CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Misc. Application No.70423 of 2018
In
Service Tax Appeal No.70270 of 2016-CU[DB]

(Arising out of Order-in-Original No.AGA-EXCUS-000-COM-0019-15-16 dated 23/12/2015 passed by Commissioner, Central Excise & Service Tax, Agra)

M/s Kunj Power Projects (P) Ltd. **.....Appellant**

Vithal Kunj, Vishram Ghat,

Mathura-281001

VERSUS

Commissioner of Central Excise & Service Tax,

.....Respondent

Agra

WITH

Service Tax Appeal No.70271 of 2016-CU[DB]

(Arising out of Order-in-Original No.AGA-EXCUS-000-COM-0019-15-16 dated 23/12/2015 passed by Commissioner, Central Excise & Service Tax, Agra)

Shri Abhay Kumar Saxena **.....Appellant**

Director, M/s Kunj Power Projects (P) Ltd.

Vithal Kunj, Vishram Ghat,

Mathura-281001

VERSUS

Commissioner of Central Excise & Service Tax,

.....Respondent

Agra

AND

Service Tax Appeal No.70272 of 2016-CU[DB]

(Arising out of Order-in-Original No.AGA-EXCUS-000-COM-0019-15-16 dated 23/12/2015 passed by Commissioner, Central Excise & Service Tax, Agra)

Shri Sandeep Chaturvedi **.....Appellant**

Director, M/s Kunj Power Projects (P) Ltd.

Vithal Kunj, Vishram Ghat,

Mathura-281001

VERSUS

Commissioner of Central Excise & Service Tax,

.....Respondent

Agra

<u>APPEARANCE:</u>

Shri Nishant Mishra, Advocate for Appellant
Shri Sandeep Kumar Singh, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 05.03.2019
DATE OF Pronouncement : 16.05.2019

FINAL ORDER NO.**70999-71001 / 2019**

ARCHANA WADHWA

After hearing both the sides duly represented by learned advocate, Shri Nishant Mishra appearing for the appellant and learned AR Shri Sandeep Kumar Singh appearing for the Revenue, we find that the appellants, who are engaged in 'Fabrication, Erection & Installation of power sub-stations and were dully registered with the Service Tax Department, availed cenvat credit of Rs.1,15,27,245/- in respect of various input services provided by one M/s Sakshi Trade Link Pvt. Ltd., Kolkata (hereinafter refer to as STPL).

2. As a result of investigations conducted by the Revenue leading to recoding of statements of various persons and collection of evidences, Revenue entertained a view that that said M/s STPL, Kolkata had not provided any services to the appellant and appellant has availed the credit on the basis of fake and bogus invoices. Accordingly, proceedings were initiated against the appellant for denial of the said credit which stand culminated into the impugned order passed by the Commissioner vide which he has confirmed the demand by denying the credit along with confirmation of interests and imposition of penalty.

3. The appellant has filed a miscellaneous application for placing additional evidences on record, apart from submitting the retraction of the statement by one Shri Sumit Sharma, Director of M/s STPL wherein he has deposed that he was director of M/s STPL only w.e.f. 08.01.2013, whereas period in the present appeal is prior to his appointment. He was not aware of the activities of the M/s STPL. Apart from filing the affidavit of Shri Sumit Sharma, certificate of Shri Vishal Solanki, Director of M/s STPL certifying that services were provided by M/s STPL for which they had raised invoices against them also stands placed on record. Apart from the said 2(Two) documents, the appellant has also enclosed the bank statement indicating the deposit of service tax by M/s STPL by way of various cheques.

4. We note that assessee is entitled to the Cenvat Credit of duty **'Paid'** by the input service provider and if the input service provider has actually deposited the Service Tax, the same would be available as a credit to the service recipient. Revenue has disputed the fact of payment of service tax by M/s STPL on the ground that they were not found to be in existence at the time of investigations conducted by the Revenue. Further, Revenue has relied upon statements of various persons, who have not been offered for cross-examination.

5. Inasmuch as in the miscellaneous application the appellant has produced evidences for deposit of service tax by M/s STPL, we are of the view that the said fact requires verification at the end of the Adjudicating Authority. As such without expressing any opinion on the retraction of the statements by way of affidavits and certificates, we set aside the impugned order and remand the matter to the Original Adjudicating Authority for *de-novo* decision. If it is

established that M/s STPL has actually paid the service tax and no objection was raised by the Revenue at the time of receipt of the said service tax by M/s STPL, the credit of the same would be admissible to the assessee.

6. We make it clear that we have not gone into alternative detailed arguments advanced before us by the learned advocate. As the matter is remanded, the appellant is at liberty to raise all such issues including his prayer for cross-examination of deponents for various statements before the Original Adjudicating Authority.

7. All the appeals are allowed by way of remand.

(Order Pronounced in the open Court on 16.05.2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Nihal