IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 19/01/2018.
DATE OF DECISION : 19/01/2018.

Service Tax Appeal No. 190 of 2012

CCE, Raipur — Appellant

Versus

M/s The General Manager Telecom District BSNL — Respondent

Service Tax Appeals No. 249 and 1787 of 2012 with 59878 of 2013

M/s Bharat Sanchar Nigam Ltd. — Appellant

Versus

CCE & ST, Raipur, Indore — Respondent

[Arising out of the Order-in-Original No. Commissioner/RPR/CEX/52/2011 dated 18/11/2011 passed by The Commissioner of Central Excise, Raipur and Order-in-Original No. IND-CEX-000-APP-491-12 dated 22/02/2012 and Order-in-Appeal No. 15-COMMR-ST-IND-2013 dated 10/06/2013 passed by The Commissioner of Central Excise and Service Tax (Appeals), Indore.]

Appearance

Shri Sanjay Jain, Authorized Representative (DR) - for the appellant/respondent.

Shri Samdarshi Sanjay, Advocate – for the Respondent/appellant.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50591-50594/2018 Dated : 19/01/2018

Per. B. Ravichandran :-

These 4 appeals are on the common dispute of the eligibility of appellant/assessee to avail Cenvat credit on tower materials which are used for erecting telecommunication towers on various other accessories as part of the said towers. The appellant/assessee claimed credit on the various items used in creation of such towers and their accessories. The Revenue (in appeal No. ST/190/2012) is in appeal against the order of Commissioner's order dated 18/11/2011, wherein she dropped the demand and allowed the credit on such material to the assessee/appellant. In other appeals the assessee/appellant is in appeal against lower authority's order disallowing the credit on similar said items.

2. During the course of submission on the respective appeals both the learned Counsel for the assessee/appellant as well as learned AR for Revenue submitted that the dispute in the present appeals are squarely covered by the decision of Larger Bench in **Tower Vision India Pvt. Ltd. vs. CCE (Adj.), Delhi – 2016 (42) S.T.R. 249 (Tri. – LB)**. In the said decision, the Tribunal after examining the dispute at length arrived at the conclusion that the appellants are not eligible for credit on such tower materials as they cannot be considered either inputs or capital goods in terms of Cenvat Credit Rules, 2004. The Tribunal relied on the decision of Hon'ble Bombay High Court in **Bharti Airtel – 2014 (35) S.T.R. 865 (Bom.)**.

3. As the matter stands settled by the Larger Bench of the Tribunal on identical dispute, by following the said ratio, we hold that the appellants are not eligible for the credit on such items. Accordingly, the appeal by the Revenue is allowed and the appeal by the assessee/appellant are dismissed.

4. The learned Counsel for the assessee/appellant submits that as the whole issue is involving legal interpretation of Cenvat Credit Rules, there can be no malafide intend to take ineligible credit with an intention to evade payment of service tax. There can be no allegation involving the ingredients of Section 73 (1) proviso, in the facts and circumstances of the present dispute. Further, the assessee/appellant is a Government of India owned public sector and as such there is a rebuttal presumption of non-existence of malafide on their part. Revenue only stated that the assessee/appellant did not cooperate during the course of verification and did not also file proper ST-3 returns containing the details of these credits.

5. After hearing both the sides and perusing the impugned orders, we are in agreement with the assessee/appellant regarding the period limitation for action against them for reversal of credit. The fact is that the assessee/appellant is a public sector undertaking and have availed such credit under bonafide belief that the duty paid on such components and items used for erection of towers are eligible to them. It is an admitted fact that the credit on various items used in the

telecommunication towers were subject matter of substantial dispute starting from the Original Authority upto High Courts. The fact that the matter was referred to a Larger Bench of the Tribunal itself will indicate that there were issues regarding interpretation of application of Cenvat Credit Rules to the dispute at hand. Having considered all these factors and noting the status of the assessee/appellant as a Government of India owned company, we are of view that extended period of limitation cannot be sustained in the present proceedings. For the same reasons, penalties also are set aside. Except for this modification, the appeals are otherwise dismissed. The Jurisdictional Authority can verify the documents and arrive at the correct quantum of credit ineligible of the appellant within the normal limitation period.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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