

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 52017 of 2016 [DB]**

[Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0042-15-16 dated 23.03.2016 passed by the Commissioner, Customs & Central Excise, Jodhpur]

**M/s. Sikar Ex-Serviceman Welfare  
Co-operative Society Ltd.**

Super Tower/Sarwadi House,  
Behind S.K. Hospital,  
Sikar, Rajasthan.

**...Appellant**

**Vs.**

**Commissioner Central Excise and  
Service Tax, Jodhpur**

**...Respondent**

**WITH**

**Service Tax Appeal No. 52018 of 2016 [DB]**

[Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0042-15-16 dated 23.03.2016 passed by the Commissioner, Customs & Central Excise, Jodhpur]

**Shri Shiv Pal Singh, Treasurer**

M/s. Sikar Ex-Serviceman Welfare  
Co-operative Society Ltd.  
Super Tower/Sarwadi House,  
Behind S.K. Hospital,  
Sikar, Rajasthan.

**...Appellant**

**Vs.**

**Commissioner Central Excise and  
Service Tax, Jodhpur**

**...Respondent**

**WITH**

**Service Tax Appeal No. 52019 of 2016 [DB]**

[Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0042-15-16 dated 23.03.2016 passed by the Commissioner, Customs & Central Excise, Jodhpur]

**Shri Sohan Lal Dhaka, President**

M/s. Sikar Ex-Serviceman Welfare  
Co-operative Society Ltd.  
Super Tower/Sarwadi House,  
Behind S.K. Hospital,  
Sikar, Rajasthan.

**...Appellant**

**Vs.**

**Commissioner Central Excise and  
Service Tax, Jodhpur**

**...Respondent**

**AND WITH**

**Service Tax Appeal No. 52020 of 2016 [DB]**

[Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0042-15-16 dated 23.03.2016 passed by the Commissioner, Customs & Central Excise, Jodhpur]

**Shri Ram Krishan, Secretary**

**...Appellant**

M/s. Sikar Ex-Serviceman Welfare  
Co-operative Society Ltd.  
Super Tower/Sarwadi House,  
Behind S.K. Hospital,  
Sikar, Rajasthan.

**Vs.**

**Commissioner Central Excise and  
Service Tax, Jodhpur**

**...Respondent**

**APPEARANCE:**

Shri Alok Kothari, Advocate for the Appellants  
Shri K. Poddar, Authorized Representative for the Respondent

**Coram: HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)  
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING : **10.03.2021**  
DATE OF DECISION : **01.04.2021**

**FINAL ORDER Nos. 51206-51209/2021**

**RACHNA GUPTA**

Present order disposes of four appeals arising out of same Show Cause Notice adjudicated by common order that is the order under challenge bearing No.0042-15-16 dated 23.03.2016.

The facts in brief for disposal of the impugned appeals are as follows:-

That the appellant is registered and engaged in rendering services covered under the category of Man-power Recruitment and Supply Agency / Security/ Detective Agency Service. Based upon an intelligence gathered from a service receiver, the Department came to know that despite providing the taxable service of Man-power Recruitment and Supply Agency Services, the appellants were neither paying the due Service Tax nor were filing the ST – 3 Returns. Accordingly, the appellants were called upon vide summons of September and November 2014 to provide the documents. The appellants neither replied nor provided the documents. Summons dated 7<sup>th</sup> January, 2015 was served upon to all the appellants requiring them to appear for their statements on 9<sup>th</sup> January, 2015 but none appeared. Fresh summons were issued to appear on 19<sup>th</sup> January, 2015 when all the appellants appeared. The premises, accordingly, were searched on 7<sup>th</sup> January, 2015 and the requisite record was resumed under Panchnama of the even date. The statements of all the appellants Shri Sohan Lal Dhaka, the President of M/s.Sikar Ex-Serviceman Welfare Co-operative Society Ltd. (hereinafter referred as "Society"), Shri Ram Krishan, Secretary of the Society, Shri Shiv Pal Singh, Treasurer of the Society, Shri Nav Kishore Bhuria and Shri Om Prakash both Directors of the Society were recorded. Statements of ex-office bearers of Society were also recorded on 19<sup>th</sup> and 20<sup>th</sup> January, 2015. Statement of appellants were again recorded on 7<sup>th</sup> March, 2015.

1.1 Based thereupon and in view of the documents resumed, Department observed that the assessee has failed to pay the Service Tax amounting to Rs.1,15,16,673/- for rendering the taxable service. Accordingly, vide a Show Cause Notice No.128 of 21<sup>st</sup> April, 2015 the Demand of the aforesaid amount alongwith the proportionate penalty and the interest was proposed to be recovered from the appellant. The said proposal was confirmed vide the Order-in-Original bearing No.0042/2015-16 dated 23<sup>rd</sup> March, 2016. Being aggrieved of the said order, the appellants are before this Tribunal.

2. We have heard Shri Alok Kothari, learned Advocate for the appellant and Shri K. Poddar, learned Departmental Representative for the Department.

3. It is submitted on behalf of the appellants that appellants Society is a non-profitable organisation. Hence, alleged malafide is not attributable to them. Nor there is any reason with such an organisation to suppress the material facts. The Show Cause Notice of 2015 raising a demand since October, 2009 to December, 2014 is, therefore, a demand beyond the reasonable period of one year and hence is liable to be set side on this score only. Reliance is placed upon the decision cited as **2012 (28) STR 650** in the case of **Telecommunications Consultants India Ltd.** It is further submitted that the order under challenge is liable to be set aside, also on the ground that once the penalty is imposed upon the organisation i.e. the impugned Society, the office bearers thereof

cannot be penalised separately. Finally, it is submitted that the Services of Man-power Recruitment have also been provided to Kendriya Vidyalaya. Those being the Government educational Institute the service provided to them is exempted under Notification No.6/2014-ST dated 11<sup>th</sup> July, 2014 vide Entry No.9 (b) (iii). It is submitted that a letter dated 11.12.2014 has also been issued by Kendriya Vidhyalaya Sangadan in this respect. It is submitted that demand of Rs.1.12 Lakhs Approximately is liable to be set aside being the demands towards Services rendered to Kendriya Vidhyalayas. Ld. Counsel has impressed upon submitting that adjudicating authority below has ignored these submissions. Hence, the demand confirmed is not legally sustainable. Order under challenge is, therefore, prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these arguments, learned Departmental Representative has placed reliance upon para 24.2 of the Order-in-Original as far as the submissions about the suppression of facts is concerned wherein it has been held that since the appellants have withheld the required information and have also failed to file the ST-3 Returns, the appellant cannot take plea of no malafide and no suppression of facts on their part. The extended time limit for issuing Show Cause Notice is very much available with the Department. Learned D.R. has also emphasised upon para No.3 of the Order under challenge, wherein it has clearly been observed that despite taking registration under Service Tax the appellants were neither paying the due service tax nor were filing ST-3

Returns. It is impressed upon that the demand in order under challenge has been confirmed based upon the aforesaid observations as such there seems no infirmity nor any illegality in the order. Appeal is, accordingly, prayed to be dismissed.

5. After hearing the parties and perusing the record of the appeal we observe and hold as follows. There is no denial by the appellant to the facts as follows:

- (1) They are providing Man-power Recruitment or Supply Agency.
- (2) The said Service is taxable under Section 65(105) (k) of Finance Act, 1994.
- (3) The appellants had obtained Service Tax Registration in the year 2004 itself.
- (4) They have not ever filed the service tax returns.
- (5) They have not discharged the complete liability of Service Tax.

Alongwith these admissions the prayer of appellant is that the appellants Society being a no profit no loss welfare Organisation may be exempted from the net of service tax liability. The period of demand is partially pre-negative list regime and partially post negative list regime. Apparently and admittedly the manpower recruitment or supply agency services are not covered under negative list of Section 66D of Finance Act, 2012. Hence, we have to go with the requisite definitions.

6. We observe that Man-power supply service has been defined under Rule 2 (g) of Service Tax Rules, 1994 to mean supply of man-power temporarily or otherwise, to another person to work under his Superintendents or control. Further, Manpower Recruitment of Supply Agency has been defined under Section 65-68 of Finance Act to mean "**any person**" engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of man-power, temporarily or otherwise, to any other person. The bare perusal of the above provisions make it abundantly clear that there is no exclusion for any category of service providers from the ambit of the tax liability with respect to manpower recruitment and supply agency service the use of word "any person" in the afore mentioned definitions is sufficient to form the above opinion. Hence, the argument of the appellant that they being a welfare organisation working upon no profit fundamental may be exempted from Service Tax liability for providing the manpower services is not sustainable in the eyes of the laws. No benefit in terms of said argument can be extended in favour of the appellants.

7. The another argument of the appellant is about the extended period of limitation as has been invoked by the Department while issuing the impugned Show Cause Notice of the year 2015 raising a demand for the year 2009-2014. We observe that the appellants Society was admittedly registered under service tax since the year 2004. Admittedly, no ST-3 return was ever filed by the appellant Society. Both these admissions are sufficient for us to hold that

there was sufficient knowledge with the appellants about their liability to pay Service Tax as received by them for providing the taxable service of manpower recruitment and service agency. The non-filing of ST-3 Return and non-payment of the service tax so collected from the receivers definitely amounts to suppression of the relevant fact on part of the appellants. There can be no other motive than evasion of tax liability for the said suppression. There is nothing brought on record by the appellants to falsify the said presumption. It is also apparent from record that the appellants Society has received gross value amounting to Rs.110410414/- for various service receivers against the impugned service provided by them. Accordingly their tax liability was Rs.12617613/-. However, from the documents resumed, it was observed by the Department that liability only for an amount of Rs.1100940 has been discharged by the appellants Society and they are still liable to pay an amount of Rs.11516673/-. These observations which have nowhere been denied by the appellant corroborate the appellants knowledge about their liability but suppression of discharge thereof. Resultantly, the circumstances of present case are held to have an element of wilful concealment or suppression of liability which under Section 77 entitles the Department to have a period of 5 years instead of one year to serve a show cause notice. Hence, this argument of appellant also is held to be not sustainable.

8. It is further submitted on behalf of the appellant that amount of Rs.1.12 Lakh is the Service Tax liability for providing the impugned services to Kendriya Vidhyalayas. We observe that there



is no denial of the Department for Kendriya Vidhyalays also to be the service recipient of the appellants and that such services are exempted under Notification No.6/2014. We observe that Notification No.6/2014 dated 11 July, 2014 amends Notification No.25/2012-ST dated 20<sup>th</sup> June, 2012. Services provided to an educational Institution by way of security or cleaning or house keeping services performed in such educational institutions have been exempted from the Service Tax liability. In view of the said observation, we find strength in this submission of the appellant and we hold that the demand to the extent of service tax liability qua the services rendered by the appellant Society to Kendriya Vidhyalayas is not sustainable and same is liable to be set aside.

9. The final submission of appellant is that once the penalty has been imposed upon an organisation, simultaneous imposition of penalty on the office bearers thereof, is not sustainable. We observe in view of the definition of company in Section 3 of Companies Act that the appellants Society is not a Company but a Co-operative Society whose affairs are to be handled by a committee of office bearers having a life span of five years. It is also apparent from the record that the impugned period of demand has two different set of office bearers. Seen from any stretch of imagination the penalty cannot be imposed upon all of them, we hold that once the penalty is imposed upon the appellants Society, none other can be burdened with the penalty for the same omission as is alleged against the Society. We draw our support from the case law in the case of **Anil Kumar Mahensaria vs.**

**Commissioner of Customs reported in 2008 (228) ELT 166 (Delhi)** wherein it was held that only one set of penalty can be imposed either on the appellant or upon his proprietorship firm.

10. In view of entire above discussion, we summarise the findings as follows:-

The appellant have admitted their omission for not paying the Service Tax despite they being registered under Service Tax. The services rendered by them being taxable in nature, we hold that the demand has rightly been confirmed by the adjudicating authority below. However, for the demand of Rs.1.12 Lakh qua the services being rendered to the Kendriya Vidhyalays, we extend the benefit of the Notification No.25/2012 dated 20.06.2012 in favour of appellant and do hereby set aside the said demand. Penalty upon the appellants Society has also been upheld. However the penalties upon the office bearers thereof are held not sustainable and are hereby set aside

11. In view of these findings the order under challenge stands modified to the above extent. Consequent thereto, all the appeals stand partly allowed.

[Pronounced in the open Court on 01.04.2021]

**(P.V. SUBBA RAO)  
MEMBER (TECHNICAL)**

**(RACHNA GUPTA)  
MEMBER (JUDICIAL)**