BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.9655 of 2024
and
W.M.P.(MD) No.8744 of 2024

The Superintendent of Police,
Dindigul District,
Dindigul. ... Petitioner

Vs.

1.Union of India,
Represented by its Secretary,
Ministry of Finance,
(Department of Revenue),
Room No.46, North Block,
New Delhi – 110001.

2.The Superintendent of GST &
Central Excise,
Dindigul II Range, Dindigul.

3.The Joint Commissioner of GST &
Central Excise, Madurai,
Lal Bahadur Shashtri Marg,
C.R. Buildings, Madurai – 625 002.

4.The Assistant Commissioner,
Central Excise and Service Tax,
Dindigul.

5.The Assistant General Manager,
Canara Bank,
Madurai Circle Office,
Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Declaration and Mandamus to call for the records of the order of the third respondent (i.e. Joint Commissioner of the Office of the Commissioner of Central Excise, Madurai) in his letter V/ST/15/63/2012-Adjn., Order-in-Original No.MAD-STU-000-JTC-23-13 dated 30.09.2013 and communication Letter in OC No. 376/2022 of the second respondent to the fifth respondent dated 29.08.2022 and quash the same as well as any proceedings in furtherance of the same and consequently to declare that the activities of the petitioner are outside the purview of the Union Levy of Service Tax as that of the Security Agencies Services and also to direct the first respondent to issue suitable instruction to his subordinate officers not to propose, demand and/or levy Service Tax on the petitioner for the statutory service rendered under the provisions of the Tamil Nadu District Police Act, 1859, the Chennai Police Act, 1888 (Formerly the Madras City Police Act, 1888) and the relevant Government Orders issued by the Government of Tamil Nadu.

For Petitioner	: Mr.S.P.Maharajan Special Government Pleader
For R1	: Mr.T.Mahendran Central Government Standing Counsel

For R2 to R4 : Mr.R.Nanda Kumar
Senior Standing Counsel

For R5 : Mr.P.Pethu Rajesh
Standing Counsel

ORDER

The petitioner has filed this Writ Petition for issuance of a Writ of Declaration and Mandamus to

i. call for the records pertaining to the impugned Order-in-Original No.MAD-CEX-000-JTC-23-13 dated 30.09.2013 passed by the third respondent Joint Commissioner, O/o. Commissioner of Central Excise, Madurai and the consequential letter dated 29.08.2022 issued by the second respondent to the fifth respondent;
ii. quash the same;
iii. declare that the activities of the petitioner are outside the purview of the Union levy of Service Tax as that of the Security Agencies Service; and
iv. direct the first respondent to issue suitable instructions to his subordinate officers not to propose, demand and/or levy service tax on the petitioner for the statutory service rendered under the provisions of the Tamil Nadu District Police Act, 1859, the Chennai Police Act, 1888 (formerly Madras City Police Act, 1888) as well as based on the relevant Government Orders issued by the Government of Tamil Nadu.

2. Operative portion of the impugned Order-in-Original No.MAD-CEX-000-JTC-23-13 dated 30.09.2013 passed by the third respondent reads as under:-

"*FINDINGS AND DISCUSSIONS*

10. *I have carefully gone through the records of the case, the reply to the show cause notice and the submission made during personal hearing. The moot point to be decided in this case is whether the Dindigul Police is liable for payment of Service tax for the Security service rendered by them the period during 01.04.2011 to 31.12.2012 along with applicable interest and liable for penalty under 76, 77(1) and 77(2) respectively for failure to pay service tax within the stipulated time, for failure to get registration and for failure to furnish prescribed statutory returns.*

11.1. *I find that the Dindigul Police are providing security/bandobust service, cash escort service/Guard service to banks, Private institutions and Private parties for consideration, as detailed hereunder;*

- *Security Service to various banks and other institutions for escorting.*
- *Security Service during the Bank Exams held.*
- *Security Service to Film Shootings, Advertisement Shootings and Star Nights etc.*
- *Security Service to Deepavali Festival Celebrations by Private parties such as Pothis, Lalitha Jewellery etc.*

11.2. *In view of the above legal provisions of the Act pertaining to the Security Agency Service and details received from Dindigul Police, I find that the Security Service provided by the Dindigul Police to various private/commercial agencies for a consideration would clearly falls under the taxable category of "Security Agency Services as defined under Section 65(105)(w) of the Act and hence the entire amount collected by them as consideration for provision of the above service fall under the ambit of Service Tax*

