IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/208/2008

Arising out of Order-in-Original No. 17/Commr./ST/Kol/2008-09 dated 15.09.2008 passed by the Commissioner of Service Tax, Kolkata.

M/s General Security and Information Services.

…Appellant (s)

Vs.

Commissioner of Service Tax, Kolkata.

…Respondent (s)

Appearance:
Shri Prosenjit Das, Advocate & Shri Bhaskar Sengupta, Advocate for the Appellant (s)
Shri H. S. Abedin, A.C. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL
HON'BLE SHRI C. L. MAHAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 29.06.2018

ORDER No…FO/A/77121/2018

Per Bench:

The facts of the case in brief are that the appellant is a proprietory concern and is having its offices at Kolkata and Siliguri and were engaged in providing services related to security, manpower supply for cleaning, washing, sweeping, gardening, upkeep, watch and guard, grass cutting, checking, watch and ward, machinised cleaning, driving, office assistance etc. Show Cause Notice dated on 27.03.2007 was issued for demanding service tax along with interest and for imposing penalty and also for appropriation of Rs.5 lakhs as paid by the Appellant. Adjudicating Authority confirmed the demand of service tax amounting of Rs.53,65,724/- and Rs.3,37,538/- along with interest and imposed penalty of equal amount under section 78 and also imposed penalty under section 76 of the Finance Act 1994. He appropriated Rs5 lakhs as paid by the appellant assessee. Hence, the present appeal before the Tribunal.

2. The Ld. Advocate appearing on behalf of the appellant submits that;

(i) "Watch and ward" service provided to Metro Railways for the period March 2001 to May 2005 is assumed to be Security Service and on the base of such assumption, Rs.39,70,003/- (incl.E.Cess) tax has been demanded. How come a Coin Exchanger or Checking Assistance and semi skilled/unskilled workman can fit into the shoes of Security Guard.

(ii) Copies of all the relied upon documents from the DGCEI authorities have not been received despite our best possible effort. Therefore, it is hardly possible to prepare reply with totality.

(iii) Section 11D is not applicable in this case as:-

(a) This section is not applicable for non- taxable or exempted service.

(b) No evidence has been adduced to show that the service tax has been collected, only few bills are enclosed in SCN showing service tax has been charged.

(c) Tax demanded under Section 11D is Rs.3,37,538/- is wholly unsustainable.

(iv) The order/SCN is prepared in a hurried manner, thus both penal section, i.e. Section 76 and 78 are applied simultaneously.

(v) **Limitation-**

(a) Case has been confirmed on assumption, thus suppression of facts cannot be established, and longer period cannot be imposed.

- case law – 1995(75) ELT 721 (SC) – Cosmic Dye Chemical,

1989(43) ELT 195(SC) – Padmini Products.

(b) The Show Cause Notice is grossly time barred as in para 6.1 at page 8 of the demand notice, the authority admitted that the present proceedings were initiated Vide C No. IV(16)12CE/SCN/SLG/2004/2664 dated 17.09.2004. The Notice has been issued on 27.03.2007 which is beyond one year.

3. The Ld. DR justifies the impugned order.

4. Heard both sides and perused the appeal records.

5. On perusal of appeal records we find that service tax and Education Cess amounting Rs.39,48,646/- and Rs.21,357/- has been demanded on "Watch and Ward" services provided to Metro

Railways for the period March 01 to May 05. They submit that such "watch and Ward" services are not taxable service within the meaning of Section 65 (105) (W) of Finance Act, 1994. The Appellant have been providing services related to security, manpower supply for cleaning, washing, sweeping, gardening, upkeep, watch and guard, grass cutting, checking, watch and ward, mechanized cleaning, driving , office assistance etc. The services provided by the said appellant are classifiable under two categories viz. "Security Agency Service" and "Manpower Recruitment or Supply Agency's service." They are rendering "security service" to their clients. The service was made taxable under the category of "security Agency" w.e.f. 16.10.98 vide clause 94 of Section 65 of chapter v of the Finance Act, 1994. We observe that the appellants have, in the most of the cases, provided the service of "security Agency. They have been rendering the security Agency Service to a number of clients/customers including a host of public sector undertakings like Metro Railway, BSNL, various Directorates and autonomous Institutes of the Government of West Bengal like Satyajit Ray Film & Television Institute. West Bengal Aids Prevention Directorate. Directorate of Health & Family Welfare etc as also to a number of private clients like GTZ. Priya Entertainment, Skanska Cementation etc Sri Jaydev Chandra Sinha, proprietor in his statement dated 11.01.07, stated that they have been providing such service for a long time since 1990. They have obtained service tax registration vide no. SA/Cal-i/92- General Security, from the Assistant Commissioner, Service Tax cell, Cal–I Commissionerate. They have submitted Service Tax Returns for the period from September' 2001 to May' 2005.

6. We find from the impugned order that the Adjudicating Authority has observed that their functions cannot be restricted to checking of tickets of the passengers only. The personnel deployed by them must have done the overall supervision of passengers including watching the property of Metro Railway and watching that any passenger cannot make any damage to any property. The personnel deployed must have under taken the job related to security of Metro property. They are also to ensure smooth movement of passengers in the Metro Station. We are therefore, of considered opinion that the services provided by the appellant to Metro Railway, Kolkata surely falls under the category of "Security Agency Service. It has been alleged in the Show Cause Notice that the appellant have also provided other services like that of manpower supply, cleaning services etc. (in addition to "security agency" service) which, at the material time, were not taxable under Service Tax statute. But the appellant has collected "Service Tax" and comes under the ambit of Section 11D of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. The appellant has argued that for non-taxable

services, section 11D of Central Excise Act, 1944 has no application. They have also mentioned that Section 73A of the Finance Act , 1994 has been introduced w.e.f 18.04.06 and that according to sub-section(2) of Section 73A, service tax collected on non–taxable service is demandable/payable to Government exchequer. This provision is only applicable w.e.f 18.04.06.During the material period the provision of Section 11D of the Central Excise Act, 1944 was applicable.

7. In view of the above discussion, we do not find any infirmity in the impugned order and accordingly it is sustained. The appeal filed by the appellant is rejected.

(Operative portion of the order have already pronounced in the open court)

(C. L. Mahar)
Member (Technical)

(P. K. Choudhary)
Member (Technical)

Tushar Kr.