CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. ST/858/2010

(Arising out of Order-in-Original No. 35/2009 (PVR) dated 30.11.2009 passed by Commissioner of Customs & Central Excise, Visakhapatnam)

M/s Utility Powertech Ltd., ...Appellant(s)

Vs.

Commissioner of Customs, Central Excise
& Service Tax, Visakhapatnam - II .....Respondent(s)

Appearance
Shri A. Sarveswar Rao, Advocate for the Appellant.
Shri AVLN Chary, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 08/01/2019
Date of Decision: 08/01/2019

FINAL ORDER No. A/30098/2019

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Original No. 35/2009 (PVR) dated 30.11.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding service tax demand on the amounts received by the appellant towards the services rendered by them. It is the case of the

Revenue, in the show cause notice that the demand of service tax liability is liable to be paid under the category of Maintenance or Repair services. The said show cause notice also sought to demand interest and impose penalties. The said show cause notice was contested by the appellant. The Adjudicating Authority after following due process of law, confirmed the demands so raised along with interest and also imposed penalties.

4. Learned Counsel after drawing our attention to the facts of the case and the records submits that the show cause notice is seeking to demand tax under "Management and Maintenance or Repair services" while the Adjudicating Authority has confirmed the demand under various heads, Construction - Industrial Services, Manpower Supply Services etc. It is his further submission that the appellant had given detailed paper book indicating therein, the calculation of the amount in the show cause notice seems to be erroneous. That the Adjudicating Authority has not given any consideration to this calculation; that demands have been raised on painting of margins on roads, dividers, structures and tanks, building, etc., cannot be considered as 'Management, Maintenance & Repair of Immovable Property services and classification is being contested as also of cleaning services rendered by the appellant. He would submit that if all these services taken into consideration the demand comes would fall down and the appellant would be entitled for the refund amounts towards paid service tax.

5. Learned Departmental Representative on the other hand submits that appellant himself chose to reply the show cause notice stating therein the services rendered by the appellant would fall under the various categories, which is only reiterated by the Adjudicating Authority in the impugned order. He would submit that the Adjudicating Authority has confirmed the tax liability after considering various submissions made by appellant.

6. On careful consideration of the submissions made by both sides and on perusal of records, we find that appellant had in fact raised the points of non-taxability of various services rendered by them that cleaning services are not taxable prior to 14.06.2005 and that calculation of the tax amount is also incorrect. We find that the Adjudicating Authority has only mentioned these submissions made by the appellant and in the findings portion of the impugned order only recorded the same and confirmed the entire demands raised under various heads, though the show cause notice calls upon the appellant to reply as to how the tax been demanded under Management, Maintenance and Repair service. Further we do find considerable force in the contentions of the appellant's Counsel that the Adjudicating Authority has not given any findings on the correct tax liability on the appellant as also that various activities non taxable during the period in question. In our view, the Adjudicating Authority should be given an opportunity to consider the issue afresh. We find that the matter needs to be remitted to the Adjudicating Authority.

7. In view of the foregoing, we set aside the impugned order and remand the matter back to the Adjudicating Authority to reconsider the issue afresh, keeping in mind the allegations made in the show cause notice and also consider the various submissions that may be made by the appellant. The Adjudicating Authority will follow the principles of natural justice before coming to a conclusion.

8. The impugned order is set aside and the appeal is disposed of by way of remand.

(Operative portion of this order was pronounced in open court on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….