



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

GST Building, 7th Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सप्तवीं मंजिल, पॉलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015



: 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2/44/GNR/2019-20 | 12530 - 34

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-033-19-20

दिनांक Date : 11/10/2019 जारी करने की तारीख Date of Issue: 16/10/19

आयुक्त (अपील) द्वारा पारित

Passed by Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : GNR-STX-DEM-DC-40/2015 दिनांक : 24/07/2015 से सृजित

Arising out of Order-in-Original: GNR-STX-DEM-DC-40/2015, Date: 24/07/2015 Issued by: Deputy Commissioner, CGST, Div: Gandhinagar, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Superintendent of Police Banaskantha

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

\भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
 (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, and Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
 Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ए0बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहमाली

भवन, असारवा, अहमदाबाद, गुजरात 380016

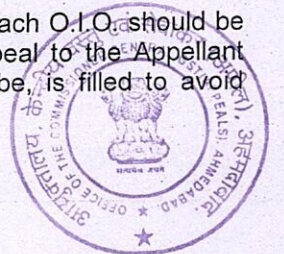
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र ईए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEL

This appeal has been filed by the Superintendent of Police, Banaskantha (Gujarat) [for short-'the appellant'] against Order-in-Original No.GNR-STX-DEM-DC-040/2015 dated 24.07.2015 [for short-'the impugned order'] passed by the Deputy Commissioner of Service Tax Division, Gandhinagar [for short-'adjudicating authority'].

2. Briefly stated, the facts of the case are that the appellant is engaged in rendering service under "Security Agency Service"; that the appellant was providing security service to private persons or companies' i.e activities like escorts of cash etc to the public/private sector banks for consideration. As it appeared that such service provided by the appellant is taxable under Section 65(105) (w) read with Section 65(94) of Finance Act, 1994 (FA) and they were not paying service tax, jurisdictional Range Officer has obtained details of amount received by the appellant towards such service rendered during 2005 to 2011. On the basis of such details submitted by the appellant, a show cause notice dated 18.10.2012 was issued to the appellant for non-payment of service tax amounting to Rs.2,24,138/- with interest and imposition of penalty under Section 76, 78, 77 of FA. Vide impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty of Rs.2,24,138/- under Section 78 of FA and Rs.5,000/- each under Section 77(1) and 77(2) of FA and dropped imposition of penalty under Section 76 of FA. The adjudicating authority has also imposed penalty under Rule 7C of Service Tax Rules, 1994.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- They are an authority of State Government to carry out statutory and constitutional duties working under Home Ministry of State Government; that they collect some charges according to the resolution passed by the Home Ministry in respect of service rendered to Bank etc.;
- That as per definition under Section 65(105) of FA, the word 'person' used must be construed to be a natural person as well as a juristic person and by no stretch of imagination, the same will include State or its officers or the posts created under a statute.
- As per Board's circular No.89/7/2006-ST dated 18.12.2006, the charges collected by any sovereign/public authority for carrying out any statutory function will not be liable for levy of service tax.
- The issue in dispute has finally been decided by the Hon'ble supreme Court in case of CCE & ST, Jaipur-II V/s Dy.Commissioner of Police, Jodhpur [2018 (11) GSTL 133].



4. Hearing in the matter was granted on 21.08.19. The appellant vide their letter dated 23.08.2019 has submitted a written submission, wherein, they, inter-alia, reiterated the submissions made in the appeal memo and further stated that the issue involved in the matter, pertaining to the period of 2012-13 to 2016-17 has already decided by the Commissioner (Appeals), Ahmedabad vide OIA dated 05.07.2017. They requested to decide the matter accordingly.

5. Before going into the merits of the case, I find that the appellant has filed the instant appeal on 02.03.2017 against the impugned order dated 23.07.2015. The appellant, in their appeal has stated that they received the impugned order only on 04.01.2017 from the adjudicating authority. An affidavit in this regard has also submitted by them. A report in this regard was sought from the adjudicating authority, vide this office letter dated 30.11.2017. However, no reply in this connection was received. Therefore, the date mentioned by the appellant is taken as date of receipt of the order for filing the instant appeal and accordingly, the appeal filed by the appellant is within time limit.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum and vide their letter dated 23.08.2019. The issue to be decided is whether the service rendered by the appellant would be covered within the definition of security agency services and service tax will be liable to be paid by them on the amounts recovered by them for providing security personnel to various organizations during 2006 to 2011.

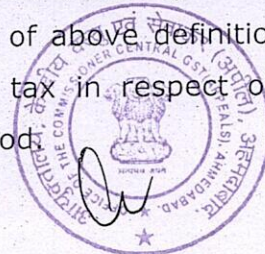
7. I find that as per Section 65(94) of FA, "Security Agency" means

"any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel"

and taxable service under Section 65(105)(w) means

"any service provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity."

8. In view of above definition, Security Agency services provided to "any person" in relation to security of any property is taxable. It is also important to mention here that from 01.07.2012 the pattern of levy of service tax was changed after introduction of negative list and Government, local authority etc includes in the term "person" in Section 65B (37) of FA. In view of above definitions, in any case, the appellant is liable for payment of service tax in respect of "security Agency" service rendered by them for the disputed period.



9. I find that the appellant has argued that they are not liable for payment of service tax in respect of following counts.

[a] They are an authority of State Government working under Home Ministry Gujarat State as per definition under Section 65(105) of FA, the word 'person' will not include State or its officers or the posts created under a statute; that the Hon'ble Supreme Court has decided this issue in favour of their argument in case of CCE & ST, Jaipur-II V/s Dy. Commissioner of Police, Jodhpur [2018 (11) GSTL 133].

10. I have considered the said submissions. I find that the the Hon'ble Supreme Court's decision in case of CCE & ST, Jaipur-II V/s Dy. Commissioner of Police, Jodhpur [2018 (11) GSTL 133] has affirmed the decision of Hon'ble Tribunal in case of Deputy Commissioner of Jodhpur [2017 (48) S.T.R. 275 (Tri. - Del.)]. While dismissing the appeal filed by the department, the Hon'ble Supreme Court passed the following order:

"In the facts of the case, we are not inclined to interfere with the impugned order(s). The civil appeal(s) are accordingly dismissed."

The Appellate Tribunal in its impugned order had held that the activity of the State police represented by the Superintendent of Police of various districts deploying security personnel to various organizations and for character verification of candidates selected for various jobs on payment of charges, was not leviable to Service Tax under the category of Security Agency service under Section 64(94) of the Finance Act, 1994.

It was further held that the definition of 'person' introduced in Section 65B (37) of the Finance Act, 1994 to include Government, local authorities, etc. with effect from 1-7-2012 was not applicable prior to the said date."

I find that the Hon'ble Supreme Court has maintained the decision of the Hon'ble Tribunal's decision supra. The Hon'ble Tribunal has come to the conclusion that the police department, which is an agency of the State Govt., cannot be considered to be a "person" engaged in the business of running security services. The relevant para 10 of the said Hon'ble Tribunal's decision is under:

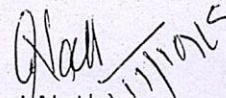
"In the light of the definition of the term "person" in the General Clauses Act, 1897, which has also been examined and clarified by the Apex Court, it would appear that the Superintendent of Police, which is an agency of the State Govt. does not appear to be covered within the term "person". It is also noteworthy that in the year 2012 when the pattern of levy of service tax was changed and the concept of negative list was introduced with effect from 1-7-2012, a definition was introduced for the term "person" in Section 65B(37), of the Act, which includes the Govt., local authorities, etc. From this, it is evident that such a definition for the term "person" has become part of the statute only from this date. To decide the meaning of "person" up to this date, we will have to refer to the General Clauses Act, 1897 as well as relevant case laws. The Apex Court has clearly held that the definition of "person" cannot be extended to include State. Consequently, we are of the view that the Superintendent of Police will not be covered within the term "person"."



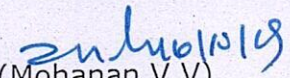
11. In view above decision, it is very clear that the definition of "person" cannot be extended to include State Government and the Superintendent of Police will not be covered within the term "person" upto 01.07.2012. Accordingly, the appellant is not liable to pay service tax in respect of 'security agency' service provided by them upto 01.07.2012. By applying the ratio of the above decision, it is apparently clear that the appellant is liable to pay service tax for the service in question from 01.07.2012. In the circumstances, the appellant is not liable for any service tax during the disputed periods in the instant case i.e. 2006 to 2011.

12. In view of above discussion, I find that the service tax demanded for the period in question by the adjudicating authority with interest is not correct and not tenable and required to be set aside. Accordingly, I do so. Since the demand is not sustainable, the question imposition of penalty is also not sustainable.

13. In the foregoing discussion, I allow the appeal filed by the appellant. The appeal stand disposed of in above terms.


 (Gopi Nath)
 Commissioner (Appeals)
 Date : 10.10.2019

Attested


 (Mohanan V.V)
 Superintendent (Appeal),
 Central Tax, Ahmedabad.

BY R.P.A.D

To

The Superintendent of Police,
 Police Head Quarter, Jaravar Palance,
 Palanpur, Banaskatha

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Principal Commissioner, Central Tax, Gandhinagar.
3. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
4. The Assistant Commissioner, Palanpur Division.
5. Guard file.
6. P.A file.



