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

APPEAL No.ST/71279/2018-CU[DB]

(Arising out of Order-in-Appeal No. 172-ST/APPL/KNP/ADG-NACIN/2017-18 dated 19/04/2018 passed by Commissioner of Customs Indirect Taxes and Narcotics (ZTI), Kanpur)

M/s Omkar Singh Dubey, **Appellant**

Vs.

Commissioner of Central Excise & S.T., Kanpur **Respondent**

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 06/03/2019
Date of Decision : 06/03/2019

FINAL ORDER NO-**70498 / 2019**

Per: Archana Wadhwa

After hearing both sides, we find that Commissioner (Appeals) has disposed of above appeal by observing as under:-

> *"7. I find that the appellant has submitted copy of sample work contracts awarded to them by UPRVUNL. On examination of documents submitted by the appellant before me, I find that nowhere in the contract, it is mentioned that VAT (WCT) shall be deducted by the UPRVUNL on the amount paid to the appellant on execution of said work contracts. No bill or proof of payment of VAT/WCT on such payments made to appellant has been produced. To quality a service under Works Contract service, payment of WCT/VAT on such contract value is mandatory condition which the appellant has failed to corroborate with tangible evidence. Moreover, the appellant in his letter addressed*

> *to the Superintendent dated 13.10.2014 has clearly admitted that they are providing Management, Maintenance or Repair service only and no other work is done in their firm. Thus, in view of the above, I have no other opinion but to confirm the findings of the adjudicating authority on the issue of classification of service provided by the appellant and demand of service tax. Therefore, in view of the above, I uphold the demand of service tax confirmed in the impugned order. Interest is also payable on this demand of service tax."*

2. Learned Advocate submits that WCT is required to be paid by the service recipient who were public sector undertaking and as such the documentary evidence could not be produced before the authorities bellow. However, he submits that he can make efforts to obtain the said certificate from the service recipient and produce the same before the authorities bellow, if the matter is remanded.

3. Learned A.R. Shri P.K. Singh, appearing for revenue has no objection.

4. In view of the above, we set aside the impugned order and remand the matter to the Original Authority for affording an opportunity to the appellant to place the documentary evidences before him. All other pleas are left open.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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