IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:07.02.2018

Service Tax Appeal No.679/2012 Customs (DB)

[Arising out of Order-in-Appeal No. 02(AKJ)ST/JPR-II/2012 dated 17.01.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur-II]

M/s. Bharat Sanchar Nigam Limited Appellants

Vs.

CCE & ST, Jaipur-II Respondent

Appearance:

Rep. by Shri O.P.Agarwal, Advocate for the appellant.
Rep. by Shri P. Juneja, AR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.50569/2018

Per B. Ravichandran:

The appellant is aggrieved by the order dated17.01.2012 of Commissioner (Appeals), Jaipur-II. The lower authorities denied the cenvat credit on M.S. items used for erection of tele-communication towers. Service tax on GTA service used for transportation of such M.S. items were also disallowed. The reason given by the lower authorities is that the telecommunication's tower materials are used in creating immovable assets and these are neither inputs nor capital goods covered by the Cenvat Credit Rules, 2004.

2. After hearing both the sides, we find that the credit on M.S. items like angles, etc. used in erection of telecommunication towers has been a subject matter of decision by the larger bench of this Tribunal. In **Tower Vision - 2016 (42)STR 249 (Tribunal-LB)**, the Tribunal examined the issue in detail and following the ratio of the decision of the Hon'ble Bombay High Court in **Bharati Airtel - 2014 (35) STR 865 (Bombay),** the Tribunal held the credit on these M.S. items will not

be available to the appellant. In fact, in the appellant's own case, vide Final Order No.ST/56722/2017 –CU(DB) dated 31.08.2017, the credit was denied following the above ratio of the Tribunal and the Bombay High Court. Since the matter has already been settled by the above decisions, following the same ratio, we hold that the appellants are not eligible for credit either on the central excise duty paid on M.S. items or for transport of such M.S. items to be used for erection of towers.

3. Ld. Counsel for the appellant pleaded for setting aside the demands for extended period and penalties.

4. He submitted that the issue involved is one of the interpretation and the appellant, being Public Sector Undertaking, has no malafide and deliberate contraventions of any provisions of law. We note that in the Final Order dated 31.08.2017, in the appellant's own case, for Jodhpur Circle, the Tribunal held that based on the facts and circumstances of the dispute, now examined , there is no case of demand for extended period as well as for imposition of penalties. Such view has been taken in respect of the other telecommunications companies also, where similar disputes came before the Tribunal after the decision of the Larger Bench, mentioned above.

5. In view of the above discussions and analysis, while upholding the impugned order regarding denial of credit, we hold that the said denial shall be restricted to normal period with no penalties. The appeal is partly allowed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.