



2024:KER:95594

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 17TH DAY OF DECEMBER 2024/26TH AGRAHAYANA, 1946

C.E.APPEAL.NO.16 OF 2018

AGAINST THE FINAL ORDER NO.23017/2017 DATED 12.12.2017 IN
APPEAL NO.ST/297/2008-DB OF CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, BANGALORE

ORDER-IN-APPEAL NO.57/2008-ST DATED 19.03.2008 OF THE COMMISSIONER
OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX (APPEALS), COCHIN

APPELLANT/APPELLANT/APPELLANT/ASSESSEE:

THE KERALA STATE-EX-SERVICES LEAGUE
STATE COMMITTEE, THIRUVANANTHAPURAM,
VIMUKTHABHADA BHAVAN, NEAR A K G CENTRE,
KUNNUKUZHY, THIRUVANANTHAPURAM - 695 037.

BY ADV.DR.K.P.PRADEEP
BY ADV.SRI.T.T.BIJU
BY ADV.SRI.K.P.KESAVAN NAIR
BY ADV.SRI.SANAND RAMAKRISHNAN
BY ADV.SMT.T.THASMI

RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:

COMMISSIONER OF CENTRAL EXCISE
CUSTOMS AND SERVICE TAX, TRIVANDRUM,
TC NO 26/334(1&2), ICE BHAVAN,
PRESS CLUB ROAD, THIRUVANANTHAPURAM 695 001.

BY SRI.SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE
& CUSTOMS

THIS CENTRAL EXCISE APPEAL HAVING BEEN FINALLY HEARD
ON 17.12.2024, ALONG WITH C.E.APPEAL.NOS.20/2018 &
28/2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



2024:KER:95594

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 17TH DAY OF DECEMBER 2024/26TH AGRAHAYANA, 1946

C.E.APPEAL NO.20 OF 2018

AGAINST THE FINAL ORDER NO.23014/2017 DATED 12.12.2017 IN
APPEAL NO.ST/294/2008-DB OF CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, BANGALORE

ORDER-IN-APPEAL NO.61/2008-ST DATED 19.03.2008 OF THE COMMISSIONER
OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX (APPEALS), COCHIN

APPELLANT/APPELLANT/APPELLANT/ASSESSEE:

THE KERALA STATE EX-SERVICES LEAGUE,
DISTRICT COMMITTEE, THRISSUR
VIMUKTHABHADA BHAVAN, KANJANI ROAD, AYYANTHOLE,
THRISSUR-680003.

BY ADV.DR.K.P.PRADEEP
BY ADV.SRI.T.T.BIJU
BY ADV.SRI.K.P.KESAVAN NAIR
BY ADV.SRI.SANAND RAMAKRISHNAN
BY ADV.SMT.T.THASMI

RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:

COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX, CALICUT
C.R.BUILDINGS, MANANCHIRA, CALICUT-673001.

BY SRI.SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE
& CUSTOMS

THIS CENTRAL EXCISE APPEAL HAVING BEEN FINALLY HEARD
ON 17.12.2024, ALONG WITH C.E.APPEAL.NOS.16/2018 & 28/2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2024:KER:95594

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 17TH DAY OF DECEMBER 2024/26TH AGRAHAYANA, 1946

C.E.APPEAL NO.28 OF 2018

AGAINST THE FINAL ORDER NO.23012/2017 DATED 12.12.2017 IN
APPEAL NO.ST/292/2008-DB OF CUSTOMS, EXCISE & SERVICE TAX

APPELLATE TRIBUNAL, BANGALORE

ORDER-IN-APPEAL NO.59/2008-ST DATED 19.03.2008 OF THE COMMISSIONER
OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX (APPEALS), COCHIN

APPELLANT/APPELLANT/APPELLANT/ASSESSEE:

THE KERALA STATE-EX-SERVICES LEAGUE
DISTRICT COMMITTEE, THRISSUR,
VIMUKTHABHADA BHAVAN, KANJANI ROAD,
AYYANTHOLE, THRISSUR-680003.

BY ADV.DR.K.P.PRADEEP
BY ADV.SRI.T.T.BIJU
BY ADV.SRI.K.P.KESAVAN NAIR
BY ADV.SRI.SANAND RAMAKRISHNAN
BY ADV.SMT.T.THASMI

RESPONDENT/RESPONDENT/RESPONDENT/REVENUE:

COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX, CALICUT
C.R.BUILDINGS, MANANCHIRA, CALICUT-673001.

BY SRI.SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE
& CUSTOMS

THIS CENTRAL EXCISE APPEAL HAVING BEEN FINALLY HEARD
ON 17.12.2024, ALONG WITH C.E.APPEAL.NOS.16/2018 & 20/2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

As all these appeals involve a common issue and are preferred against a common order dated 12.12.2017 of the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, they are taken up together for consideration and disposed by this common judgment.

2. The brief facts necessary for disposal of these appeals are as follows:

The appellant in all these appeals is the Kerala State Ex-services League, which is a Charitable Society registered under the Travancore Cochin Society Registration Act, 1955 and is affiliated to the Indian Ex-Service League, New Delhi. It has its registered office at Trivandrum and the League has District Committees in all the Districts in the State of Kerala. The primary object of the League is stated to be to look after the socio-economic and welfare matters of ex-servicemen and their families. Annexure A1 Bye-law of the League is also produced to show that the Society is incorporated for the purposes of coordinating the welfare measures for the benefit of the ex-servicemen and their family members.



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3. The issue in these appeals arises from the notices issued to the appellant in 1998 asking it to register itself as a service provider under the head of “security agency service” as defined under Section 65(40) of the Finance Act, 1994 prior to 2006 and under Section 65(94) of the said Act after the 2006 amendment.

4. C.E. Appeal.No.16 of 2018 arises from the proceedings that commenced with the challenge to the notice requiring the appellant to take out registration as a service provider under the head of “security agency service”. C.E. Appeal Nos.20 and 28 of 2018 arise from proceedings initiated by the Department for recovery of service tax dues together with penalty and interest for various periods between 1998 and 2006 from the appellant. It would appear that after an initial round of litigation which culminated in an order of the Appellate Tribunal remanding the matter to the original authority for consideration as to whether or not the appellant would satisfy the definition of “a commercial concern 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”, the original authority once again found that the activities of the appellant would attract the definition of “security agency service” for the purposes of payment of service tax under the Finance Act, 1994, as amended.

5. Aggrieved by the order of the original authority, the appellant preferred appeals before the First Appellate Authority which confirmed



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the demand of service tax and penalty on the appellant. In the further appeals preferred by the appellant before the Appellate Tribunal, the Appellate Tribunal also found that the services provided by the appellant would attract the definition of “taxable service” under the head of “security agency service” and therefore dismissed the appeals preferred by the appellant and confirmed the demand of service tax and penalty on the appellant. For the sake of completion of the facts, we might note at this juncture that the common order of the Appellate Tribunal that is impugned in these appeals disposed 12 appeals and the appellant has chosen to opt for the Amnesty Scheme in respect of 9 of those 12 appeals. The above 3 appeals with which we are concerned now, are those appeals in respect of which the appellant has not chosen to opt for the Amnesty Scheme.

6. Appearing on behalf of the appellant, the argument of Dr.K.P.Pradeep, the learned counsel, is essentially that the services rendered by the appellant cannot attract the definition of “taxable service” as applicable under the head of “security agency service”. He would, in particular, point to Annexure A6 Circular dated 10.06.1985 issued by the Directorate of Sainik Welfare, Trivandrum, to point out that the appellant came into being for the purpose of looking after the socio-economic and welfare matters of Ex-servicemen and their families. The appellant consequently provides opportunities to its members by guiding them for better placements on no profit no loss basis and hence, its functioning is purely on a non-commercial basis



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which fact has been recognized by the Governmental authorities. The Circular relied on by the appellant also mandates that on requests being received from Government Offices or private or public sector undertakings for security cover, the appellant would furnish a panel of names for selection by the undertaking concerned. On its part, the appellant would take the full responsibility of executing the security contract and making the payment to the ex-servicemen so employed on contract basis by the establishment concerned. It is his case that in view of the fact that the members of the appellant are employed on contract basis by the establishments concerned, the role played by the appellant cannot be seen as providing a security service to an establishment. He would further point out that the service tax liability under the Finance Act, 1994, as amended, is attracted only if the entity that provides for service is a 'commercial concern that is engaged in the business of rendering such services'. In relation to the appellant, it is contended that it does not carry out any activity as a commercial concern since it does not intend to make any profit from the commercial activity entered into by it with the various establishments.

7. Per contra, it is the submission of Sri.Sreelal N. Warriar, the learned Standing counsel for the respondent that the impugned order of the Appellate Tribunal has considered the submissions of the appellant on merits, and has taken note of the statutory provisions and the judgments rendered by various High Courts and Tribunal to come to the conclusion that the services rendered by the appellant attract



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the liability to tax under the Finance Act, 1994, as amended, in its application to security agency service.

8. On a consideration of the rival submissions, we find that a 'Security Agency' is defined under the Finance Act, 1994 as it stood during the relevant time as follows;

Security Agency

"Security Agency" means any commercial concern 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.

'Taxable Service' is also defined as follows:

Taxable Service

"Taxable Service" means any service provided, to a client, 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.

What is clear from a reading of the aforesaid definitions is that to attract the levy of tax as applicable to the security agency services, the service has to be provided by a commercial concern engaged in the business of rendering services relating to 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. In our view, it cannot be



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disputed that the activity that the appellant provides is essentially the providing of security personnel, who invariably are its members, being ex-servicemen. The only other issue that needs to be considered is whether the appellant would satisfy the definition of a “commercial concern” engaged in the business of rendering the security agency services. In this connection, we note that a commercial concern albeit not defined under the Act or in the Rules, has been understood by the Central Board of Excise and Customs, as an institution/establishment that is primarily engaged in commercial activities, having profit as the primary aim. The Circular No.86/4/2006-ST dated 01.11.2006 issued in this connection goes on to clarify that it is not one/few isolated activities which determine whether or not an institution is a commercial concern but it is the totality of its activity and the objective of its existence that determines the commercial nature of an institution as an entity or a concern. The said Circular which basically considers the applicability of service tax to educational institutes like IITs and IIMs, goes on to clarify that the principal activity of institutes like IITs and IIMs being the imparting of education without the objective of making profit, the said institutes cannot be seen as commercial concerns, even if for some of their activities they charged a fee. Taking cue from the above Circular, we would think that for an association like the appellant before us, the embarking on a transaction that is designed to earn income for its members, would have to be seen as a commercial venture and the appellant who embarks on such a venture, a 'commercial concern'. We say so because although it may be a fact

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that in any particular year(s), the appellant did not make any profit from its commercial activities, the fact remains that it had embarked upon the venture with an objective of making profit. The appellant cannot be treated at par with educational institutions, which by their very nature and going by the activities intended to be performed by them, cannot be seen as commercial concerns. We therefore find ourselves unable to accept the submissions of the learned counsel for the appellant that the appellant is not a commercial concern for the purposes of levy of service tax.

In the result, we see no reason to interfere with the impugned order of the Appellate Tribunal. These C.E. Appeals fail, and are accordingly dismissed.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
EASWARAN S.
JUDGE**

prp/18/12/24



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APPENDIX OF C.E.APEAL NO.16/2018

PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE BY-LAW OF THE KERALA STATE EX-SERVICES LEAGUE WITH REGISTRATION NO. K/77/92
- ANNEXURE A2 TRUE COPY OF THE FINAL ORDER DATED 19/08/2004 NO.1401 IN ST APPEAL NO. 23/2003 OF THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE
- ANNEXURE A3 TRUE COPY OF THE ORDER IN ORIGINAL NO. 10/ST/2007 DATED 13/04/2007 OF HE DEPUTY COMMISSIONER, CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, TRIVANDRUM
- ANNEXURE A4 TRUE COPY OF THE ORDER IN APPEAL NO. 57/2008/ST DATED 10/03/2008 IN APPEAL NO. 55/ST/TVM/2007 OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, COCHIN
- ANNEXURE A5 TRUE COPY OF THE MEMORANDUM OF APPEAL IN ST 297/2008 FILED BEFORE THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE
- ANNEXURE A6 TRUE COPY OF CIRCULAR NO SB-6/13570/85 DATED 10/06/1985 ISSUED BY THE DIRECTORATE OF SAINIK WELFARE, THIRUVANANTHAPURAM
- ANNEXURE A7 TRUE COPY OF THE CONTINGENT BILL NO. 799 DATED 05/02/2001 ISSUED BY THE KERALA STATE ROAD TRANSPORT CORPORATION
- ANNEXURE A8 TRUE COPY OF THE RELEVANT PAGES OF THE ACQUITTANCE ROLL FOR THE MONTH OF JANUARY, 2001



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- ANNEXURE A9 TRUE COPY OF THE CIRCULAR NO. 62/11/2003 DATED 21/08/2003 ISSUED BY THE MINISTRY OF FINANCE, GOVERNMENT OF INDIA.
- ANNEXURE A10 TRUE COPY OF THE RELEVANT PAGES OF THE STATEMENT OF ACCOUNTS AND INCOME AND EXPENDITURE STATEMENT FOR THE YEAR 1998-99 TO 2001-02 OF THE APPELLANT.
- ANNEXURE A11 TRUE COPY OF THE RELEVANT PAGES OF THE STATEMENT OF ACCOUNTS AND INCOME AND EXPENDITURE STATEMENT FOR THE YEAR 2005-06 TO 2008-09 OF THE APPELLANT.
- ANNEXURE A12 TRUE COPY OF THE COMMON ORDER NO. 23006 TO 23017 DATED 12/12/2017 ISSUED BY THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE IN SERVICE TAX APPEALS NO. ST/286/2008 DB TO 297/2008/DB



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APPENDIX OF C.E.APEAL.NO.20/2018

PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE ORDER IN ORIGINAL NO. 102/06/ST DATED 13/10/2006 OF THE ASSISTANT COMMISSIONER, CENTRAL EXCISE, CUSTOMS AND SERVICE TAX , THRISSUR
- ANNEXURE A2 TRUE COPY OF THE ORDER IN APPEAL NO. 61/2008/ST DATED 19/03/2008 IN APPEAL NO. 05/ST/CLT/2007 OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, (APPEALS) COCHIN
- ANNEXURE A3 TRUE COPY OF THE COMMON ORDER NO. 23006 TO 23017 DATED 12/12/2017 ISSUED BY THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE IN SERVICE TAX APPEALS NO. ST/286/2008 DB TO 297/2008/DB



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APPENDIX OF C.E.APEAL NO.28/2018

PETITIONER'S ANNEXURES:

ANNEXURE A1 TRUE COPY OF THE ORDER IN ORIGINAL NO. 26/2006/ST DATED 31/10/2006 OF THE JOINT COMMISSIONER, CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, CALICUT

ANNEXURE A2 TRUE COPY OF THE ORDER IN APPEAL NO. 59/2008/ST DATED 19/03/2008 IN APPEAL NO. 03/ST/CLT/2007 OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, (APPEALS) COCHIN

ANNEXURE A3 TRUE COPY OF THE COMMON ORDER NO.23006 TO 23017 DATED 12/12/2017 ISSUED BY THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE IN SERVICE TAX APPEALS NO. ST/286/2008/DB TO 297/2008/DB

RESPONDENT'S ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE