Maruthi Detective and Security Vs. Commr. of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/41001

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Dec-02-2005

Judge : S Peeran, J T T.K.

Appellant : Maruthi Detective and Security

Respondent : Commr. of C. Ex.

Judgement :

1. For the purpose of hearing the appeal, the appellants are required to pre-deposit a tax amount of Rs. 5,29,694/- and like sum as penalty besides other penalties. The department proceeded against the appellant that they have collected service charges for providing security services in the guise of services of electrical maintenance to their client M/s. UKP and received payment for them as distinct from the payment received for their services as a Security Agent. This is seriously contested by the appellants.

2. The learned Counsel submits that although the name of the appellant is Detective and Security Agency, in fact they had taken up works of various other areas. They had entered into contract with M/s. UKP for maintenance of electrical and water supply. The learned Counsel refers to a large number of bills which have been raised on M/s. UKP showing the services for "Street light operation, transformer, water supply operation, motors and minor repairs with electrical equipment and material". The letter which they have received from the Executive Engineer is dated 27-2-2004. The letter is a 'Workdone Certificate' with regard to the works entrusted for pump operations of water supply installations, street light

control operations, arranging power supply to temporary sheds and other petty repairs and minor electrical maintenance works etc. He submits that this evidence has been unduly rejected and imputed that they were receiving service charges for security services in this guise. They seriously deny this allegation.

They further contend that there is no letter of the Executive Engineer referred in their order, except this letter. The letter dated 14-5-2004 has not been furnished to them which is referred in the order by the Commissioner (Appeals). They also refer to the letter addressed by them to the ACC contending that they had paid service tax for providing the services of Guards and the amount on which service tax is now collected is for electrical and water maintenance work which is not liable to tax.

3. The learned JDR strongly relied on the letter dated 14-5-2004 of EEE, KPTCL referred in the order. He submits that the appellants had not produced this letter in the paper book.

4. On a careful consideration, we notice that the letter referred to by the Commissioner (Appeals) has not been provided to the appellant.

There is a clear violation of Principles of Natural Justice in so far as this submission of the learned JDR is concerned. The applicants have produced the bills which have been raised on M/s. UKP showing that the amounts collected were for "Street light operation, transformer, water supply operation, motors and minor repairs with electrical equipment and material". The letter dated 27-2-2004 of EEE also disclosed that they have provided these services. The alleged evidence quoted by the Revenue is not placed before us. On the basis of the records, the appellants have shown that what they have collected was not for providing services of Security Agencies. The appellants have made out a strong prima facie case in their favour. The JDR to call for records and produce the letter dated 14-5-2004 of EEE, KPTCL relied by the Commissioner (Appeals) in the order. The stay application is allowed unconditionally granting full waiver and stay of the recovery. As full waiver is granted, the matter will be heard out of turn on 3rd March, 2006.