CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Service Tax Appeal No. 87054 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/263-15-16 dated 31.07.2015 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Nagpur)

Superintendent of Police (Rural) **Appellant**
T.V. Centre Road, N-10, CIDCO,
Aurangabad 431 005.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
N-5, Town Centre, CIDCO,
Aurangabad 431 003.

Appearance:

Shri Sumeet Tholle, Chartered Accountant, for the Appellant
Shri Dilip Shinde, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/86934/2021**

Date of Hearing: 29.09.2021
Date of Decision: 29.09.2021

PER: SANJIV SRIVASTAVA

Superintendent of Police (Rural) is in appeal against the Order-in-Original No. NGP/EXCUS/000/APP/263-15-16 dated 31.07.2015 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Nagpur, whereunder demand of service tax of Rs.3,19,421/-.

2. Brief facts of the case are that the appellant is a part of Maharashtra State Police force. They have statutory responsibility for maintenance and enforcement of public law and order. They are also providing arms, security guards to public sector banks/undertakings and government departments under

Section 13 of Police Act, 1861 on collection of actual expenditure/cost, which has been called as consideration under the contract. The issue is that whether providing armed security guards to public sector banks / undertakings and government departments is to be covered under the definition of 'security services' and collection of charges for the same will be liable to service tax under the Finance Act, 1994.

3. The appellant has been represented by Shri Sumeet Tholle, Chartered Accountant, and Revenue has been represented by Shri Dilip Shinde, Assistant Commissioner, Authorised Representative.

4.1 Both the sides have been heard.

4.2 After perusal of the facts on record and submissions of both sides, we are of the view that the appellant is performing statutory duties and the amount so collected is being deposited in the government treasury. CBEC has issued a Circular No.89/7/2006-ST dated 18.12.2006 clarifying that wherever the charges collected by any sovereign public authority for carrying out any statutory function, the same is not liable to levy of service tax if following three 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.

4.3 Further, there is a CESTAT decision vide Final Order No.55321-55348 dated 25.11.2016 in the case of Dy. Commissioner of Police & Others Vs. CCE, Jaipur & Others, where it was concluded that the police department which is in the agency of State Government cannot be considered to be a person engaged in the business of running security services. The CESTAT in the said decision has held that the activity undertaken by the police is not covered by the definition of security agency under Section 64(94) of the Finance Act, 1994.

4.4 The same view has been expressed by the Mumbai Bench of the Tribunal in the case of Mumbai Police Vs. Commissioner of Service Tax, Mumbai-I [2018-TIOL-1067-CESTAT-MUM].

5. Respectfully following the above decisions, the appeal is allowed and the impugned order set aside.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

tvu