CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO.3

SERVICE TAX APPEAL NO.51223 OF 2019

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-386-18-19 dated 28.02.2019 passed by the Commissioner (Appeals), CGST, Customs and Excise, Bhopal]

M/s. KBS Security Agency (Organization),
HIG 187 Sector B, Shriramesaram Colony,
Bagmugaliya, Bhopal (M.P.) **Appellant**

Vs.

Commissioner, CGST, Customs & Excise,
Bhopal **Respondent**
48 Administrative Area, Arera Hills, Bhopal (M.P.)

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

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 21.07.2025
Date of Decision: 30.07.2025

Final Order No.51095/2025

SANJIV SRIVASTAVA:

This appeal is directed against the order-in-appeal no.BHO-EXCUS-001-APP-386-18-19 dated 28.02.2019 vide the impugned order following as below:

> "16. Therefore, there is no question of reducing the service tax liability by appropriating the service tax paid by the appellant. The Commissioner (Appeals) vide order-in-appeal dated 02.08.2010 has upheld the service tax liability of Rs.11,11,353/-

only after adjusting the payment of Rs.15,04,479/- which is not correct. The service tax determinable under Section 73 is the total service tax evaded by the appellant which was unearthed by the department. Any payment made by the appellant during the course of investigation or later will not have any effect on the determination of such amount under Section 73 of the Act. Therefore, the confirmation of service tax demand of Rs.27,92,9271- under Section 73 by the adjudicating authority is upheld along with interest. It however, does not mean that the payment of Rs.15,04,479/- made through various challans would not be considered a payment at all. The same is the job of the Range Superintendent which has to examine at the stage of recovery of arrears after satisfying himself that the payment vide these challans was made against the service tax liability confirmed by the order dated 20.02.2009.

17. The adjudicating authority has also imposed penalty both under Section 76 & 78 of the Act. Section 76 and 78 of the Finance Act, 1994 are the underlying provisions for penalty under Service Tax. Section 76 deals with penalty for failure to pay Service Tax whereas Section 78 deal with penalty for failure to pay Service Tax for reasons of fraud, suppression etc. These provisions have undergone amendments with effect from 14th May 2015 vide Finance Act, 2015 in order to rationalize the penalty provisions. Penalty is imposable in terms of the amended Section 78 in view of Section 78 of the Act. The newly inserted Section 78 provides for transition application of proposed Sections 76 and 78, which implies that the amended Sections 76 and 78 shall be applicable even for the show cause notices issued before the date of assent of the President which have not been adjudicated. As it was a case of suppression penalty under Section 78 is imposable. The penalty imposed by the adjudicating authority under Section 78 is upheld. As penalty under Section 78 has been imposed, separate penalty under Section 76 is not imposable as these provisions are mutually exclusive. Accordingly, penalty imposed by the adjudicating authority under Section 76 is hereby set aside.

18. In view of the above, the order passed by the adjudicating authority is modified to the extent mentioned above and the appeal filed by the appellant is party allowed.”

2. The appellant is engaged in providing taxable service under the category of security and manpower supply service. The dispute arose regarding the service tax liability of the assessee/appellant with reference to quantification of such liability and its timely payment. Proceedings initiated against the assessee/appellant resulted in original

order dated 20.02.2009. The Original Authority confirmed the service tax liability of Rs.28,52,227/-. He also imposed equivalent amount of penalty under Section 78 and alongwith further penalty under Section 76 and 77 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) re-determined the tax liability of the appellant to Rs.27,08,614/-. He upheld the penalty under Section 78 of the Finance Act. He set aside the penalty under Section 76.

2.1. Against the order of the Commissioner (Appeals), the appeal was filed to the Tribunal which has been allowed by Final Order No.56717-56718/2017 dated 20.09.2017, the order is as follows:

> "5. Regarding adjustment towards service tax already paid, we find that the impugned order did not elaborate the basis on which such adjustment is made...On the point raised by the Revenue regarding the adjustment amounts has included normally discharges service tax, we find that such possibility has not been examined in the impugned order for a clear finding. In any case for both quantification of tax liability. as well as adjustment towards already paid tax basic verification with the connected -documents by the Jurisdictional officer is a basic requirement. Since, the issue involved s basically about factual verification and quantification, we find it fit and proper to set aside the impugned order and to remand the matter to the Original Authority for a fresh decision. The assessee/appellant shall be given adequate opportunity to submit all supporting evidence before a decision is taken. We note that the claim of the Revenue regarding incorrect adjustment of tax already paid has to be specifically examined by the Original Authority.
>
> 6. In view of the above observation, the appeals are allowed by way of remand."

2.3. In the remand proceedings the Adjudicating Authority decided the issue again holding as follows:

> "(i) Demand of Service Tax amounting to Rs.27,92,927/- (including cesses thereon) (Rs.Twenty Seven Lacs Ninety Two Thousand Nine Hundred and Twenty Seven Only) leviable during the period Oct 2001 to March 2006 is confirmed and is ordered

to be recovered from M/s KBS Security organization, B-187, Rameshwaram Colony, Baghmugalia under the proviso to Section 73(1) of the Finance Act, 1994. The Noticee is directed to pay the same forthwith. Since the Noticee has already deposited the service tax to the tune of Rs 2,02,728/-, the same is appropriated against the confirmed dues;

(ii) Interest on the amount of Service Tax confirmed at Sr. No. 1(i) above is ordered to be recovered from them under Section 75 of the Finance Act, 1994. The Noticee is directed to pay the same forthwith;

(iii) I impose a penalty equal to service tax not paid or paid after the initiation of investigation amounting to Rs 27,00,199/- (Rs Twenty Seven Lacs One Hundred Ninety Nine only) under section 78 of the Act. The Noticee is directed to pay the same forthwith.

I give an option to the Noticee to avail opportunity of reduced penalty as provisioned under the relevant section. The penalty imposed under Section 78 of the Finance Act, 1994 will be reduced to 25% of the said amount provided the service tax and interest are paid within 30 days from the date of communication of this order and the said reduced penalty is also paid within the said time i.e., 30 days from the date of communication of this order.

(iv) Penalty of Rs. 100/- per day (upto 17.04.2006) and Rs 200/- per day or.® 2% of such tax per month (From 18.04.2006 to 09.05.2008), whichever is higher, starting with the first day after the due date till the date of payment of outstanding amount of Service Tax or upto 09.05.2008 whichever is earlier is imposed under Section 76 of the Finance Act, 1994. The jurisdictional range office is directed to quantity such penalty and accordingly recover the same from the notice.

(v) A penalty of Rs 1,000/- (Rs one thousand only) is imposed on the noticee under Section 77 of the Finance Act, 1994.

The proceedings arising out of the Final Order No. ST/56717-56718/2017-CU[DB] dated 20.09.2017 passed by the Hon'ble CESTAT, New Delhi in respect of Service Tax appeal no. ST/1471/2010 filed by the department and appeal no. ST/1816/2010 filed by the noticee against Order-in-Appeal No.06/ADC/ST/BPL-1/09 dated 20.09.2009 is disposed off accordingly.”

2.4. Against this order-in-original, appellant filed appeal before the Commissioner (Appeals) which has been disposed of as per the impugned order mentioned in Para 1 above.

3. We have heard Shri Anand Narayan, authorized representative for the Department and considered the grounds of appeal taken by the appellant in the appeal memo and have perused the records of the case on our own. The appellant, despite service of notice, has not been appearing ever since the filing of the appeal.

4. We have considered the submissions made in the appeal during the course of arguments.

5. In the remand proceedings the adjudicating authority have after consideration of the documents including challans used for payment of the service tax as claimed by the appellant have observed as follows:

> "40. Results of the verificatory exercise are mentioned below:
>
> 40.1 Bills pertaining to Manpower But included in Security services
>
> On scrutiny of bill books seized from the noticee's premises, I find that while calculating service tax liability for the period 01.04.2002 to 18.04.2006 in Annexure F, G & H of the impugried notice, investigation has also included 32 Bills in Security services but the same actually pertained to manpower supply services. During this period, as supply of manpower services were not taxable, service tax is not liable to be demanded. Details are as follows:

Sr.No.	**Annexure to Show Cause Notice**	**Bill No./Bill book**	**Date**	**Party**	**Amount**
Period 01.04.2002 to 13.05.2003					
1	E	20/15	01.07.2002	Optel Communication	9760
2	E	21/15	31.07.2002	Optel Communication	26174
3	E	34/15	31.08.2002	Director, IPD	9325
4	E	35/15	31.08.2002	Director, IPD	2155
5	E	43/15	31.08.2002	Director, IPD	11550
6	E	46/15	31.08.2002	Optel Communication	9120
7	E	75/21	03.03.2003	Optel Communication	2747
8	E	601/14	01.05.2002	Optel	12013

				Communication	
9	E	50/16	01.11.2002	MPSEDC	548
10	E	11/16	01.11.2002	MPSEDC	548
11	E	28/16	01.12.2002	Director, IPD	9395
12	E	39/16		MPSEDC	2350
13	E	59/16		Director, IPD	11551
14	E	56/16		MPSEDC	2036
				TOTAL	109272
Period 14.05.2003 to 09.09.2004					
15	F	7/18	01.08.2003	Bhartiya Manak Bureau	6150
16	F	10/18	01.08.2003	MPSEDC	15920
17	F	14/18	01.07.2003	MPSEDC	2886
18	F	91/18	01.10.2003	MPSEDC	15847
19	F	139/18	12.11.2003	MPSEDC	2666
20	F	171/18		DDMC	53160
21	F	189/18	01.01.2004	DDMC	53160
22	F	229/25	01.02.2004	DDMC	53160
23	F	237/25	01.03.2004	DDMC	53160
24	F	290/26	01.04.2004	Bhartiya Manak Bureau	6150
25	F	106	01.07.2004	DDMC	53160
26	F	138	01.08.2004	DDMC	53160
27	F	34	01.05.2004	DDMC	53160
				TOTAL	421739
Period 10.09.2004 to 18.04.2005					
28	G	173/14	10.09.2004	DDMC	93160
29	G	192/14	01.10.2004	DDMC	53160
30	G	415/27	01.03.2005	Doordarshan	46072
31	G	277/16	01.11.2004	Doordarshan	53160
32	G	75/33	38139	DDMC	53160
				TOTAL	298712

40.2 Amount of Bill wrongly taken

I find that there were 18 bills whose amount has been wrongly taken and excess service tax has been demanded. Details are as follows:

Sr. No.	Annexure to Show Cause Notice	Bill No./Bill book	Date	Party	Amount Shown	Correct Amount	Excess amount taken
Period 01.04.2002 to 13.05.2003							
1	E	10/15	01.08.2002	SEC Coal	31600	2160	29440
2	E	27/15	31.08.2002	Hotel Shagun	48000	4800	43200
3	E	37/15	31.08.2002	Mr. Saxena	33000	3300	29700
4	E	78/21	01.01.2003	Bhojpal Estate	153000	9600	143400
5	E	81/21	01.01.2003	Housing Society	67154	2825	64329
6	E	665/14	01.06.2002	Chinar Woodland	6466	6400	66

7	E	639/14	01.07.2002	Aakriti Enclave	6508	1650	4858
8	E	650/14	01.07.2002	Bhojpal Estate	2794	2734	60
9	E	653/14	01.07.2002	Optel Communication	1690	1650	40
10	E	14/16		TTTI	117000	0	117000
11	E	21/16		Kusum Housing	58769	2734	56035
12	E	597		Bhojpal Estate	13800	4800	9000
13	E	3/22	01.04.2003	Bhojpal Estate	181800	9600	172200
14	E	6/22	01.04.2003	Kusum Housing	75356	2825	72531
15	E	7/22	01.05.2003	Kusum Housing	78090	2734	75356
				Total	875027	57812	817215
Period 01.04.2002 to 13.05.2003							
16	F	5/5	01.06.2003	Bhojpal builder	201000	9600	191400
17	F		01.09.2003	Shalimar Enclave	25202	14000	11202
18	F	45	01.05.2004	Chankyapuri Housing	11500	4500	7000
				Total	237702	28100	209602

40.3 Bills Cancelled/Not Found/Duplicate Bills

Further, I find that the investigation while calculating service tax liability, has also included some bills which were either cancelled or not found in bill books. Further some bills have been taken twice. Details are as follows:

Sr.No.	**Annexure to Show Cause Notice**	**Bill No./Bill book**	**Date**	**Party**	**Amount**
Period 01.04.2002 to 13.05.2003					
1	E	17/21	01.02.2003	MPSEDC	7853
2	E	22/21	01.02.2003	MPSEDC	13267
3	E	642/24	10.11.2002	MPSEDC	61489
4	E	650/24	10.11.2002	MPSEDC	67261
5	E	64/16	01.01.2003	Advance Network	6750
6	E	201	26.03.2003	Advance Network	19350
7	E	219	08.04.2003	MPSEDC	26861
8	E	4/22	01.05.2003	Bhojpal Builders	191400
				Total	394231
Period 14.05.2003 to 09.09.2004					
9	F	2/5	01.06.2003	MPSEDC	9264
10	F	9/5	01.06.2003	AICTE	7684
11	F	2/5	01.06.2003	MPSEDC	5492
12	F		01.08.2003	Aakriti Builders	2825
13	F			LBS College	2400
14	F	21/5	23.06.2003	TTTI	71878
15	F	41/18	01.09.2003	Shalimar Campus	4200

16	F	136/23		TTTI	71680
17	F	137/23		TTTI	3717
18	F	118	09.07.2004	AICTE	20349
				Total	199489

41. In the light of the outcome of the above said verificatory exercise vis-à-vis the noticee’s claim iterated in their submission, my observations are recorded as under:

Period	Manpower supply Bills wrongly taken as security services	Amount of bills wrongly taken	Not Found/ Cancelled/ Duplicate Bills	Total Amount
01.04.2002 to 13.05.2003	109272	817215	394231	1320718
14.05.2003 to 09.09.2004	421739	209602	199489	830830
10.09.2004 to 31.03.2005	298712	0	0	298712

