IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. ST/70365/2018-CU[DB]

(Arising out of Order-in-Appeal No. 432-ST/APPL-KNP/LKO/2017 dated 29/12/2017 passed by Commissioner of Customs, GST & Central Excise (Appeals), Lucknow)

M/s GPL Buildtech Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:
Shri Dharmendra Srivastava (CA), for Appellant
Shri Gyanendra Kumar Tripathi, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 15/02/2019
FINAL ORDER NO. **70301/2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Dharmenedra Srivastava, Chartered Accountant appearing on behalf of the appellant & Shri Gyanendra Kumar Tripathi, learned Deputy Commissioner appearing on behalf of the Revenue, we note that the appellant was paying Service Tax on the basis of receipt. W.e.f. 01/07/2011 in view of provisions of Point of Taxation Rules, 2011 appellant was required to pay Service Tax on the basis of the invoice raised. It is noted that in the Trade of Construction of Residential Complex invoices were not independently raised but a schedule of payment is agreed between the purchaser of property and the service provide and payment is to be made in accordance with such schedule by the purchaser of property. Therefore, it appeared to Revenue that the appellant was required to pay Service Tax on such date as per schedule when the amount was due from purchaser to the Service Provider. On that basis Service Tax was confirmed and equal amount of penalty was imposed. The contention of the appellant is that the said amount of Service Tax was discharged by the appellant subsequent to the said due date on receipt of payment from purchasers as and when amount was received and therefore, there is no short payment of Service Tax. The Revenue reiterated the findings of the impugned order.

2. In order to verify whether Service Tax was paid on such component of Service Provider which was received by the appellant subsequent to the due date of receipt cannot be verified at this stage. We, therefore, remand the matter to the Original Adjudicating Authority with a direction to verify whether Service Tax on such component was paid by the appellant subsequently and if so reconsidered the matter for payment of interest on the same. We keep all the issues open before the Original Adjudicating Authority. In above terms, appeal is allowed by way of remand after setting aside the impugned order.

(Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari