IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.75020 of 2017

(Arising out of Order-in-Original No.18-19/ST/Commr./DNB/2016 dated 22.09.2016 passed by Commr. of Central Excise & S.Tax, Dhanbad)

M/s Bharat Coking Coal Ltd.
Koyla Nagar, Koyla Bawan, Dhanbad-8260025

Appellant

VERSUS

Commr. of Central Excise & S.Tax, Dhanbad
Ozone Center, Ashok Nagar, Jharia Road, Dhanbad-826001

Respondent

Appearance:
Shri Rajeev Agarwal, Advocate for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI RAJU, TECHNICAL MEMBER

FINAL ORDER NO.75551/2021

DATE OF E-HEARING : 28.07.2021
DATE OF PRONOUNCEMENT : 25.08.2021

Per P.K.Choudhary :

The instant appeal has been filed by M/s. Bharat Coking Coal Limited assailing the demand of service tax of Rs.2,79,38,885/- incl. Cess confirmed vide Order in Original no. 18-19/ST/COMMR/DNB/2016 dated 22.09.2016 along with penalty imposed under Section 76, 77 and 78 of the Finance Act, 1994.

2. Briefly stated the facts of the case are that the appellant is a PSU and a 100% subsidiary company of Coal India Limited. The appellant is engaged in the business of mining and selling of coal. In the course of business, the appellant receives security services in terms of a Memorandum of Understanding from Central Industrial Security Force, Koyla Nagar Dhanbad (hereinafter referred to as 'CISF'). With the introduction of Negative List w.e.f. 01.07.2012, the appellant

started discharging service tax on said security services as a service recipient on reverse charge basis. For the purpose of valuation, the appellant was considering the amount paid to CISF towards cost of deployment, cost of arms and ammunition and cost of clothing items (uniforms), etc. In addition to the above, the appellant was providing the facilities to CISF for (i) free residential accommodation, (ii) free medical services to the CISF personnel at its premises, (iii) free vehicles /cabs to CISF personnel, (iv) reimbursement of expenditure on petty imprest expenses, medicines and telephone on actual submission of bills/invoices. The appellant has not included the value for above facilities for payment of service tax on reverse charge basis.

The Revenue has contended that notional value of the free residential accommodation, free vehicles provided and the actual amount of reimbursement claimed by CISF for expenditure incurred on petty imprest/medical/telephone are to be included in the assessable/taxable value as per Section 67 of the Act. As per the Revenue, since w. e. f. 01.07.2012, the appellant was liable to pay service tax under RCM under the category of "Support Services by Government" on the "gross" value of the services provided, the appellant has suppressed the value of taxable services with an intent to evade the payment of service tax.

3. Sri Rajeev Kumar Agarwal, Advocate appeared for the appellant and Sri S.Mukhopadhyay, Ld.A.R., appeared for the Revenue.

4. The Ld. Advocate appearing for the appellant assessee submitted that the entire dispute is whether value of free supplies of residential accommodation and vehicles/car and the reimbursement of expenses made on actual basis to CISF is includible for determining the value of the taxable service as provided in Section 67 at that point of time. He submitted that issue has been squarely settled by the Hon'ble Supreme Court in **Union of India and Others v. Intercontinental Consultants and Technocrats Private Limited (2018) 4 SCC 669 = 2018 (10) G.S.T.L. 401 (S.C.)** wherein it has been held that the reimbursement claimed by service provider is not includible in the

assessable value for payment of service tax liability. He further submitted that the cost of free supplied are also not liable to be included by following the principles laid down in the case of **Bhayana Builders (P) Ltd vs. Commissioner of Service Tax, Delhi 2013 (32) STR 49 (Tri- LB)** which has also been upheld by the Hon'ble Supreme Court.

He also relied on the following Tribunal decisions to support his contentions wherein the above decisions of the Hon'ble Supreme Court has been relied:

- **AMR India Limited vs. CCE, Hyderabad 2016 (42) STR 329 (Tri)**
- **Central Industrial Security Force v Commissioner of Customs, C.E. & S.T., Allahabad, APPEAL No.ST/70293/2016-CU[DB] decided on 9th January 2019**
- **Commr. Of CGST, Cus & C. Ex, Dehradun vs Commandant CISF, CISF Unit, 2019 (24) GSTL 232 (Tri- Delhi)**
- **Brand David Communication Pvt Ltd v Commr. Of CGST & CX, Kolkata South, 2020 (37) G.S.T.L. 227 (Tri- Kol)**

As an alternative submission, he submitted that the appellant is already availing the Cenvat Credit of service tax paid under reverse charge basis. He submitted that the impugned demand is for reverse charge liability and that the appellant would be entitled to claim credit in the similar manner as above against its central excise liability arising on removal of coal. Hence, the entire exercise is Revenue Neutral and there is no loss to the Government Exchequer. He relied on the following decisions

- **CCE, Pune v. Coca Cola India Pvt Ltd 2007 (213) ELT 490 (SC)**
- **CCE, Vadodara Vs Narmada Chematur Pharmaceuticals Ltd., 2005 (179) ELT 276 (SC).**

