FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 12/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70035/2017-CU[DB] dated 09/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/269/2007	**Vodafone Mobile Services Ltd** 493, Mangal Pandey Nagar, University Road MEERUT UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

B. L. Narsimhan
B-6/10, Safdarjung Enclave,
New Delhi
Delhi
110029

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. ST/269/2007-CU[DB]

(Arising out of Order-in-Original No. 4-5/Commr./MRT-I/2007dated 31/01/2007 passed by Commissioner of Central Excise & Customs, Meerut-I)

M/s Vodafone Mobile Services Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Atul Gupta, Advocate &
Shri Hrishikesh, Advocate. for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 29/12/2016

FINAL ORDER NO - 70035/2017

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Vodafone Mobile Services Ltd., against Order-in-Original No. 4-5/Commr./MRT-I/2007dated 31/01/2007 passed by Commissioner of Customs & Central Excise, Meerut-I.

2. Brief facts of the case are that the appellant are providing Telecom Service particularly Telephone Service to its subscribers. The appellants are registered with the department. The appellants also availed facilities of Cenvat credit on input services & capital goods. They were issued with a Show Cause Notice dated 21/04/2006 & another Show

Cause Notice dated 18/10/2006 calling upon to Show Cause Notice as to why the Cenvat credit amounting to Rs.81,90,196/- & Rs.1,78,37,146/- should not be recovered from them as inadmissible Cenvat credit. The alleged inadmissible Cenvat credit was in respect of input services & capital goods availed during the period from April, 2004 to September, 2005. There was another allegation in the said Show Cause Notice that Excise duty of Rs.35,211/- was paid on capital goods received prior to 10/09/2004 and therefore the Cenvat credit of said amount did not appear to be eligible. It was contended in the said Show Cause Notices that Cenvat credit was taken on capital goods which were not covered by the definition of capital goods and Cenvat credit involved in such contention was Rs.1,43,48,257/-. There was allegation in the show Cause Notice that input services were received prior to 10/09/2004 and they were utilized in respect to output service after 10/09/2004 and hence, Cenvat credit on such input services and capital goods was not admissible. The said Show Cause Notices also contended that the appellant was providing International Roaming Service, which was exempted and therefore, appellant was eligible to utilize Cenvat credit only to the extent of 20% of credit availed and differential 80% of the Cenvat credit availed by them was liable to be recovered. The said Show Cause Notice was adjudicated through Order-in-Original No. 4-5/Commr./MRT-I/2007dated 31/01/2007. The Original

Authority dropped various demands in the Show Cause Notice and confirmed following amounts:- (a) He confirmed demand of Rs.70,50,603/- on capital goods received prior to 10/09/2004, (b) He Confirmed demand of Rs.35,211/- in respect of Show Cause Notice dated 18/10/2006 in respect of capital goods received prior to 10/09/2004, (c) He confirmed demand of Rs.11,04,382/- on account of input service received prior to 10/09/2004 and not consumed before 10/09/2004 & (d) He ordered for recovery of Rs.1,78,37,148/- being differential 80% of the Cenvat credit availed in respect of input services provided on Roaming to subscribers of foreign telecom network during their visit to India treating said service to be exempted due to export. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant. He has clarified that in respect of the Show Cause Notice 21/04/2006, Cenvat credit availed on capital goods received prior to 10/09/2004 was Rs.35,211/- by oversight the ld. Original Authority has denied Cenvat credit of Rs.70,50,603/- in place of Rs.35,211/- . He, further, contended that the contention of the Original Authority was that that Cenvat credit of Rs.35,211/- in respect of Show Cause Notice dated 21/04/2006 & Cenvat credit of equal amount in respect of Show Cause Notice dated 18/10/2006 where the capital goods were received during the currency of Cenvat Credit Rules which were in operation up to 09/09/2004. Further

Rules which were in operation up to 09/09/2004. Further, Cenvat credit of Rs.11,04,382/- denied by Original Authority in respect of input service received prior to 10/09/2004 denied on the same grounds that the Cenvat credit was availed during the currency of rules which were effective till 09/09/2004 was not admissible after the period 10/09/2004 since when Cenvat credit Rules, 2004 came into operation. He has submitted that Rule 11 of Cenvat Credit Rules, 2004 has provided transitional provisions wherein Cenvat credit availed prior to 10/09/2004 were admissible to be utilized after 10/09/2004. In respect of 80% Cenvat credit amounting to Rs. 1,78,37,148/- availed for providing service on Roaming to subscribers of foreign telecom network during their visit to India treating said service as exempted, the Original Authority has confirmed the demand however, Notification No. 36/2007-ST dated 15/06/2007, very categorically stated that Central Government in exercise of the powers conferred by Section 11C of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, directed that the Service tax payable on Roaming Services provided by Telegraph Authority to an international inbound roaming subscribers was leviable but was not being levied in accordance with the practice prevailing during the period from 01/07/1994 to 14/01/2007 was not required to be collected. He, further, argued that Notification No. 36/2007-ST dated 15/06/2007, under said Section 11C of Central Excise Act, 1944 empowered to be issued only in respect of such goods which are liable to Excise duty. In view of Section 83 of Finance Act, 1994 the provisions are in respect of services which are leviable to Service tax.

4. Heard the ld. D.R., Shri Rajeev Ranjan, who has supported the impugned Order-in-Original.

5. Having considered the rival contentions, we hold that in view of the transitional provisions provided in Rule 11 of Cenvat Credit Rules, 2004. Cenvat credit on input services received prior to 10/09/2009 were admissible to the appellant. Further, in view of the said Notification No. 36/2007-ST dated 15/06/2007, where Central Government has considered "services provided on Roaming to subscribers of foreign telecom network during their visit to India" as leviable to Service tax, the contention of the Original Authority that the said services were exempted and that is why 80% of the Service tax credit availed was inadmissible to the appellant is not sustainable. We, therefore, modify the impugned Order-in-Original to the extent that the appellants are liable to pay amount equal to Rs.35,211/- in respect of Show Cause Notice dated 21/04/2006 & another amount of Rs.35,211/- in respect of Show Cause Notice dated 18/10/2006, of the order in impugned. We uphold the Order-in-Original impugned in so far as it is concerned with droppping of demand of Cenvat credit amounting to Rs.8,17,38,878/- Save as stated above, remaining portion of

the impugned Order-in-Original is set aside. In above terms, appeal is allowed partially.

(Dictated and pronounced in Court)

-Sd/-	-Sd/-
(ANIL G. SHAKKARWAR)	(ANIL CHOUDHARY)
Member (TECHNICAL)	Member(JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
20.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001