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

Service Tax Appeal No. 313 of 2012

(Arising out of the Order-in-Original No. 16/COMMR./ST/BOL/2012 dated 23.03.2012 passed by Commissioner of Central Excise, Bolpur.)

M/s Central Industrial Security Force,
ECL, Sheetalpour, Sanctoria, Dist.-Burdwan, P.O.- Dishergarh Pin 713333.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Bolpur,
Nanoor Chandidas Road, Sian, Bolpur, Dist.- Birbhum.
.

...**Respondent(s)**

APPERANCE :
Shri Anjan Sarkar, Chartered Accountant & Shri Jyotirmoy Gupta, CMA for the Appellant
Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No. 76297/2023

DATE OF HEARING : 26.07.2023
DATE OF DECISION : 26.07.2023

PER K. ANPAZHAKAN :

The instant appeal is filed by the Appellant M/s Central Industrial Force, Sheetalpur (CISF in short), against Order-in-Original dated 23.03.2012 passed by the Commissioner of Central Excise, Bolpur confirming the demand of Service Tax amounting to Rs.2,21,55,615/- Education Cess amounting to Rs.5,24,014 and secondary and Higher Education Cess amounting to Rs.1,77,646/- totaling to Rs.2,28,57,275/- along with interest and equal amount of duty as penalty . The Appellant collected the Service tax from ECL and paid the same to the department. Thus, the issue involved in the present appeal is mainly interest on the service tax paid belatedly and the penalty imposed on them by invoking suppression of facts.

2. Briefly stated facts of the case are that CISF, Sheetalpur was engaged by M/s Eastern Coalfield Ltd., (herein after called ECL) since 1983 for providing security services to the entire organization as per the memorandum of understanding entered into between CISF and ECL. The liability of service tax on the Security Agency rendered by CISF, Sheetalpur to ECL is the dispute in the present appeal. The issue of applicability of Service Tax on services provided by CISF was taken up by Ministry of Home Affairs (MHA) and MHA in consultation with Ministry of Finance, Department of Revenue, decided that Service Tax is payable by CISF w.e.f 1st April, 2009. Accordingly, CISF, Sheetalpur unit started levying Service Tax in their bills raised to ECL, after taking Service Tax Registration and paid Service Tax recovered to the Government and also submitted Returns.

3. The dispute in the present appeal pertains to the period from 01.04.2009 to 31.03.2011. During this period CISF, Sheetalpur unit raised Bills amounting to Rs.57,13,11,157/- to ECL and collected Service Tax on this amount and paid to Government around Rs.6.00 crores. The Service Tax Department sought details of payment made by ECL for receiving the security service from CISF including the expenditure incurred by ECL directly for the facilities provided by ECL to CISF for the said period 01.04.2009 to 31.03.2011. Initially, ECL had furnished a figure of Rs.76,20,14,999/- including value of all the facilities provided by them to CISF. However, subsequently ECL vide its letter dated 17.05.2012, revised the figures for 2009-10 and 2010-11 as Rs.2656.75 lakhs and Rs.3925.41 lakhs respectively totaling Rs.6582.16 lakhs in place of Rs.7620.15 lakhs which was provided earlier. In the figures furnished earlier they have included amounts paid prior to 1st April, 2009 also and payment under the head salaries were shown inclusive of Service Tax. This had resulted in a higher figure to the tune of Rs.1037.99 lakhs. Service Tax payable on

Rs.1037.99 lakhs @ 10.30% works out to Rs.106.91 lakhs. Accordingly, the demand is liable to be reduced to this extent.

4. In their ground of Appeal, the Appellant made the following submissions.

(i) They are not a business identity as evident from the CISF Act. There is no profit motive. Service is provided as a special security measure of the Government on reimbursement of cost basis. There is no Balance Sheet, Profit and Loss Account and Income-Tax PAN No. of the Appellant.

(ii) The appellant is a Central Government Department, established for providing security Services to Government Departments. CISF provides security services to other Govt. Departments without any fees for earning profit for the organization. Salary and related benefits paid to the personnel employed by CISF for providing security services are reimbursed by the undertakings PSUS availing services from them. Other costs, like equipment's, ammunitions, clothing etc. are also reimbursed on submission of bills by CISF.

(iii) CISF being, a Central Govt. Agency did not have any intention to defraud with another Central Govt. Department by not paying Service Tax which is recoverable from a PSU like ECL. Moreover, CISF being part of the sovereign body cannot have any malafide intention of evading Service Tax.

(iv) The Service Tax whatever would have paid, would be available back to the service receiver ECL through CENVAT Credit and therefore, the issue is otherwise revenue neutral. The Penalty cannot be imposed on the appellant and so as to interest.

(v) The entire demand in the impugned order is based on ECL's letter dated 17.06.2011. Subsequent to passing of the impugned order, ECL has revised the statement vide letter dated 09.06.2012. The demand will be much lower, if the revised statement given by ECL is considered by the department.

(vi) Demand of service tax cannot be based on the statement of third party, unless the assesse's returns are proved to be incorrect.

(vii) Out of the expense items which ECL incurred directly, Hire charges of Vehicles, POL and Road tax are the main items. For providing Vehicles, ECL paid Hire Charges along with Service Tax payable under Rent-a-cab service. CISF had not received any payment on account of such service provided to them. Further, as per the judgement of the Hon'ble Supreme Court in the case of Intercontinental Consultants vs UOI, reimbursements are not includable in the value for the purpose of levy of service tax. Hence, the entire billing by ECL on CISF upto 14.05.2015 are not includable in the taxable value.

(viii) Even if Service Tax is payable on the revised enhanced value, allegation of suppression of facts in the Order-in-Original is not sustainable. They always depend on the direction of head Quarter in Delhi. They received the direction from Delhi vide their circular R-11011/30/06/09-10/1016 dated 25.06.2009 in June, 2009. This circular says that upto 31.03.2009 Security Services rendered by CISF has been exempted by Ministry of Finance, Department of Revenue, but Service Tax is payable thereafter from 01.04.2009 onwards. As per class B. Para 03 of the circular, Service Tax at prescribed rate shall be levied by inclusion in the bills for cost of Deployment, i.e., Monthly bills of salaries, leave salary contribution, pension contribution, Annual bills for clothing charges and Arms and Ammunition etc. Nowhere in the circular it was mentioned that value of expenditure including expenses on vehicles provided by the service recipient should be included in the value to arrive at the gross value for the purpose of payment of Service Tax. Therefore, CISF, Sheetalpur unit was totally ignorant about the issue and there was no suppression of facts with intention to evade payment of Service Tax. Consequently extended period cannot be invoked to demand service tax and penalty under section 78 of the Finance Act, 1994 also cannot be imposed.

(ix) In the case of Motilal Padampat Sugar Mills Co. ltd., Vs. Sale of UP [1979, 118 ITR 326(SC)], it was held that there is no presumption that every person knows the law. There is no such maxim that everyone is presumed to know law. It is reiterated that CISF was totally ignorant of this part of the provisions of Service Tax law.

(x) CISF, Sheetalpur, has levied service on their bills against salary, Arms and Ammunitions etc. from 01.04.2009 and paid to the Government. They had no intention at all to evade Service Tax on the other expenditure paid directly to their parties by ECL. As per the decision in the case of Tamil Nadu Housing Board Vs. CCE, 1994 (74) ELT9 (SC), there can be no suppression if the assessee is ignorant. Intention to evade payment of tax is not mere failure to pay tax. It must be something more, that the assessee must be aware that tax was leviable and must deliberately avoid payment. Evasion means defeating provisions of law of paying tax. It was decided in the case of Punjab Ex-servicemen Corporation Vs. CCE, (2009) 18 STT121 (CESTAT). Hence, imposition of penalty is not sustainable.

5. The Ld. A.R. reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that the Appellant is a Central Government Department, established for providing security Services to Government Departments. CISF provides security services to other Govt. Salary and related benefits paid to the personnel employed by CISF for providing security services are reimbursed by the PSUS availing services from them. Other costs, like equipment's, ammunitions, clothing etc. are also reimbursed on submission of bills by CISF. MHA in consultation with Ministry of Finance, Department of Revenue, decided that Service Tax is payable by CISF only w.e.f 1st April, 2009. Accordingly, CISF, Sheetalpur unit started levying Service Tax in their bills raised to ECL, after taking Service Tax Registration and paid Service Tax recovered from ECL to the Government and also submitted Returns. During the period from 01.04.2009 to 31.03.2011, they raised Bills amounting to Rs.57,13,11,157/-

to ECL and collected Service Tax on this amount and paid the same to Government. The department collected some information directly from ECL which indicated that there was an excess payment by ECL to CISF, Sheetalpur, than what was declared by them in the ST-3 returns.

8. It is observed that subsequently ECL revised the figure for 2009-10 and 2010-11 and admitted that in the figures furnished earlier they have included amounts paid prior to 1st April, 2009 also and payment under the head salaries were shown inclusive of Service Tax. This had resulted in a higher figure to the tune of Rs.1037.99 lakhs. It is also observed that payments made by ECL directly to the customers of CISF have been included as payments made to CISF, which they were not even aware. Accordingly, they contended that the demand of service tax confirmed based on the data received directly from ECL is not sustainable.

9. We observe that CISF being, a Central Govt. Agency did not have any intention to defraud with another Central Govt. Department by not paying Service Tax which is recoverable from a PSU like ECL. Moreover, CISF being part of the sovereign body cannot have any malafide intention of evading Service Tax. Further, the entire demand in the impugned order is based on ECL's letter dated 17.06.2011. Subsequent to passing of the impugned order, ECL has revised the statement vide letter dated 09.06.2012. The demand will be much lower, if the revised statement given by ECL is considered by the department. We observe that the demand of service tax cannot be based on the statement of third party, unless the Appellant's returns are proved to be incorrect. We observe that the differential service tax has been demanded on the basis of the expenses which ECL incurred directly, such as Hire charges of Vehicles, POL and Road tax. For providing Vehicles, ECL paid Hire Charges along with Service Tax payable under Rent-a-cab service. CISF had not received any payment on account of such service provided to them. Thus, we observe that these reimbursement recorded by ECL on account of CISF in their books of account were actually not received by CISF. The Appellant said they were not even aware that such reimbursements were made by ECL. Thus, by relying on the judgement of the Hon'ble Supreme Court in the case of **Intercontinental Consultants vs UOI,** we hold that reimbursements said to

have been paid by ECL are not includable in the taxable value for the purpose of levy of service tax. Hence, the demand is not sustainable. However, we observe that the Appellant has collected the service tax from ECL and paid the same to Government and they are not disputing the payment of tax. Since the demand is not sustainable, the demand of interest is also not sustainable

10. Regarding limitation, we observe that the demand in this case pertains to the period from 01.04.2009 to 31.03.2011 and the Notice was issued on 18.08.2011. Hence part of the demand is barred by limitation. Further, CISF being, a Central Govt. Agency did not have any intention to defraud with another Central Govt. Department by not paying Service Tax which is recoverable from a PSUs like ECL. Moreover, CISF being part of the sovereign body cannot have any malafide intention of evading Service Tax. Accordingly, we hold that there no suppression facts with intention to evade the tax exists in this case. Hence, we hold that penalty under Section 78 of the Finance Act, 1994 not imposable.

11. Accordingly, we hold that the impugned order is not sustainable to the extent of demanding interest and imposing penalty and hence set aside the same.

12. In view of the above discussion, we allow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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