

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 53043 Of 2018

[Arising out of Order-in-Appeal No. 93(PK)ST/JPR/2017-18 dated 23.03.2018 passed by the Commissioner (Appeals) of ADG, DGGSTI, Jaipur]

Kailashpati Ex-Servicemen Welfare : **Appellant**
Co-Operative Society Limited
4-C, 340, Jamunapuri, Murlipura, Scheme
Jaipur, Rajasthan

Vs

Commissioner of Central Goods, Service : **Respondent**
Tax & Central Excise-Jaipur-I
NCR Building, Statute Circle C-Scheme
Jaipur, Rajasthan

APPEARANCE:

Shri Jitin Mahajan, Advocate for the Appellant

Shri Anand Narayan Authorized Representative for the Respondent

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50840/2025

Date of Hearing:15.05.2025

Date of Decision:04.06.2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Kailashpati Ex Servicemen Welfare Society Limited¹ to assail the Order-in-Appeal No. 93(PK)ST/JPR/2017-18 dated 23.03.2018 wherein the Commissioner (Appeals) confirmed the demand of Rs. 19,35,929/- along with interest and appropriate penalty.

2. The brief facts of the case are that the appellant was registered with the department under the category of 'Security Agency services'

1 The appellant

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and availing the benefit of notification 30/2012-ST dated 20.6.2012. During the period 2012 to 2015, the appellant had provided security services to various organizations and collected charges for the security services provided by them. An audit was conducted and thereafter a show cause notice dated 5.2.2016 was issued to the appellant alleging that the appellant has paid service tax on 25% of the taxable value by wrongly availing the benefit of the notification No.30/2012-ST dated 20.6.2012. The show cause notice also invoked the extended period of limitation alleging that the appellant had suppressed the facts by way of availment of undue benefit, with an intent to evade payment of service tax. Accordingly, the show cause notice proposed demand of Service Tax amounting to Rs. 19,35,929 /- for the period from 01.12.2012 to 31.03.2015, along with interest and penalty under section 78 of the Finance Act 1994. The adjudicating authority, vide order in original no. 69/2016-17(ST) dated 28.02.2017 confirmed the demand of service tax of Rs. 19,35,929/-(inclusive of Cesses) for the period from 01.12.2012 to 31.03.2015, along with interest and also imposed penalty of Rs. 19,35,929/- under section 78 of the Finance Act 1994. The Commissioner (Appeals), dismissed the appeal of the appellant vide Order in Appeal No. 93(RK)ST/JPR/2017-18 dated 23.3.2018. Being aggrieved by the said order, the appellant has filed the present appeal.

3. Learned Counsel for the appellant submitted that the appellant was co-operative society and hence fell under the category of "association of persons" in view of the definition of persons given in section 65B(37) of the Finance Act and in view of the Notification no. 30/2012 dated 20.6.2012 wherein it was provided that when an

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'association of persons' provide security services to a body corporate, then 25% tax is to be paid by the service provider and 75% by the service receiver. Learned counsel contended that it is an undisputed fact that the service receiver had paid the tax on 75% of value of taxable service and demanding the same now again from the appellant is not legally justified as held in various cases by the Tribunal. He further submitted that the Tribunal in the case of **Sahara Ex-Servicemen Welfare Co-Operative Society Limited vs. Commissioner of CGST, Customs and Central Excise Alwar**² had taken a similar view.

4. Learned Authorized Representative for the Department at the outset reiterated the discussion and findings made in the impugned order. However, in all fairness, learned Authorized Representative conceded that the issue was covered squarely by the Tribunal's decision (supra).

5. We have heard the learned counsel for the appellant and the learned Authorized Representative for the Department and perused the records of the appeal.

6. We note that this Bench in its decision in the case of **Sahara Ex-Servicemen Welfare Co-Operative Society Limited (supra)** held as under:-

"5. Having heard the rival contentions, we observe that two issues have to be decided:

(i) The demand of service tax denying appellant the benefit of Notification No. 30/2012 date 20.03.2012.

xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx

6. The issue wise findings are as follows:

6.1 Issue No. 1

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To adjudicate this issue foremost the notification is perused which exempts certain taxable services as mentioned therein including the Manpower Recruitment service when provided by the persons as mentioned in Para A (ii) (c) of the said notification includes a co-operative society established by or under any law. The table given in the notification, Para B thereof, the Entry No. 8 exempts the services provided by way of supply of manpower for any person to the extent of 75% which has to be paid by the service recipient. The appellant admittedly is a co-operative society registered under Rajasthan Co-operative Society Act, 2001. The copy of certificate of registration is also produced by the appellant. There is no evidence to the contrary by the department. In the light of above observations with respect to Notification No. 30/2012, we hold that the appellant being a co-operative society was very much eligible for the abatement/exemption of 75% of the tax liability. The Order-in-Original has denied the said exemption holding the appellant is not the 'Association of Person'. To our understanding the said comparison is not required for the purpose of the impugned notification. It is an admitted fact that 25% of tax liability has been discharged by the appellant. In light of this discussion the confirmation of remaining 75% of the gross value as service tax from appellant is not sustainable.

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7. Finally coming to the plea of invocation of extended period of limitation, from the above discussion, it has been already held that appellant was not liable to the tax as has been proposed by the impugned show cause notice and has been confirmed by the impugned order. Hence, the question of evasion of tax becomes redundant. Also no question arises with the appellant to have an intent to evade the same. Accordingly, we hold that the extended period has wrongly been invoked. In light of the entire above discussion, the order under challenge is not sustainable, neither on merits nor on the technical issue of limitation. Therefore, same is hereby set aside. Consequent thereto, the appeal is allowed."

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7. We find that the facts of the instant case are squarely covered by the said decision. In view of the above, we set-aside the impugned order and allow the appeal.

(Order pronounced in the open Court on 04.06.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.