

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70580 of 2017

(Arising out of Order-in-Original No.52-53/PR. COMMR./MRT/2017 dated 12.05.2017 passed by Principal Commissioner of Central Excise & Service Tax, Meerut)

M/s Vodafone Mobile Services Ltd.

(Formerly known as Vodafone Essar South Ltd.)
(135/1 & 137/1, Mangal Pandey Nagar,
Opposite CCS University, Meerut, U.P.-250004)

.....Appellant

VERSUS

**Principal Commissioner of Customs,
Central Excise & Service Tax, Meerut-I**

(Opposite CCS University, Mangal Pandey Nagar,
Meerut-250004)

....Respondent

WITH

Service Tax Appeal No.70123 of 2019

(Arising out of Order-in-Original No.139/COMMR./MRT/2018 dated 10.09.2018 passed by Commissioner of Central Goods & Service Tax, Meerut)

M/s Vodafone Idea Ltd.

(Formerly known as Vodafone Mobile Services Ltd.)
(A-68, Sector-64, Noida, U.P.-201301)

.....Appellant

VERSUS

**Principal Commissioner of
Central Goods & Services Tax, Meerut**

(Opposite CCS University, Mangal Pandey Nagar,
Meerut-250005)

....Respondent

APPEARANCE:

Shri Sivarajan Kalyanaraman, Chartered Accountant for the Appellant
Shri A. K. Choudhary, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOS.- 70659-70660/2024

DATE OF HEARING : 14.10.2024
DATE OF DECISION : 14.10.2024

P. K. CHOUDHARY:

Since the dispute in both the appeals is common hence both these appeals are taken up together for hearing and disposal. These appeals are made against impugned Orders-in-Original issued by the Respondent against Vodafone Mobile Services Pvt. Ltd. (formerly known as Vodafone Essar South Ltd.). Further under the scheme of merger approved by the National Company Law Tribunal vide order dated 30.08.2018, Vodafone Mobile Services Pvt. Ltd. merged with Idea Cellular Ltd. to form Vodafone Idea Ltd. Evidence to this effect is part of the appeal paper book in Service Tax Appeal No.70123/2019. Henceforth, all proceedings in relation to the impugned Orders-in-Original should be continued in the name of Vodafone Idea Ltd.

2. Briefly stated, the facts of the case are that the Appellant is a company engaged in business of providing telecom services classified under the category of "Telecommunication Services". The Appellant has been raising invoices on its customers and discharged applicable service tax as per the provisions of the Act and Rules made therein. The Appellant has also received various inputs, input services and capital goods and used the same for providing subject output services. It has also availed credit of relevant duties/taxes paid on procurement of such inputs, input services and capital goods as per the provisions of the Cenvat Credit Rules. Summary of both the appeals is as below:-

3 **Service Tax Appeal No.70580 of 2017**
Service Tax Appeal No.70123 of 2019

		SUMMARY OF APPEAL			
		SCN NO. C.No.V(15)Off/Adj./S.T ax/MRT/294/2014/665 dated 29 January 2016	SCN NO. C.No.V(15)Off/Adj/MR T/17/2016/2577 dated 13 April 2016	SCN NO. C.No.V(15)Off/Adj/S.Ta x/MRT/33/2017/7657 dated 23 October 2017	Total
1	Period of dispute	FY 12-13 to Feb 2015	FY 14-15	March 2015 to June 2017	
2	Issues Involved (ST/70580/2017) (ST/70123/2019)				
2a	Short payment of service tax on Rent-a-cab	Rs. 1,83,082	-	-	Rs. 1,83,082
2b	Inadmissible Cenvat credit on Commission Agent	Rs. 2,31,11,661	-	Rs. 71,46,767/-	Rs. 3,02,58,428/-
2c	Inadmissible Cenvat credit on Service Tax availed on invalid documents	Rs. 7,87,80,468	Rs. 2,05,24,359	Rs. 4,13,75,255/-	Rs. 14,06,80,082/-
	Total tax demand	Rs. 10,20,75,211	Rs. 2,05,24,359	Rs. 4,85,22,022/-	Rs. 17,11,21,592/-
3	Limitation period				
3a	Period within limitation - 18 months	25 Oct 2014&25 Oct 2015	25 Oct 2016		
3b	Period beyond limitation	FY 12-13& FY 13-14	Within limitation		
3c	Demand relating to normal period	Nil	2,05,24,359	4,85,22,022	
3d	Demand relating to extended period	10,18,92,129	Nil	Nil	
	Interest				
4	Interest	75 of the Finance Act, 1994	75 of the Finance Act, 1994	75 of the Finance Act, 1994	
	Penalty				
5	Penalty u/s 76 (issue wise)				
	for issue no 2b	Nil	Nil	7,14,677	
	for issue no 2c	Nil	20,52,436	41,37,525	
6	Penalty u/s 78				
	for issue no 2a	1,83,082	Nil	Nil	
	for issue no 2b	2,31,11,661	Nil	Nil	
	for issue no 2c	7,87,80,468	Nil	Nil	
	Total Penalty	10,20,75,211	20,52,436	48,52,202	

3. The impugned orders have been passed on the following grounds as captured in the table below:-

4 Service Tax Appeal No.70580 of 2017
Service Tax Appeal No.70123 of 2019

No	Issues	Period	Amount (Rs.)	SCN paragraph reference	OIO paragraph reference	Appeal paragraph reference
In respect of First SCN:						
1	Short payment of service tax on rent-a-cab services under reverse charge mechanism along with penalty u/s 78	July 2012 to March 2013	1,83,082	4.1 to 4.4	12	4 to 8
2	Inadmissible CENVAT credit of service tax paid on Commission Agent along with penalty u/s 78 read with Rule 15(3) of the CCR	April 2012 to February 2015	2,31,11,661	6.1 to 6.4	16 to 20	9 to 58
3	Inadmissible CENVAT credit of service tax availed on debit/credit notes issued by Vodafone India Limited along with penalty u/s 78 read with Rule 15(3) of the CCR	April 2012 to February 2015	7,87,80,468	7.1 to 7.4	21 to 25	59 to 86
In respect of Fourth SCN:						
4	Inadmissible CENVAT credit of service tax availed on debit/credit notes along with penalty u/s 76(1) read with Rule 15(1) of CCR	April 2014 to March 2015	2,05,24,359	4	21 to 25	59 to 86
In respect of Fifth SCN:						
1	Inadmissible CENVAT credit of service tax paid on Commission Agent along with penalty u/s 73(1A) of the Finance Act, 1994	March 2015 to June 2017	71,46,767	5.1	12 – 18	4 to 21
2	Inadmissible CENVAT credit of service tax availed on debit notes issued by Vodafone India Limited along with penalty u/s 76(1) of Finance Act, 1994	March 2015 to June 2017	4,13,75,255	5.2	19 - 23	22 to 66

4. Heard both the sides and perused the appeal records.
5. We find that in respect of application of short payment of service tax on Rent-a-Cab Services under reverse charge mechanism (Rs.1,83,082/- for Financial year 2012-13), it is submitted that the said demand has been discharged by the Appellant vide Challan No.02048 dated 14.10.2016 alongwith applicable interest of Rs.1,65,150/-. The said liability was discharged before filing response to first show cause notice¹ and the said facts have been mentioned in the reply to first SCN.
6. The next issue is regarding availment of Cenvat credit of service tax on commission paid to vendors. It is the case of the Appellant that the Adjudicating Authority has erred in computing Cenvat credit availed on commission paid to vendors during the Financial Year 2012-13. Though this was brought to the knowledge of the Adjudicating Authority by the Appellant in reply to the first SCN, however the submission was not considered by the Adjudicating Authority. According to the Appellant, out of total demand of Rs.73,34,883/-, Rs.30,19,856/- relates to credit on office record maintenance which has been inadvertently considered by the Adjudicating Authority as credit of service tax paid to commission vendors. Thus, demand in respect of Cenvat credit availed on commission paid to vendors should be restricted only to Rs.43,15,027/- for Financial Year 2012-13. Regarding Cenvat credit of Rs.30,19,856/- for the Financial Year 2012-13, availed on services in relation to maintenance of office records, same has been allowed by the Adjudicating Authority in the impugned order. We find that this issue is no more *res integra* and has been decided by various Benches of the Tribunal in the Appellant's own case. The Department has placed reliance on the judgements of Hon'ble High Court of Gujarat in the case of CCE, Ahmedabad-III vs. Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.) for disallowing the availment of Cenvat credit of service tax on commission paid to vendors, wherein it has been held that such commission agents are not engaged in the activity of sales & promotion. The decision of Cadila Healthcare Ltd.

¹ SCN

relied upon by the Adjudicating Authority has been reversed by the Hon'ble Supreme Court in the case of Zydus Lifesciences Ltd. vs. CCE, Ahmedabad-II reported as 2024 (80) G.S.T.L. 338 (S.C.) relevant paragraphs are reproduced below:-

"Being aggrieved by the judgment dated 7-11-2012 passed by the Division Bench of the High Court of Gujarat in Tax Appeal Nos. 353/2010 and 204/2011 [[2013 \(30\) S.T.R. 3](#) (Guj.)] insofar as the controversy relating to the claim of Input Tax Credit on commission paid to the foreign agent is concerned, the appellant-assessee had preferred these appeals.

2. *We have heard Learned Senior Counsel Mr. Jay Savla for the appellant-assessee and Learned Counsel Mr. Rupesh Kumar for the respondent -Department and perused the material on record.*

3. *During the course of submission, our attention was drawn to what was recorded by the High Court in paragraph 5.2(ii) of the impugned judgment inasmuch as the High Court has stated that in regard to the claim of CENVAT credit on the payment of commission to a foreign agent or service rendered, whether the same was in the nature of sales promotion or effecting of sale as such, the Tribunal had not discussed in detail and instead the Tribunal had reversed the findings of the adjudicating authority and had not allowed the benefit to the appellant-assessee by placing reliance on its findings in relation to services rendered being in the nature of clearing and forwarding agents.*

4. *Learned Senior Counsel appearing for the appellant contended that if that was the opinion of the High Court then the matters ought to have been remanded to the Tribunal for a fresh adjudication bearing in mind the actual nature of the transaction between the appellant and the agent who was appointed and also the payments made as per the invoices etc.*

5. *In this regard, Learned Counsel for the appellant has submitted a copy of the Agency Agreement dated 31-3-1999 entered into by the assessee with one of its agents M/s. Millies International Limited Ireland and the nature of payment that was agreed to be paid to the said agent. It was contended that the payment was for sales promotion*

and therefore, the appellant was entitled to input tax credit within the meaning of Section 2(L) of the CENVAT Credit Rules of 2004.

6. *Per contra, the Learned Counsel for the respondent-Department supported the impugned order and contended that even in the absence of there being any categorical finding given by the Tribunal on the basis of what was stated by the adjudicating authority, the High Court has independently interpreted the provisions and applied the same to the facts of the case and therefore, the impugned judgment and order of the High Court would not call for any interference.*

7. *We have considered the respective submissions in light of what has been stated in paragraph 5.2(ii) of the judgment of the High Court which for immediate purpose could be extracted as under :*

"The Tribunal has held that foreign commission agent service is in the nature of sales promotion and without any elaborate discussion in respect thereof has held that CENVAT credit was admissible on service tax paid in respect of such service. The Tribunal while reversing the findings recorded by the Adjudicating Authority has not given any reasons in support thereof and has merely placed reliance upon its findings in relation to the services rendered by the Clearing and Forwarding agents."

8. *On a reading of the same, it is clear that insofar as the Tribunal's finding is concerned, the High Court found that the Tribunal had reversed the findings of the adjudicating authority without giving any reason in support thereof and had merely sought to compare the payments made for services rendered by a foreign agent as analogues to a clearing and forwarding agent who actually effects sales. It was contended that the sales promotion is a terms of art and an agent can be appointed only for that purpose and therefore, the nature of the agreement between the assessee and the agent; the invoices indicating the payments made to the agent would all be relevant factors to be considered while arriving at a finding as to whether the appellant-assessee is entitled to claim Input Tax Credit.*

9. *We find substance in the contention of Learned Senior Counsel appearing for the appellant particularly having*

regard to the doubt expressed by the High Court with regard to the manner in which the CESTAT had reversed what had been stated by adjudicating authority.

10. *We observe that the High Court ought to have then remanded the matter(s) to CESTAT for a fresh consideration by giving an opportunity to the appellant to place on record the necessary documents including the agreement entered into by the assessee with the concerned agents, the relevant invoices etc.*

11. *In the circumstances, the impugned judgment and order of the High Court as well as of the CESTAT are set aside and the matters are remanded to CESTAT for a fresh consideration.*

12. *In view of the observations made above, the appellant-assessee is given an opportunity to place on record the relevant documents so as to assist CESTAT to arrive at a categorical finding on the nature of payment made by the assessee to the foreign agent and as to whether the assessee is entitled to claim input tax credit on the said payment. It is needless to observe that if any additional document is filed by the assessee before CESTAT, the respondent-Department will have an opportunity to have its say on the said document.*

13. *In the result, the impugned judgment and order of the High Court dated 7-11-2012 as well as of the CESTAT dated 3-8-2009 [[2010 \(17\) S.T.R. 134](#) (Tri. - Ahmd.) = [2009] 30 STT 224 (Ahd. - CESTAT)] are set aside to the extent of observations of the High Court as well as the CESTAT on the point of commission paid to the foreign agent only and the matters are remanded to the concerned CESTAT for a fresh adjudication on the point in controversy."*

The decision of Cadila Healthcare Ltd. is on an entirely different type of commission agent and is not applicable to the facts of the Appellant's case. It was held that activities of sale of goods performed by commission agents were not in the nature of sale promotion activities as envisaged under the said expression under Rule 2 (I) of the Cenvat Credit Rules. It is apparent that input service was being determined in the context of manufacturer entity and cannot be extended to the input

services received by a service provider such as the Appellant herein. Therefore, it is submitted that the Appellant is eligible to claim CENVAT credit of input services utilized for providing output services. It has also been held in **Essar Steel India Ltd vs. Commissioner of Central Excise & ST, Surat-I [2016 (335) E.L.T. 660 (Tri. – Ahmd.)] (Refer Para 20)** that the Explanation to Rule 2(l) of Rules says in clear terms that there is no bar on availment of the CENVAT credit on sales promotion service by way of sale of dutiable goods on commission basis. Further, by inserting the Explanation in the Rule 2(l), it stood confirmed the Board Circular and resolved the different views of the High Courts. Taking into circumstances under which the Explanation was inserted in Rule 2(l) of Rules, 2004 and consequence of the Explanation to extend the benefit to the assessee as per Board Circular, it was held that the Explanation inserted in Rule 2(l) of Rules, 2004 by Notification No.2/2016-CX (N.T.) should be declaratory in nature and effective retrospectively. It is submitted that vendors do not provide services to customers of the Appellant and they provide services on independent basis to the Appellant for better customer management or support function. Thus, vendors are not directly responsible for provision or receipt of services on behalf of the Appellant. The Adjudicating Authority has wrongly concluded that the vendors work as pure agent for sale of services to the customers. Hence, CENVAT credit of service tax paid on commission charged by agents has been rightly availed by the Appellant.

7. The next issue is regarding availment and utilization of Cenvat credit on invalid documents. It is the case of the Appellant that Cenvat credit has been solely denied on the ground that debit notes received by the Appellant are not valid documents for the purpose of availing Cenvat credit under Rule 9 of CCR, 2004. The Adjudicating Authority has not disputed the admissibility of input services for which Cenvat credit has been availed based on debit notes. Learned Chartered Accountant submits that Vodafone India Ltd. is the holding company of the

Appellant and it incurs expenditure on behalf of the entire Vodafone group. The benefit of these expenses is received by all the circles including the Appellant. Thus, Vodafone India Limited issues debit notes in the nature of corporate cost allocation towards reimbursements of expenses. It is not disputed by the Adjudicating Authority that Vodafone India Limited and other vendors have not discharged tax on such debit notes. It is submitted that mere nomenclature of a document as 'debit note' cannot be the basis for denial of Cenvat credit. Further, no format has been prescribed in Rule 9(1) of the CCR which contains list of documents basis which credit can be availed. Further, Rule 4A of the Service Tax Rules, 1994 provides for certain particulars which should be specified in the invoices. It is submitted that where requisite particulars are mentioned in any document, the same shall be considered as proper document for availment of Cenvat credit. In the instant case, the debit notes contained all the details as specified in Rule 4A of the Service Tax Rules, 1994. For ready reference Rule 4A is reproduced below:-

RULE [4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. —

(1) Every person providing taxable service shall [, not later than [thirty days] from the date of [completion of] such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier,] issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him [in respect of such taxable service] [provided or agreed to be provided] and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and the registration number of such person;*
- (ii) the name and address of the person receiving taxable service;*
- [(iii) description and value of taxable service provided or agreed to be provided; and]*
- (iv) the service tax payable thereon :*

[Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company providing service to any person,

an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule :]

*[**Provided** further that in case the provider of taxable service is a goods transport agency, providing service [to any person], in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule :]*

*[* * * * *]*

*[**Provided** also that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within [thirty days] of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed.]*

*[**Provided** also that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company providing service to any person, the period within which the invoice, bill or challan, as the case may be, is to be issued, shall be forty-five days :]*

*[**Provided** also that in case the provider of taxable service is providing the service of transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the provider of service and address of the recipient of service but containing other information in such documents as required under this sub-rule :]*

*[**Provided** also that wherever the provider of taxable service receives an amount up to rupees one thousand in excess of the amount indicated in the invoice and the provider of taxable service has opted to determine the point of taxation based on the option as given in Point of Taxation Rules, 2011, no invoice is required to be issued to such extent.]*

(2) Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him, for each of

the recipient of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1);*
- (ii) the name, [and address] of the said input services distributor;*
- (iii) the name and address of the recipient of the credit distributed;*
- (iv) the amount of the credit distributed :]*

*[**Provided** that in case the input service distributor is an office of a banking company or a financial institution including a non-banking financial company providing service to any person an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered but containing other information in such documents as required under this sub-rule :]*

*[**Provided** also that in case of online information and database access or retrieval services provided or agreed to be provided in taxable territory by a person located in the nontaxable territory, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, but containing name and address of the person receiving taxable service to the extent available and other information in such documents as required under this sub-rule.]*

8. We find that the Tribunal in the Appellant's own case reported as 2022 (9) TMI 1285-(CESTAT-Mum), Commissioner of CGST & Central Excise, Mumbai vs. Vodafone Idea Ltd. has decided as under:-

"2. In this appeal of Revenue against order-in-original no. 74/STCIV/MRRR/16-17 dated 30th June 2016 of Commissioner of Service Tax – IV, Mumbai dropping proceedings for recovery of CENVAT credit availed by M/s Idea Cellular Ltd amounting to Rs.11,28,86,302/- for 2008-2009 and 2009-2010, the issue for resolution is whether

- (a) 'debit note' suffices for the documentation requirements prescribed in rule 9 of CENVAT Credit Rules, 2004, and*
- (b) if it does, whether such debit notes/invoices pertaining to reimbursements of diesel and electricity costs incurred by the service provider on which tax under Finance Act, 1994*

has been duly discharged enables the recipient to take credit.