Further, the taxable value of security services and manpower supply services are re-quantified as under:

	As per Show Cause Notice		As per my observations	
Period	Security Services	Man Power Supply Services	Security Services	Man Power Supply services
01.04.2002 to 13.05.2003	3649437	647685	2328719	756957
14.05.2003 to 09.09.2004	5094830	1665100	4264000	2086839
10.09.2004 to 31.03.2005	4116686	477646	3817974	776358
16.06.2005 to 18.04.2006	12591693		12591693	
19.04.2006 to 31.03.2007	7769881		7769881	

42. Further, the noticee has argued that during the period under issue, Service Tax was required to be paid during the month immediately following the calendar month in which payments are received as per rule 6 of Service Tax Rules, 1994, as such Service Tax was required to be paid on the receipt amount and not on the billed amount. They have paid the Service Tax on the amount received as shown in their balance sheet to the tune of Rs.16,22,232/- for 2002-03, Rs.36,09,805/- for 2003-04, and Rs.38,35,338/- for 2004-05, Rs.39,85,620/- for the 2005-06 and Rs 39,49,121/- for 2006-07 along with the difference amount Rs.658445/- @10.2% of Rs.67161/-.”

6. From the above observations and details made, we find that original authority had complied with the directions given in the order of the Tribunal remanding the matter back to him. They have gone through entire set of documents including the challans used for payment of tax. We, further observed that for not allowing the complete adjustment of the service tax already paid by the challans adjudicating authority do not deny the fact in respect of the amount paid against that challans. However, only ground for adjustment of the challans was that they are not been co-related with ST-3 in absence of production of ST-3 Returns while for the period of October 2004 to March 2007.

7. In the appeal, Commissioner (Appeals) has observed as follows:

> " On going through the challans, I find that the following challans are made available before me:
>
> (i) Challans from July 2003 to September 2004 - 92782/-
>
> (ii) Challans showing deposition of Service tax for the
>
> Period April 2002 to March 2007 (total Challans 30) - 5,24,440/-
>
> (iii) Challans showing deposition of Service Tax during
>
> 9/07 to 02/08 (total Challans 3) - 1,24,420/-
>
> (iv) Challan showing deposition of Service Tax
>
> on 14.05.09 - 8,55,619/-
>
> **Total deposition - 15,97,261/-**
>
> Thus out of total outstanding amount of Service tax Rs.26,15,832/- the Appellant has paid an amount of Rs.15,97,261/- which certainly needs consideration towards the liability of Service tax due to appellant and confirmed against the appellant vide the impugned Order-In-Original. However as the amount of Service Tax of Rs.92,782/-deposited by Appellant has already been taken into consideration by the lower authority

> while deciding the fate of demand and by myself as discussed in the previous para. Accordingly, now at this stage, I can give consideration only to the amount as equal to Rs.15,97,261 - Rs.92,782/- which comes to Rs.15,04,479/-. Here I would also like to mention that Appellant had also produced one challan evidencing payments of Rs. 20000/- with a plea to consider it also but on going through this challan I find that this challan relates to payment of Service Tax towards their liability for period 10/01 to 03/02 whereas the demand relates to a period from April 2002 to March 2007. Hence I have not given any consideration to this challan as it nowhere relates to demand in question.
>
> Now as the Appellant has evidenced payment of Service tax of Rs.15,04,479/-in above terms. The total tax liability against the Appellant gets reduced to Rs.11,11,353/- [Rs.26,15,832 (-) Rs.15,04,479/-] subject to verification of all the challans by concerned Range Superintendent so as the authenticity of same is proved beyond any doubt."

8. In this appeal, appellant is only disputing viz-a-viz, the payment verification of the amount paid against these challans.

9. We observe that depositing of service tax by these challans is not in dispute. The only fact that is in dispute is as observed by the original authority is with regard to which these challans pertains. The Commissioner (Appeals) for these reason remanded the matter back of the observing so to the original authority for causing such co-relation and allowing the benefit of the amounts already paid. The purpose for which this appeal has been filed is not very clear. In case appellant is able to demonstrate that these challans where in respect of the periods of the demand the benefit of the service tax paid will be admissible to them. This is exactly what Commissioner (Appeals) observed in the impugned order.

10. In absence of the proper verification the matter has been remanded by Commissioner (Appeals) to the original authority., We do

not find any error in the approach adopted by the Commissioner (Appeals).

11. Commissioner (Appeals) has also set aside the penalties imposed under section 76 while upholding the penalties under section 78. In case after re-verification, it is found that amount as claimed by the appellant was already paid as per the challans for the period of demand, penalty under section 78 will be reduced by that amount.

12. In view above except for observations made in Para 11, we do not find any infirmity in the impugned order. Appeal is disposed of.

((Pronounced in the open court on **30.07.2025**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Archana