- **Mafatlal Industries Ltd. vs. CCE Daman 2009 (241) ELT 153 (Tr-Ahm)** maintained in Supreme Court reported in **2010 (255) ELT A77 (SC).**
- **CCE, Mumbai vs. Special Steel Ltd 2015 (329) ELT 449 (Tri-Mum)** as upheld by the Hon'ble Supreme Court reported in **2016 (334) ELT A123 (SC)**
- **CCE Vadodara vs. INDEOS ABS Ltd 2010 (254) ELT 628 (Guj) Sarovar Hotels Pvt Ltd. vs. CST Mumbai 2018 (10) GSTL 72 (Tri-Mum)**
- **Texyard International vs. CCE Trichy 2015 (40) STR 322 (Tri-Chennai**
- **Ashirwad Foundaries Pvt. Ltd v Commissioner of CGST & Central Excise, Kolkata North Commissionerate, S. Tax Appeal No. 75639 of 2019, decided CESTAT on 28th February 2020**.

Further, the Ld. Advocate also submitted that CISF has been constituted under "The Central Industrial Security Force Act, 1968", is a statutory body rendering the subject security service and is separate from the State and cannot be regarded as Central or State Government. He accordingly submitted that the appellant is legally not liable to make payment of service tax under the reverse charge mechanism for security services provided by CISF. Further, it is the contention of the Ld. Advocate that since the CISF is an armed force of the Union of India established by an Act of Parliament for a specific purpose of providing security to industrial establishments, which is mandated in the CISF Act, purely on a cost reimbursement basis without any profit motive. He accordingly submitted that an armed force of the Union of India, constituted under an act of Parliament for a specific purpose and functioning directly under the Ministry of Home Affairs, Government of India is performing Statutorily mandated functions as provided in the Statute and such Statutory Functions cannot be brought under the service tax.

He also contested the invocation of extended period of limitation and imposition of penalty in the absence of fraud or suppression.

5. The Ld. A.R. appearing for the Revenue reiterated the findings made by the Ld. Commissioner and submitted that demand has been rightly been confirmed. He heavily relied on the decision of the Tribunal in case of **Impact Communications vs. Comm. of Service Tax, New Delhi 2018 (8) GSTL 396 (Tri-Del)** to distinguish the decisions relied by the appellant to support his arguments that reimbursement which are claimed as exclusion from assessable value should be on actual basis and duly pre-approved by the service recipient.

6. Heard both sides through video conferencing and perused the appeal records.

7. We find that the issue to be decided is whether costs reimbursed by the appellant to CISF for medical & telephone facilities, imprest expenses and notional value for rent free accommodation, free supply of rented vehicles, etc. are to be added to the assessable value for payment of service tax on reverse charge basis. The appellant is already depositing service tax on reverse charge basis on the cost of deployment, cost of arms and ammunition, cost of clothing items (uniforms), etc. which is not in dispute.

We find that the Allahabad Bench of the Tribunal in the case of **Central Industrial Security Force v Commissioner of Customs, C.E. & S.T., Allahabad, Appeal No. ST/70293/2016-CU[DB] decided on 9th January, 2019,** has already settled the issue in favour of the appellant to hold that expenses incurred towards medical Services, vehicles, expenditure on Dog Squad, stationery expenses, telephone charges, expenditure incurred by the service recipient for accommodation provided to CISF etc are not includible. Further, the Principal Bench at New Delhi in the case of **Commr. Of CGST, Cus & C. Ex, Dehradun vs Commandant CISF, CISF Unit, 2019 (24) GSTL 232 (Tri- Delhi),** has also held that free accommodation provided by the service recipient to CISF security personnel providing security services is not includable in taxable value.

We find that the Ld. Commissioner has merely confirmed the demand, in para 26 appearing in Page 25 of the impugned adjudication order, on the ground that the issue was pending for consideration before the Supreme Court in the case Bhayana Builders (P) Ltd (Supra) and Intercontinental Consultants and Technocrats Private Limited (Supra), on the date of passing the impugned order. Since the issue is no longer *res integra*, as the legal position has already been decided by the Hon'ble Supreme Court in both the above judgements, this Tribunal is bound by the said legal position.

We also note that in the Tribunal decision in the case of **Impact Communications (Supra)** which has been heavily relied by the Ld. A/R for the Revenue, the demand was confirmed for the reason that the reimbursement was not claimed on actual basis and that there was no pre-arrangement with the client for authorising such reimbursement of expenses which is not the case herein inasmuch as there is a specific MOU agreed with the CISF as also appearing in the appeal paper book. There is no dispute in the entire case proceedings that expenses have been reimbursed on actual basis. Hence, the contentions of the Revenue cannot be accepted. In so far as the issue of extended period of limitation is concerned, we do not find any case of fraud or suppression and hence, the notice issued by invoking extended period is not sustainable.

In view of the above discussions, the impugned order cannot be sustained and therefore, the same is set aside. The appeal is thus allowed with consequential relief.

(Pronounced in the open court on 25 August 2021)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/
(Raju)
Member (Technical)

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