

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH,COURT NO. 1**

SERVICE TAX APPEAL NO. 50973 OF 2017

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-648-16-17 dated 10.02.2017 passed by the Commissioner of Customs, Central Excise Service Tax (Appeals), Bhopal]

**Sr.Commandant
Central Industrial Security Force**
(BHEL Unit) Bharat Heavy Electricals Ltd.
Administrative Building,
PO Piplani Bhopal 462021.

Appellant

Vs.

**COMMISSIONER OF CUSTOMS,
& CENTRAL EXCISE,**
48, Administrative Area Hoshangabad Road
Bhopal 462011 (MP)

Respondent

Appearance:

Present for the Appellant : Shri Z U Alvi, Advocate

Present for the Respondent : Dr. Radhey Tallo, Authorised Representative

CORAM:

HON'BLE Mr.JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE Ms.HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)

Date of Hearing /Decision: 03/04/2023

FINAL ORDER No. 50467 /2023

JUSTICE DILIP GUPTA

The order dated 10.02.2017 passed by the Commissioner (Appeals) to the extent it holds that the appellant would be liable to pay service tax with interest has been assailed in this appeal.

2. The allegations against the appellant was that it was discharging service tax liability on the consideration received towards salary and allowance, but it did not discharge service tax

on non-monetary consideration such as free accommodation, medical facilities, vehicle and telephone insurance and stationery and other expenses for the period April 2009 to March 2012. The show cause notice dated 12.03.2014 also invoked the extended period of limitation contemplated under the proviso to section 73 of the Finance Act 1994. The Joint Commissioner by order dated 19.02.2015, confirmed the demand of service tax with penalty and interest. The appeal filed by the appellant before the Commissioner (Appeals) was allowed in part. The penalty imposed upon the appellant was set aside but the confirmation of demand of service tax with interest was upheld. This appeal has accordingly, been filed to assail that portion of order of Commissioner (Appeals) that confirms the demand of service tax with interest.

3. Learned counsel for the appellant submitted that the issue as to whether the aforesaid value of non-monetary consideration could be included in the taxable value has been decided in **M/s. Central Industrial Security Force (CISF) vs Commissioner of Service Tax, Pune¹**, following the decision of Supreme court in **Union of India and another vs M/s. intercontinental Consultants and Technocrats Pvt. Ltd.²** Learned counsel, therefore, submits that the impugned order confirming the demand of service tax with interest should be set aside.

¹ [2022 (11) TMI 835 CESTAT MUMBAI

² [2018 (3) TMI 357 (Supreme Court)].

4. Dr. Radhey Tallo, learned authorized representative, appearing for the department has very fairly stated that the issue involved is covered by the decision of the Tribunal in **CISF**. In this decision, the Tribunal placed reliance upon the earlier decision of the Tribunal in **Bharat Coking Coal Ltd. vs Commissioner of Central Excise & Service Tax, Dhanbad**³ wherein it was held:

"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, 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), 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."

3 2021 (9) TMI 83 Cestat kol.

5. Thus, for the reasons stated in the aforesaid decision of the Tribunal, with which we have no reason to differ, the impugned order deserves to be set aside. It would, therefore, not be necessary to examine the issue relating to limitation.

6. Thus, for the reasons stated above, the order dated 10.02.2017 passed by the Commissioner (Appeals) to the extent it has confirmed the demand of service tax with interest is set aside and the appeal is allowed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER(TECHNICAL)

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