said judgement and the various Tribunal decisions which are on the point, we hold that the association, co-operative society or organisation which saw the light of the day with the sole object and intent to serve the ex-servicemen and to look after the welfare activity of their families cannot be held to be a commercial concern so as to make them liable to service tax. We make it clear that the said declaration of law would be applicable only for the period prior to 18.4.2006 inasmuch as the definition of 'security agency' thereafter was amended and the security service provided by any person were made liable to service tax. This amendment in the definition also supports our view that prior to 18.4.2006 legislature intended to tax security services provided by only commercial concern and not by organisations other than commercial concerns.

17. In view of our foregoing discussions, we hold that appellants are not liable to any service tax. Inasmuch as the facts in other appeals are identical, the appeals are being allowed by setting aside the impugned orders.

18. As we have held in favour of the assessee on the merits of the case, we are not dealing with the other pleas raised before us as regards the limitation

or value of the service.

19. In view of the foregoing, all the appeals are allowed with consequential relief.

(Pronounced in the open Court on 8-9.2011)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

scd/