CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70209 of 2017

(Arising out of Order-in-Original No.KNP-EXCUS-000-COM-057-16-17 dated 31/01/2017 passed by Commissioner, Customs, Central Excise & Service Tax, Kanpur)

M/s Om Prakash Yadav, **.....Appellant**

(3192, Patel Nagar, Kalpi Road,

Orai, Distt. Jalaun)

VERSUS

Commissioner, Customs, Central Excise &

Service Tax, Kanpur **.....Respondent**

(117/7, Sarvoday Nagar, Kanpur)

APPEARANCE:

Ms. Rinki Arora, Advocate for Appellant
Shri Santosh Kumar Agrawal, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.70065/2020

DATE OF HEARING: 28 November, 2019
DATE OF DECISION: 28 November, 2019

ARCHANA WADHWA

After hearing both the sides we find that the appellant is providing works contract services to M/s U.P. Power Transmission Corporation Ltd. Demand of service tax was raised against them by way of show cause notice dated 21 October, 2014 raising demand for the period 2009-10 to 2013-14, to the extent of around Rs.86 lakhs. However, during the adjudication the major part of the demand was dropped by observing that services were in connection with construction of roads which were not taxable. The Commissioner vide his impugned order confirmed the demand to the extent of Rs.13,84,723/- in respect of the construction of various civil structure at the site of sub-station along with confirmation of demand and interest. Penalties under various sections were also imposed upon the appellants.

2. Learned advocate appearing for the appellant assails the impugned demand on merits as also on limitation. As regards limitation she submits that the services were being provided by them to Uttar Pradesh state enterprises and there can be no *mala fide* on their part to suppress the said fact from the Revenue inasmuch as they were entitled to recover the service tax amount from the Uttar Pradesh State Enterprises. As regards merits of the case, she submits that the entire work is in connection with transmission of electricity in which case service would be exempted under Notification No. 45/2010-CE and Mega Exemption Notification No.25/2012. She also draws our attention to the Tribunal decision in the case of Noida Power Co. Ltd. V/s Commissioner of C. EX., Noida reported at 2014 (33) S.T.R. 383 (Tri. Del.) and also to M/s Kedar Constructions V/s Commissioner of Central Excise, Kolhapur reported at 2015 (37) S.T.R. 631 (Tri. Mumbai)

She submits inasmuch as work undertaken by them was in connection with transmission of electricity which phrase appearing in the notification has been held to be of wide connotation, the work undertaken by them would be exempted.

3. Learned A.R. appearing for the Revenue reiterates the impugned order.

4. As regards limitation, we find that the services were being provided to Uttar Pradesh State Corporation and there can be a *bona fide* belief on the part of the assessee that inasmuch as the services are being provided to a Government organization they cannot be held to be taxable. Otherwise also we note that the onus to establish *mala fide* on the part of the assessee is upon the Revenue and the same is required to be discharged by

production of evidences. There has been no evidences indicating any *mala fide* intention on the part of the assessee to evade payment of service tax, we agree with the learned advocate that the major part of the demand would be hit by bar of limitation.

4. However, a small portion would still lie within the normal period. We have examined the works contract and found that they are in respect of various jobs to be done by the assessee at the sub-stations. The appellant is required to establish that such work was primarily and basically linked with the transmission of electricity. Each and every contract has to be examined for the said purpose. Accordingly, we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority to re-decide the said issue in the light of the Tribunal's judgment relied upon by the appellant and after examining the various contracts. We make it clear that said exercise would be done by the Adjudicating Authority for the period falling within the limitation.

5. Inasmuch as we have set aside the demand beyond the normal period of limitation, we find no justifiable reasons to impose penalties upon the appellants. The same are set aside in *toto*.

6. Appeal is disposed of in above manner.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Nihal