CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50365 of 2019-SM

(Arising out of order-in-appeal No. 1265(CRM) ST/ JDR/2018 dated 15.11.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Jodhpur).

M/s United Engineers **Appellant**
House No. 6
F25, Vigyan Nagar, Kota.

VERSUS

Commissioner, Central Excise & Central Goods and Service Tax, **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed
Basni, Jodhpur.

APPEARANCE:

None for the appellant
Shri Y. Singh, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50162/2020

DATE OF HEARING/DECISION: 13.01.2020

ANIL CHOUDHARY:

The appellant is absent on call and was also absent on the previous occasions when the case was listed for hearing on 09.10.2019 and 14.11.2019.

2. Heard the learned Authorised Representative and perused the record.

3. The appellant is a contractor mainly engaged in executing of work for Nuclear Power Corporation of India Limited, Rajasthan Atomic Power Project in Kota District of Rajasthan. According to the

grounds of appeal, the appellant is aggrieved with the impugned order in appeal as service tax is demanded on the 'gross turnover' without giving any allowance for the material utilised in execution of the contract. The assessee, is also registered with the Sales Tax Department and have drawn attention towards their assessment orders under Sales Tax / VAT, have been annexed in the appeal paper book.

4. The show cause notice dated 22.10.2013 was issued for the period April, 2008 to March, 2012 invoking the extended period of limitation whereby service tax of Rs. 7,01,864/- including cess was demanded on the gross turnover during the period, as reported by the Nuclear Power Corporation of India Limited to the Department. The Commissioner (Appeals) took notice that the assessee has deposited the amount of Rs. 7,15,950/- and also Rs. 1 lakhs towards interest. Further, the Commissioner (Appeals) have remanded the matter to the adjudicating authority for the limited purpose of the quantification of the service tax demand, after allowing cum tax benefit and deduction for trading receipt from the gross value, if any. Consequently, the penalty also is to be re-quantified.

5. From the facts on record being work order issued by the Nuclear Power Corporation of India Limited to the appellant, it is evident that the appellant have done 'works contract' wherein they have executing the work alongwith material. Thus, the gross amount paid to them by the principal, includes the value of materials. Further, the appellant are also assessed to sales tax and they have

paid VAT on the value of the materials which are to be sold to the principal in the execution of work contract. Accordingly, I find that in the impugned order, mistake in calculation of tax dues has already appreciated by the Commissioner (Appeals). Accordingly, the impugned order is set aside and remanded to the original adjudicating authority for re-determination of tax liability after allowing deduction for the material component, which is verifiable from the sales tax assessment order and also from the other records. The appellant shall be entitled to cum tax benefit as already held by the Commissioner (Appeals) 'and also entitled to turnover'. Further, in absence of any malafide no penalty is exigible under Section 76 and 78, as there is no case of deliberate default made out in the show cause notice. The penalty under Section 77 shall also stand reduced in terms of the re-quantification of the demand. Thus, the appeal is allowed by way of remand.

(Dictated and pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Pant