CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGINAL BENCH AT CHANDIGARH

Court NO.I

Appeal No. ST/55383 /2013-CU-DB

[Arising out of OIO No. 170-171/ST/PKJ/CCE/ADJ/12 dt.16.10.2012 passed by the Commissioner of Central Excise (Ajudication), Room No.109, CR Building, I.P.Estate, New Delhi]

M/s. Bharti Airtel Limited : Appellant
(Airtel Centre, Plot No.16, 4th Floor,Udyog Vihar, Phase-IV, Gurgaon-122015.

Vs
CCE & ST- Gurgaon-II : Respondent
(17-B, I.A.E.A. House, M.G.Road, I.P.Estate, New Delhi)

WITH

Appeal No. ST/ 55947/2013-CU-DB

[Arising out of OIO No. 17-19-SA-CCE-ST-2012 dt.22.11.2012 passed by the Commissioner of Central Excise (Ajudication), Room No.109, CR Building, I.P.Estate, New Delhi]

M/s. Bharti Airtel Limited : Appellant
(Airtel Centre, Plot No.16, 4th Floor,Udyog Vihar, Phase-IV, Gurgaon-122015.

Vs
CCE & ST- Gurgaon-II : Respondent
(17-B, I.A.E.A. House, M.G.Road, I.P.Estate, New Delhi)

APPEARANCE:
Shri B.L.Narasimhan, Advocate for the Appellant
Ms. Krati Somani, Advocate
Shri G. M. Sharma & Tarun Kumar, ARs for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE Mr. C L MAHAR, MEMBER (TECHNICAL)

FINAL ORDER No.60770-60771/2019

Date of Hearing/Decision: 03.09.2019

PER: Ashok Jindal

The appellant is in appeal against the impugned order wherein the Cenvat credit has been denied on tower and shelters and credit on services used for erection of towers for providing telecommunication services.

2. Heard the parties.

3. On consideration of the arguments advanced by both sides, we find that the following issue emerges:-

(a) Whether the appellant is entitled for Cenvat credit on tower and shelters and support structure which has been used for providing telecommunication services or not? And

(b) Whether the appellant is entitled for credit on services used for erection of towers for providing telecommunication services or not?

4. We find that both the issues have been decided by this Tribunal in the case of Bharati Infratel Limited vide Final Order No.60592-60594/2019 dt.22.5.2019, wherein this Tribunal as under:-

" 3. Considering the fact that the issue has been settled by this Tribunal in their own case vide Final Order No.A/60267-60269/2019 dt.21.2.2019 wherein this Tribunal has observed as under:-

"5. We have gone through the decision of the Hon'ble Delhi High Court in the case of ***Bharti Infratel Ltd. (supra)*** *wherein the Hon'ble High Court allowed the cenvat credit in respect of towers, shelter parts thereof has observed as under:-*

(i) The Revenue did not dispute that the towers and shelters are merely bolted or fastened. The foundation is necessary only to make a wobble free operation (stability) of the equipment and there is no assimilation of the machine with the structure permanently.
(ii) The installation or assembly of towers and shelters on a foundation cannot be said to be "attached to earth" and can be moved without any damage.
(iii) Fastening to earth is only to provide stability
(iv) Manufacture of the plant does not therefore constitute annexation and cannot be termed as immovable property.
(v) The Hon'ble Tribunal failed to appreciate the permanency test as established in the case of CCE, Ahmedabad vs. Solid & Correct engineering Works, 2010 (252) ELT 481 (SC).

(vi) Towers are constructed to form the active infrastructure for placement of BTS equipment, antennae and other items. Therefore, toweres form part of the active infrastructure and shelters are the accessories for placement of BTS and other items.

(vii) Alternatively, towers are shelters qualify as "inputs" the test used for determining whether the capital goods are "used in the manufacture of goods" is the functional utility test- BTS is an integrated system and each component in the BTS have to work in tandem to provide cellular connectivity. Thus, there is an actual use of towers and shelters in conjunction with the capital goods, namely BTS and antennae. The pre-fabricated shelters are therefore inputs as per rule 2(K) of the Cenvat credit Rules.

(viii) The eligibility to claim credit on inputs is to be determined at the time of receipt of goods in terms of Rule 4(1) of the Credit Rules. The definition of "inputs" does not contain any condition relating to emergence of immovable property to be ineligible for taking credit.

(ix) Towers which are received CKD condition, are assembled/eracted at the site subsequently giving rise to structure that remains immovable till its use for safety, stability and commercial reasons cannot be disentitled for credit. The fact that goods are later on fastened to earth cannot make them non-excisable.

(x) Further that, in any case, immovability cannot determine eligibility to avail credit. Emergence of immovable property in the intermediate stage also cannot disentitle the Assessee-Appellant's eligibility to avail credit.

Therefore, we hold that the assessee-appellant are entitled to avail cenvat credit on items, towers, shelter parts thereof being input used for providing output service. In these circumstances, we dismiss the appeal filed by the Revenue and allow the appeals filed by the assessee-appellants."

4. Therefore, relying on the above decision of this Tribunal in the appellant's own case, we set aside the impugned order and allow the credit availed by the appellant.

5. We further take note of the in the case of Bharat Sanchar Nigam Limited vs. CCE, Chandigarh-2017 (47) STR 246 (Tri.Chand.), this Tribunal has allowed the credit for the services used for erection and installation telcom towers wherein this Tribunal has observed as under:-

> ***"4.****It is an admitted fact on record that the appellant is a service tax assessee, duly registered under the Service Tax statute for providing the telecom services. Installation of telecom towers are for the purpose of providing the output service by the appellant. The fact is not under dispute that the services in question are not confirming to the definition of "input service" defined in Rule 2(l) of the Cenvat Credit Rules, 2004. Since the disputed services have*

been used by the appellant for erection of the telecom towers, which is used for providing the taxable output service, in my opinion, it will not be appropriate to deny the Cenvat benefit."

6. In view of this, we allow the Cenvat credit on tower and shelters and services used for erection of towers to the appellants. Accordingly, the impugned order deserves no merits and the same are set aside.

7. In the result, the appeals are allowed with consequential relief, if any.

(operative part of order was pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C.L.MAHAR)
MEMBER (TECHNICAL)

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