CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Service Tax Appeal No. 26170 of 2013

(Arising out of Order-in-Original No. VIZ-STX-001-COM-125-12 dt.27.11.2012 passed by Commissioner of Central Excise & Service Tax, Visakhapatnam-I)

Central Industrial Security Force
Visakhapatnam Steel Plant,
Visakhapatnam, Andhra Pradesh – 530 031 **.....Appellant**

VERSUS

Commissioner of Central Tax Visakhapatnam
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **.....Respondent**

Appearance
Ms. Anushka Rastogi, Advocate for the Appellant.
Shri K. Srinivas Reddy, AR for the Respondent.

Coram:
HON'BLE MR. R. MURALIDHAR (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30295/2024

Date of Hearing: 07.05.2024
Date of Decision: 10.05.2024

[Order per: R. MURALIDHAR]

The Appellant – CISF, working under the Ministry of Home Affairs, Government of India, is providing security services to various Public Sector Undertakings. In the present case, they have been providing services to Rashtriya Ispat Nigam Ltd (RINL). They were paying the Service Tax towards the consideration received from RINL for the security services and filing their normal Returns. However, they were also receiving reimbursements on account of various expenditures like medical bills, transportation costs, etc., from RINL. They were also making Pension Contribution Fund and the excess Pension Contribution Fund was being deducted from the bill amount and Service Tax was being charged only on the net amount. Finally, the employees of the Appellant were provided

accommodation by RINL. In case of reimbursement of expenses on various counts, the Department took the view that in terms of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, such reimbursements have to be added to the total consideration for payment of Service Tax. On this count, the Service Tax of Rs.5,18,41,050/- was demanded. In respect of the excess pension contribution claimed, Service Tax of Rs.10,61,476/- was demanded. In respect of the rent free accommodation provided to the Appellant's personnel by RINL, the HRA @20% of the Basic Pay and Grade Pay was taken as the value of the rent saved by the Appellant. This was taken as part of the total consideration in terms of Section 67 of the Finance Act and Service Tax of Rs.70,76,574/- was demanded. After due process, the Adjudicating Authority confirmed the demands. Being aggrieved, the Appellant is before the Tribunal.

2. Learned Counsel appearing on behalf of the Appellant submits that admittedly, the expenses on account of medical services, vehicles provided, stationery expenses, telephone charges, etc., are being reimbursed by RINL on actual basis. There is no dispute on this count. She submits that this issue was before the Hon'ble Supreme Court in the case of UOI vs Intercontinental Consultants & Technocrats Pvt Ltd [2018 (10) GSTL 401 (SC)], wherein it has been held that Rule 5 of the Service Tax (Determination of Value) Rules have gone much beyond the mandate under Section 67. Accordingly, the Hon'ble Supreme Court affirmed the decision of Hon'ble High Court which had held that Rule 5 was ultra vires the statutory provisions. As per this judgment, the reimbursements cannot be part of the total consideration for arriving at the Taxable Value. She further submits that identical issues were raised in respect of various other units of the same Appellant and the matters were decided at Tribunal level holding that reimbursement charges are not required to be added to the gross value for arriving at the Service Tax to be paid. She relies on the following case laws:

i) CISF vs CC, CE & ST, Allahabad [2019 (1) TMI 1661 – CESTAT Allahabad]
ii) CGST, CCE, Dehradun vs Commandant CISF Unit [2019 (2) TMI 1175 – CESTAT New Delhi]
iii) CISF vs CST-I, Pune [2021 (11) TMI 835 – CESTAT Mumbai]
iv) CISF vs CCE & ST, Rajkot [2024 (4) TMI 391 – CESTAT Ahmedabad]

3. In respect of excess pension contribution fund, she submits that this pertains to the pension fund of their employees. Whenever any excess pension contribution is received from RINL, the same is given back to them in the subsequent month. This is not a consideration received by the Appellant. In this case also, the cited case laws would be squarely applicable.

4. In respect of the rent free accommodation given to CISF personnel, she relies on the case of CST vs Bhayana Builders (P) Ltd [2018 (2) TMI 1325 (SC)]. She submits that even in many of the above cited case laws of CISF, wherein reimbursement was the primary issue, the rent free accommodation/HRA was also dealt with and the Tribunals have been consistently holding that they are not exigible to Service Tax.

5. In view of the foregoing, she submits that the Impugned Order is required to be set aside and prays that the Appeal may be allowed on merits.

6. She further submits that the SCN issued on 13.06.2012 for the period 01.04.2009 to 30.09.2011 is time barred for the period 01.04.2009 to 31.03.2011 for the following reasons:

i) The Appellant is a Registered Service Provider and has been discharging their Service Tax liabilities and was also filing their ST3 Returns.

ii) Being under the bonafide belief that reimbursements are not liable to be added to the gross value, the Appellant has not paid the Service Tax. This belief of theirs was fortified by the cited decisions of Hon'ble Supreme Court in the case of Intercontinental Consultants & Technocrats Pvt Ltd (cited supra) and Bhayana Builders (P) Ltd (cited supra).

iii) The Appellant is working under the Ministry of Home Affairs and being directly under the Ministry providing service to PSU. Both of them would have no intention to evade Service Tax payable to the Government of India.

7. In view of the above, she submits that no case of suppression can be made out against the Appellant and hence, the confirmed demand for the extended period is not legally sustainable on account of time bar. Accordingly, she prays that the confirmed demand for the period 01.04.2009 to 31.03.2011 may be set aside and Appeal may be allowed on account of time bar also.

8. Learned AR for Revenue submits that the Appellant was receiving additional amounts on account of medical expenses, stationery expenses, vehicle movement expenses, etc., from RINL. These amounts were not shown as part of the consideration and they are not included in the total value. Therefore, Service Tax payment was not made in respect of these amounts. In respect of accommodation provided to the employees of the Appellant by RINL, earlier the Appellant was paying HRA @20% of salary of their employees, which was subsequently stopped since the accommodation was being provided by RINL. The amount of 20% HRA saved by the Appellant is nothing but additional consideration received by the Appellant in terms of Section 67 of the Finance Act, 1994. Therefore, he submits that the Adjudicating Authority was correct in confirming the demands on merits. He further submits that Appellant never disclosed that they were getting reimbursements on several counts and also were getting additional consideration by way of rent free accommodation from RINL. Thus, there is a case of suppression on the part of the Appellant. Accordingly, he justifies the invocation of extended period. Finally, he submits that the Appeal is required to be dismissed.

9. Heard both sides and perused the Appeal papers and documentary evidence produced by both sides.

10. The Appellants have been receiving reimbursements for various expenses like medical expenses, stationery expenses, etc., from RINL. We find that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of **Intercontinental Consultants & Technocrats Pvt Ltd** (cited supra), wherein it has been held as under:

> *"31. In the aforesaid appeals, the issue is as to whether the value of free supplies of diesel and explosives in respect of the service of 'Site Formation and Clearance Service' can be included for the*

purpose of assessment to Service Tax under Section 67 of the Act. These assessees had not availed the benefit of aforesaid Notifications Nos. 15/2004 and 4/2005. Therefore, the issue has to be adjudged simply by referring to Section 67 of the Act. We have already held above that the value of such material which is supplied free by the service recipient cannot be treated as 'gross amount charged' and that is not the 'consideration' for rendering the services. Therefore, value of free supplies of diesel and explosives would not warrant inclusion while arriving at the gross amount charged on its Service Tax is to be paid. Therefore, all these appeals are also dismissed." [Emphasis supplied]

11. Similarly, the Hon'ble Supreme Court in the case of **Bhayana Builders Pvt Ltd** (cited supra), have held that free supplies would not form part of the total value for charging of Service Tax. The relevant portion of the judgment is as under:

"16. In fact, the definition of "gross amount charged" given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term "gross amount charged" to enable the Department to ignore the contract value or the amount actually charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider." [Emphasis supplied]

12. We also observe that the issue is no more *res integra* as identical issues were decided in respect of various other units of the same Appellant by various Benches of this Tribunal as under:

a) In the case of CISF vs CC, CE & ST, Allahabad [2019 (1) TMI 1661 – CESTAT Allahabad], it has been held as under:

> *"…… On the emoluments paid to CISF, CISF was paying Service Tax. It appeared to revenue that certain other expenses incurred while receiving services by Airport Authority of India should be included in assessable value for the purpose of assessment. The said expenses were Medical Services, expenses on vehicles provided, expenditure on Dog Squad, Stationery Expenses, Telephone Charges, Expenditure incurred by Airport Authority of India on* ***accommodation provided to CISF*** *etc. The learned representative has submitted that except medical expenses all other expenses are directly incurred by Airport Authority of India and they are not paid to CISF and are the expenses which are incurred by Airport Authority of India directly. He has further relied on the ruling by Hon'ble Supreme Court in the case of Union of India Vs Intercontinental Consultants & Technocrats Pvt. Ltd. reported at 2018 (10) GSTL 401 (SC) and further submitted that Commissioner (Appeals) Allahabad has relied on the said ruling by Hon'ble Supreme Court and held that such expenses cannot be included in the assessable value, in Order-in-Appeal No.367/2018 dated 26.10.2018.*
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> *2. ……*
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> *3. Having considered the submissions made by both sides, we find that Hon'ble Delhi High Court held in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. (supra) that provisions of Rule 5 of Service Tax (Determination of Value) Rules, 2006 were not in accordance with the provisions of Section 67 of Finance Act, 1994 and therefore, the reimbursable expenses paid to the service provider are not includable in the assessable value. We also note that Hon'ble Supreme Court has upheld the said decision of Hon'ble Delhi High Court and held that Section 67 of Finance Act, 1994 authorizes only such consideration which is received by the service*

provider for assessment of Service Tax. By following the said ruling of Hon'ble Supreme Court we hold that the impugned order is not sustainable." [Emphasis supplied]

b) In the case of CGST, CCE, Dehradun vs Commandant CISF Unit [2019 (2) TMI 1175 – CESTAT New Delhi], it has been held as under:

"3. It is submitted on behalf of the Department that the Order-in-Original had specifically appreciated that the cost of accommodation facility as provided by BHEL to CISF (the service provider) but in lieu of HRA which according to Rule 3 of Valuation Rules becomes the such consideration for the service provider i.e. CISF which otherwise not in terms of money. This important finding has absolutely been ignored by Commissioner (Appeals) while passing the Order under challenge. While impressing upon the demand to be statutorily maintainable under Section 67 read with Rule 3 of Service Tax (Determination of Value) Rules, the Order of Commissioner (Appeals) is prayed to be set aside.

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7. To our opinion, consideration received against providing any service, i.e. as per explanation [to] Section 67, is something which include any amount payable for taxable services provided or to be provided. The bare reading makes it clear that in case any amount is payable qua to CISF the accommodation being provided to the security personnels that it shall be the consideration. If it is consideration, then only Rule 3 [of Service Tax (Determination of Value) Rules] will come into picture. But as observed by Commissioner (Appeals) vide the Order under challenge that there is no evidence on the point about any amount either in terms of HRA was ever paid to the respondent/CISF, the question of notional value of the free accommodation provided cannot form the part of the gross value which has to be taxed under Section 67 of the Act. We therefore do not find any infirmity in the findings of Order under challenge.

8. Also coming to the aspect of limitation as has been raised by the respondent, we observe that the period of demand herein is w.e.f. April, 2009 to June, 2012. SCN is issued on 9-9-2014. It is clear that the entire period of demand is beyond the normal period of one year. The service provider herein is Government undertaking. Service recipient is also a public sector undertaking. There cannot be a single good reason for either of the two to have an intent to evade the tax, there is otherwise no evidence by the Department to prove any positive act on part of the service provider which may amount as mens rea on the part of the provider to evade tax. Rather from the above discussion it is apparent that SCN was issued under notional presumption of free accommodation to be the part of consideration which otherwise was not the liability of the service provider in the given circumstances. Hence, to our opinion, there appears no case of any suppression or mis-representation of facts on part of the service provider (CISF). The Department had no occasion to proviso to Section 73 of the Finance Act, 1994 for invoking the extended period of limitation. Seeing from this angle, SCN is hit by the principle of limitation." [Emphasis supplied]

c) In the case of CISF vs CST-I, Pune [2021 (11) TMI 835 – CESTAT Mumbai], it has been held as under:

"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.

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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]:-

> *"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.*
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> *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."*

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." [Emphasis supplied]

d) In the case of CISF vs CCE & ST, Rajkot [2024 (4) TMI 391 – CESTAT Ahmedabad], it has been held as under:

"The brief facts of the matter are that the appellant is an Armed Force of Union of India that discharges sovereign and statutory functions of providing security to various industrial undertakings. The appellant is registered under Security Agency Service and has been discharging service tax liability on the cost of deployment of its forces, which included recurring and non-recurring expenditures. It is matter of record that the service of the appellant was hired by M/s. Reliance Industries Limited for providing protection and security to their industrial units. M/s. Reliance Industries Limited were paying to the appellant expenses such as salary and allowances, initial uniform and equipment charges and arms and ammunitions etc. The department is of the view that the appellant has not discharged their service tax liability correctly as value of certain facilities extended by M/s. Reliance Industries Limited such as charges for accommodation, medical expenses, vehicle running and maintenance, telephone, dog squad etc. has not been included in the taxable value for providing security service to M/s. Reliance Industries Limited.

2. ……

3. ……

4. Following the above decision, we hold that impugned order-in-original is without any merit therefore, we set-aside the same. Appeal is allowed." [Emphasis supplied]

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.

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.

15. The Appeal stands allowed both on merits and on limitation. The Appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the Open Court on 10.05.2024)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda