CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70750 of 2018-Division Bench

(Arising out of Order-in-Appeal No.225/ST/ALLD./2018 dated 24/04/2018 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Gopi Appartment .....Appellant

(South X Mall, Plot No.9, Block-O,

Scheme-2, Kidwai Nagar, Kanpur, U.P.-208011)

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Kanpur ....Respondent

(117/7, Sarvodaya Nagar, Kanpur, U.P.-208005)

APPEARANCE:

Shri Ravi Holani, Advocate for the Appellant
Shri Shiv Pratap Singh, Authorised Representative for the Respondent

WITH

Service Tax Appeal No.70768 of 2018-Division Bench

(Arising out of Order-in-Appeal No.224/ST/ALLD./2018 dated 24/04/2018 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Gopi Appartment .....Appellant

(South X Mall, Plot No.9, Block-O,

Scheme-2, Kidwai Nagar, Kanpur, U.P.-208011)

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Kanpur ....Respondent

(117/7, Sarvodaya Nagar, Kanpur, U.P.-208005)

APPEARANCE:

Shri Ravi Holani, Advocate for the Appellant
Shri Shiv Pratap Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOs.- 71139-71140 / 2019

Date of Hearing : 20 June, 2019
Date of Decision : 20 June, 2019

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since the appellant is same and the issue involved is also common and the said two appeals are for two different periods one for the Financial Year 2013-14 and another is for the Financial Year 2014-15.

2. After hearing both the sides duly represented by Shri Ravi Holani learned advocate on behalf of the appellant and Shri Shiv Pratap Singh learned A.R. on behalf of the Revenue, we note that the appellants were providing Renting of Immovable Property Services and they were paying service tax on the renting. In addition to renting, appellants were also providing electricity generated through generator to their tenants. It appeared to Revenue that the consideration received for providing electricity should be subjected to service tax therefore proceedings were initiated against the appellant through issuance of show cause notices. The Original Authority has dropped the demand initiated through said show cause notices in the both the cases. Revenue preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) has set aside the said original order through which the proceedings were dropped and held under Section 66F of Finance Act, 1994 supply of electricity was bundled services and needs to be taxed alongwith service of Renting of Immovable Property and therefore he confirmed the said demands raised through said show cause notices and also imposed penalties. Aggrieved by the said order of learned Commissioner (Appeals) appellant is before this Tribunal. Learned counsel for the appellant has submitted that supply of electricity is not supply of services as held by this Tribunal in the case of M/s ICC Reality (India) Pvt. Ltd. vs. Commissioner of Central Excise, Pune-III reported at 2013 (32) S.T.R. 427 (Tri.-Mum.).

3. Learned A.R. appearing for the Revenue has supported the impugned orders.

4. Having considered the submission from both the sides and on perusal of records, we note that this Tribunal in the above stated case of ICC Reality (India) Pvt. Ltd. (Supra) has held that electricity is goods and chargeable to duty under Central Excise Tariff Act and therefore supply of electricity amounts to sale and supply of goods and it does not amount to supply of services. We, therefore hold that supply of electricity is not covered for bundling of services since the supply of electricity is supply of goods. We also note that the said Section 66F does not allow bundling of supply of goods alongwith supply of services. We, therefore, set aside the impugned orders and allow both the appeals by restoring the orders passed by the Original Authority.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks