**Shubham Security Services Vs. Commissioner of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/45314

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-12-2007

**Reported in** : (2007)10STJ104CESTATNew(Delhi)

**Judge** : R Abichandani, J T T.K.

**Appellant** : Shubham Security Services

**Respondent** : Commissioner of Central Excise

**Judgement** :

1. The learned advocate for the applicant has sent a communication for adjourning the matter on the ground that some information sought for from BSNL has not been received by the appellant. Neither the learned advocate nor the appellant is present. The proceedings of the Court cannot be thwarted by sending such unilateral communication for adjournment.

2. We have gone through the records and heard the learned authorised representative for the department. The appellant seeks interim stay of the impugned order demanding service tax of Rs. 3,84,812/- with interest on the footing that the services provided by the appellant were in the nature of security service. The penalty imposed has also been challenged and interim stay sought. The principal contention of the applicant is that the applicant provided only man-power to BSNL.

According to the appellant, if any security service was to be provided to BSNL, the same was bound to be only from DGR. It is also contended that the service provided was also in the nature of operating the generator.

3. On going through the terms of the agreement, it is abundantly clear that besides guarding and manning of the exchanges/offices and operating the generator, security service in the nature of providing guards with guns was to be provided which is evident from Clauses 8-10, 14-16, 18-21, 23, 26-27 of the agreement. Moreover, as per Clause 13 of the agreement any State/Central Excise tax applicable was to be deducted from the bill of the contractor. The BSNL sent a reply to the appellant, copy of which is on record, which referred to the letter dated 30.9.06 of the appellant in which service tax, interest, penalty were claimed, stating that "....BSNL has already made...full and final payment of the security service provided by the appellant, as per agreement dated 5.9.02." It was stated that no further payment was admissible as demanded by the appellant. Thus, even according to the BSNL, security service was provided to it by the appellant. The appellant has, therefore, not made out any case for total waiver of pre-deposit.

5. Having regard to the facts and circumstances of the case, particularly the fact that even service of operating the generator was involved, we direct that, on the applicant depositing Rs. 75,000/- (Rupees Seventy-five thousand only) within six weeks from today, there shall be waiver of pre-deposit of remaining amount of service tax and penalty during the pendency of the appeal. If the amount is not so deposited, the appeal will stand dismissed. Compliance to be reported on 24.5.07.