CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/53665/2014-ST [DB]

[Arising out of Order-in-Appeal No.BPL-EXCUS-000-APP-333-13-14 dated 28.03.2014 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal]

M/s. Utility Powertech Limited …Appellant

Vs.

C.C.E., Bhopal … Respondent

Present for the Appellant : Mr.A.K. Batra, CA
Ms. Vibha Narang, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 09.04.2018

FINAL ORDER NO. __51621/2018___

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 28.03.2015 passed by the Commissioner (Appeals), Central Excise, Bhopal.

2. In this case, the appellant is a joint venture company of M/s. National Thermal Power Corporation Ltd. and Reliance Infrastructure Ltd. The appellant provides various services to M/s. NTPC, pursuant to the work orders issued by them. The services provided by the appellant fall under different category

of taxable services. The appellant is also registered with the Service Tax Department for providing the taxable services namely, manpower recruitment or supply agency service management, maintenance or repair service and cleaning activity service. During the disputed period i.e. 01.04.2006 to 31.03.2010, the Department proceeded against the appellant seeking for recovery of Service Tax demand, in respect of such category of services provided by it. The show cause notice issued in this regard, was adjudicated vide order dated 30.07.2012, wherein Service Tax demand of Rs.43,19,600/- was confirmed alongwith interest and equal amount of penalty was imposed under Section 78 of the Finance Act, 1994. On appeal, the ld. Commissioner (Appeals) vide the impugned order, has upheld the adjudged demand confirmed against the appellant.

3. The ld. Consultant appearing for the appellant, at the outset, submits that the show cause notice has not properly bifurcated the services, which the appellant had provided to M/s. NTPC and that Service Tax liability had not been quantified with regard to specific taxable category of service provided by the appellant. He also submits that though the appellant had provided detailed submission with regard to the nature of activities undertaken by it, but without considering the submissions in proper prospective, the ld. Commissioner (Appeals) has passed the ex-parte order against the appellant. Thus, it is the contention of the ld. Consultant that the show cause notice as well as the orders passed by the authorities below cannot be sustained on merits.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. On perusal of the show cause notice dated 18.10.2011 issued by the Service Tax Department, we find that the activities of the appellant were discussed therein and it was held that the services provided by it are covered under the taxable category of services under management maintenance & repair, manpower recruitment and supply agency and cleaning activity. On the basis of the proposals made in the show cause notice, both the original as well as the lower appellate authorities have proceeded against the appellant for confirmation of the Service Tax demand, as proposed under such category of services. We find that the authorities below have not properly addressed the issue as to under which category of taxable service, the activities provided by the appellant should fall. Further, we also find that the Service Tax liability has not been properly quantified with regard to the specific heads of service. Furthermore, we also find that the ld. Commissioner (Appeals) has passed the ex-parte order, without considering the submissions of the appellant in-true and proper prospective. Therefore, we are of the considered view that the proceedings initiated by the Department cannot be sustained at this juncture, for proper consideration of the facts. Accordingly, the matter should go back to the original authority for passing of fresh adjudication order, by addressing the issues, concerning the nature of activities provided by the

appellant and their specific categorization under the respective heads of taxable service. The adjudicating authority should also quantify the proper demand in respect of the individual heads of service provided by the appellant. Further, the submissions of the appellant that it is entitled for the exemptions and the deduction of value of material and taxability of service should also be addressed while passing the fresh adjudication order. Needless to say that, opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

7. In the result, the appeal is allowed by way of remand to the original authority.

[Dictated and pronounced in the open Court]

(V.PADMANABHAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita