IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. ST/85709, 86023 to 86027/15

(Arising out of Order-in-Original No. 16-20/ST-VII/RS/2014 dated 22.01.2015 passed by the Commissioner of Service Tax-VII, Mumbai).

The Security Guards Board for Brihan Mumbai & Thane Dist.	Appellant

Vs.

Commissioner of Service Tax-VII, Mumbai	Respondent

Appearance:

Shri R.G. Sheth, Advocate with Ms. Pinkey Jasuja, Advocate	for Appellant

Shri Roopam Kapoor, Commissioner (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL) **HON'BLE SHRI RAJU, MEMBER (TECHNICAL)**

Date of Hearing: 21.02.2018

Date of Decision: 21.02.2018

ORDER NO. **A/85683 – 85688/2018**

Per: Ramesh Nair

The issue involved in the present case is whether the security services provided by The Security Guards Board (the appellant) is liable to Service Tax or otherwise.

2. Shri R.G. Sheth, learned Counsel along with Ms. Pinkey Jasuja, learned Advocate appearing on behalf of the appellants at

the outset submits that in the appellant's own case against the Tribunal's decision reported as Security Guards Board for Greater Bombay and Thane Dist. Vs. Commissioner of Central Excise, Thane-II – 2017-TIOL-69-CESTAT-MUM against the partly confirmed demand of Service Tax, the appellant filed appeal before the Hon'ble Supreme Court. The appeal has been admitted and the Hon'ble Supreme Court granted the interim injunction of the impugned judgment passed by this Tribunal.

3. On the other hand, Shri Roopam Kapoor, learned Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He further submits that in case of the matter sub-judice before the Hon'ble Supreme Court, the issue relates to only part demand, which is on the commission whereas the Revenue is of the view that total gross amount should be taxable. Therefore, the issue before the Hon'ble Supreme Court is limited. He relied upon the following judgments: -

(a) *Panther Detective Services Vs, Commissioner of Central Excise, Kanpur – 2006 (4) STR 116 (Tri-Del)*

(b) *GDA Security Pvt. Ltd. Vs. Union of India – 2006 (2) STR 542 (Mad).*

(c) *Punjab Ex-Servicemen Corpn. Vs. Commissioner of Central Excise, Chandigarh – 2009 (13) STR 529 (Tri-Del).*

(d) *Punjab Ex-Servicemen Corpn. Vs. Union of India – 2012 (25) STR 122 (P&H).*

He submits that on an identical issue, the Hon'ble Punjab & Haryana High Court in the case of Punjab Ex-Servicemen Corpn. (supra), the assessee's appeal was dismissed, therefore, the service in question is taxable.

4. We have carefully considered the submissions made by both sides. We find that though there is contradiction in the judgment given by this Tribunal in the appellant's own case and the judgment given by the Punjab & Haryana High Court, moreover the basic issue that whether the services provided by Security Guards Board per se is taxable or otherwise, the issue is seized with the Hon'ble Supreme Court, wherein the order of the Tribunal has been stayed. In this scenario, we are of the view that there is no purpose of laying the matter pending in this Tribunal. We, therefore, remand the matter to the adjudicating authority for passing a fresh order after the outcome of the Hon'ble Supreme Court's judgment in Civil Appeal in Diary No. S/5898/2017. Since both the issues have not attained finality, therefore, all the issues are kept open for reconsideration by the adjudicating authority.

5. The appeals are accordingly disposed of by way of remand to the adjudicating authority.

(Operative portion of the order pronounced in Court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha