

**CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II R.K. PURAM, NEW DELHI-66
PRINCIPAL BENCH NEW DELHI
LARGER BENCH MATTERS
HEARING NOTICE**

ST/242/2008-CU[DB] ST/398/2008-CU[DB], ST/399/2008-CU[DB], ST/762/2008-CU[DB],
ST/92/2009-CU[DB], ST/162/2009-CU[DB], ST/315/2009-CU[DB], ST/579/2009-CU[DB],
ST/768/2009-CU[DB], ST/777/2009-CU[DB], ST/1032/2010-CU[DB], ST/847/2012-CU[DB]
ST/56237/2013-CU[DB], ST/55227/2013-CU[DB], ST/51115/2015-CU[DB] ST/51211/2015-CU[DB]
ST/51721/2015-CU[DB] ST/51721/2015-CU[DB] ST/51729/2015-CU[DB] ST/52377/2015-CU[DB],
ST/52378/2015-CU[DB], ST/52382/2015-CU[DB]

1. **Name of the Appellant**
**IDEA MOBILE
COMMUNICATION LTD.**
DELHI ROAD, SONEPAT,
HARYANA.
2. **Spice Communications Ltd.**
C-105, industrial Area, Phase-vii,
Mohali, Pb
3. **IDEAL CELLULAR LTD**
Delhi Road, Sonapat, Haryana.
BHARTI AIRTEL LTD.,
4. C-25, INDUSTRIAL AREA,
PHASE-II, MOHALI (PB)
VODAFONE ESSAR SOUTH LTD.
5. C-131, INDUSTRIAL AREA,
PHASE-VIII, MOHALI (PB)
VODAFONE ESSAR SOUTH LTD.
6. 493, MANGAL PANDEY NAGAR,
UNIVERSITY ROAD, MEERUT (U.P.)
7. **SPICE COMMUNICATION LTD.**
C-105, INDUSTRIAL AREA,
PHASE-VII, MOHALI. PUNJAB.
8. **BHARTI AIRTEL LIMITED,**
85, DURAND ROAD,
AMBALA CANTT.
9. **VODAFONE ESSAR DIGILINK LTD**
(Formerly Known as Aircel
Digilink India Ltd) Kunjpura Road
Bharat Sanchar Nigam Ltd
Telephone Exchange, Club Road,
Sangrur.
10. **Vodafone Essar Mobile Services Ltd**
C-48, Okhla Industrial Area ,
Phase-ii, SOUTH DELHI, DELHI.
- 11

- 12 **Tower Vision India Private Limited**
Corporate Office Plot No-356,udyog
Vihar,phase-iv, GURGAON
DELHI-122015
- 13 **Indus Towers Ltd**
4th Floor, Building No. 10,
tower-a, Dlf Cyber City
GURGAON, HARYANA-122002
- 14 **Bharti Infratel Ltd**
Bptp, Park Centra, 2nd Floor,
Sector-30, GURGAON
HARYANA-122001

Name of the Respondent

- 1 **C.C.E. ROHTAK**
SCO NO,6 Sector 1,
Rohtak.
- 2 **C.C.E. CHANDIGARH**
C.R. Building, Plot No. 19,
Sector 17-C, Chandigarh 160017
- 3 **C.C.E. MEERUT I**
Excise Chowk,Opposite
Choudhary Charan
Singh University Mangal Panday
Nagar, Meerut - 250005.
- 4 **C.C.E. PANCHKULA**
SCO No. 407 and 408, Sector 8,
Panchkula (Haryana) 134119.
- 5 **C.S.T.-Service Tax - Delhi**
MG MARG... IP ESTATE,
17-B... IAEA HOUSE...I P ESTATE,
DELHI-110002
- 6 **C.C.E. & S.T-Gurgaon Ii**
OFFICE OF THE COMMISSIONER
(APPEAL-II), SERVICE TAX,
GURGAONCENTRAL EXCISE
BUILDING, PLOT NO.36-37,
SECTOR-32,GURGAON
HARYANA
- 7 **C.S.T.-Delhi-iii**
Plot No. - 36 - 37,
Sector - 32, Gurgaon,
Haryana-122021

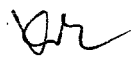
This issue involved in the matter is discussed in the **Misc. Order No.52850-52853/2015** (Copy enclosed)

The matters are now listed for hearing before Three Member **LARGER BENCH**.

You are hereby directed to make available one more set of appeal/complete paper book to the Tribunal and one set to the Secretary, Bar Association, CESTAT, New Delhi well before the date of hearing.

Take notice that the Larger Bench cases mentioned above has been fixed for hearing along with other Larger bench matters on **2nd and 3rd November, 2015** at 10:30 AM or any subsequent date thereafter as per the cause list or as may be convenient to the Tribunal before CESTAT, West Block No.2, R.K. Puram, New Delhi.

Date.10.09.2015


**Assistant Registrar
Custom branch**

Copy to:-

1. Deputy Registrar/ Assistant Registrar, CESTAT, Mumbai, Chennai, Kolkata, Ahmadabad, Bangalore, Allahabad. (display in NB)
2. Secretary, Bar Association, New Delhi, Mumbai, Chennai, Kolkata, Ahmadabad, Bangalore, Allahabad.
3. SDR, CESTAT, New Delhi.
4. Advocate/Consult: **Shri.V.LaxmiKumaran, Adv**
5, Jangpura Extension Link Road,
New Delhi-110 014

**GAJENDRA MAHESHWARI/TRIPTI DHAR/
SUMIT K. BATRA ADV (st/51721, 729/15)
85, NATIONAL PARK, LAJPAT NAGAR,
IV NEW DELHI-24**

VMJ Associates

**(S.Muthu Venkatraman), Advocate,
SKANDALAYA, OLD NO.4, NEW-7, JUSTICE SUNDARAM ROAD,
MYLAPORE, CHENNAI-600004, TAMIL NADU**

TRIPTI DHAR

6th floor Enkay Squar, 448Udyog,
Vihar Phase-V Gurgaon-122016

5. Web site / Office Copy / Guard File

NOTE:- If any Party wants to submit written submission please send it before the date of hearing.

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.**

Date of Hearing/Order : 30.7.2015

**No. ST/Misc./50410/2015, 50957/2014, 59782,
60928/2013 in ST/55227/2013, ST/51115, 51211,
51721, 51729, 52377, 52378, 52382/2015-CU(DB)**

Tower Vision India Pvt. Ltd.
Bharti Infratel Ltd.

Appellant

Vs.

CST, Delhi

Respondent

Appearance

Shri N. Venkatraman, Sr. Advocate
Shri Gajendra Maheshwari, Advocate

- for the appellant

Shri Govind Dixit, D.R.
Shri Amresh Jain, D.R.

- for the respondent

CORAM: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

Misc. Order No. 52850-52853/2015

Per R.K. Singh:

Misc. application No. 50957/2013 has been filed by the appellant to request extension of the stay granted vide Stay Order No. 58883/2013 dated 19.8.2013 till the disposal of the appeal. The appellant is ready and willing for final hearing of the appeal. But in view of the pendency of several older appeals, we are not able to take up the appeal. Therefore, the stay granted vide order dated 19.8.2013 is extended till disposal of the appeal. The other Misc. applications have been filed for adjournment/early hearing^{etc} of the appeal.



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2. Appeals have been filed by the appellants against the respective orders in original. When the case is called today, the appellant stated that in another ^{Case} (the case of Idea Mobile) ~~case~~ involving the same issue viz. availability of Cenvat credit in respect of telecom towers, there has been a difference of opinion between the Id. Members of the Division Bench and the matter is put~~ting~~ up to the Hon'ble President, CESTAT for referring the matter to 3rd Member/Larger Bench. The appellant has pleaded that although vide the Misc. applications, it has only requested to adjourn the hearing and allow it to be an intervener in the case of Idea Mobile, as an intervener, it will not be able to argue the matter on facts and therefore instead of referring the difference of opinion to a 3rd Member, the President may constitute a Larger Bench of three Members which could consider the difference of opinion as well as these appeals. The appellant also pleaded that the Hon'ble President has full powers to constitute such a Bench for this purpose and cited the following judgements in support of its contention:

- i) *Union of India Vs. Paras Laminates (P) Ltd.* - 1990 (49) ELT 322 (SC).
- ii) *Income Tax Appellate Tribunal Vs. Dy. CIT (Assts.), III, Hyderabad* - 1996 (82) ELT 4 (SC).
- iii) *P.C. Puri Vs. Commissioner of Income Tax, Delhi-II*
- iv) *Central Board of Dawoodi Bohra Community Vs. State of Maharashtra* - (2005) 2 Supreme Court Cases 673.



3. Ld. DR, on the other hand, stated that these appeals need not be tagged with the matter regarding the difference of opinion in the case of Idea Mobile and that the said difference of opinion could be referred to a 3rd Member. He however, agreed ~~as~~^{that} there is no limitation or bar as far as the power of the Hon'ble President with regard to referring the difference of opinion to a Larger Bench is concerned.

4. We have considered the contentions of both sides. We find that the issue involved in these cases is admissibility of Cenvat credit on telecom towers and on this very issue, there has been a difference of opinion between two ld. Members of a Division Bench in the case of Idea Mobile in the wake of which Division Bench has put up the matter to the Hon'ble President for reference to a third Member. The procedure to be adopted in the case of difference of opinion is contained in Section 129C (5) ^{of Customs Act 1962} which states as under :

[(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.]

It is evident from the language of the aforesaid sub-section (5) of Section 129C that in case of difference of opinion, the Hon'ble

President can refer the case for hearing on such point of difference by the one or more of the other Members of the Tribunal. It clearly means that the difference of opinion in a Division Bench need not necessarily and always be referred only to a single 3rd Member. As regards the power of Hon'ble President CESTAT with regard to constitution of benches, in the case of *Central Board of Dawoodi Bohra Community Vs. State of Maharashtra* (supra) the Supreme Court observed as under :

Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

- (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.
- (2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.
- (3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; "


In the case of *Paras Laminates (P) Ltd.* (supra), the Hon'ble Supreme Court observed as under:

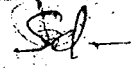
"There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised, the powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes, (eleventh edition) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

From the two foregoing judicial pronouncements [in the cases of *Dawoodi Bohra Community* (supra) and *Paras Laminates Pvt. Ltd.* (supra)] there remains no doubt that the Hon'ble President of CESTAT has full discretion/power regarding framing of roster, constitution of benches and directing any particular matter to be placed for hearing before any particular bench of any strength.

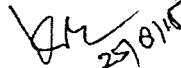
5. In the present appeals the issue involved is the same as that involved in the case of *Idea Mobile* ⁱⁿ ^{the} ^{Division} ^{Bench} ^{of} ^{the} ^{Members} ^{of} ^{the} ^{Division} ^{Bench} ^{have} expressed a difference of opinion which is to be resolved. If that matter is referred to a 3rd Member, then these appeals will not be

be able to tagged therewith and as an intervener, the appellants will not be able to argue the question of fact. In these circumstances, we are of the view that it will be more efficient if the difference of opinion is heard by a 3rd Member Larger Bench in which case these appeals can also be heard by the same Bench. Accordingly, we hereby decide that these matters should be placed before the Hon'ble President with a request that the difference of opinion in the case of Idea Mobile may be referred to a Larger Bench of 3 Members and these appeals should be allowed to be tagged therewith to be heard by the same Larger Bench.


(Justice G. Raghuram)
President


(R.K. Singh)
Member (Technical)

RM

प्रमाणित प्रति/Certified True Copy

सहायक पंजीकार/Asstt. Registrar
सीमांतृतक सचवालय/सचवालय
अपीलीय न्यायालय, (C.E.S./T.A.T.)
West Block, Court, दिल्ली-110056
सचवालय, 224 नं० दरवाजा-110056
R. K. Puram, New Delhi-110056