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

Service Tax Appeal No. 86125 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-437-16-17 dated 16.02.2017 passed by the Commissioner of Central Excise (Appeals-I), Pune)

M/s. Central Industrial Security Force (CISF) **Appellant**
C/o. Infosys Ltd., Pune, No.24, Rajiv Gandhi Infotech Park,
Phase II, Village Man, Taluka Mulshi, Pune 411 017.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
F-Wing, 3rd floor, ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri N. Anand, Advocate, for the Appellant
Shri Nitin M. Tagade, Joint Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/87119/2021**

Date of Hearing: 09.11.2021
Date of Decision: 09.11.2021

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Appeal No. PUN-EXCUS-001-APP-437-16-17 dated 16.02.2017 of the Commissioner of Central Excise (Appeals-I), Pune, holding as follows:-

"ORDER

The Order-in-Original No. P I/ADC/ST/38/2014 dated 29.03.2014, passed by the Additional Commissioner of Central Excise & Service Tax, Pune I is modified as under:

(i) The confirmation of demand of Service Tax of Rs.26,74,869/- Section 73 of the Act is upheld.

(ii) Demand of interest under Section 75 of the Act is set aside.

(iii) The equivalent penalty imposed under Section 78 of the Act is also set aside.

The present appeal is disposed off accordingly."

2.1 The appellant is providing security agency services and the services provided by the appellant are exempt from payment of service tax leviable thereon under Section 66 of the Finance Act, 1994 as per the ad-hoc exemption notification order No.1/1/2011 dated 01.07.2011 for the period from 16.10.1998 to 31.03.2009. Therefore the appellant was required to pay service tax from 01.04.2009 on taxable services provided by them under this category.

2.2 The appellant was providing security agency services to M/s. Infosys Ltd., Pune from July 2010. They were determining the assessable value on the amount charged by them from the service recipient. However, the appellant was receiving certain facilities like accommodation, medical facility, vehicle, telephone, stationery etc. and has not included the value of these facilities while determining the taxable value for payment of service tax in respect of the services rendered by them.

2.3 A show cause notice dated 20.09.2013 was issued to the appellant asking them to show cause as to why:

"(a) An amount of Rs.2,50,87,700/- (Rupees Two Crores Fifty Lakhs Eighty Seven Thousand Seven Hundred only) should not be included in Gross value of taxable services rendered by them in terms of Section 67(1)(ii) of the Act.

(b) Service Tax (including Education Cess and Secondary Higher Education Cess) amounting to Rs.26,74,869/- (Rupees Twenty Six Lakhs Seventy Four Thousand Eight Hundred Sixty Nine only) payable on the Gross value of Services provided under the category of 'Security Agency Services' as computed at (a) above should not be demanded from them under proviso to Section 73(1) of the Act.

(c) Interest leviable thereon should not be demanded from them under the provisions of Section 75 of the Act.

(d) Penalty should not be imposed on them under Section 76 of the Act for their failure to pay Service Tax in prescribed manner.

(e) Penalty should not be imposed on them under Section 77 of the Act for their failure to assess the correct value of Services rendered in prescribed manner.

(f) Penalty should not be imposed on them under Section 78 of the Act for suppressing the value of the taxable services provided and contravention of various provisions of law with intent to evade payment of applicable Service Tax."

2.4 The show cause notice was adjudicated by the Additional Commissioner of Central Excise, Pune-I holding as follows:

"37.1 I hold that the amount of Rs.2,50,87,700/- which is equivalent to the additional consideration received by M/s. Central Industrial Security Forces, Pune is includable in the gross value of taxable services rendered by them, under the provisions of Section 67(1)(ii) of the Finance Act, 1994.

37.2 I further confirm the demand of Service Tax amounting to Rs.26,74,869/- (Rupees Twenty Six Lakhs Seventy Four Thousand Eight Hundred Sixty Nine only) inclusive of Education Cess and SHE Cess, on the assessee i.e. M/s. Central Industrial Security Forces, Pune, under the provisions of Section 73(2) of the Finance Act, 1994.

37.3 I also order recovery of interest at the appropriate rate(s), as applicable during the relevant period, on the demand of service tax as confirmed at para 37.2 above, under the provisions of Section 75 ibid.

37.4 I also impose a penalty of Rs.26,74,869/- (Rupees Twenty Six Lakhs Seventy Four Thousand Eight Hundred Sixty Nine only) on the assessee i.e. M/s. Central Industrial Security Forces, Pune, under the provisions of Section 78 ibid. However, since penalty is being imposed on the assessee under Section 78, I do not propose to impose any penalty on them under Section 76 ibid, in view of the provisions of fifth proviso to Section 78 ibid.

38. I also give an option to the assessee i.e. M/s. Central Industrial Security Forces, Pune under first proviso to Section 78 of the Finance Act, 1994, to pay the reduced 25% of the penalty amount as imposed under Section 78, in Para 37.4 above, provided the assessee pay the entire amount of Service Tax, as determined/confirmed in para 37.2 above, along with interest payable thereon as ordered in para 37.3 above as well as the reduced 25% penalty, within 30 days of the date of communication of this order."

3.1 We have heard Shri N. Anand, Advocate, for the appellant and Shri Nitin M. Tagade, Joint Commissioner, Authorised Representative, for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that the issue;-

- involved in the matter is with regard to inclusion of reimbursable expenses in the value of the taxable services provided by them.
- is no longer res integra and has been covered by various decisions in appellant's own case i.e. 2019-TIOL-3277-CESTAT-ALL and [2019 (24) GSTL 232 (Tri.-Del.)].

3.3 Learned AR reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 We find that the issue is squarely covered in favour of the appellant by various decisions referred to by the appellant. Taking note of all the said decisions, the Tribunal in the case of Bharat Coking Coal Ltd. [2021-TIOL-551-CESTAT-KOL] in para 7 has observed as follows:-

"7. We find that the issue to be decided is whether costs reimbursed by the appellant to CISF for medical & telephone facilities, imprest expenses and notional value for rent free accommodation, free supply of rented vehicles, etc. are to be added to the assessable value for payment of service tax on

reverse charge basis. The appellant is already depositing service tax on reverse charge basis on the cost of deployment, cost of arms and ammunition, cost of clothing items (uniforms), etc. which is not in dispute.

We find that the Allahabad Bench of the Tribunal in the case of Central Industrial Security Force v Commissioner of Customs, C.E. & S.T., Allahabad, Appeal No. ST/70293/2016-CU[DB] decided on 9th January, 2019 = *2019-TIOL-3277-CESTAT-ALL, has already settled the issue in favour of the appellant to hold that expenses incurred towards medical Services, vehicles, expenditure on Dog Squad, stationery expenses, telephone charges, expenditure incurred by the service recipient for accommodation provided to CISF etc are not includible. Further, the Principal Bench at New Delhi in the case of* Commr. *Of CGST, Cus & C. Ex, Dehradun vs Commandant CISF, CISF Unit, 2019 (24) GSTL 232 (Tri- Delhi)* = 2019-TIOL-1342-CESTAT-DEL*, has also held that free accommodation provided by the service recipient to CISF security personnel providing security services is not includable in taxable value.*

We find that the Ld. Commissioner has merely confirmed the demand, in para 26 appearing in Page 25 of the impugned adjudication order, on the ground that the issue was pending for consideration before the Supreme Court in the case Bhayana Builders (P) Ltd *(Supra) and* Intercontinental Consultants and Technocrats Private Limited *(Supra), on the date of passing the impugned order. Since the issue is no longer res integra, as the legal position has already been decided by the Hon'ble Supreme Court in both the above judgements, this Tribunal is bound by the said legal position.*

We also note that in the Tribunal decision in the case of Impact Communications *(Supra) which has been heavily relied by the Ld. A/R for the Revenue, the demand was confirmed for the reason that the reimbursement was not claimed on actual basis and that there was no pre-arrangement with the client for authorising such reimbursement of expenses which is not the case herein inasmuch as there is a specific MOU agreed with the CISF as also appearing in the appeal paper book. There is no dispute in the entire case proceedings that expenses have been* *reimbursed on actual basis. Hence, the contentions of the Revenue cannot be accepted. In so far as the issue of extended period of limitation is concerned, we do not find any case of fraud or suppression and hence, the notice issued by invoking extended period is not sustainable.*

In view of the above discussions, the impugned order cannot be sustained and therefore, the same is set aside. The appeal is thus allowed with consequential relief."

4.3 In view of the above decision which is squarely on the same issue, we do not find merit in the impugned order and set aside the same.

5.1 Appeal is allowed with consequential relief, if any.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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