

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11444 of 2014-DB

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-001-COM-53-13-14 dated 30.12.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Commissioner of Central Excise & ST, Surat

New Building...Opp. Gandhi Baug,
Chowk Bazar,Surat,Gujarat-395001

.... Appellant

VERSUS

Central Industrial Security Force

CISF Unit, ONGC,Hazira Road,
SURAT, GUJARAT

.... Respondent

APPEARANCE :

Shri Tara Prakash, Deputy Commissioner (AR) for the Appellant-Revenue
None for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING:21.08.2023
DATE OF DECISION : 05.09.2023

FINAL ORDER NO. 11875/2023

RAMESH NAIR :

The Revenue filed the present appeal for imposition of penalty under Section 78 which was not imposed by the learned Adjudicating Authority.

2. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that as the demand of service tax has been accepted by the respondent and the case has been settled under SVLDRS-2019. Accordingly, the Tribunal vide order No. A/11451/2021 dated 01.04.2021 disposed the appeal as deemed withdrawn. It is his submission that since the demand has been accepted by the respondent and the extended period is involved, penalty under Section 78 was supposed to be imposed by the Adjudicating Authority.

3. None appearing on behalf of the respondent-assessee.

4. On careful consideration of the submissions made by learned AR and perusal of record, we find that Adjudicating Authority while dropping the proposal for penalty under Section 78 of the Finance Act, 1994 given the following findings:-

“17. Regarding the proposal of penalty on CISF, as is evident from the Ad hoc exemption, there was lack of clarity about the leviability of Service tax on the Security Services provided by CISF for the reason that CISF is a Govt. Agency and also because the recipient being PSUs in which Govt. has a stake. I therefore find no mens rea on the part of CISF to evade payment of duty. I therefore propose no penalty against CISF.”

5. We do agree with the learned Commissioner that since there was lack of clarity about the leviability of service tax on security services provided by Central Industrial Security Force as part of the Government of India under Ministry of Home Affairs, there was no *mens-rea* on the part of the Central Industrial Security Force and therefore, this case is covered under Section 80 of the Finance Act, 1994. Accordingly, invoking the said proviso, we are of the view that the learned Commissioner has rightly dropped the proposal to impose penalty under Section 78. Therefore, we do not find any substance in the appeal filed by the Revenue. Accordingly, the impugned order is upheld and the Revenue's appeal is dismissed.

(Pronounced in the open court on 05.09.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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