CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

Appeal No.E/2870/2010-Ex

(Arising out of OIO No.74/STC/CHD-I/10 dt.30.4.2010 passed by the CCE, Chandigarh)

Date of hearing:03.05.2018

Date of Decision:31.08.2018

Bharat Sanchar Nigam Ltd. **Appellant**

Vs.

CCE, Chandigarh **Respondent**

Present for the Appellant: Shri Amarinder Singh, Advocate
Present for the Respondent: Shri A.K.Saini, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Devender Singh, Member (Technical)

FINAL ORDER NO.62666/2018

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is engaged in the activity of providing telecommunication service. For providing the service, the appellant is using towers and shelters and also availing Cenvat credit on transportation of towers to the site. The Revenue is of the view that as these towers and shelters are immovable property, therefore, the appellant is not entitled to avail Cenvat credit on transportation of towers to the site as well as towers and shelters. Therefore, the proceedings were initiated against the appellant by issuance of show cause notice on 17.3.2009 by invoking the extended

period of limitation for the period 2004-05 to 2007-08. The matter was adjudicated and the credit availed by the appellant was denied. Against the said order, the appellant is before us.

3. Ld. Counsel for the appellant submits that for availment of Cenvat credit on towers and shelters, the demand pertaining to the extended period of limitation, is not sustainable. Moreover, no penalty is imposable in the light of the decision of this Tribunal in the case of Vodafone Essar South Ltd. vs. CCE, Chandigarh vide Final Order No.A/60069/2018-CU (DB) dt.31.1.2018. For availment of Cenvat credit on transportation of towers as input service, he has relied upon the decision of this Tribunal in the case of Vodafone Essar South Ltd. vs. CST, Chennai-2018 (1) TMI 1218-CESTAT Chennai to say that the appellant is engaged in the activity of erection and commissioning of towers and for providing the telecommunication services, without bringing the towers at site, the appellant cannot provide telecommunication service. He pleaded that the demand pertaining to the extended period of limitation, the credit on transportation of towers be allowed.

4. On the other hand, Ld.AR relied on the decision Larger Bench of this Tribunal in the case of Tower Vision India Pvt.Ltd. vs. CCE (Adj.), Delhi-2016 (42) STR 249 (Tri.-LB).

5. Heard the parties and considered the submissions.

6. We find that on towers and shelters, the larger bench of this Tribunal in the case of Tower Vision India Pvt.Ltd. (supra) has held that the assessee is not entitled to avail credit on towers and shelters

as it has become immovable property. Further, we find that in the case of Vodaphone Essar South Limited (supra), this Tribunal has entertained the view and observed that the extended period of limitation is not applicable. Therefore, the demand pertaining to the extended period of limitation is not sustainable and no penalty is imposable on the appellant.

7. With regard to the availment of Cenvat credit on transportation of towers at site as input service, we find that similar issue has been dealt in the case of Vodafone Essar South Ltd. vs. CST, Chennai (supra) wherein this Tribunal has observed as under:-

> *"12. On the second issue regarding eligibility of various credits on input services, we note that the main activity of which substantial credit has been availed by various appellants is with reference to erection and construction of telecommunication towers. The plea of the appellant is that these towers are basic essential requirements for telecommunication service. As such, the service of erecting of such tower is essentially an input service covered by the main means clause of the definition for input servicethat is used by a service provider for providing output service. We are in agreement with the said proposition. We also note that ratio adopted for inputs and capital goods which were used for creating such towers cannot be automatically applied to input services rendered in creating towers. In this connection, we refer to a decision of the Tribunal in Idea Cellular ltd. Vs CST Mumbai - 2016-TIOL-2486-CESTAT-MUM. The Tribunal examining a similar dispute observed as follows :*
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> *"7. The issue involved in the case is the eligibility to avail CENVAT credit of service tax paid on various input services and utilization thereof. Adjudicating authority has held that appellant is not eligible to avail CENVAT credit on services utilized for construction of towers, service related to supply of diesel, liasoning services, catering charges, towers and shelters and on the capital goods. He has also held that appellant has wrongly utilized excess CENVAT credit of more than 20% of credit balance in few months despite rendering taxable non-taxable services. In our considered view the adjudicating authority has erred in coming to such a conclusion we address each issue as under:-*

(a) ....

(b) Demand pertaining to CENVAT credit of service tax paid on construction of tower On perusal of Tribunal's order No. A/86785/15/SMB dated 30.04.2015, we find that same issue was agitated before the Bench. Tribunal considering the issue from all angles held that CENVAT credit can be availed of service tax paid on services utilized for erection of towers. We do not find any reason to deviate from such a reasoned order. Accordingly, we hold that CENVAT credit availed of service tax paid on services utilized for erection of tower....."

13. The said ratio has been followed in BSNL Vs CCE Chandigarh - 2017 (47) STR 246 (Tri.-Chan.). Accordingly, following the ratio already laid down, we hold that input service credit on erection of telecommunication towers are eligible for the appellant."

8. As it is fact on record that the appellant is providing telecommunication service and for providing the service, the input service is used for erection of towers, he has availed credit on transportation of towers to site as input service and without transportation of towers upto site, the appellant is not able to provide such service. In that circumstance, the appellant is entitled for Cenvat credit on transportation of towers as input services.

(pronounced in the court on 31.08.2018)

(DEVENDER SINGH)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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9. While I agree with the conclusions of Ld. Brother Member (J) on both the issues, my reasoning on the input service credit on transportation of towers is as below:-

In the present case, the period for input service is 2006-07 to 2007-08 i.e. the entire period is prior to 1.4.2011. For the said period, the settled position in law is that the input service or the activity used should be integrally connected with the business of the appellant and should not be in the nature of welfare activity. On this basis, the services like renting a cab, outdoor catering and other services, which are used for carrying on the business of manufacturing or providing output services have been held to be admissible services in numerous judicial pronouncements after the judgment of Hon'ble Bombay High Court in Ultra Tech Cement-2010 (260) ELT 369 (Bom.) On the same basis, transportation of towers is an activity related to the business. Even though the towers are not eligible for Cenvat credit as inputs or capital goods as held by the Larger Bench of this Tribunal in the case of Tower Vision India Pvt.Ltd. (supra), they are essential for providing telecommunication service. In view thereof, input service credit on transportation of towers to the site is admissible to the appellant.

10. The appeal is disposed of in the above terms.

(DEVENDER SINGH)
MEMBER (TECHNICAL)