

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No.ST/70516/2017-CU[DB]

(Arising out of Order-in-Appeal No. 113/ST/KNP/2017 dated 27/04/2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Kanpur)

M/s Bundel Khand Enterprises,

Appellant

Vs.

Commissioner of Customs, C.E. & S.T., Kanpur

Respondent

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant
Shri Mohammad Altaf, Assistant Commissioner (AR),

for Appellant
for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 05/12/2018
Date of Decision : 05/12/2018

FINAL ORDER NO-72815 / 2018

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Appeal No. 113/ST/KNP/2017 dated 27/04/2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Kanpur.

2. After hearing both the sides duly represented by learned Chartered Accountant Shri Dharmendra Srivastava appearing on behalf of the appellant and learned A.R. Shri Mohammad Altaf, Assistant Commissioner appearing on

behalf of the respondent we note that an amount of around Rs.38 lakhs was confirmed against the appellant. The Learned C.A. has submitted that the issue was related to the period from 2007-08 to 2011-12 and during that period Point of Taxation Rules were not applicable and the service tax was chargeable on the amount received by them. He has submitted that the Original Authority has taken into consideration the amount mentioned in the profit and loss account which is maintained on the accrual basis whereas the service tax was to be paid on the actual receipt basis and therefore, the demand confirmed has two components, one component relates to service tax payable on the basis of amount received and other component on the basis of amount raised in the invoices but not realized. He has submitted that during the relevant period there was no authority of law to collect service tax on the second component.

3. At this stage, we are satisfied that the issue needs to go back to the Original Adjudicating Authority for segregation of the amount actually received and actually not received by the appellant during the said period for which Point of Taxation Rules were not applicable. We, therefore, remand the matter to the Original Adjudicating authority for redetermination of service tax payable by the appellant on the basis of provisions of Law and Rules

applicable during the material period. Accordingly, after setting aside the impugned order, we remand the matter to the Original Adjudicating Authority.

4. The appeal is thus allowed by way of remand.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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