

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2125/2009 - EX[DB] WITH
E/S/2200/2009-EX

Date 23/09/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S IDEA MOBILE COMMUNICATIONS LTD. (NOW
M/S IDEA CELLULAR LTD.)
182-ABU LANE, VIDYA LAXMI COMPLEX, MEERUT
(U.P.)
M/S IDEA MOBILE COMMUNICATIONS LTD. (NOW
M/S IDEA CELLULAR LTD.)

Appellant

Vs
Respondent

C.C.E. MEERUT I

STAY ORDER NO.670/2010-EX

I am directed to transmit herewith a certified copy of Final order No. 652/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

2010 EX[DB] dated 30-7-10


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. MEERUT I
EXCISE CHOWK, OPPOSITE CHOUDHARY CHARAN
SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.

2. Adv. / Consult

MR.V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.D.R

4 ~~J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

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

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

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

11 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New
Delhi - 110070

14 Office Copy

15 Guard file

16, HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH

Date of Hearing/Decision: 30.07.2010

Excise Stay Application No.2200 of 2009
Central Excise Appeal No.2125 of 2009

M/s.Idea Mobile Communication Ltd.

Appellant

Vs.

CCE, Meerut-I

Respondent

Present for the Appellant : Shri Ar.R.Madhav Rao, Advocate

Present for the Respondent: Shri Sheo Narayan Singh ,JCDR

CORAM: HON'BLE MR.JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR.RAKESH KUMAR, MEMBER (TECHNICAL)

STAY ORAL ORDER No. 620/10-EX

PER: JUSTICE R.M.S. KHANDEPARKAR

Heard. We propose to dispose of the appeal itself, and therefore,
the application is allowed without insisting for pre-deposit of the amount
while directing the Registry to place the appeal for final disposal
forthwith. The appeal is disposed of.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH

Date of Hearing/Decision:30.07.2010

Excise Appeal No.2125 of 2009

(Arising out of Order-in-Original No.16/Commr/MRT-I/2009 dated 31.3.2008 passed by the Commissioner of Central Excise, Meerut)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	See
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s.Idea Mobile Communication Ltd.

Appellants

Vs.

CCE, Meerut-I

Respondent

Present for the Appellant : Shri Ar.R.Madhav Rao, Advocate

Present for the Respondent: Shri Sheo Narayan Singh, JCDR

CORAM: HON'BLE MR.JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR.RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL ORAL ORDER No. 652/10-EX

PER: JUSTICE R.M.S. KHANDEPARKAR

Heard learned Advocate for the appellant and Joint CDR for the respondent.

2. The appellants are engaged in providing telecommunication services. During scrutiny of the records of the appellants for the period from October, 2006 to September, 2007, it was revealed to the department that the appellants had availed cenvat credit of service tax without complying with the requirement of statutory provisions and

therefore a show cause notice dated 21.4.2008 came to be issued requiring the appellants to show cause as to why cenvat credit amounting to Rs.5,61,27,973/- should not be held to have been wrongly availed and therefore should not be demanded under Rule 14 of Cenvat Credit Rules, 2004 read with Section 73 of Finance Act, 1994 and Section 11A of Central Excise Act, 1944 along with interest and penalty. The notice was contested by the appellants on various grounds. However, by the impugned order, the Commissioner disallowed the cenvat credit amounting to Rs.1,72,66,973/- and ordered recovery thereof alongwith interest and equal amount of penalty.

3. Though the appeal has been filed against the impugned order on various grounds, suffice to record only two grounds to justify interference by the Tribunal in the impugned order. One relates to reliance in reports dated 5.5.2008, 24.03.2009 and 26.03.2009 submitted by the Deputy Commissioner to the Commissioner, the copies of which were never furnished to the appellants even though formed the basis for arriving at the finding relating to the duty liability of the appellants; consequently, it is the contention of the learned Advocate for the appellants that the authority did not apply its mind to the provisions of law comprised under Rule 9 (2) of Cenvat Credit Rules, 2004 while considering the entire matter.

4. The Commissioner has clearly recorded his finding in the impugned order in para 4.4 and 4.5 which reads thus:

"In the light of the above statutory provisions and the case laws referred by the notice in their defence submissions, the Dy. Commissioner, Central Excise Division, Meerut has been asked to verify the invoices/challans/bills and to submit a factual report. The report was submitted vide his office letter C.No.V(15)59/ST/SCN/071208 dated 5.5.2008, even C.No.1147 dated 24.03.2009 and 1148 dated 26.03.2009.

In view of various case laws cited by the noticee, verification reports submitted by the Deputy Commissioner, Central Excise Division, Meerut and provisions of law, the issues raised under the SCN are taken for decision as under:"

5. Further in para 4.5 of the impugned order, it has been recorded that the authority has verified the said reports to ascertain liability of the appellants. The impugned order and the records placed before us nowhere disclose that the appellants were furnished with the copies of the said reports. The rules of principles of natural justice require that before any document is relied upon to ascertain the liability of the assessee, the copy thereof should be made available to the assessee except in case where there are statutory prohibition for providing such copies or some other justifiable reason. Neither the impugned order discloses any such reason nor the records make out any case for any such reason for not providing copies of the said reports to the appellants. This apparently discloses the denial of principles of natural justice to the appellants in the matter in hand.

6. The Rule 9(2) of Cenvat Credit Rules, 2004 reads thus:

"The Cenvat Credit shall not be denied on the grounds that any of the documents mentioned in sub-rule (1) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty or service tax, description of the goods or taxable service, assessable value, name and address of the factory or warehouse or provider of input service:

Provided that the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer or provider

of output service intending to take Cenvat credit, or the input service distributor distributing Cenvat credit on input service, is satisfied that the duty of excise or service tax due on the input or input service has been paid and such input or input service has actually been used or is to be used in the manufacture of final products or in providing output service, then, such Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, shall record the reasons for not denying the credit in each case."

7. Rule 9(2) apparently gives discretion to the adjudication authority to ascertain whether tax due on inputs and input service has actually been paid and such input or input service has actually be used or is to be used in the manufacture of final products or in providing output service as the case may be, and if satisfied in this regard, to give necessary concession to the assessee in relation to any procedural irregularity in relation to maintenance of documents on the basis of which cenvat credit can be availed. Obviously before ascertaining the liability of the assessee under Cenvat Credit Rules, the adjudicating authority is expected to apply its mind to this aspect of the matter and thereafter to arrive at the final conclusion about liability of the assessee in this regard. The impugned order does not disclose any such exercise having been done by the adjudicating authority. In the result, in view of the same, the impugned order is liable to be set aside and the matter to be remanded to the adjudicating authority to decide the same afresh.

8. There is another ground which justifies the remand of this matter. It is the contention of the appellants that all the original invoices were actually produced for its verification by the authority at the time when they had visited the premises of the appellants on 05.02.2009 and

06.02.2009. There is a letter dated 2.4.2009 by the appellants addressed to the Superintendent, Range Service Tax, Central Excise Division, Meeruti-1 which reads:

"We are in receipt of your letter regarding the above SCN wherein against point No.2(i) you have asked us to submit original copies of invoices of the consignor parties in respect of which service tax registration numbers were missing in invoice copies.

In this regard, we request you to refer your letter bearing No.C.No.Audit/RST/D-MRT/Idea/08 Dt.18.03.2009 in which you had asked us to submit copies of invoices within two days of receipt of the aforesaid letter. In response to the said letter, we have submitted the photocopies of the invoices on 24th March,2009. You would further recall that according to Hon'ble Commissioner's directions, you were required to make visit to our office to verify the relevant documents in original since the volume involved was substantial. Pursuant to such directions, you visited our office on 5th & 6th Feb 2009 and verified all the original invoices. The acknowledgement dated 6th Feb 2009 which is enclosed herewith for your ready reference in which it is clearly mentioned that all the points as mentioned in the aforesaid notice has been satisfactorily verified from original invoices. The verification of ST-2 certificates of parties was pending which were submitted by us on 18th Feb 2009. Copy of acknowledgement letter dt.18th Feb 2009 is enclosed.

We are surprised and shocked by your letter asking us to submit the original copies of invoice when the same have already been verified at the time of your visit to our office on 5th & 6th Feb 2009. Despite these facts, if you wish to verify the original invoices then as per directions of the Hon'ble Commissioner, we request you to make visit to our office as the volume involved is substantial."

9. Records placed before us do not disclose any reply to such letter. It is true that the letter was forwarded to the department after passing of the impugned order. However, the fact remains that the impugned order though was passed on 31.3.2008, the copy thereof was issued only 23.4.2009. There was ample time to the respondents to reply to the said

letter dated 2.4.2009 before issuance of copy of the said order. In the circumstances, added to this, it is the contention of the appellants even today that all the original invoices are available for the purpose of verification. In such case while remanding the matter, it is observed that the adjudicating authority ought to consider all original invoices.

10. In the result, the impugned order is set aside and the matter is remanded for fresh adjudication bearing in mind the observations made hereinabove. The appeal disposed of in above terms.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNIACL)

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