IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70451/2018-ST[SM]

(Arising out of Order-in-Appeal No. 121 & 122-ST/APPL-KNP/LKO/2018 dated 13/02/2018 passed by Commissioner of Customs GST & Central Excise (Appeals), Lucknow)

M/s Mahavir Polyplast Pvt. Ltd., Agra **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Agra **Respondent**

Appearance:

Shri Nishant Mishra, Advocate, for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 01/04/2019

FINAL ORDER NO. **70694/2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Nishant Mishra – ld. Advocate appearing on behalf of the appellant & Shri Mohammad Altaf – ld. Assistant Commissioner appearing on behalf of the Revenue, I note that the appellant were engaged in the manufacture of PVC Pipes, etc. falling under Chapter 39 of Central Excise Tariff Act, 1985. With effect from 01/07/2012, the appellant were required to pay some component of Service Tax on two input services received by them. One was Security Service and the other was Legal Service. In case of said two services, some component was to be paid by Service Receiver and the remaining component was to be paid by Service Provider. In the present case, the Service Provider has paid the entire quantum of Service Tax and the appellant has availed Cenvat Credit of the entire Service Tax paid by Service Provider. The said Cenvat Credit was to the tune of Rs.57,392/-. It appeared to Revenue that the appellant was not entitled to Cenvat Credit of Rs.57,392/-, which was paid by the Service Provider since the Service Receiver i.e. appellant were required to pay some component of the same.

2. The ld. Counsel for the appellant has submitted that Cenvat Credit of Rs.57,392/- availed by them was the Service Tax paid by the Service Provider and therefore, as provided under Rule 3 of the Cenvat Credit Rules, 2004, the same cannot be denied. He further in support of his argument relying on the ruling by Hon'ble Allahabad High Court in the case of Commissioner of Central Excise, Customs & Service Tax *Versus* Juhi Alloys Ltd. reported at 2014 (302) ELT (Allahabad) and submitted that the Honb'ble Allahabad High Court has ruled to the effect that if the assessee acts with all reasonable diligence in its dealing then the same is sufficient and it was further ruled that casting an impossible or impractical burden on the assessee would be contrary to the Rules. Further, he has submitted that there were standing instructions issued by C.B.E.C. that the availer of the Cenvat

Credit is not required to do the assessment to decide whether the Service Tax paid, which is eligible to be availed as Cenvat Credit was properly paid or not.

3. After careful consideration of the issue of admissibility of Cenvat Credit to the tune of Rs.57,392/-, it is clear that the said Service Tax was paid by the Service Provider and there was no dispute that the said services were received by the appellant and therefore as ruled by Hon'ble Allahabad High Court in the case of Juhi Alloys Ltd. (supra), I hold that the appellant is entitled to Cenvat Credit of Rs.57,392/-. I, therefore, set aside that part of the impugned order through which Cenvat Credit of Rs.57,392/- was denied along with interest and equal penalty was imposed. The appeal is partially allowed.

(Dictated in Court)

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

Ansari