CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70189 of 2017

(Arising out of Order-in-Original No.68-69/Pr.Commr/Meerut/2016 dated 30/11/2016 passed by Commissioner, Central Excise & Service Tax, Meerut)

M/s Vodafone Idea Ltd., ...Appellant
(E-5, Sector-63, Noida)

VERSUS

Commissioner, Customs, Central Excise & Service Tax, Meerut ....Respondent
(Opposite CCS University,
Mangal Pandey Nagar, Meerut-250004)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NO.70687/2024

DATE OF HEARING : 21.10.2024
DATE OF DECISION : 21.10.2024

P.K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Original No.68-69/Pr.Commr/Meerut/2016 dated 30/11/2016 passed by Commissioner, Central Excise & Service Tax, Meerut.

2. The appeal was filed in the name of Vodafone Mobile Services Ltd. on 03 March, 2013. Subsequently, the Appellant had filed a miscellaneous application on 13.10.2023 being Service Tax Miscellaneous Application No.70098 of 2023 whereby they had prayed for change of cause-title from

"Vodafone Mobile Services Ltd." to "M/s Vodafone Idea Limited" on amalgamation. Vide Miscellaneous Order No.70099 of 2023 dated 02.11.2023, the change in cause title was allowed.

3. Briefly stated, the facts of the case are that the Appellant is engaged in provision of telecommunication services in U.P. West Circle under Telecom Licences issued by the Department of Telecommunication. Registration with the Service Tax Department was obtained under the category of 'Telecommunication Services', 'Business Support Service', 'Sponsorship Service', 'Goods Transport Service', 'Business Auxiliary Service' etc.

4. In order to provide telecommunication service, the Appellant required various infrastructure support for providing seamless network facilities to its subscribers. Such telecom infrastructure support services are provided by various tower companies to telecom operators. The Appellant had received the infrastructure support services from one such tower company viz. M/s Indus Tower Limited[1].

5. The 'Master Service Agreement' dated 07.03.2008 alongwith the supplementary agreements was entered with ITL for provision of infrastructure support service. An audit of the financial records of the Appellant was conducted by the officers of Internal audit of the Commissionerate, Meerut-I for the period from April 2011 to March 2012 and certain discrepancies were noted and communicated vide Draft Audit Report No.02/2013-14 dated 04.07.2013 wherein *inter alia* it was stated that Appellant had availed Cenvat credit of service tax paid on input/input services amounting to Rs.13,35,76,678/- on the strength of invoices issued by ITL. As per the said invoices, ITL had paid service tax on diesel charges and electricity charges of which cenvat credit had been availed by the Appellant. The Appellant filed a detailed explanation to the Audit objection. Subsequently,

---

[1] ITL

Show Cause Notice[2] dated 21.01.2015 was issued proposing to demand service tax of Rs.56,93,95,643/-. In terms of Rule 14 of the CC Rules read with proviso to Section 73(1) of the Finance Act, 1994. Reply to the show cause notice was filed on 10.05.2015.

6. Subsequently, another SCN dated 22.03.2016 was issued for the Period from April 2014 to March 2015. Following order was passed vide the impugned Order-In-Original:-

ORDER

A. IN RESPECT OF SHOW CAUSE NOTICE C. NO. V(15) Off/Adj/S.Tax/293/ 2014 dated 21.1.2015

(i) I disallow and confirm the demand of CENVAT credit of Rs.56,93,95,643/- (Rupees Fifty Six Crores Ninety Three Lac Ninety Five Thousand and Six Hundred Forty Three only) and order recovery of the above said demand amount from the party i.e. M/s Vodafone Essar South Limited, 135/1 & 137/1, Mangal Pandey Nagar, Opposite CCS University, Meerut under Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to Section 73(1) of the Finance Act, 1994.

(ii) I order recovery of interest on the above said amount of demand from the party under Rule 14 of CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act 1994,

(ii) I impose a penalty of Rs. Rs.56,93,95,643/- (Rupees Fifty Six Crores Ninety Three Lac Ninety Five Thousand and Six Hundred Forty Three only) on M/s Vodafone Essar South Limited, 135/1 & 137/1, Mangal Pandey Nagar, Opposite CCS University, Meerut under Rule 15(3) of CENVAT Credit Rules, 2004 read with Section 78(1) of the Finance Act, 1994.

B. IN RESPECT OF SHOW CAUSE NOTICE C. NO. V (15) Off/Adj/S.Tax/ MRT/45/2016 dated 22.3.2016

(i) I disallow and confirm the demand of CENVAT credit of Rs.23,53,12,236/- (Rupees Twenty Three Crores Fifty Three Lac Twelve Thousand and Two Hundred Thirty Six only) and order recovery of the above said demand amount from the party i.e. M/s Vodafone Essar South Limited, 135/1 & 137/1, Mangal Pandey Nagar, Opposite CCS University, Meerut under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994.

(ii) I order recovery of interest on the above said amount of demand from the party under Rule 14 of

---

[2] SCN

CENVAT Credit Rules, 2004 real with Section 75 of the Finance Act, 1994.

(iii) I impose a penalty of Rs. 2,35,31,223/-(Rupees Two Crores Thirty Five Lacs Thirty One Thousand and Two Hundred Twenty Three only) on M/s Vodafone Essar South Limited, 135/1 & 137/1, Mangal Pandey Nagar, Opposite CCS University, Meerut under Rule 15(1) of CENVAT Credit Rules, 2004 read with Section 76(1) of the Finance Act, 1994.

7. Hence the present appeal before the Tribunal.

8. Heard both the sides and perused the appeal record.

9. We find that the issue in dispute is no more *res integra* and the Tribunal vide Final Order No.70610 of 2024 dated 04.06.2024 in the case of M/s Bharat Sanchar Nigam Ltd. V/s Commissioner of Central Excise & Service Tax, Meerut-I in Service Tax Appeal No.70318 of 2017 held as under:-

"4.8 On the second issue we are of the view that the adjudicating authority has misdirected himself by treating the issue to be one of admissibility of CENVAT credit on diesel or electricity. The appellant has taken credit on the invoices of the service provider providing AMC services. For providing such services he has used "diesel/ electricity" as input. The output service provided by the service provider admittedly is AMC service. Not a single word has been stated in the impugned order as to why CENVAT credit should not be allowed on these input services which have been providing inputs – diesel and electricity. All the decisions relied upon in the impugned order in respect of denial of CENVAT Credit on diesel/ electricity used as inputs. It is not even the claim of the appellant that the CENVAT Credit should be allowed to them on the diesel/ electricity by treating them as input under Rule 2 (k) of the CENVAT Credit Rules, 2004. The fact that service provider has paid service tax on the service provided by him consuming these inputs is not in dispute. We do not find any merits in the findings recorded by the adjudicating authority in respect of this demand and set aside the same. As this demand is set aside the interest and penalty imposed in respect of this demand is also set aside."

10. We find that the facts of the present case are squarely covered by the aforesaid decision of the Tribunal and we follow the same.

11. In view of the above discussion, the impugned order is set aside and the appeal filed by the Appellant is allowed with consequential relief, as per law.

(Operative part of the order pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal