CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
CHANDIGARH

COURT NO. I

Service Tax Appeal No. 1496 of 2010

[Arising out of the Order-in-Original No. 81/STC/CHD-I/2010 dated 18/06/2010 passed by The Commissioner, Central Excise, Chandigarh.]

The Commissioner of Central Excise and Service Tax, **Appellant**
C.R. Building, Plot No. 19,
Sector 17 – C,
Chandigarh – 160 017.

Versus

M/s Vodafone Essar South Limited **Respondent**
C-131, Industrial Area,
Phase VIII, Mohali,
(Punjab.)

APPEARANCE

Shri A.K. Saini, Authorized Representative (DR) – for the appellant

Ms. Krati Somani, Advocate – for the Respondent.

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

FINAL ORDER NO. 61248 /2019

DATE OF HEARING : 04/09/2019.
DATE OF DECISION : 04/09/2019.

ASHOK JINDAL :-

The Revenue is in appeal against the impugned order wherein the learned Commissioner allowed the Cenvat credit on various input services availed by the respondent which have been used for providing telecommunication services.

2. The facts of the case are that the respondent is a telecommunication service provider and used the passive infrastructure i.e. tower, shelter to be installed at various sites. The respondent was availing of Cenvat credit of duty paid on

inputs and service tax paid on input services used in setting of tower facility. During the course of audit, it was observed that these towers and shelters are immovable property and therefore not goods, hence not eligible for credit as inputs or capital goods. Therefore, the show cause notice was issued to the respondent to deny Cenvat credit availed by them in respect of input and input services. The learned Commissioner denied the Cenvat credit on inputs on the ground that the tower shelters and part thereof are immovable property which are not excisable goods therefore they are not entitled to avail Cenvat credit but allowed Cenvat credit on input services used by the respondent on the ground that nexus have been established for output service. Against the said order, the Revenue is in appeal praying that Cenvat credit on input services used for setting up of towers which are immovable property, the respondent is not entitled to Cenvat credit.

3. Heard the parties considered the submissions.

4. On going through the impugned order, we find that the learned Commissioner has allowed Cenvat credit on various input services namely civil work for tower, shelter and DG foundation, soil investigation, installation and commissioning (TSP, Shelter, Tower & Pole) and Rent-a-cab service. The said issue has been examined by this Tribunal in the case of **Bharti Airtel Ltd. versus CGST, CE, Chennai & CGST, CE, Chennai versus Vodafone Essar Cellular Ltd. & vice-versa** reported in **2018 (3) TMI 708 – CESTAT CHENNAI** and Hon'ble High Court of Punjab & Haryana in the case of **Commissioner of Central Excise, Chandigarh – II versus Federal Mogul Goetze (India) Ltd.** reported in **2015 (39) S.T.R. 735 (P&H)**. In the case of **Bharti Airtel Ltd.** (supra) 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 service that 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 :

> "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:-
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> (a) ....
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> (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".

5. Further, in the case of **Federal Mogul Goetze** (supra) the Hon'ble High Court has observed as under :-

> "4. The Tribunal, *inter alia*, returned a finding that the transportation of the employees from their residence to the factory premises is related to their manufacturing activities, as without coming to factory, the production cannot be started. The provision of transportation facility to the employees increases efficiency and increases the production capacity of the manufacturing unit itself. The Tribunal has relied upon a judgment of Bombay High Court reported as 2009 (242) E.L.T. 168 (Bombay), *Coca Cola India Pvt. Ltd.* v. *Commissioner of Central Excise, Pune-III.*
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> 5. Learned counsel for the appellant has vehemently argued that the Revenue is in appeal against the judgment rendered in *Coca Cola's* case (supra) before the Hon'ble Supreme Court.

> Therefore, the judgment rendered in *Coca Cola's* case (supra) cannot be made basis of the decision by the Tribunal.
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> 6. We do not find any merit in the said argument. Hence, the pendency of the appeal does not bar this Court to examine the issue. We respectfully agree with the findings recorded by the Bombay High Court in *Coca Cola's* case (supra). The judgment rendered in *Coca Cola's* case (supra) has also been followed in *Semco Electrical Pvt. Limited* v. *CCE, Pune* - 2010 (18) S.T.R. 177 (Tri.-Bom.).
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> 7. The reasoning given by the Tribunal is a possible reasoning which does not give rise to any substantial question of law".

6. As the issue of availment of Cenvat credit has been dealt in above cases wherein, it is held that Cenvat credit is available on the services in question, therefore, we hold that the respondent is entitled to avail Cenvat credit on the services, in question.

7. Hence, we do not find any merit in the appeal filed by the Revenue, therefore, the same is dismissed by confirming the impugned order passed by the learned Commissioner.

(Operative part of the order pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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