IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No.ST/51506/2017 [SM]

[Arising out of Order-in-Appeal No.221/ST/DLH/2017-18 dated 08.06.2017 passed by the Commissioner (Appeals-1), Service Tax, New Delhi]

M/s.Tata Teleservices Ltd. ...Appellant

Vs.

C.C., Delhi-I ... Respondent

Present for the Appellant : Mr.Vivek Sharma, Advocate
Mr. Dhrub Bhattacharya, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 16/11/2017

FINAL ORDER NO.58103 /2017

PER: S.K. MOHANTY

Denial of Cenvat Credit of Central Excise duty paid on inputs/capital goods, namely, office furniture, racks, chairs etc. fitted in the outlets is the subject matter of present dispute. The outlets of the appellant are registered with the service tax Department for providing taxable service, namely, telecom service, defined under Section 65 (105) of the Finance Act, 1994. In this case, the show cause notice proposed to deny the Cenvat Credit on those goods on the ground that the goods were used in the construction of towers/ BTS rooms and accordingly, cannot be considered for Cenvat benefit in terms of the Explanation-2 appended to Rule 2 (k) of the Cenvat Credit Rules, 2004. The proposals made in the show cause notice dated 08.04.2016 were confirmed by the original authority vide order dated 17.10.2016 and accordingly, Cenvat Credit taken by the appellant to the tune of Rs.6,62,970/- was denied with the direction to deposit the interest liability thereon. Further, penalties were also imposed under the Cenvat Credit Rules, 2004 and the Finance Act, 1994. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 08.06.2017 has upheld the adjudged demand. Hence, the appellant has filed the present appeal before the Tribunal.

2. The ld. Advocate appearing for the appellant refers to the letter dated 28.03.2016 addressed to the Jurisdictional Range Superintendent, stating *inter-alia,* that it has not availed any Cenvat Credit in relation to tower and structures and that the Cenvat Credit was taken on the office furniture, racks, chairs etc. kept in the retail stores, which are registered with the Service Tax Department for providing the taxable output service. It has further been stated that the appellant had not availed any Cenvat Credit on mediclaim policies taken in the name of employees and their family members. It has also been stated that passive infrastructure business belonging to the appellant was sold to M/s. Viom Networks Limited in November, 2007 and thereafter, the appellant had no lawful

rights over such infrastructure business. Thus, he submits that since the disputed services were used by the appellant for providing the taxable output service, taking of cenvat credit is in conformity with Rule 2 read with Rule 3 of the Cenvat Credit Rules, 2004.

3. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. I find that the adjudicating authority vide paragraph 15 at page 6 in the original order has framed the question, as to whether cenvat credit can be availed on the parts used in passive telecom infrastructure, which is used as the immovable property. After considering the reply of the appellant recorded at paragraph 15.7, that the goods have not been used for constructing and manufacturing passive infrastructure, the ld. Adjudicating authority at paragraph 15.8 has changed the question framed earlier and re-framed the question, whether the Cenvat Credit is allowable on the furniture used in the retail outlets as claimed by the assessee.

6. From the above observations of the adjudicating authority, the question needs to be answered by the Tribunal is whether the appellant can Claim the Cenvat Credit on the disputed goods, namely, furniture, office racks, chairs etc. The definition of input contained in clause (k) of Rule 2 read with Rule 3 ibid permits a service provider to take cenvat credit on the goods used for providing the output service. The fact is

not under dispute that the retail outlets where the furniture were fitted, are belonging to the appellant and appellant provides the taxable service, namely, telecom services from such premises. Thus, the requirement of the statutory provisions has been duly compiled with by the appellant for availment of the Cenvat Credit in respect of the disputed services.

7. In view of the fact that there is no embargo created in the cenvat statute for not entitling a service provider to avail the cenvat benefit on the disputed services, I am of the view that the impugned order passed by the lower authorities should be set aside on this ground alone. Accordingly, after setting aside the impugned order, I allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita