IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 57368 of 2013

[Arising out of Order-in-original No. 22/13 dated 31.1.13. passed by the Commissioner of Central Excise & Service Tax, Raipur]

M/s. Utility Powertech Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Raipur

Appearance:

Shri A K Batra, CA for the Appellants-assessee
Shri Sanjay Jain, AR for the Respondent- Revenue

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 17.07.2017

FINAL ORDER NO.55380 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against order in original No. 22/13 dated 31.1.13. The period of dispute is 2006-2011.

2. Brief facts of the case are that during period under consideration, the appellant was engaged in providing services of cleaning, manpower recruitment and supply services, cargo handling services,

repairs and maintenance services and construction services in respect of commercial or industrial buildings and civil structures. The department has raised the demand of Service Tax on certain grounds after issuing show cause notice. Being aggrieved the appellant has filed the present appeal.

3. With this background, we have heard Shri A K Batra, learned Chartered Accountant for the appellant and Shri Sanjay Jain, learned DR for the Revenue.

4. During the course of arguments both the parties have agreed that there are discrepancies in the ST 3 returns), such as :-

a) During the disputed period 2006-07 to 2010-11, inter alia above mentioned services, the appellant had rendered construction services to M/s. NTPC and availed abatement of material supplied during the work; however in returns only the value after abatement under Notification No. 1/2006 ST dated 01.03.2006 was shown under "Repairs and Management Services" and paid tax;

b) Further, the above construction activity provided to M/s. NTPC, certain free of supply materials were availed, the value of which were not included in gross taxable value for calculating abatement under Notification No. 1/2006-ST dated 01.03.2006;

however, the value of FOC materials/ goods upon which no tax has been paid was inadvertently not shown in the returns;

c) That w.e.f. 01.06.2007, the construction services provided along with the materials is liable to be classified and taxed under "Works Contract Services", and discharged the tax liability @ 4% (2% upto 28.02.2008) in respect to the contracts executed after 01.06.2007. However, the value of FOC materials are not required to be included in the total value till the period 07.07.2009. It was with effect from 07.07.2009, the value of FOC materials were included in the gross value of services and Service Tax liability was discharged under "Works Contract Services";

d) It was further submitted that the Appellant procured the work order from M/s. NTPC and hires sub-contractors for providing the services. Upon the services rendered by sub-contractors, the Service Tax has been discharged by them only whereas after netting off the tax paid by sub-contractors from the total tax liability, for the differential amount, the Appellant has discharged the Service Tax. In such a way entire activity of rendering service tax is tax paid;

e) However, for the above methodology of paying service tax, the appellant pleaded that being situated in the remote area of Jamnipali, Dist. Korba, they were not having sufficient knowledge of the provisions of service tax hence service tax was calculated as per best of their understanding with no intention to evade payment of tax. Moreover, due to remoteness of the area, there is also dearth of good service tax Consultants, hence, the Appellant was not in the position to get consultancy about provisions of Service Tax, Appellant pleaded bonafide for the discrepancies found in paying service tax;

f) During course of investigation, the Appellant deposited following:-

- Rs.13,413/- vide challans dated 07.11.2012 as a balance tax required to be paid with respect to the contract of construction entered after 01.06.2007,

- Rs.9.20,696/- along with interest of Rs.3,78,274/- in total amounting to Rs.12,98,970/- vide Challans dated 07.11.2012 with respect to the tax upon free supplies of goods received.

- Rs.9,47,498/- along with interest of Rs.4,79,146/- vide Challans dated 22.03.2011 towards the balance impugned service tax liability to prove bonafide of the appellant.

5. Both the parties have agreed that the above mentioned discrepancies were not before the adjudicating authority and therefore, in the interest of justice, this matter may be remanded. In the above

background, we remand the matter back to the adjudicating authority to decide the issue denovo but after providing reasonable opportunity of hearing. Impugned order is set aside. Any additional evidence, if need be, may be admitted. In the result, the appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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