CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT - I

Service Tax Appeal No. 31014 of 2018

(arising out of order-in-Appeal No. HYD-SVTAX-HVC-APP-013-18-19 APP I dated 16.05.2018 passed by Commissioner of Central Tax & Customs, (Appeals-I) Hyderabad)

M/s Iljin Electric Co Ltd
6/3/628/8a, Iljin House, Anandnagar,
Khairatabad, Hyderabad

Appellant

Versus

The Commissioner of Customs & Central Excise
GST Bhavan, Opp L.B. Stadium
Basheerbagh,
Hyderabad

Respondent

Appearance:

Mr Saroja Sahu, C.A. for the Assessee.

Mr A.V.L.N.Chary A.R. for the Respondent.

CORAM

HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

FINAL ORDER No.31107/ 2019

Date of Hearing: 03/12/2019

Date of Decision: 03/12/2019

[ORDER PER:P.VENKATA SUBBA RAO] .

This appeal is filed against order-in-appeal No. HYD-SVTAX-HVC-APP-013-18-19 APP I dated 16.05.2018. The facts of the case in brief are that the appellant is engaged in providing works contract services and are registered with the service tax department. During the course of audit of their accounts, the department noticed two discrepancies (i) non-payment of service tax on mobilisation advance received from the client; and (2) irregular availment of CENVAT credit on common input services used for rendering taxable as well as exempted services. Accordingly, a show-cause dated 11.02.2017 was issued to the appellant demanding service tax on the amount of mobilisation advancse which they had received and also an amount under Rule 6(3) of CENVAT Credit Rules 2004 to be recovered under Rule 14 of CENVAT Credit Rules 2004. The show-cause notice also proposed to charge interest on this amount and impose penalties under Section 76, 77 and 78 of the Finance Act 1994.

2. After following due process, the lower authority has confirmed the demand as proposed and appropriated the amounts already paid by the appellant. She also imposed penalties upon the appellant. Aggrieved, the appellant appealed to the first appellate authority who upheld the order of the lower authority with some modifications. Aggrieved by this order, the present appeal is filed.

3. Shri Saroja Sahu, Chartered Accountant appearing for the appellant submits that in their appeal they had challenged the levy of service tax on the mobilisation advances received by them. However, he is not pressing this point as they have already discharged service tax on the amount of mobilisation advance received by them. To the extent mobilisation advances were adjusted towards subsequent demands against their invoices, to the

clients they have paid interest on the differential amounts. The department's case is that they have paid service tax only partly on the mobilisation advances and need to pay service tax on unadjusted amounts. However, he would submit a Chartered Accountant's certificate showing that they have in fact discharged the total service tax liability on the mobilisation advances received by them. With respect to the demand under Rule 6 of CENVAT Credit rules 2004, he would submit that this rule prohibits taking of CENVAT Credit on inputs and input services which are used for provision of exempted services or manufacture of exempted goods. In respect of common input services, the option is given under Rule 6(2) to maintain separate records with respect to such inputs and input services used for rendering exempted and taxable services. If one decides not to choose this option, they have to pay an amount as per the formula given in Rule 6(3) read with Rule 6(3A). The demand by the department is made taking into account 6% of the value of exempted services rendered, mainly trading of goods, under Rule 6 (3). He would submit that they have, in fact, submitted before the lower authorities that they have proportionately reversed the amount of CENVAT Credit on the common input services and therefore have complied with the requirement under Rule 6(2) of CENVAT Credit Rules 2004. He therefore prays that the matter may be remanded to the original authority for verification of these facts only.

4. Learned A.R. agrees with the facts of the case and he has no objection to remanding the matter to the original authority as far as mobilisation advances are concerned. With respect to reversal of CENVAT Credit on common services, he would submit that although the appellant has

reversed some amounts but was not able to provide calculations as to how they have arrived at these amounts. The relevant portion of the order-in-original which is at para 11 is reproduced below:

> "11. Now I take up the issue pertaining to Cenvat Credit availed on common inputs and contravention thereof. The issue has not been negated by the assesse but has submitted that they have calculated the irregularly availed cenvat credit and reversed an amount of Rs 3,37,722/- which has been certified by a Chartered Accountant. I have gone through the submissions made and documents enclosed therein. It is observed that the said certificate is not submitted along with their submissions. However, the notice has demanded an amount of Rs 7,78,397/- towards irregularly availed Cenvat Credit in terms of Rule 6 (3)(i) read with Rule 14 of Cenvat Credit Rules 2004."

Before the Commissioner (Appeals) they had submitted that they have calculated the amount of CENVAT Credit on common input services attributable to the exempted services and reversed an amount of Rs 3,37,722/- which is also fully reflected in their ST-3 returns filed for the period October 2015 to March 2016 and for April 2016 to September 2016. It is the assertion of the appellant this reversal was done taking into account the relative turnover of exempted services and total services. The Commissioner (Appeals) has recorded that appellants had enclosed certain ST-3 returns pertaining to 2012-13 and 2014-15 but had not produced relevant ST-3 returns to prove their claim that they had reversed the amount. Therefore he rejected the claim of the appellant and upheld the demand under Rule 6(3) of CENVAT Credit rules 2004.

5. After hearing both sides, and perusing the records, I find that this is a fit case to be remanded to the original authority for verification of the following: (1) the amount of service tax paid by them on the mobilisation advances received by them; (2) the amount of CENVAT credit reversed by

them and its calculation. The original authority shall give the appellant an opportunity of being heard and presenting the documents in support of their claims and accordingly redetermine the tax liability, if any. Appeal is disposed of by way of remand to the original authority.

(Order pronounced and dictated in open court)

(P. Venkata Subba Rao)
Member (Technical)

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