11.3. *I find that the Dindigul Police have furnished the above details of amount collected towards providing security/bandobust service, cash escort service/Guard service to banks, Private institutions and Private parties within their jurisdiction during the period from April 2011 to December 2012 to the tune of* ***Rs. 7,30,060/-****. The total service tax liability for security services rendered by them works out to* ***Rs.89,468/-[****ST : Rs.86.861/-, EC : Rs.1,738/- and SHE Cess : Rs. 869/-****]***

12.1. *The Dindigul Police in their written reply vide letter C.No.D2/14623/2012 dated 17.06.2013 to the Show Cause Notice, have claimed that they are entrusted for various guard duties as per the rules and regulations of the Government and the guard charges are being collected and credited into the Government Treasury only. Dindigul Police is attached with the Police Department of Government of Tamilnadu and the services are purely in Public interest only and the fee collected is in accordance with the law in force. In this regard, I observer that no specific service tax exemption is available in the Statute in respect of the above specified services rendered to the Private/Commercial Agencies/Organizations by the Dindigul Police. I further find that, being a Government Organization, Dindigul Police have more* *responsibility towards discharge of their tax liabilities but it is noticed that they have not complied with the statutory levies of service tax. In view of the above, I am convinced that the request of Dindigul Police seeking withdrawal of the demand can not be acceded to as the same does not merit any consideration for the reasons discussed supra.*

12.2. *Further, the Dindigul Police in their written reply vide letter stated above, have claimed that since the amount received by them towards rendering taxable service during the impugned period was Rs. 7,30,060/- only, which is below the threshold exemption limit provided vide Notification No. 06/2005-ST dt. 01.04.2005, the question of remitting service tax would not arise. They have relied on the Order-in-Appeal No.94/2013-ST dt 26.04.2013 passed by the Commissioner (Appeals) Salem and stated that the O-I-A passed by the said Appealate authority would be applicable to them also since the matter is one and the same. I have carefully gone through the relevant Order-in Appeal and I find that the Dindigul Police are not eligible to get benefit of threshold exemption as provided under Notification No.06/2005-ST dt.01.04.2005 as amended Para 2(viii) of the said Notification reads as under:*

> ***2.*** *The exemption contained in this notification shall apply subject to the following conditions, namely:-*
>
> *(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees ten lakhs in the preceding financial year.*

As the amount received by the Dindigul Police towards rendering taxable service during the *preceding financial year was more than ten lakhs, the benefit of threshold exemption granted vide said Notification would not be applicable to them and for the same reason the Order-in Appeal relied upon by the Dindigul Police would not come to rescue for them.*

13. *During the personal hearing the Dindigul Police submitted a letter written by the Principal Secretary, Government of Tamilnadu to the Secretary, Government of India, Ministry of Home Affairs, New Delhi wherein exemption from payment of Service tax has been pleaded as the Police are providing service to the public. In this regard, I observe that the said letter relied upon by the Dindigul Police can not be considered as a documentary evidence for their claim of getting exemption from paying service tax as no conclusion has been arrived at on the same amending the statutory provisions. As such, I hold that the same does not debar them from their service tax liability.*

14. *In view of the foregoing. I hold that an amount of Rs.89,468/- towards service tax liability on the charges received by the Dindigul Police towards the security services rendered during the period from 01.04.2011 to 31 12.2012 under proviso to Section 73(1) of the Act is demandable from them with interest at appropriate rate on the said amount under section 75 of the Act. I also hold that the Dindigul Police have failed to pay service tax on taxable service provided by them during the impugned period and thereby contravened the provisions of Section 68 of the Act read with Rule 6 of the Rule and made them liable for penal action under Section 76 of the Finance Act, 1994; that the Dindigul Police have failed to register themselves with the department and thereby contravened the provisions of Section 69 of the Act read with Rule 4 and made them liable for penal action under Section 77(1) of the Act; that the*

> *Dindigul Police have failed to file statutory ST-3 returns for the impugned period within the stipulated time and thereby contravened the provisions of Section 70 of the Act read with Rule 7 and made them liable for penal action under Section 77(2) of the Act.*"

3. The issue that arises for consideration in this Writ Petition is whether the petitioner who represents the Tamil Nadu Police is required to pay service tax for the services rendered by them to various Banks while transportation of cash from currency chest to ATMs of the respective Banks.

