IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 1173 /2011

[Arising out of Order-In-Original No. 26/2011 (ST) - Commr dated 1.4.2011 passed by Commissioner of Central Excise, Jaipur I]

M/s. Rajasthan Ex-Servicemen Ltd. **Appellants**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur 1

Appearance:
Shri Subodh Kr. Pathak, Advocate for the Appellants
Ms. Neha Garg, DR for the Respondent

<u>**CORAM**</u>:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing Decision: 21.02.2017

FINAL ORDER NO. 52010/2017

<u>**Per B Ravichandran:**</u>

The appeal is against the order dated 1.4.2011 of Commissioner of Central Excise, Jaipur-I. The appellants are engaged in providing services under the category of 'security agency' covered by tax entry section 65(105)(w). Proceedings were initiated against them for non payment of service tax on the consideration received for rendering the said services. The period involved is November, 2004 to September, 2009. The original authority confirmed the service tax liability of

Rs.64,80,971/- on the appellant. He also imposed the penalty of equivalent amount under section 78 of the Finance Act, 1994 along with penalties under section 76 and 77 of the said Act.

2. Learned Counsel appearing for the appellant submitted that they are registered as a society and are governed by the Government regulations. They are mainly involved in resettlement of ex-serviceman and activities relating to their welfare. They are not involved in commercial activities and cannot be considered as 'commercial concern'. Even after amendment of tax entry in 2006, service tax liability will not arise for them as they are not involved in providing any taxable service. Learned Counsel also submitted that their assessee is run by retired service personnel and there can be no allegation of fraud, collusion etc. invoking extended period of demand as well as imposing penalties under various sections. He prays for setting aside the penalties invoking provisions of section 80 of the Finance Act, 1994. He also submitted that they have provided these services mainly to various Government departments, corporations and RBI and they did not get the Service Tax duly reimbursed by all these organisations which created financial difficulties for the appellant. Hence, the additional burden of penalty may please be waived.

3. Learned AR submitted that bylaws of the appellant society, as submitted by them in appeal, clearly state that they are operating on commercial/profit basis and there were specific regulations regarding

allocation of profit for the functioning of the society. Further, it is submitted that valuation for service tax purpose is to be the gross amount received from the recipient of service and appellant failed to pay service tax on such gross amount.

4. Regarding the demand of extended period, the learned AR submitted that it is clear from the impugned order (para 9 and 13) that the appellants did not submit even the basic documents inspite of repeated requests by the department. The revenue had to proceed with the case after collecting details from similarly placed society. The appellant plea of absence of ingredients for invoking the extended period for demand cannot be accepted. The details are brought out clearly in the impugned order.

5. We have heard both the sides and perused the appeals records.

6. Regarding the liability of the appellant for Service Tax under the category of security agency, it is clear that the services rendered are squarely covered by the tax entry and we see no merits in the pleas of the appellant in this regard. The lower authority examined the issue in detail and we find no ground in the present appeal to interfere with the findings. Similarly, the appellants are covered for tax liability for the whole period of demand is clear from their legal status and financial accounts to the effect that they are, infact, involved in profitable commercial activity. It is clear from the bylaws of the society which clearly stipulates about net profit. We find no justification to hold the

appellant as anything other than commercial entity. Similarly, the value for tax purpose has to be the gross amount received by the appellant from their clients is a well settled legal position in terms of section 67 of the Finance Act, 1994. The Valuation in respect of 'security agency services' has been subject matter of many decisions of Tribunal and Hon'ble High Courts which are as under:

1. ***Security Agencies Association vs. Union of India [2012 (28) STR 3 (Ker)];***

2. ***Punjab Ex-Servicemen Corporation vs. Union of India [2012 (25) STR 122 (P&H)];***

3. ***New Industrial Security Force vs. CCE, Kanpur [2006 (3) STR 197 (Tri-Del)];***

4. ***Panther Detective Services vs. CCE, Kanpur [2006 (4) STR 116 (Tri-Del)];***

5. ***CCE, Pune II vs. Commander Security Services [2015 (39) STR 494 (Tri-Mum)]***

7. Accordingly, we find no merits in the pleas of the appellant.

8. Regarding penalties imposed for the extended period of demand against the appellant, we note that the impugned order recorded reasons for the same. It is clear that the appellants did not provide the required details and come forward with full facts during the course of audit during subsequent inquiry conducted by the department. Even at the time of filing regular ST 3 return, the appellant did not show the full gross amount received from the clients for providing taxable service.

Considering these facts as recorded in the impugned order, we find the demand is sustainable for the full period. However, considering that the appellants had difficulty in realising the tax amount from their clients which are mainly Government departments and RBI and also there is no allegation that during the material time they billed or received any tax amount from the appellant, we find that there is reasonable cause for non payment of Service tax during the material time. Considering the background of operation of assessee and also circumstances pleaded by the appellant in appeal, we find it fit and proper to waive the penalties imposed on the appellant, invoking the provisions of section 80 as available during material time.

9. In view of the discussions and analysis, we uphold the service tax liability of the appellant. However, the penalties are set aside as mentioned above. The appeal is disposed of in the above terms.

(dictated and pronounced in the court)

(S K Mohanty)
Member(Judicial)

(B Ravichandran)
Member(Technical)

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