CHAPTER XIII : MINISTRY OF NEW AND RENEWABLE ENERGY

Karnataka Solar Power Development Corporation Limited

13.1 Non availing of CENVAT credit in time on inputs/capital goods procured

CENVAT Credit on inputs/capital goods were not availed in time as per extant rules, Company had to bear an extra expenditure to the extent of ₹ 1.01 crore and also lost an opportunity to avail CENVAT credit on bought out materials.

Karnataka Solar Power Development Corporation Limited (*hereinafter referred as Company*) is developing 2000 MW solar parks in five villages of Pavagada Taluk, Tumkur District, Karnataka. Company being a solar power park developer entered into agreements with landowners for taking land on lease for development of solar park. Land(s) so acquired were allotted to solar power developers (i.e. entity responsible to build and operate solar power projects) on annual lease rent. Company also entered into implementation and support agreement with solar power developers and charged them for operations and maintenance of solar park facilities.

For creation of common/shared facilities at solar parks, Company awarded contracts to various private firms (*hereinafter referred as Contractors*) for works related to establishment of sub-stations along with connected transmission lines, terminal bays and street lighting on turnkey basis. The value of contracts was inclusive of all taxes and duties. It was noted that prices of goods supplied by Contractors to Company during December 2016 to June 2017 was ₹ 10.90 crore includes excise duty of ₹ 1.16 crore.

Audit noted that CENVAT Credit Rules (CCR) 2004 provides that an output service provider can avail input tax credit (CENVAT credit) for the excise duty paid on any input or the capital goods received by the output service provider {Rule 3(1)}. Audit also noted that Rule 3(4) of CCR 2004 states that CENVAT credit can be utilised for payment of any duty of excise on any final product or service tax on any output service. Rule 4(4) further provides that CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods (represented by excise duty paid) on which output service provider has claimed benefit of depreciation under Section 32 of Income Tax Act, 1961. Further output service provider cannot take CENVAT credit after one year of the date of issue of documents as per Ministry of Finance notification dated 1 March 2015.

A review of service tax returns of Company for the period March 2016 to June 2017 revealed that it had paid service tax amounting to ₹ 25.39 crore (in cash ₹ 24.91 crore and CENVAT credit ₹ 0.48 crore). However, it did not avail CENVAT credit of ₹ 1.16 crore towards payment of service tax on output services provided. A CENVAT credit of ₹ 1.16 crore was available being the amount of excise duty of ₹ 1.16 crore paid on capital/input goods supplied by Contractors. It was further noted that Company also received supply of bought out materials[1] valuing ₹ 140.76 crore on which the amount of CENVAT Credit could not be worked out by Audit due to non-submission of tax invoices by Contractors.

The Management replied (August 2018) that the Contractors need not share the tax invoices with Company in respect of bought out items as the prices are inclusive of all taxes and duties. In the absence of invoices carrying requisite details as per CCR 2004, it is difficult to ascertain eligibility for CENVAT credit. It further replied that tax invoices submitted by one Contractor (M/s Larsen & Toubro Ltd.) are under examination with regard to eligible amount of CENVAT credit. It further added that it had claimed the depreciation on the amount of CENVAT credit that would offset the non-availment of CENVAT credit over a period of time. Ministry of New and Renewable Energy replied (May 2019) that there are no restrictions from Ministry regarding availing any fiscal benefits, including CENVAT credit, wherever available, to a solar park developer.

The reply of the Management is not tenable as CCR 2004 permit availing of CENVAT credit by the output service provider. Company being the provider of infrastructure facilities at solar parks had to insist for the tax invoice from the contractors even in case of bought out items for availing CENVAT credit. It was not financially prudent on part of Company to not develop a mechanism to receive tax invoices on bought out materials because of which it lost an opportunity to avail further CENVAT credit in respect of those materials. Further as per Department of Revenue, Ministry of Finance notification dated 1 March 2015 manufacturer or the provider of output service cannot take CENVAT credit after one year of the date of issue of the documents. Thus, Management submission that it is examining the matter with regard to eligibility of CENVAT credit has no relevance and would be of no results as the invoices by M/s Larsen & Toubro Ltd. were submitted in 2016 and 2017 and therefore, Company now cannot take benefit of CENVAT credit. In our opinion even if the company makes profits in all the years, the extra benefit of depreciation

[1] Materials bought by the Contractors from third source and supplied to the Company.

does not offset CENVAT credit as the net present value[2] comes out to ₹ 0.15 crore as against ₹ 1.16 crore cumulative under CENVAT credit. The net present value of benefits that would accrue due to depreciation charge would be ₹ 0.15 crore (12.93 *per cent* of the unavailed CENVAT credit).

Thus, by not availing the CENVAT credit on input/capital goods as per extant rules, Company had to bear an extra expenditure to the extent of ₹ 1.01 crore (₹ 1.16 crore less ₹ 0.15 crore i.e. net present value of benefits that would accrue due to depreciation charge) and also lost an opportunity to avail CENVAT credit on bought out materials of ₹ 140.76 crore.

13.2 Payment of tax deducted at source (TDS) on behalf of land owners

TDS was not carried out from the payment of land lease charges to the land owners. It was borne by the company on behalf of the land owners, which resulted in irregular expenditure of ₹ 5.25 crore.

Karnataka Solar Power Development Corporation Limited[3] (KSPDCL-*hereinafter referred as Company*) was formed (March 2015) to develop solar projects in the state of Karnataka, and is developing 2,000 MW solar projects in around 11,000 acres of land identified in five villages of Pavagada Taluk, Tumkur District. Ministry of New and Renewable Energy, Government of India scheme (December 2014) stipulated that for development of solar parks and ultra mega solar power projects, it was the responsibility of state government to make land available for solar parks at lowest possible price. Government of Karnataka (GoK) formed (August 2015) a Committee for fixing lease charges payable to landowners in respect of land taken on lease for solar projects. The Committee fixed (28 September 2015) land lease charges payable to landowners at the rate of ₹ 21,000 per acre per annum with five *per cent* escalation on base price once in two years. Accordingly, Company entered into lease agreements with landowners and was paying land lease charges as agreed. Land so acquired were allotted to solar power developers (SPDs) on annual lease charges basis to build and operate for solar power projects.

Board of Directors (BoD) of the Company noted (13 May 2016) that tax deducted at source (TDS) had not been deducted in compliance of the section 194I of Income Tax Act, 1961(IT Act, 1961) before release of annual lease charges to landowners. Section 201 of IT Act, 1961 provides that in the event of failure to deduct TDS by the person liable for it, he will be deemed to be an

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[2] Calculated using 6.75 *per cent* rate (i.e. State Bank of India term deposit rate as on 1 July 2017 for a period of one year).

[3] A 50:50 joint venture between Karnataka Renewable Energy Development Ltd (a Karnataka State Govt. PSU) and Solar Energy Corporation of India (a PSU of Union Govt. of India).

assessee in default in respect of such tax. BoD in view of consequences and legal issues involved decided to bear the TDS liability and to capitalise the same towards project cost and passed on to the SPDs.

Audit noted that possibility of recovering the expenditure towards TDS payments from SPDs are remote as they had contended that they had not factored this aspect in their project cost and Company's demand was not as per agreement entered between them and Company, and hence would not make any payment.

Audit also observed that land lease charges fixation Committee does not state that land lease charges fixed were net of income tax. Thus, income tax being direct tax in nature should be borne by the assessee. Further the possibility of claiming refund of TDS by land owners from income tax authorities cannot be ruled out despite the fact that TDS was deposited by the Company from its own funds on behalf of land owners leading to unjust enrichment of such land owners.

On being pointed out by Audit on continuing irregular payment of TDS on behalf of land owners, Company approached (July 2018) Energy Department, GoK for approval of payment of TDS on behalf of land owners. GoK accorded approval to Company proposals in September 2018. However, a review of records made available to Audit did not reveal that issue was referred to Committee which was the competent authority for fixing/revising the land lease charges payable to land owners. Company is continuing payment of TDS without deducting the same from the land lease charges paid to land owners. As of December 2018, the Company had paid TDS on land lease charges amounting to ₹ 5.25 crore for the period January 2016 to November 2018 including interest of ₹ 0.13 crore on delayed payment of TDS.

The Management stated (June 2018/January 2019) that as per the agreement the land owners shall pay the land tax/revenue tax in respect of the lands and as such ₹ 21,000 will be "net of taxes". TDS payment was made as per GoK orders and as per lease agreement entered with land lease owners. It further stated that there would not be any financial burden on the Company as the land lease charges paid by SPDs (to whom land has been further allotted for building power projects) would cover the amount of TDS deposited by the Company. It also stated that it had not issued any TDS certificate to avoid refund/adjustment of TDS by land owners.

The Ministry (March 2020) stated that they have no comments to offer on the issue raised in the audit para.

The Management's reply is not tenable. Neither land lease agreement between the Company and land owners nor the land lease charges fixed by the

Committee states that annual lease charges of ₹ 21,000 is 'net of income tax'. TDS is tax deducted at source by the disbursement authority towards the income tax payable by the recipient on their taxable income as per the provisions of IT Act, 1961. Also, any payment to or on behalf of land owners which is not recoverable from SPDs would have a direct financial burden on the Company. Further TDS certificate not being issued alone does not remove all possibilities of claiming TDS refund/adjustment by the land owners.

Thus, failure to deduct TDS from the payment of land lease charges and payment of the same by Company on behalf of the land owners has resulted in irregular expenditure to the extent of ₹ 5.25 crore (till November 2018) which should be recovered from land owners. The irregular payment will continue, unless the Company modifies its decision and initiate deduction of TDS from payment of land lease charges to land owners.