**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 17118 of 2013 (O&M)

Date of decision: 13.9.2018

State of Punjab and others .. Petitioners

vs

Union of India and others .. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Amit Rawal**

Present Mr. Pankaj Gupta, Additional Advocate General, Punjab.
Mr. Saurabh Goel, Advocate, for respondent nos. 1, 2, 4 & 5.
Mr. Sharan Sethi, Advocate, for respondent no. 3 in all the writ petitions except CWP No. 19806 of 2013.

Rajesh Bindal, J.

This order will dispose of bunch of petitions bearing CWP Nos. 17118, 19806, 25235, 26072 of 2013, 16117, 19024 of 2015 and 8705 of 2016, as common questions of law and facts are involved therein.

In CWP No. 17118 of 2013, challenge has been made to the order dated 28.2.2013 passed by the Commissioner, Central Excise and Service Tax, Ludhiana, raising demand of service tax on the State of Punjab for the sum charged for providing security to various banks in the State of Punjab for the period from 2007-08 to 2011-12.

In CWP No. 19806 of 2013, challenge is to the order dated 5.10.2012, raising demand of service tax on account of sum received for providing security to various banks for the period from October, 2006 to December, 2011.

In CWP No. 25235 of 2013, prayer has been made for quashing show cause notice dated 8.2.2013 proposing to levy the tax on the sum received for providing security to the public sector banks during the period 2011-12.

In CWP No. 26072 of 2013, challenge has been made to order dated 23.12.2011, raising demand of tax on account of sum received for providing security to various banks for the period from 2006-07 to 2010-11.

In CWP No. 16117 of 2015, challenge has been made to orders dated 30.3.2014 and 14.11.2014, raising demand of tax on account of sum received for providing security to various banks for the period from 2007-08 to 2011-12.

In CWP No. 19024 of 2015, challenge has been made to order dated 5.8.2013 and show cause notice dated 4.7.2014, raising demand of tax on account of sum received for providing security to various banks and General Post Office, Ludhiana, for the period from 2007-08 to 2011-12.

In CWP No. 8705 of 2016, prayer has been made for quashing show cause notice dated 17.10.2014 and order dated 11.9.2015, raising demand of tax on account of sum received for providing security to various banks for the period from September, 2009 to September, 2012.

Learned counsel for the petitioners while referring to Article 289 of the Constitution of India submitted that the property of the State is exempted from Union taxation. In the case in hand, service tax is sought to be levied on the State of Punjab on certain amounts received by it for providing extra security to various public sector banks and General Post Office, Ludhiana. The kind of service provided by it cannot be said to be trade or business being carried on by the State.

On the other hand, learned counsel for the respondents submitted that once the State has charged amount as security services provided to public sector banks, the receipt is chargeable to service tax as per the provisions of Section 65(105) of the Finance Act, 1994. There is no error in the order passed by the authorities in levying the tax. The State also cannot be permitted to escape from huge liability of tax thereon.

Heard learned counsel for the parties and perused the paper book.

Relevant provisions of Article 289 of the Constitution of India are extracted below:-

> **289. Exemption of property and income of a State from Union taxation.- (1)** The property and income of a State shall be exempt from Union taxation.
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> (2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.
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> (3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government."

A perusal of the aforesaid Article of the Constitution of India shows that the property and income of a State is exempted from Union taxation. However, the Union is not debarred from imposing or authorising or imposition of any tax by law to be framed by the Parliament in respect of a trade or business of any kind carried on by or on behalf of the State or any property used for the purpose.

In the case in hand, providing security cannot be said to be a business carried on by the State, as it is otherwise the duty of the State. Security service has not been provided to any private individual. Apparently for the reason of requirement of security more than the normal being provided by the State, certain amounts have been recovered from the public sector banks and All India Radio, on which service tax is sought to be charged by the department, which cannot be permitted, because of constitutional bar.

For the reasons mentioned above, the writ petitions are allowed. The impugned orders directing recovery of service tax from the amount received by the State on account of service provided to the banks, etc. are set aside. If any amount is already paid, the same shall be refunded to the State within a period of three months from the date of receipt of copy of this order.

(Rajesh Bindal)
Judge

13.9.2018
vs

(Amit Rawal)
Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No