4. It is the case of the petitioner that the petitioner is merely doing statutory functions such as law and order and escort in connection with transportation of cash from currency chest to ATMs. It is submitted that the aforesaid service does not warrant levy of service tax.

5. The learned Special Government Pleader for the petitioner would submit that the issue is no longer *res integra* and is covered by the recent decision of the Customs, Excise and Service Tax Appellate Tribunal [CESTAT], New Delhi, in **Superintendent of Police** Vs. **Commissioner of Central Goods and Service Tax, Excise and Customs**, dated

12.12.2023, in Service Tax Appeal No.50390 of 2017 arising out of the Order in Appeal No.IND-CEX-000-APP-155-156-14 dated 28.07.2014.

6. The learned Special Government Pleader for the petitioner would also submit that the issue is also covered by CBEC Circular No. 89/07/2006-ST dated 18.12.2006, as per which, the charges recovered by any sovereign or public authority for carrying out any statutory function will not be liable to service tax if three conditions prescribed thereon are satisfied.

7. The learned Special Government Pleader for the petitioner would also place reliance on the decision of the Calcutta High Court in **Mcleod Russel (India) Ltd.** Vs. **Union of India**, 2015 (39) S.T.R. 8 (Cal). That apart, the learned Special Government Pleader for the petitioner has relied on the following decisions of the Tribunals:-

i. **Superintendent of Police, Swai Madhopur** Vs. **Commissioner of Central Excise, Jaipur**, dated 22.10.2019, passed by the CESTAT, New Delhi in Service Tax Appeal No.52890 of 2016 [DB].

ii. **Jamnagar Police, O/o. Superintendent of Police, Jamnagar, Gujarat** Vs. **C.C.E. & S.T., Rajkot**, dated 04.12.2023 passed by the CESTAT, West Zonal Bench at Ahmedabad, in Service Tax Appeal No. 13606 of 2014-DB.

8. Per contra, the learned counsel for the respondents would submit that this Writ Petition is liable to be dismissed on account of the fact that the petitioner has an alternate remedy.

9. Heard the learned Special Government Pleader for the petitioner, the learned Central Government Standing Counsel for the first respondent, the learned Senior Standing Counsel for the second to fourth respondents and the learned Standing Counsel for the third respondent.

10. This case was heard at length on 19.06.2024. After hearing this case on 19.06.2024, a similar Writ Petition came up for hearing on behalf of the Superintendent of Police, Tirunelveli District in W.P.(MD) No. 18917 of 2022. By an order dated 25.06.2024, the said Writ Petition was disposed of by giving liberty to file statutory appeal before the Customs,

Excise & Service Tax Appellate Tribunal (CESTAT), Chennai. The CESTAT, Chennai was directed to entertain the appeal and dispose of the same without insisting the certified copy of the said order.

11. Therefore, I see no reason to take a different view in this Writ Petition. Hence, this Writ Petition is disposed of by giving liberty to the petitioner to file statutory appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai, within a period of 60 days from today, without awaiting for the certified copy of this order.

12. If such appeal is filed with the web copy of this order, the CESTAT, Chennai shall entertain the appeal and dispose of the same on merits and in accordance with law. Needless to state, before passing the order, the Tribunal may examine the above decisions of the Tribunal cited by the learned Special Government Pleader for the petitioner and pass orders on merits, on its turn, as expeditiously as possible.

13. Recovery proceedings, if any initiated, is directed to be lifted. In case the petitioner fails to file such appeal before the CESTAT, Chennai, within the time as stipulated above, the respondents are at liberty

to proceed against the petitioner as if no liberty is granted and the impugned order is scrutinized the lability.

14. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.07.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

1.The Secretary,
Ministry of Finance,
(Department of Revenue),
Room No.46, North Block,
New Delhi – 110001.

2.The Superintendent of GST & Central Excise,
Dindigul II Range, Dindigul.

3.The Joint Commissioner of GST & Central Excise, Madurai,
Lal Bahadur Shashtri Marg,
C.R. Buildings, Madurai – 625 002.

4.The Assistant Commissioner,
Central Excise and Service Tax,
Dindigul.

C.SARAVANAN, J.

JEN

W.P.(MD) No.9655 of 2024
and
W.M.P.(MD) No.8744 of 2024

03.07.2024