IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – IV

Service Tax Appeal No. ST/50085/2016 [DB]

[Arising out of Order-in-Appeal No. 91-SLM-ST-JPR-2015 dated 31/03/2015 passed by the Commissioner, Central Excise & Service Tax, Udaipur]

Suprintendent Of Police Banswara ...**Appellant**
Vs.
C.E. & S.T., Udaipur ...**Respondent**

Present for the Appellant : Mr. Keshav Dutta, Advocate
Present for the Respondent: Mr. R.K. Maji, AR

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision 04.01.2019

FINAL ORDER NO. 50053/2019

PER: RACHNA GUPTA

Present Appeal has originated out of the Order of Commissioner(Appeals) No. 91 dated 31.03.2015. Vide the said Order, a SCN No. 813 dated 20.10.2011 has been adjudicated which was served upon the appellant i.e. the Superintendent of Police, District Banswara to show cause as to why the service tax of Rs. 42,19,235/- for providing services under Security Agency Services may not be recovered alongwith the interest at the prevailing rates and the penalties prescribed under Section 76, 75 and 78 of the Finance Act be not imposed. The demand as proposed vide the said SCN was confirmed initially by Order-in-Original No. 1156 dated 22.02.2013 and was subsequently confirmed vide the impugned order under challenge. Resultantly, the present Appeal.

2. We have heard Mr. Keshav Dutta, Ld. Counsel for the appellant and Mr. R.K. Maji, Ld. DR for the Department.

3. Ld. Counsel has impressed upon that the issue is no more *res integra*. Orders of this Tribunal namely, Final Order Nos. 52156/2018 dated 28.05.2018, 51689/2018 dated 23.04.2018 and 50010-50011/2018 dated 02.01.2018 are being impressed upon. Appeal is accordingly prayed to be allowed.

4. Per contra, Ld. DR has submitted that police when are providing the security personal against charges they are discharging the function as that of security agency. As such, the demand has rightly been confirmed.

5. After hearing both the parties and decisions as relied upon we are of the opinion as follows:

Foremost, it is necessary to look into the definition of security agency as given under Section 65(94) of the Finance Act, 1994 which reads as follows:

> *"Security agency means any person engaged in the business of rendering the services relating to the security of any property, whether movable or immovable or of any person in any manner and includes the service 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 word 'person' was substituted in this definition w.e.f. 01.05.2006.

6. Bare perusal of the provision makes it clear that for a person to be liable under this service, foremost, it has to be a business.

The appellant herein is the Superintendent of Police, the in-charge of the services as under a sovereign act for discharge of the sovereign function. i.e. the Rajasthan Police Act. The functions, responsibilities and duties of a police officer are described by the said Act as follows:

(a) to enforce the law and to protect life, liberty, property rights, dignity and human rights of the people;
(b) to prevent crime and public nuisance;
(c) to maintain public order;
(d) to preserve internal security, prevent and control terrorist activities and to prevent breach of public peace;
(e) to protect public property;
(f) to detect offences and bring the offenders to justice;
(g) to apprehend persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist;
(h) to help people in situation arising out of natural or manmade disaster; and to assist other agencies in relief measures;
(i) to facilitate orderly movement of people and vehicles and to control and regulate traffic;
(j) to gather intelligence relating to matters affecting public peace and crime;
(k) to provide security to public authorities in discharging their functions and duties; and
(l) to perform such duties and discharge such responsibilities as may be enjoined upon him by law or by an authority empowered to issue such directions under any law.
(2) The State Government, or an authority specially empowered in this behalf by the State Government, may assign such other duties and responsibilities to police officers as may be specified by the State Government.

33. Police officer always on duty:- Every police officer shall be considered to be always on duty for all purposes of this Act.

34. Police officers may be deployed in any part of the State:- Every police officer may, at any time, be deployed as a police officer in any part of the State.

35. Police officer not to engage in other employment:- No police officer shall engage in an employment or office whatsoever, other than his duties under this Act, unless expressly permitted to do so in writing by the State Government.

36. Police officer not to withdraw from duty :- No police officer shall be at liberty to withdraw himself from duties of his office unless expressly allowed to do so by an officer authorised to grant such permission.

46. Payment for Police service:- The State Government may levy from any person, who carries on any such occupation, gathering, exhibition, sale, entertainment etc., for monetary gain, as may, for the purpose of public security or for the maintenance of public peace or order, require deployment of additional police force, such user charges as may be prescribed.

As per Section 35 of the said Act, "No police office shall engage in an employment or office whatsoever, other than his duties under this Act, unless expressly permitted to do so in writing by the State Government."

Thus, police officer is by law bound to maintain law and order and it cannot be considered as an agency engaged in business of providing security. Also for the reason that amount so collected by the appellant was deposited to Government Treasury, it was not the income in its hand.

The issue has earlier been discussed in the Final Orders in following terms:

> *"46. Payment for Police service.- The State Government may levy from any person, who carries on any such occupation, gathering, exhibition, sale, entertainment, etc. for monetary gain, as may, for the purpose of public security or for the maintenance of public peace or order, require deployment of additional police force, such user charges as may be prescribed." (ii)The fee collected should be levied as per the provision of relevant law. The State Government, in exercise of powers conferred under Section 46 of the Police Act issued two notifications wherein the charges to be recovered for providing additional police force for the purpose of maintaining public security and law and order have been notified. Notification number 27 (2) Home/Gr.-6/ 84 dated 19.05.2008 which notifies the charges for police arrangement in central government offices/institutions/banks and other organizations, and notification number F.1(K)(16)Gr.-2/05 dated 15.01.2008 which notifies the charges to be recovered on providing/deploying/rendering police force for 3 S. T. CoD Nos. 50987 & 50997 of 2017 in S.T. Appeal No. 51854 & 51861 of 2017 security purposes. In the notification number dated 19.5.2008, the charges fixed per day are as follows: 1 Constable Rs 250 per day. 2 Head constable Rs 300 per day With this it is wide and clear that the user charges are in the nature of amount collected as per the provision of the relevant law. (iii) The amount collected is to be deposited into Government treasury. As per the requirement of the General Finance Account Rules issued by the Rajasthan State Government, the Government dues are to be collected and paid into the Government treasury. The Appellant, therefore, is required to collect the usage charges and credit the same in the Rajasthan State Government treasury. The submission made by the police department in this regard is that the fees recovered by them is for provision of additional*

police force. They have referred to Section 46 of the Rajasthan Police Act, 2007 and submitted that the additional police officers are deployed at the request of any person only for the purpose of public security or for the maintenance of public peace or order. The fees levied and collected for this purpose is strictly as per the Notification issued by the State Govt. under the above Section of the Act. The amounts so collected are mandatorily deposited into the Govt. treasury. Accordingly, they have submitted that all the conditions stipulated by the CBEC circular are satisfied and consequently the activities are to be considered as statutory function and no service tax can be levied on such fees collected for discharging the sovereign function. The lower authorities have, however, taken the view that the activity undertaken is not in the nature of statutory duty, but an activity undertaken for a consideration which is not a statutory fee. We find ourselves unable to agree to this stand taken by the lower authorities. The police department has the mandatory duty to maintain public peace and order. For such duty, which is in the nature of sovereign function, no charges are recoverable from the citizens. In the present case, the police department has recovered fees for deploying additional police personnel on request. However, the statutory functions of the police of the State Govt. make it explicit that such activity, even at request of the other person, is to be carried out only for the purpose of public security or for the maintenance of public peace or order. The charge for deployment of such additional force is also prescribed by the statutory 4 S. T. CoD Nos. 50987 & 50997 of 2017 in S.T. Appeal No. 51854 & 51861 of 2017 notification issued by the State Govt. In view of these facts, we are of the view that the activity of deploying police personnel on payment basis is to be considered as part of statutory function of the State Govt. and the fees recovered are to be considered as statutory. It is also not disputed that such amounts recovered have been deposited into the Govt. treasury. 13. On the basis of the above discussion, we conclude that police department, which is an agency of the State Govt., cannot be considered to be a "person" engaged in the business of running security services. Consequently, the activity undertaken by the police is not covered by the definition of Security Agency under Section 64(94) of the Act. We also find that in terms of CBEC circular on this subject, the fees collected by the police department is in the nature of fee prescribed for performing statutory function, which has been deposited into the Govt. treasury. In the light of the CBEC circular also, there can be no levy of service tax on such activities carried out by the police department. 14. Both sides have relied on several case laws. However, none of the cases are squarely covering the present issue of levy of service tax on State Police. Some touching upon the subject have dealt with only stay petitions. As such, we have not discussed them at length".

7. The CBEC Circular No. 89/7/2006 dated 18.12. 2006 reads as follows:

"2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of

> *statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury. Such activity is purely in public interest and it is under taken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therfore, such an activity performed by a sovereign /public authority under the provisions of law does not constitute provision of taxable service to a person and therefore, no service tax is leviable on such activities."*

8. In view of entire above discussion, we are of the opinion that Commissioner(Appeals) has failed to appreciate the difference between a person doing a business and a person discharging a sovereign function under a statutory mandate. The Order is therefore set aside. Appeal accordingly stands allowed.

[Dictated and pronounced in the open Court]

(C.L. MAHAR)	**(RACHNA GUPTA)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

D.J.