3. *It is seen from records that M/s Spice Communications Ltd (since taken over by the respondent herein, M/s Idea Cellular Ltd) came under audit scrutiny for the said years and, based on their objection, proceedings were initiated for recovery of credit of Rs.4,05,31,447 and Rs.7,23,54,855 availed in April 2008 - March 2009 and April 2009 - February 2010 respectively. It was taken note that the said credit had been taken against 'debit notes' issued by M/s GTL Infrastructure Ltd to them in which charges for electricity, diesel and rent had been adjusted in accordance with the terms of 'infrastructure provision agreement' dated 8th May 2006 between them and the provider. It was also held that the CENVAT Credit Rules, 2004 does not incorporate diesel as eligible input and that electricity is not a taxable service under Finance Act, 1994 to enable such availment.*

4. *The respondent herein is a 'telecom service operator' and, for securing towers, entered into agreements with owners for installation of their dishes/antenna. The service agreements required deposit of rent and energy on the basis of estimate of electricity charges besides cost of diesel that was required for operational continuity during power shutdown in proportion to the utilization for the recipient of service and for the actuals to be adjusted through debit notes. The service tax liability discharged by the provider is included in the debit note and credit was availed accordingly. The objection of the audit in this case culminated in the issue of show cause notice that was ultimately dropped by the adjudicating authority leading to this appeal.*

5. *According to the Learned Authorised Representative, the adjudicating authority had dropped the proceedings pertaining to service rendered for M/s Quippo Telecom Infrastructure Ltd, amounting of ₹ 3,79,19,638, on the ground that credit had been availed against invoices; however, it is his contention that the expenses therein being inputs used by the provider for rendering of service, with diesel as well as electricity not being eligible 'inputs' or 'input service', as the case may be, under rule 2 of the CENVAT Credit Rules, 2004 the credit was accordingly taken.*

6. *According to Learned Chartered Accountant, the issue of acceptability of 'debit notes' for availment of CENVAT credit stands settled by several decisions among*

which are that of the Hon'ble High Court of Rajasthan in Commissioner of Central Excise, Jaipur – I v. Bharti Hexacom Ltd [2018 (6) TMI 435 RAJASTHAN HIGH COURT]

'9. Taking into consideration the fact that even first authority while considering the matter has admitted the debit note which was produced though holding it to be in contravention under Rule 9 of the Cenvat Credit Rules, 2004 but in view of the different decisions of the tribunal and in view of the observations made by the Gujarat High Court and Delhi High Court, the view taken by the tribunal is required to be accepted and the same is accepted.'

and of the Tribunal in Tata Motors Ltd v. Commissioner of Central Excise [2017 (8) TMI 835 CESTAT MUMBAI] holding that

'4(ii) On the issue of denial of cenvat credit on the debit notes we are of the view that even though the Rule prescribed challan and invoice as valid document for availing the cenvat credit but if all the information required to be mentioned in the invoice is otherwise appearing on the debit notes, the said debit notes must be allowed for taking the credit. In the decisions of Pallipalayam Spinners (P) Ltd (supra) and Phrmalab Process Equipments Pvt Ltd (supra), credit on debit notes have been allowed on the ground that debit notes bear all the information as required under Rule 4A of Service Tax Rules. We therefore set aside the demand on this count.'

as well as that of the Tribunal in Commissioner of Central Excise, Indore v. Gwalior Chemical Industries Ltd [2011 (274) ELT 97 (Tri-Del.)] holding that

'4. The only point of dispute in this case is as to whether the respondent could take service tax credit on the basis of the documents called debit notes cum bills issued by the service providers for the service provided by them to the Respondent. From the records, it is also seen that the debit notes cum bills are not in the nature of supplementary invoices, but are of the nature of invoices and Assistant Commissioner in the order-in-original has given a clear finding that the debit note cum bill contain all the requisite information as per the provisions of Rule 9(1) of the Cenvat Credit Rules, 2004, that the service provider has also charged the service tax and has deposited the taxes to the exchequer and that the debit notes cum bills are in the name of the respondent. From the nature of these documents called debit notes cum bills in the Commissioner (Appeals)'s order, it is clear that the same

are in the nature of invoices as these documents not only contained the information about the name of the service provider, the nature of the service provided, but also the value of service and the service tax charged. In view of this, I am of the view that these documents have to be treated as invoices and it would not be correct to deny the Cenvat credit to the respondent just because these documents invoice are mentioned as debit notes cum bills. I find that same view has been expressed by the Tribunal in the case of Karur KCP Packaging Pvt. Ltd. v. CCE, Trichy (supra) and Pharmalab Process Equipments Pvt. Ltd. v. CCE, Ahmedabad (supra).

5. The learned Departmental Representative has cited the judgment of Larger Bench of the Tribunal in the case of CCE, New Delhi v. AVIS Electronics Pvt. Ltd. (supra), wherein it was held that when as per the provisions of the Cenvat Credit Rules, the credit could be taken only on the basis of duplicate copy of invoice or in the case of loss of duplicate copy in transit on the basis of other copy with the necessary permission of Jurisdictional Assistant Commissioner, the Cenvat credit could not be taken on the basis of other copies or in the case of loss of duplicate copy, without the permission of the Jurisdictional Assistant Commissioner. The issue involved in this case is totally different and, hence, I am of the view the ratio of this judgment is not applicable to the facts of this case. The learned Departmental Representative has cited judgment of Hon'ble Punjab & Haryana High Court in the case of S.K. Foils Ltd. v. CCE, New Delhi-III (supra) and of Hon'ble Madhya Pradesh High Court in the case of Executive Engineer (Civil), MPEB v. Asstt. Commr., C. Ex., Ujjain (supra). The issue involved in these cases are totally different. In the case of S.K. Foils Ltd., the issue involved was as to whether the Cenvat credit could be taken on the basis of carbon copy of the invoice, while the issue involved in the case of Executive Engineer (Civil), MPEB was as to whether Cenvat credit could be taken on the basis of invalid invoices which are not in conformity with the Rules. In this case, there is no dispute that the documents called "debit notes cum bills" contain all the information which is required to be mentioned in the invoices and except for the name of the document, there is no difference between the debit note cum bill and invoice. The nature and value of the service provided and the service tax paid has been shown in these documents and it is not disputed that the service tax has been paid to the Government. In view of these circumstances, I hold that

there is no infirmity in the impugned order. The Revenue's appeal is dismissed. The crossobjection also stands disposed of.'

and of the Hon'ble High Court of Telangana in Tiara Advertising v. Union of India 2019 (30) GSTL 474 (Telangana)] holding that

'16. As regards the issue of debit notes, Sri A. Radha Krishna, Learned Senior Standing Counsel, is not in a position to dispute the case law relied upon by the petitioner in its reply dated 16-5-2016. It is not his case that any of these decisions was overturned or that there is a binding decision of a higher judicial authority to the contrary. He also has no explanation to offer as to why the second respondent did not even deal with the case law cited before him. We therefore hold that disallowance of Cenvat Credit on the ground that the petitioner had availed the same by producing debit notes instead of invoices cannot be accepted.'

with that of the Tribunal in Pharmed Process Equipment Pvt. Ltd v. Commissioner of Central Excise, Ahmedabad [2009 (242) ELT 467 (Ahmd)] holding that

