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

APPEAL No. ST/2376/2012-CU[DB]

(Arising out of Order-in-Appeal No.87/ST/ALLD/2012 dated 11/05/2012 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s R S & Brothers **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Absent on Call for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

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

Date of Hearing : 21/06/2018
Date of Decision : 21/06/2018

FINAL ORDER NO. – 71222/2018

Per: Archana Wadhwa

On matter being called neither anybody appeared nor is there any adjournment request in spite of notice of hearing having been sent to them well in advance. Accordingly, after hearing learned A.R., we proceed to decide the appeal itself.

2. In this case, the appellant is a sub-contractor to M/s Utility Powertech Ltd. ("UPL" for short) who is a contractor to M/s National Thermal Power Corporation

Ltd. for rendering services like cleaning, sweeping, removal of bottom ash etc. For the entire consideration received by M/s UPL form M/s NTPC, M/s UP had paid service tax and appellants were instructed that they will be paying the relevant tax and for that reason, the appellants need not pay tax on the same activity as a sub-contractor. M/s UPL has also given a certificate that service tax liability in respect of such contracts under which work was executed by the appellant has been paid by them. In fact, the appellant is contesting that the payment made by UPL is more than the tax liability in the hands of the appellant. The appellant submits that presently UPL has instructed that the correct procedure for payment is that the appellant should be paying tax and they are doing so. The appellants are making a case that there is no revenue loss and it is only a question of procedure not being followed because the appellants were not having adequate knowledge of law and he requests that the appeal may be heard without any pre-deposit.

3. Opposing the prayer, learned A.R. for Revenue submits that it is not possible to co-relate the payment made by M/s UPL to the service provided by the appellant and certificate given by UPL cannot be taken as proof of payment of tax and therefore, the position is that

the appellant has not paid tax on service rendered by them.

4. The appellant have taken a categorical stands that their principal contractor for whom they were working as Sub-contractor has already discharged full tax liability on the full value of the contract. The appellant is only a sub-contractor and second time tax liability cannot be fastened upon him. It is seen that the appellant had also produced certificate from principal contractors to the effect that he has paid the entire tax. However, inasmuch as the Revenue is disputing the said fact, we deem it fit to set aside the impugned order and remand the matter to the Original Adjudicating Authority for verification of the said factual position. As per the settled law if the service tax stands paid on the full value by main contractor, no further liability would arise against the present appellant.

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

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks