IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.198 of 2012
Service Tax Appeal No.199 of 2012
(On behalf of Appellant)

(Arising out of Order-in-Original/ST/Shillong No.01/2012 & Order-in-Original/ST/Shillong No.02/2012 both dated dated 31.01.2012 passed by Commissioner of Central Excise, Shillong)

The Commandant, 1st Battalion
The Commandant, 2nd Battalion
Tripura State Rifles, Kamlasagar Road, Veer Bandhu Gram,PS-Bishalgarh, Sepahijala, Tripura, Pin-799102

Appellant

VERSUS

Commissioner of Service Tax & Central Excise, Shillong
Morellow Compound, M.G.Road, Shillong-793001

Respondent

APPERANCE :
None for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75274-75275/2024

DATE OF HEARING : 19 .02.2024
DATE OF DECISION : 19 .02.2024

Per Ashok Jindal :

Both the appeals are having a common issue. Therefore, both are disposed off by a common order.

2. The facts of the case are that the Government of Tripura has entered into a memorandum of understanding with ONGC, which is a Public Sector Undertaking (PSU) owned by the Government of India, for a period of 10 years to raise a full battalion of the Tripura State Rifles mainly for dedicated deployment to ONGC for security services. The same was also provided to the Gas Authority of India, an another PSU owned by the Government of India.

2.1 During the impugned period, for providing these services to the Public Sector Undertaking, the appellant was receiving certain remunerations of the same.

2.2 The Revenue is of the view that the activity undertaken by the appellant, falls under the category of "Security Services". Therefore, the proceedings were initiated against the appellant to demand service tax under the category of "Security Services" from the appellants.

2.3 The matter was contested by the appellant stating that the appellant being a Government of India Undertaking and whatever amount have been received, has gone to the Government Treasury and the appellant is not engaged in any business of providing security services. Therefore, they did not fall under the category of "Security Services". Accordingly, they are not liable to pay service tax under Section 65 (94) of the Finance Act, 1994.

2.4 The matter was adjudicated. The demand of service tax were confirmed against the appellant.

2.5 Aggrieved from the said orders, the appellant is before us.

3. None appeared on behalf of the appellant nor any request for adjournment has been received, but considering the facts that the appeals pertain to the year 2010-2012, hence, the same are taken up for disposal.

4. Heard the ld.A.R. for the Revenue.

5. We find that the issue involved in these cases is squarely covered by the decision of this Tribunal in the case of Mumbai Police Vs.

Commissioner of Service Tax, Mumbai reported in 2018 (4) TMI 418-CESTAT Mumbai, wherein this Tribunal has observed as under :

"4. Heard both the parties and perused the cited case laws and facts of the case. We find that the issue is no more res-integra in the light of the Tribunal's various judgments. In case of DY. COMMISSIONER OF POLICE, JODHOUR Vs. CCE & ST 2017 (48) STR 275 (TRI) the Tribunal has held that service tax demand is not sustainable. The relevant findings of the Tribunal is as under :

"8. The question for decision is whether the State Police represented by the Superintendents of Police of various districts, would be covered within the definition of security agency services and service tax will be liable to be paid by them on the amounts recovered by them for providing security personnel to various organizations. Further, they were also sending police personnel for character verifications of candidates selected for various jobs and collecting charges but they neither got the registered with the Department nor did they pay service tax on such amounts recovered. As per Section 65(94) of the Finance Act, 1994, the definitions of "Security Agency" as well as "Security Agency Service" are given below for ready reference :- 'Security Agency' means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel.'

9. The other relevant circular issued by C.B.E. & C. is Circular No. 89/7/2006-S.T., dated 18-12-2006 is reproduced below :

"The activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of compulsory levy and are deposited in the Govt. Account.

However, if a sovereign or public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for consideration (not a statutory fee), then in such cases service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined."

10. The appellants have argued that the term "person" appearing in the definition must be construed to be a natural person as well as a juristic person and by no stretch of imagination, the same will include the State or its officers or the posts created under a statute. They cited the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of West Bengal v. Union of India [AIR 1963 SC 124] in which the Apex Court has held as under :-

"the definition is an enlargement of the natural meaning of the expression 'person', even the extended meaning does not include the State."

Their submission is that Superintendent of Police is an authority of the State Govt. to carry out statutory and constitutional duties. The definition of the term "person", (which does not cover the Govt.) in the General Clauses Act, 1897 is given as follows :- "42. "Person" shall include any company or association or body of individuals, whether incorporated or not,".

In the light of the definition of the term "person" in the General Clauses Act, 1897, which has also been examined and clarified by the Apex Court, it would appear that the Superintendent of Police, which is an agency of the State Govt. does not appear to be covered within the term "person". It is also noteworthy that in the year 2012 when the pattern of levy of service tax was changed and the concept of negative list was introduced with effect from 1-7-2012, a definition was introduced for the term "person" in Section 65B(37), of the Act, which includes the Govt., local authorities, etc. From this, it is evident that such a definition for the term "person" has become part of the statute only from this date. To decide the meaning of "person" up to this date, we will have to refer to the General Clauses Act, 1897 as well as relevant *case laws. The Apex Court has clearly held that the definition of "person" cannot be extended to include State. Consequently, we are of the view that the Superintendent of Police will not be covered within the term "person".*

11. The second leg of the argument advanced by the appellants is that they are not engaged in the business of rendering services relating to security. Their submission is that the occupation in business by a person is a condition precedent for a security agency. The lower authority has held that the term "business" does not signify any commercial activity for the purpose of gaining something out of the said activities, but the same has been used in terms of the work. He has accordingly held that as long as consideration is being received by police for providing security service, it is to be presumed to be in the nature of business.

The term "business" connotes that it is an activity undertaken with the intent of earning profit. The charges recovered by police are in the nature of cost recovery for the additional police force deployed on request for maintaining security and law and order. It is also the submission of the police department that the deployment of additional police force at the request of banks and other institutions or other events has been done only for maintenance of law and in the absence thereof there could arise major security issues in relation to person or property. In the light of the submissions made, we are of the view that the activities undertaken by the police, for which charges have been recovered, cannot be held to be in the nature of business activity.

12. Now, we turn to the C.B.E. & C. Circular No. 89/7/2006- S.T., dated 18-12-2006. The circular has indicated under what conditions an activity performed by a sovereign/public authority should be categorized as one which is liable to payment of service tax. The circular clarifies that charges recovered by any sovereign/public authority for carrying out any statutory function will not be liable for levy of service tax if all the following conditions are satisfied :-

(a) Sovereign/public authorities perform duties which are in the nature of statutory and mandatory obligation to be fulfilled in accordance with the law.

(b) The fee collected should be levied as per the provision of relevant law.

(c) The amount collected is to be deposited into Government treasury. The satisfaction of each of the above three conditions is analysed below :-

(i) A sovereign/public authority performs duties which are in the nature of statutory and mandatory obligation to be fulfilled in accordance with law.

The Superintendent of Police is an extended arm/instrumentality/ agency of the State Government and is controlled and managed by the State Government. It is carrying out the activities as entrusted to it vide the Police Act which are statutory and constitutional in nature. The appellant is required to discharge these statutory obligations for public security and maintenance of public peace and order. The appellant cannot carry out any activity beyond the legislative competence. The user charges are levied by the State Government for the deployment of Police Force for the maintenance of public peace, security and law and order as per Section 46 of the Police Act, Section 46 is reproduced below :-

"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 19-5-2008 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 15-1-2008 which notifies the charges to be recovered on providing/deploying/rendering police force for 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 C.B.E. & C. 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 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 C.B.E. & C.'s 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 C.B.E. & C.'s 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.

15. In line with the above discussions, the appeals filed by the police department succeed. The impugned orders are consequently set aside.

Further the Ld. CA has informed that the above order of the Tribunal has been upheld by the Hon'ble Apex Court vide Order dt. 18.09.2017 in Diary Number 24355 of 2017. This being the position we hold that the demand made against the Appellant is not sustainable. The impugned order is therefore set aside. The appeal is allowed."

6. In this case also, the appellant is not engaged in the business of providing security services, therefore, following the precedent decision of this Tribunal cited (supra), we hold that as the appellant is not engaged in the business of providing security services, therefore, the appellant is outside the purview of security services as defined under Section 65 (94) of the Finance Act, 1994.

7. In that circumstances, we hold that the appellant is not liable to pay service tax, for which, we set aside the impugned demand against the appellant.

8. Consequently, we set aside the impugned order and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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