'4. Commissioner (Appeals) also has taken the same view. However, from the copies of debit notes submitted during the hearing I find that the debit notes issued by the service provider contained the details of service tax payable, description of the taxable service (sales commission), value of the taxable service, registration no. of the service provider, name and address of the service provider. These are the details which are required as per Rule 9(2) of CENVAT Credit Rules, 2004. The observations of the Assistant Commissioner are contrary to the facts noticed by me on the basis of documents submitted before me. Since it is not clear as to whether the same documents which were produced before me were produced before the Assistant Commissioner or not, the matter has to go back to the Assistant Commissioner who shall go through the documents, verify whether service has been received and whether all the particulars as required under the Rules are available in the debit notes and adjudicate the matter afresh. If documents contain details required under Rule 98 (sic) [9(2)] of CENVAT Credit Rules, benefit of Service Tax Credit may be extended. Needless to say the appellants shall be given an opportunity to present their case and also the Assistant

Commissioner shall be free to get any verification if necessary done.'

xxx xxx xxx xxx xxx xxx

9. *On considering the submissions made by both sides, it is seen that availment of credit, whether against invoices or against debit notes that contain substantially the same information as prescribed in rule 9 of CENAT Credit Rules, 2004 stands settled by the decision of the Tribunal and of the several High Courts as noted supra. It is seen from the debit notes, as well as the invoices in question, that, while the adjustments reflect the separate charges as provided in the master service agreements, discharge of tax liability therein under Finance Act, 1994 by the provider of service and raising of the amount as due from the recipient of the service is not in doubt. It is settled law that once the tax has been collected, it is not within the jurisdiction of the tax authorities governing the recipient to contend that such payment of tax was not in consonance with the law. Furthermore, the grounds of appeal relied upon definition of the 'inputs' to contend that diesel is not a permissible 'input. It would appear that the competent authority has not been able to draw a distinction between diesel as goods and any duties paid thereon being ineligible for availment of credit and a charge raised upon the recipient of the service as value of the service on which tax liability under Finance Act, 1994 has been duly discharged.*

10. In view of the above we find that the grounds of appeal lack merit and appeal of Revenue is consequently dismissed."

In view of the above decisions of the Tribunal, the impugned demand cannot be sustained and is accordingly set aside.

9. Learned Chartered Accountant further submits that the demand is barred by limitation to the extent it is for the period beyond Eighteen months from the relevant date as mentioned under Section 73(1) of the Finance Act, 1994 is barred by limitation and since there is no suppression of facts or contravention of provisions of law by the Appellant, extended period of limitation cannot be invoked in the instant case as per the following table:-

F.Y	Relevant date	Date of limitation under normal period	Date of issuance of SCN
2012-2013	25 Oct 2012	25 April 2014	29 January 2016
2012-2013	25 April 2013	25 Oct 2014	29 January 2016
2013-2014	25 Oct 2013	25 April 2015	29 January 2016
2013-2014	25 April 2014	25 Oct 2015	13 April 2016

In support of his submission he relied upon the following decision:-

- Nizam Sugar Factory vs. Collector of Central Excise, A.P.
[2006 (197) E.L.T. 465 (S.C.)].

10. It is to place on record that the demand of Rs.1,83,082/- was paid by the Appellant much before the conclusion of the adjudication proceedings alongwith interest of Rs.1,65,150/- but the same has not been appropriated in the adjudication order by the Adjudicating Authority and accordingly we direct to appropriate the amount paid by the Appellant vide Challan No.02048 dated 14.10.2016. Apart from this demand, all the other demands are set aside, consequential interest is set aside and all the penalties are set aside.

11. In view of the above discussion, it is our considered view that both the appeals filed by the Appellants succeed on merits as well as on limitation. Accordingly, the impugned orders are set aside and the appeals filed by the Appellants are allowed with consequential relief, as per law.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS