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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76041 of 2015

(Arising out of Order-in-Appeal No. 70/SH/CE(A)/GHY/2015 dated 13.07.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Customs House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005)

The Assistant Commandant, CISF Unit, NRL, : Appellant
Numaligarh, NRC Complex, Golaghat,
Assam – 785 699

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Morellow Compound, M.G. Road,
Shillong – 793 001

APPEARANCE:

Shri Arvind Baheti, Chartered Accountant for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77244 / 2024

DATE OF HEARING / DECISION: 05.11.2024

ORDER: [PER SHRI R. MURALIDHAR]

The appellant viz. The Assistant Commandant, CISF Unit, NRL, Numaligarh, NRC Complex, Golaghat, Assam – 785 699, working under the Ministry of Home Affairs (MHA), was engaged in providing security services to M/s. Numaligarh Refinery Limited (NRL).

2. On the ground that the appellant was required to pay Service Tax on different amounts received from their client, a Show Cause Notice was issued.

3. After due consideration, the ld. adjudicating authority confirmed the demand of Rs.6,30,578/-. Out of this confirmed demand, the appellant has paid

Rs.2,79,656/- along with interest of Rs.1,69,907/-, which stands appropriated vide the Order-in-Original dated 28.11.2014.

3.1. By way of this appeal, the appellant is contesting the balance confirmed demand of Rs.3,50,922/-.

4. The Ld. Chartered Accountant appearing on behalf of the appellant submits that the confirmed amount of demand is only on account of the amounts received under the following headings: -

i. Medical Expenses
ii. Dog Squad Expenses
iii. Donation / Financial grants for celebration of Republic Day and Independence Day.

4.1. He submits that since these are all reimbursements, the same cannot be part of the consideration, as has been held in the case of *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. [2018 (10) G.S.T.L. 401 (S.C.)]*. It is also submitted that this judgement of the Hon'ble Apex Court has been consistently followed by various co-ordinate Benches of the Tribunal. He relies upon the *Final Order No. A/30295/2024 dated 10.05.2024 in Service Tax Appeal No. 26170 of 2013 [2024 (5) TMI 565 – CESTAT, Hyderabad]* passed in their own case by the Hyderabad Bench, wherein it has been held that the considerations received on account of reimbursable expenditure are not exigible to Service Tax.

4.2. On this ground, the appellant prays that the appeal may be allowed on merits.

4.3. The Ld. Chartered Accountant for the appellant also submits that the Show Cause Notice issued to the appellant on 06.12.2013 is also hit by time-bar. He submits that the appellant was carrying a *bona fide* belief that no Service Tax was required to be paid on such reimbursements; it is also on the record that they have not collected any Service Tax from their client while billing them for the above said services. Further, it is submitted that being part of the Ministry of Home Affairs, Government of India, the appellant could not be burdened with the suppression clause to allege evasion of Service Tax. Accordingly, it is prayed that the appeal be allowed even on the ground of limitation.

5. The Ld. Authorized Representative of the Revenue reiterates the findings of the lower authorities. He submits that after going through the factual details, the ld. adjudicating authority has dropped a major portion of the demand and has confirmed only those demands which were required to be paid by the appellant.

6. Heard both sides and perused the appeal papers and documentary evidence placed before us.

7. We find that the appellant has been reimbursed all the medical expenses. In case of the dog squad expenses, the dogs belonged to M/s. NRL and the maintenance cost towards the squads has been reimbursed by M/s. NRL. Similarly, in the case of donation/financial grants received for celebration of Republic Day and Independence Day, whatever expenses were incurred by CISF/appellant, were reimbursed by M/s. NRL.

7.1. These details show that the amounts paid to the appellant were not in the nature of any consideration towards any of the said services provided by them.

8. The issue is squarely covered by the decision of the Hyderabad Bench of the CESTAT in their own case as reported in *2024 (5) TMI 565 – CESTAT, Hyderabad*, wherein it has been observed as under: -

> *"13. It can be observed from the above decisions that in the case of other units of the same Appellant, identical issues were raised by the Appellant and in all these cases it has been held that the reimbursement expenses are not to be added to the gross value for arriving at the Service Tax payable. The Rule 5 of the Service Tax (Determination of Value) Rules has been held as ultra vires by the Hon'ble High Court and Hon'ble Supreme Court. Similarly in these cases, it has also been held that the rent free accommodation provided to the CISF personnel cannot be taken as additional consideration. Therefore we find that cited case laws are squarely applicable to the facts of the present case. Following the ratio laid down in these cases, we allow the Appeal on merits.*
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> *14. We also see considerable force in the argument of the Appellant that the confirmed demand for the extended period is hit by time bar. The Appellant is a reputed Government of India Undertaking, working under the Ministry of Home Affairs. They cannot be said to have any intention to evade the Service Tax payment. Further, the decisions of Hon'ble Supreme Court in the case of Intercontinental Consultants & Technocrats Pvt Ltd and Bhayana Builders Pvt Ltd (cited supra) would have given bonafide belief to the Appellant for non-charging and non-payment of Service Tax on the reimbursements and rent free accommodation. Therefore, we hold that the confirmed demand for the period 01.04.2009 to 31.03.2011 is legally not sustainable. We set aside the confirmed demand for this period on account of time bar also."*

In the above decision, the appeal filed by CISF has been allowed on merits and also on account of limitation.

9. Following the ratio laid down in the above case, we allow the appeal both on merits as well as on limitation. The appellant would be eligible for consequential reliefs, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd