

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

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal Nos. 2658-2678 of 2012

(Arising out of order-in-original No. 20/2012(ST) dated 30.05.2012 passed by the Commissioner of Central Excise & Service Tax, Jaipur-I)

DATE OF HEARING : 27.06.2017

DATE OF DECISION : .07.2017

M/s Varsed Detective & Security Pvt. Ltd. **Appellants**
(Rep by Sh. Sudhir Malhotra, Adv.)

VERSUS

CCE, Jaipur **.....** **Respondent**
(Rep. by Sanjay Jain, DR)

AND

CCE, Jaipur **.....** **Appellant**
(Rep. by Sanjay Jain, DR)

VERSUS

M/s Varsed Detective & Security Pvt. Ltd. **Respondents**
(Rep by Sh. Sudhir Malhotra, Adv.)

**CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. 55023-55024/2017

PER JUSTICE (Dr) SATISH CHANDRA:

Both the cross appeals have been filed against the order-in-original No. 20/2012(ST) dated 30.05.2012 passed by the Commissioner of Central Excise & Service Tax, Jaipur-I. The period in dispute is 01.07.2005 to 31.03.2010.

2. The brief facts of the case are that, the assessee-Appellants, at the relevant time, were providing services under the "Security Agency Services" and "Cleaning Services". The Department got the information that the assessee-Appellants were indulging in evasion of Service Tax inasmuch as it has collected the Service Tax from its clients but not deposited the same in the Government exchequer. It also got the information that the assessee-Appellants are registered in respect of only one office at Gurgaon and is not disclosing about another office at Bhiwadi. So, search at both the premises was conducted on 19.02.2010 in the presence of independent witnesses. Certain documents, computers, CDs and laptop were seized. Finally, a show cause notice was issued demanding the Service Tax of Rs. 4,41,52,189/- along with penalty and interest. The show cause notice was adjudicated by the Commissioner (Appeals) who confirmed the demand of Rs. 2,20,98,599/- by giving the relief of the balance amount. Being aggrieved, both the parties have filed the present appeals.

3. With this background, we have heard Shri Sudhir Malhotra, learned counsel for the assessee-Appellants and Shri Sanjay Jain, learned DR for the Department.

4. The learned counsel for the assessee-Appellants submits that they have received the compensation for the services provided through the bank from different corporates and such figure is invariably reflected in the bank statement and the balance sheet, and consequently the findings of the Commissioner that assessee-Appellants was rendering the services clandestinely is not sustainable. On the parallel invoices, he submits that in some of the invoices name of customers were mentioned but no enquiry

was conducted with them to ascertain whether service was received by them or not. He submits that confirmation of demand on account of horticulture service is beyond the scope of show cause notice. It is also the submission of the learned counsel that a number of alleged parallel invoices pertain to State of J&K and SEZ Units which are otherwise exempt and not liable to Service Tax, so there was no reason to issue the parallel invoices when services are otherwise exempt. For this purpose, he has drawn our attention to page 114 of the paper book where the list of the SEZ recipients is mentioned. He further submitted that the assessee-Appellants had neither provided any service nor received any remittances against the alleged parallel/duplicate invoices nor any enquiry was caused by Revenue from the recipient of the services. Nothing corroborative has been brought on record to substantiate that services were provided by them against alleged parallel/duplicate invoices and received payment thereto. All payments were received through the banking channel. The learned counsel also submitted that the assessee-Appellants were also involved in the trading activities which are not subject to Service Tax. So the variation in figures in balance sheet and ST-3 returns submitted to Department was on account of trading activities and on account of value received towards non-taxable services. In respect of the horticulture activity, the learned counsel submits that the assessee-Appellants was providing services under the category of "Management, Maintenance and Repair Services" and these services were exempted from Service Tax prior to 16.06.2005. So no demand of Service Tax can be raised prior to this date. It is also the submission that the confirmation of the demand on such ground is beyond the scope of the show cause notice and it is well settled that the show cause notice is the foundation of the case and,

therefore, the authority cannot travel beyond the scope of the show cause notice. Further, he relied on the ratio laid down in the case of :

- (i) **Makers Mart vs CCE&ST, Jaipur-II**, 2016 (43) ELT 309 (Tri.-Del);
- (ii) **Commissioner of Central Excise, Delhi-III vs Carrier Aircon Ltd.**, (2005)184) ELT 113 (SC);
- (iii) **Manjit Singh vs CC (Import), Nahava Sheva**, 2015 (323) ELT 377 (Tri.-Mum);
- (iv) **CCE, Nagpur vs Ballarpur Indus. Ltd.**, 2007 (215) ELT 489 (SC); and
- (v) **Marubeni India Pvt. Ltd. vs CST, New Delhi**, 2016 (45) STR 549 (Tri.-Del)

5. On the other hand, Shri Sanjay Jain, learned DR for the Revenue, submits that the investigations resulted in disclosure of a secret office which was not registered with the Department. On examination, it was found that the assessee-Appellants were maintaining parallel/duplicate invoices, as mentioned in the show cause notice. Presence of parallel/duplicate invoices itself shows that the assessee/Appellants have received the payment in cash and not accounted for. By its very nature of transaction, it is clear that the same is not reflected in the books of accounts. They had provided unaccounted services and issued parallel /duplicate invoices, payments for which could not have been shown in the books of account. It could be in cash or other undisclosed form. Further, the learned DR submits that the assessee-Appellants could not submit any evidence to prove provision of such services in the State of J&K or in the SEZ, hence they are liable to pay Service Tax. The assessee-Appellants have collected the Service Tax from its clients but not deposited in the Government exchequer.

6. We have heard both sides and gone through the material available on record from which it appears that out of the demand of Rs. 4,41,52,189/-, mentioned in the show cause notice, the Commissioner has reduced the same to Rs. 2,20,98,599/- giving the benefit to the assessee-Appellants on cleaning service, service provided in J&K, on traded goods, reimbursement of expenses and also on the maintenance and management service upto 30.04.2006 as well as service provided in Special Economic Zone.

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7. From the record, it appears that the assessee-Appellants were providing the services to the following recipients :

- (i) M/s Microsoft Corporation (India) Pvt. Ltd., Gurgaon
- (ii) M/s Alstom India Projects Ltd;
- (iii) M/s Kapsons Associates Pvt. Ltd.;
- (iv) M/s Hindustan Constructions Company Ltd.; and
- (v) M/s DLF Laing O Rourke

Further, the assessee-Appellants were also providing the services in the State of J&K and SEZ Units. All the above recipients are not individuals, but are corporate entities which are bound to make the payments through the banking channel. The payment made by them was duly reflected in the balance sheet as well as in bank account. So, we do not agree with the submission of the learned DR that the assessee-Appellants have received the payment in cash for providing the services as no material was brought on record to prove this allegation. When recipients are corporate entities, certainly they will have to make the payment through banking channel by

showing in their books of account. The Department has not made any attempt to verify from their books of account that any payment was made other than the banking channel. From the record, it also appears that the parallel/duplicate invoices were the printed copies taken from the computer where they were found. There might be several copies printed by the concerned staff which were remained unsigned. When original invoice is available in computer and not duplicate copy, then no addition can be made on the basis of extra printed copy. In this regard, para 9 of the impugned order is reproduced below :

"9. Similarly, one laptop and some CDs were also resumed during the search on the relevant date. The laptop was examined but it was found that it did not carry any incriminating data. The CDs were also scrutinized and it was found that the only relevant data contained in them were the files of invoices which were duly taken printouts of. Again, the same also carried similarly numbered invoices."

In view of the above, we find no justification to demand the Service Tax on the basis of so called parallel/duplicate invoices and the same is hereby set aside.

8. About the unregistered office, it appears that the assessee-Appellants were registered in the name of M/s Varsed Detective and Security Pvt. Ltd. at Gurgaon and opened another office in Bhiwadi in the name of M/s Varsed Services, which is a component of the main company. M/s Varsed Services was doing the business activity in the name of the main company with the same registration number. So, there is no scope for escapism. From the record, it appears that M/s Varsed Services has not received any payment or order. Whatever orders or payments were received are accounted in the main company. Hence, the second company

may be slightly different in nomenclature but can be considered as a branch unit, especially when no business was carried out in its name. Further, it appears that the scope of the work included garbage cleaning, floor cleaning, drain cleaning, crystallization of floor which means floor polishing, windows and facade cleaning. The assessee-Appellants were also providing the security service including the metal detector and manpower. It's main client is M/s Hindustan Construction Company Ltd., who has the offices in four major areas, namely, J&K, Himachal Pradesh, Uttarakhand and Sikkim. The service provided in J&K is not subject to Service Tax due to the non-applicability of the Act. When the services were consumed in the State of J&K and the same were not subject to levy under Section 64(1) of the Finance Act, 1994. It also appears that providing security, safety of works and supply of commandos in hydro power and other types of projects in the State of J&K are not covered under Section 64(1) of the Act.

9. Similarly, the services provided to SEZ were exempted from payment of Service Tax under Section 93 of the Act by virtue of Notification No. 4/2004 dated 31.03.2004. The exemption was available to SEZ developers and the units in SEZ. In the instant case, the assessee-Appellants had not charged or collected any Service Tax from the SEZ, so the same was not paid.

10. Regarding the services provided in relation to horticulture, the same are exempted as per Section 65(24b) read with Section 65(105)(zzzd) of the Finance Act, 1994, which provided that :

“(ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but

does not include such services in relation to agriculture, horticulture, animal husbandry or dairying.”

(Emphasis supplied)

Hence, all the activities carried out pertaining to horticulture including maintenance of lawns, gardens, grass etc. are exempted from Service Tax. If the owner has let out the lawn or garden for any commercial activity, then owner will be liable to pay the Service Tax, but certainly not the assessee-Appellants in the instant case which has provided merely the maintenance services.

11. From the record, it appears that the assessee-Appellants were also providing cleaning services to Ajmer Fort at Jaipur which is an archaeological structure. The same cannot be considered as commercial or industrial unit. It was exempted from the clutches of the Service Tax as per the order supplied by the Archaeological Survey of India. In the instant case, it appears that the Commissioner has made addition to Service Tax demand on the basis of parallel/duplicate invoices which is not sustainable in the eyes of law. As stated above, the income was taken on accrued basis, but not on the actual basis.

12. Regarding the SEZ services, it appears that for SEZ units, namely, DLF Kolkata; DLF IT Park, Hyderabad and DLF Rai Project, the assessee-Appellants have raised the invoices but when tax was not received the same was not paid. There is nothing on record to show that the assessee-Appellants received the Service Tax raised in the invoices. It may be mentioned that no Service Tax was charged during the period 2008 to 2010. The demand of Service Tax of Rs. 5,74,624/- in this regard is bad in law and the same is hereby set aside.

13. In view of the above, we set aside the impugned order and allow the appeal.

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14. Regarding the Revenue's appeal, it may be mentioned that the issue of SEZ was raised. There is no dispute regarding the fact that services were rendered to units in SEZ. It may be mentioned that the charge in the Departmental appeal is that the services were provided to SEZ units but these were not approved by the Approval Committee of SEZ, but the same is beyond the scope of the show cause notice, since the same was not mentioned in the show cause notice. It may be mentioned that the Tribunal in the case of **Manjit Singh** (supra) has observed that, the adjudicating authority cannot go beyond the scope of the show cause notice. The Hon'ble Supreme Court in the case of **Ballarpur Indus. Ltd.** (supra) has observed that, it is settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules, 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said Rule. Similarly, the Tribunal in the case of **Marubeni India Pvt. Ltd.** (supra) has observed that "

"6. Admittedly, the show cause notice proposed demand of duty under Business Auxiliary service and it is only during adjudication by considering the appellant's stand that the demand may fall under the category of "Information Technology Software Services", it stand confirmed. As per declaration of law in the above decisions, allegations are required to be made by the Revenue very clearly in the show cause notice and adoption of classification of service under the heading different than the one proposed in the show

cause notice amounts to passing the order beyond the scope of show cause notice which is not permissible and the impugned order is required to be quashed on the said ground itself. We order accordingly.”

15. In view of the above discussion, we find no merit in the Departmental appeal.

16. In the result, the appeal filed by the assessee-Appellants is allowed and the appeal filed by the Department is rejected.

(Pronounced in the open court on .07.2017)

**(JUSTICE DR. SATISH CHANDRA)
PRESIDENT**

**(V. PADMANABHAN)
MEMBER (TECHNICAL)**