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/52944/2016 [DB]

[Arising out of Order-in-Appeal No. DDN/EXCUS/000/APPL-I/144/2016-17 dated 22.07.2016 passed by the Commissioner(Appeals), Customs & Central Excise, Meerut]

C.G.S.T, C.C.E., Dehradun **...Appellant**

Vs.

Commandant CISF Unit **... Respondent**

Present for the Appellant : Mr. G.R. Singh, DR
Present for the Respondent: Mr. Jitin Singhal, Advocate

Coram: HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 04.02.2019

FINAL ORDER NO. 50217/2019

PER: RACHNA GUPTA

The appellant herein is aggrieved of the Order-in-Appeal No. 64 dated 07.08.2019. The said Order has adjudicated SCN No. 25 dated 09.09.2014.

2. The factual matrix relevant for the present Appeal is that the appellants are registered for rendering services of providing security personnels to M/s BHEL, Haridwar. Department during an audit observed that the appellant has received accommodation from BHEL but the cost thereof has not been included in the taxable value of services provided by CISF to BHEL which otherwise has to be added

in terms of Section 67 of the Finance Act, 1994 read with Rule 3 of Service Tax (Determination of Value) Rules, 2006. Observing, on the said ground, that the appellant had short paid the service tax liability up to June 2012 that the impugned SCN proposed the demand of service tax for an amount of Rs. 22,54,231/- alongwith the interest at the appropriate rate and the proportionate penalties. The said demand was confirmed fully vide Order-in-Original No. 15 dated 07.08.2015. Being aggrieved, an Appeal was preferred. The Commissioner(Appeals) vide the impugned Order has set aside the entire demand. Being aggrieved, the Department is before this Tribunal.

2. We have heard Shri G.R. Singh, Ld. DR for the Department and Mr. Jitin Singhal, Ld. Advocate for the respondent/ assessee.

3. It is submitted on behalf of the Department that the Order-in-Original had specifically appreciated that the cost of accommodation facility as provided by BHEL to CISF(the service provider) but in lieu of HRA which according to Rule 3 of valuation rules becomes the such consideration for the service provider i.e. CISF which otherwise not in terms of money. This important finding has absolutely been ignored by Commissioner(Appeals) while passing the Order under challenge. While impressing upon the demand to be statutorily maintainable under Section 67 read with Rule 3 of Service Tax Determination of Value Rules, the Order of Commissioner(Appeals) is prayed to be set aside.

4. While rebutting these arguments, Ld. Counsel has relied upon **Central Industrial Security Force Vs. C.S.T., Visakhapatnam –I 2014 (35) STR 961 (Tri. – Bang.)** to submit that BHEL (service respondent) has given the accommodation to the security personnels

of the service provider free of cost. Nothing has been paid either as HRA, to the service provider. Hence, there appears no liability on the provider, the respondent herein, for the value of accommodation under the notion of it being the taxable income. Appeal is accordingly prayed to be dismissed.

5. After hearing both the parties we are of the opinion as follows:

Section 67 of Finance Act has to be looked into foremost for the adjudication which reads as follows:

"[1]***67. Valuation of taxable services for charging service tax***
(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) …..

(3) …..

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed

Explanation.-*For the purposes of this section,-*
4*[(a) "consideration" includes-*
(i) any amount that is payable for the taxable services provided or to be provided;

(b) ….

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [2]*[book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."*

Since the demand was proposed alongwith Rule 3 of Determination of Value Rules. Same is also relevant to be looked into which reads as follows:

"3. Manner of determination of value.– Subject to the provisions of section 67, the value of taxable service,1 where such value is not ascertainable, shall be determined by the service provider in the following manner:– (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration; (b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service."

A joint reading of both the provisions makes it clear that the service tax is chargeable on the value of the service provided. In the present case service provided is the security personnels by CISF to M/s BHEL. The liability qua the amount received in lieu of providing said service has admittedly been discharged by the provider (CISF).

6. The controversy is as to whether the free accommodation provided by the service recipient to the security personnels shall be consideration to be included in the gross value.

7. To our opinion, consideration received against providing any service, i.e. as per explanation Section 67, is something which include any amount payable for taxable services provided or to be provided. The bare reading makes it clear that in case any amount is payable qua to CISF the accommodation being provided to the security personnels that it shall be the consideration. If it is consideration, then only Rule 3 Value of Determination rules will come into picture. But as observed by Commissioner(Appeals) vide the Order under challenge that there is no evidence on the point about any amount either in terms of HRA was ever paid to the respondent/CISF, the question of notional value of the free accommodation provided cannot form the part of the gross value which has to be taxed under Section 67 of the Act. We therefore do not find any infirmity in the findings of Order under challenge.

8. Also coming to the aspect of limitation as has been raised by the respondent, we observe that the period of demand herein is w.e.f. April 2009 to June 2012. SCN is issued on 09.09.2014. It is clear that the entire period of demand is beyond the normal period of one year. The service provider herein is Government undertaking. Service recipient is also a public sector undertaking. There cannot be a single good reason for either of the two to have an intent to evade the tax. there is otherwise no evidence by the Department to prove any positive act on part of the service provider which may amount as *mensrea* on the part of the provider to evade tax. Rather from the above discussion it is apparent that SCN was issued under notional presumption of free accommodation to be the part of consideration which otherwise was not the liability of the service provider in the given circumstances. Hence, to our opinion, there appears no case of any suppression or mis-representation of facts on part of the service provider (CISF). The Department had no occasion to provisio to Section 73 of the Finance Act, 1994 for invoking the extended period of limitation. Seeing from this angle, SCN is hit by the principle of limitation.

9. In view of entire above discussion, the Order is opined to have no infirmity. Appeal stands dismissed.

[Dictated and pronounced in the open Court]

(V.PADMANABHAN)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.