

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

APPEAL No. ST/30780/2018

*(Arising out of **Order-in-Appeal** No. HYD-SVTAX-SC-AD1-052-17-18 Dated 23.03.2018 passed by Commissioner of Audit-I (Appeals), Hyderabad)*

NIPPON KOEI INDIA PVT. LIMITED .. APPELLANT

Vs.

CCT, SECUNDERABAD GST .. RESPONDENT

Appearance

Shri G.S.V. Prasad, Chartered Accountant for the Appellant.

Shri C. Mallikharjuna Reddy, Superintendent /AR for the Respondent.

Coram:

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

Date of Hearing: 13.12.2018

Date of Decision: 18.12.2018

FINAL ORDER No. A/ 31570/2018

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

1. This appeal has been filed against Order-in-Appeal No. HYD-SVTAX-SC-AD1-052-17-18 Dated 23.03.2018. The facts of the case, in brief, are that the appellant herein is engaged in providing taxable services to their clients and have been registered with Service Tax Department. During the verification of records by the Audit, it was found that appellant had taken CENVAT Credit on common input services which were used for both taxable and exempted services. It was also found that they have not

maintained separate accounts as required under Rule 6 (2) of CCR 2004 nor have they reversed the proportionate credit or an amount equivalent to 6% of the exempted services as required under Rule 6(3) of CCR 2004. Some other discrepancies were also noticed and a show cause notice was issued to the appellant calling upon to explain as to why-

- a) An amount of Rs. 18,90,121/- @ 6% of the value exempted services should not be demanded from them as per Rule 6(3)(i) under Rule 14 of CCR 2004 read with the proviso to Section 73(1) of the Finance Act, 1994, for the period 01.10.2013 to 01.07.2014.
- b) An amount of Rs. 11,56,727/- should not be demanded from them towards non payment of service tax for the period 11.07.2014 to 30.09.2014.
- c) Irregular input service tax credit of Rs. 5,26,742/- on input services used exclusively for the exempted services during the period 01.10.2013 to 10.07.2014 should not be recovered.
- d) An amount of Rs. 8,45,644/- should not be demanded from them towards non payment of service tax for the period January 2014 to March 2014.

- e) An amount of Rs. 2,97,730/- being irregular availment of input service tax credit on ineligible services and excess credit for the period 2012-13 to 2014-15.
- f) Why interest should not be demanded from them on the above amounts.
- g) Why penalties should not be imposed under Rule 15(3) of CCR 2004 and under section 78 of Finance Act, 1994.

2. After following due process of law, the lower authority dropped all the demands. However, on an appeal by the Revenue, the first appellate authority has modified the order of lower authority as follows:-

- (i) Confirmed the demand of Rs. 18,90,121/- holding that the appellant had not maintained separate records as required under Rule 6(2) of CCR 2004. He held that it is impossible to maintain separate accounts for the services such as telephone services, photo copying services, common services for all output services (both taxable and exempted).
- (ii) With regard to non payment of service tax of Rs. 11,56,727/- and irregular credit of Rs. 5,26,742/-, since the assessee has agreed to these demands and paid the same along with interest and therefore

the lower authority should have confirmed the demands and appropriated the amounts paid against the demands instead of dropping the demand on these two issues. He, therefore, modified the order with respect to these two demands.

(iii) With regard to the availment of irregular CENVAT Credit of Rs. 2,93,730/-, he found that Revenue has appealed against dropping of Rs. 2,62,840/- only of which an amount of Rs. 2,16,972/- was with respect to credit on health and life insurance policies for the employees and held that credit on these services were not admissible. He rejected the Revenue's appeal with respect to Rs.45,868/-.

3. In their present appeal, the appellant has prayed for dropping of the demand of Rs. 18,90,121/- and dropping of all penalties. They conceded the confirmation of the remaining amounts. In this factual matrix, the only fact to be decided is (a) whether the appellant is liable to pay an amount of Rs. 18,90,121/- as 6% of the value of exempted services in terms of Rule 6(3) (i) of CCR 2004 and (b) whether the penalties are imposable on appellant.

4. Ld. Representative of the appellant submits that it is incorrect to say that they have not maintained separate accounts for the taxable and exempted projects. In fact, they have maintained separate records for each

of their projects which is a fact which can be verified. He further submits that they have produced the details of these accounts before the lower authority as well as the first appellate authority and the lower authority has dropped the demands accordingly, while the first appellate authority has confirmed the same. He also produced their records before the Bench.

5. Ld. DR points out that the appellant has availed CENVAT Credit not only on inputs used in the projects but also on input services used in their Corporate Office. He draws my attention to the details of the input tax credit submitted by the appellant himself which has a specific column for the details of the credit availed at their Corporate office. He argued that the services of the Corporate Office are availed by all the projects - both exempted and taxable - and therefore should be considered as common input services. The appellant could have reversed the proportionate amount of common input service credit availed attributable to the exempted projects but they failed to do so. They are, therefore, required to pay an amount @ 6% of the value of the exempted projects under Rule 6(3) of CCR 2004. On a specific query from the Bench, Ld. Representative of the appellant concedes that they have availed CENVAT Credit of input services in the Corporate Office and have not reversed the proportionate amount of credit with respect to the exempted projects. He asserts that as far as other services including the Telephone, FAX, photocopier etc. are concerned, which are used in the project, they have maintained a separate account

for the exempted projects and have not availed CENVAT Credit on the same.

6. On the question of penalties, the appellant submits that there were some mistakes in taking credit and in those cases they have conceded and paid the amount with interest and they had no malafide intention in evading service tax or availing irregular CENVAT Credit, therefore all penalties may be dropped. Ld. DR on the other hand submits that in their ST-3 returns, the appellant has clearly indicated that they have maintained separate accounts whereas the facts show that it is impossible even to maintain separate accounts in respect of common input services availed in the Corporate Office. Ld. Representative of the appellant concedes that it is not possible to maintain separate accounts for the services availed in the Corporate Office.

7. I have considered the arguments on both sides and perused the records. The short point to be decided is whether the appellant had availed credit on common input services and not reversed the proportionate amount of credit or paid 6% of the value of exempted projects under Rule 6(3) of CCR 2004. The appellant's argument is that they have maintained separate records for each project. Be it as it may, as far as the services utilised in the Corporate Office on which they have taken the credit is concerned, there cannot be separate records for different projects (exempted and taxable). Therefore, the appellant had an option under Rule

6(3) of either reversing the proportionate amount of credit or paying 6% of the value of the exempted projects. It is evident from the records that they have not done either and therefore the demand was confirmed by the first appellate authority @ 6% of the value of exempted projects. I have, therefore, no option but to uphold the impugned order on this ground. As far as other demands confirmed in the impugned order are concerned, the appellant concedes the same. As far as the penalties on the appellant are concerned, it is clear that the appellant has declared that they have maintained separate records in their return whereas they have not disclosed that they also are availing credit on common input services availed in the Corporate Office and have not reversed the proportionate amount of credit attributed to the exempted projects. Therefore, there is no infirmity in the imposition of penalty.

8. In view of above, I find that the appeal is liable to be rejected and I do so.

9. The Impugned order is upheld and the appeal is rejected.

(Pronounced in open court on 18.12.2018)

**(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)**