CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court - I

APPEAL No. ST/30567/2018
*(Arising out of **Order-in-Appeal** No. HYD-SVTAX-HYC-APP-095-17-18 (APP-I), dated 12.01.2018 passed by CCCE (Appeals-I), Hyderabad)*

A D P PRIVATE LIMITED .. APPELLANT
Vs.
CCT, HYDERABAD GST .. RESPONDENT

Appearance
Mrs. Shikha Singhania, Advocate for the Appellant.
Shri V.R. Pawan Kumar, Superintendent /AR for theRespondent.

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

Date of Hearing: 20.11.2018
Date of Decision: 20.11.2018

FINAL ORDER No. A/31561/2018

[Order per: Mr. P.V. Subba Rao]

1. This appeal is filed against Order-in-Appeal No. HYD-SVTAX-HYC-APP-095-17-18 (APP-I), dated 12.01.2018. The appellant herein areengaged in the business of software development and Information Technology Enabled Services and provide the services to its group entities outside India. They procure various input services and avail CENVAT credit under CCR 2004. For the period April 2016 to June 2016, the appellant claimed refund of unutilised CENVAT Credit of the service tax paid on input services under Rule 5 of CCR 2004, read with Notification No.

27/2012-ST, dated 18.06.2012. The original authority rejected the refund claim with respect to some invoices as the appellant failed to produce copies of these invoices along with refund claim. The appellant preferred an appeal before the first appellate authority in respect of the rejected claims who allowed some amount of refund claims in respect of which they were able to produce the invoices and rejected the rest on the ground of non-submission of the documents.

2. Ld. Counsel for the appellant submits that they are now in a position to submit all the invoices on the basis of which they have claimed refund. He specifically assured that by 20.12.2018 they will be able to gather all the invoices which they could not produce at the time of filing the refund claim and submit the same.

3. Ld. DR reiterates the findings of the lower authority and argues that no refund can be sanctioned unless the documents are available. Appellant was provided adequate opportunity by the lower authority as well as the first appellate authority to submit the documents to support their refund claims. The appellant has been submitting these documents piecemeal. They submitted some documents to the original authority and were sanctioned refund to that extent. There was no infirmity in the lower authority rejecting the refund claim in respect of other invoices which they were not able to produce. Before the first appellate authority, they submitted some more invoices but still failed to produce the rest and

therefore they were given relief to the extent admissible by the first appellate authority. As the appellant has not submitted the documents, the first appellate authority was correct in rejecting the refund claim partially.

4. I have considered the arguments on both sides and perused the records. There is no dispute regarding admissibility of refund. The appellant has been careless in submitting the refund claims without supporting invoices and has also failed to produce them fully before the first appellate authority even after they were given sufficient opportunity. However, Ld. Counsel now submits that they were able to collect all the relevant invoices and are now in a position to submit the same by 20.12.2018. Although the appellant has been extremely careless in producing documents to support their refund claim, now that the Counsel submits that he has all the relevant invoices, I find this a fit case to remit to the original authority to examine all the documents that may be submitted by the appellant and decide the refund claim after following principles of natural justice.

5. The appeal is allowed by way of remand to the original authority.

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

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg