

(2001) 11 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No"s. 19205 of 1998, 4288 and 11271 of 1999 and 11674 of 2000

GDA Security Private Limited and Another

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 22-11-2001

Acts Referred:

Constitution of India, 1950 — Article 14
Finance Act, 1994 — Section 65(24), 65(40), 65(48), 66, 67
Service Tax Rules, 1994 — Rule 6

Citation : (2003) 89 ECC 381 : (2002) 140 ELT 332 : (2003) 264 ITR 396 : (2006) 2 STR 542

Hon'ble Judges : V.S. Sirpurkar, J;Malai Subramanian, J

Bench : Division Bench

Advocate : M.S. Sampath, N.B.N. Swamy, V. Chockalingam and P. Saravana Sowmiyan, for the Appellant; K. Veeraghavan, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—This judgment shall govern the abovementioned four petitions, which have been filed by various "Security and Detective Agencies", challenging the provisions of Sections 66 and 67 of the Finance Act, 1994. In fact, from the prayer it appears that the challenge is to the said Act generally and the abovementioned Sections particularly.

2. Petitioners case is that they are the Security and Detective Agencies, who render and provide assistance of security to any property or person by providing security personnel or bodyguards for security, undertaking detective activities, investigate matters such as financial credibility of persons, trademark or copyright infringements, etc. They also verify the veracity of incidents, claims of statements of clients and their case is that the assistance provided by them is not only service rendered, but jobs carried out on behalf of the client amounting to recoverable expenses of the actual expense, cost or price incurred. Their claim

is that if they provide a security-guard and bill a client, 70% of the bill amount would be towards the actual wages of the security-guard, 20% would be towards statutory and mandatory benefits such as Provident Fund, Employment State Insurance Scheme, Uniform Allowance, etc., 5% would be towards the administrative expenses and the remaining 5% would be the actual income of the fee charged by the petitioners.

3. As regards the challenge, the petitioners have given the background of the taxation on services. The Act, which was passed by way, of Finance Act, 1994, initially covered few sectors like Stock Brokers, Non-life Insurance Corporations and telephone services. It is then pointed out that the scope of the service tax was enlarged by Finance Act, 1996 levying the service tax on Advertising Agencies, Carrier Agencies, Pager-services. Then it is pointed out that other services were also brought in the dragnet of the service tax by Finance Act No. 2 of 1998 whereby the services provided by the Security Agencies, Architects, Interior Decorators, Credit Rating Agencies, Market Research Agencies, Chartered Accountants, Cost Accountants, etc. were covered.

4. The petitioners have then quoted the relevant provisions of the Act and they are as under:

Section 65(40) of the Finance Act provides the definition of "Security Agency" and it reads as under:

"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;"

The "taxable services" provided by the Security Agencies is defined in Section 65(48)(w), which reads as follows:

"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;"

The "charging Section" is Section 66, which has been amended by Finance Act, 1998 to bring in the services provided by the Security Agencies. We do not find it necessary to quote Section 66. The Section provides that the service tax shall be charged at the rate of 5% of the value of the taxable services provided by the security agencies.

Section 67(v) is another Section quoted by the petitioners which specifies the value of the taxable services and it runs as follows:

"Valuation of taxable services for charging service tax

(v) in relation to the service provided by a security agency to a client, shall be the gross amount charged by such agency from the client for services rendered in connection with the security of any property or person, and includes services of investigation, detection or verification of any fact or activity including services of providing security personnel;"

5. The petitioners have also referred to the provisions of Section 68(1) and Rule 6 of the Service Tax Rules as amended by the Finance Act, 1998 and the Service Tax Amendment Rules, 1998 respectively only to show the manner in which the tax is to be recovered. A reference is also made to a trade notice, bearing No. 1/96-ST dated 31.10.1996, which has explained as to how the valuation of taxable services would be made in case of advertising agencies and further providing that it is only the commission received by the advertising agencies which would be the value of the taxable services. Similarly, a reference is also made to Section 67(g), (a) and (k) which defined the value of taxable services in relation to Customs House Agents, Stock Brokers and Air Travel Agents respectively. A reference is also made to Section 67(j) and it is tried to be contended that in respect of the services covered by these sub-sections the value of the taxable service differs from the value of the taxable service offered by the security agents. It is tried to be suggested that in case of the above services, the "service part" is segregated from the "expenses part" involved in providing the services and it is only the "service part" which has been made taxable in contradistinction with the service provided by the security agencies where the gross amount charged by the security agencies has been made taxable with the exception that the service tax shall be exempted on the gross amount charged for the security provided for movable properties. The further pleading is that the service tax is inequitable in case where the security agencies provide services in respect of recoverable expenses and receive fee to meet the actual expenses and not for the service rendered. It is then argued in the petition that the service tax would amount to a tax on the amount not charged or earned for service provided and that would defeat the very object of the levying of the service tax. A reference is made to a Government letter dated 7-8-1998 which has clarified that the service tax would fall towards not only the amount charged for the services rendered but also for the charges which represent the salary of the security-guards, contributions towards their Provident Fund, Employment State Insurance Scheme, administrative expenses, miscellaneous expenses, etc. According to the petitioners this is highly irrational. So also, the taxation is dubbed as "illogical" in including in the value of the taxable services, the charges received by the security agencies for other professional jobs such as investigation or detective work, where bills have to be paid to outside agencies for transportation, communication, boarding and lodging. A feeble attempt is then made to suggest that the Act has failed to differentiate between accredited and non-accredited security agencies and also not having fixed any slab equivalent to the income received by the agencies. Lastly, it is suggested that running of security agencies amounts to a "profession" and, therefore, the levy of service tax on petitioners

by the respondent is nothing but a levy of tax on the profession, trade, calling and employment of the petitioners as enumerated in Entry 60 of List II of the Seventh Schedule of the Constitution of India.

6. In the grounds also more or the less same contentions are raised by comparing the services provided by the security agencies with that of the services provided by the Air Travel Agents, Customs House Agents, Stock Brokers, etc. The complaint is more or the less in the nature that security agencies are not allowed to deduct the reimbursable expenses while computing the service tax whereas that is possible in the case of other agencies. The challenge based on Article 14 is just more or the less limited to the rationale of taxation and the measure of tax.

7. As has already been stated the other challenge is that of "legislative competence" viewing the service tax to be on the petitioners' profession, trade, calling and employment and therefore covered by Entry 60 of List II of the Seventh Schedule.

8. Mr. Swamy, learned counsel appearing on behalf of the petitioners, at the outset, made a statement before us that his contention to the effect that the tax is beyond the "legislative competence" has already been covered by the Division Bench judgment of this Court, to which one of us (V.S. Sirpurkar, J.) was a party, in a batch of writ petitions (W.P. No. 8539 of 2000 etc.) where such a challenge came to be made on behalf of Chartered Accountants. The Court has taken the view that the service tax has different aspects and the aspect of providing a service was different and independent of the aspect of the profession. The Court has also held therein that the professional tax which was being levied by the State on all kinds of profession was only on account of the professionals being allowed to carry on a particular profession in that particular State. Mr. Swamy, therefore, says that even if the running of a security agency could be called a "profession", the judgment will cover the issue against him. Even if it is said to be a profession, trade, calling and employment, the view would be same that the tax if so levied by the State on that account would be for the privilege of carrying on the said trade, profession, calling and employment in the said State. There can be no escape from this proposition and, therefore, the major challenge of the lack of "legislative competence" on the part of the Parliament must be rejected.

9. Now coming to the question of the challenge based on Article 14 of the Constitution of India in reality no argument was addressed by the learned counsel perhaps, realising that in a batch of writ petitions (Advertising Club, Chennai v. Central Board of Excise and Customs, New Delhi, W.P. No. 1545 of 1999 etc.), which was filed on behalf of the "advertising agencies", the Division Bench of this Court, to which one of us (V.S. Sirpurkar, J.) was a party, had taken the view that the challenge under Article 14 was not possible. There also, similar challenge was raised to the effect that in the matter of calculation of the tax, the actual expenses towards the services regarding the advertising agencies were not excluded and the tax was charged on the gross amount charged by the

advertising agencies from their clients while in case of other agencies such expenditure was allowed and was permitted to be deducted from the gross amount charged thereby, their tax liability was reduced to a considerable extent. There was one novel challenge raised in that batch of writ petitions while the advertising agencies were brought in the tax dragnet, the electronic and press media were not brought under the service tax net. There also, the Division Bench, to which one of us (V.S. Sirpurkar, J.) was a party, rejected the challenge holding that it was upto the State to decide as to which agency was to be taxed and which not to be taxed. The Division Bench further held that if the advertising agencies were brought under the tax dragnet and electronic and print media were not brought under the tax dragnet, that was an exclusive privilege of the State and it could not be said then that the advertising agencies were discriminated by making them liable for taxation of the services that they offer. This finding was recorded in paragraph 20 of that judgment by holding that the Legislature had a discretion in levying the tax on a particular class and such discretion had always been recognised and approved by the Apex Court. Therefore, we are not impressed by the contention raised in the petition that the security agencies were chosen for being included in the service tax dragnet.

10. Similarly, we are also not impressed by the contention raised that in case of some other agencies while being taxed under the service tax, the "expenditure" incurred while offering the services are excluded in case of security agencies that expenditure is not excluded and the gross amount received by the security agencies is made taxable. We have dealt with this question in paragraph 22 of the aforesaid judgment of the advertising agencies. We had compared the case of manpower agencies covered u/s 65(24) and we had pointed out that on this ground the challenge cannot be made particularly relying on Article 14 of the Constitution. In paragraph 23 we have recorded a finding that no fault can be found with the taxing provision with reference to the measure of the tax. We had accepted the contention raised on behalf of the respondent that as to which would be and what would be the deductible amount would essentially depend upon the words of the statute and that it would be open for the tax payer to prove on the basis of the evidence that the amount charged would not come within the gross amount charged or any amount charged would be actually separate and independent of gross amount charged and not in relation to services provided. We also held there that it would be the discretion of the concerned authority to decide as to what are the deductible amounts and which are the others and it could not be decided as to whether a taxing statute is constitutional or otherwise on the basis of the way the calculations are to be made by the taxing authorities. Indeed a nature of the tax cannot be ascertained on the basis of its measure and this proposition is well settled. Even otherwise, the question raised regarding the calculation of the tax would not be apposite to decide the constitutional validity of the provisions much less under Article 14 of the Constitution of India. All the challenges related to the calculations and more particularly in comparison to the other services would have to be rejected on this

ground alone.

11. Last but not the least, we rely on the following observations of the Supreme Court in the celebrated decision of Federation of Hotels and Restaurant case, :

"It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal-policy Legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc. for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A Legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. The Legislature can exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes."

12. No other challenge was raised before us and in fact, the learned counsel did not argue the matter as regards the aspect of Article 14 of the Constitution. However, considering that we were dealing with an entirely different agency than the advertising agency, we have indicated our mind.

13. In short, we hold that the challenged provisions are perfectly constitutional and cannot be found fault with. We also hold that the writ petitions have no merits and they must be dismissed but without any orders as to the costs. W.M.P. Nos. 6130 and 15899 of 1999, 219112 of 1998 and 16706 of 2000 are closed.