CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53308 of 2018 (SM)

[Arising out of Order-in-Appeal No.90(AK)/ST/JPR/2017-18 dated 24.05.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur]

M/s.Vodafone Mobile Service Limited **Appellant**
(formerly known as 'Vodafone Digilink Limited &
Vodafone Essar Digilink Limited),
Jaipur, Rajasthan-302 017.

VERSUS

Commissioner of Central Excise and Central Goods and Service Tax, **Respondent**
NCRB, Statue Circle,
Jaipur, Rajasthan-302 005.

APPEARANCE:

Ms. Kruti Prashar, Advocate for the appellant.
Ms. Tamnna Alam, Authorised Representative for the respondent.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50931/2019

DATE OF HEARING: 09.07.2019
DATE OF DECISION: 09.07.2019

ANIL CHOUDHARY:

The issue in this appeal is whether the show cause notice dated 02.05.2013 is issued validly invoking the extended period of limitation for disallowing the cenvat credit taken by the appellant during the financial year 2009-2010.

2. The facts are that the appellant is registered with the Service Tax Department providing telecommunication services, etc. and they have been

filing ST-3 returns regularly, reflecting their transactions and taxable turnover and also the amount of cenvat credit taken and utilised. In the course of audit by the Revenue sometime in Jan-Feb., 2011, it appeared that the appellant has wrongly availed cenvat credit, there being deficiency in the documents required under the provisions read with the Rules, which are as follows:-

Sl. No	Service Provider	Deficiency in the document according to the Department	Credit involved (Rs.)
1.	Pushpa Jain	Document does not bear the registration number of the service provider.	2,71,032/-
2.	Nokia	a. The invoice has not been issued within 14 days of the provision of services; b. The invoice does not bear the value of the services; c. Invoice issued on 06.11.2009 and were provided to Hutch, as Vodafone was not in existence at that time; d. Cenvat credit can be availed only on invoice by the service provider.	23,61,805/-
3.	Kasera	a. The invoice has not been issued within 14 days of the provision of services; b. The invoice does not bear the value of the services; c. Cenvat Credit can be availed only on invoice issued by the service provider.	2,61,428/-
4.	Royal Sundaram	Invoices not produced.	2,163
		Total	28,96,428/-

3. Thereafter, these objections were conveyed in Feb. 2010 to the appellant/assessee. Further, reminders were issued dated 15.02.2011, 07.03.2011 and 15.03.2011 requiring them to reverse cenvat credit so taken. However, it was alleged that the appellant did not comply till the issue of show cause notice dated 02.05.2013. Further, it appeared to Revenue that had the Audit not detected such lapse, the appellant would have availed and utilised the cenvat credit under dispute on the basis of improper documents in terms of Rule 9 of Cenvat Credit Rules of 2004. Further, it was alleged that the appellant had intent to suppress and avail

cenvat credit and accordingly, extended period of limitation was invoked under proviso to Section 73(1) of the Act read with Rule 14 of the Cenvat Credit Rules for issuing show cause notice. The show cause notice was adjudicated on contest by the Addl. Commissioner, confirming the disallowance along with equal amount of penalty under Section 78 of the Act.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide the impugned order, although found part of the allegation has not been established against the appellant, but upheld some part of the allegation as regards disallowance of credit and has confirmed the demand along with penalty. The appellant has also raised ground of limitation, which was also rejected relying on the ruling of the Hon'ble Allahabad High Court in the case of **CCE, Ghaziabad Vs. Rathi Steel & Power Ltd.** - **2015 (321) ELT 200 (All.)**

5. Ld. Counsel for the appellant states that ruling of the **Rathi Steel & Power Ltd. (supra)** of Allahabad High Court is not applicable to the facts of their case and has been wrongly relied upon by the Commissioner (Appeals). It is evident from the facts on record that all the relevant documents were produced before the Audit team. There is no allegation of insufficiency of the documents and or falsification of the records and/or contumacious conduct on the part of the appellant /assessee, and accordingly, the appeal be allowed on the ground of limitation.

6. Ld. Authorised Representative has relied on the findings in the impugned order. Further, he states that the appellant did not take categorical stand in spite of the Audit objection, and three reminders were

given and the show cause notice was issued after a gap of about 24 months invoking the extended period of limitation, in accordance with law.

7. Having considered the rival contentions and on perusal of the records, I find that in spite of the audit objection and three reminders, the appellant had not responded in writing and thereafter, the Revenue also did not take any further action, and only after 24 months, the show cause notice was issued. The normal period of limitation during the period of dispute is 18 months. Further, no reason has been given by the Revenue for not issuing the show cause notice for all these months, during the period of 18 months as permissible. Further, I find that the appellant has maintained proper documents of the transactions and submitted ST-3 Returns regularly. Thus, in the facts and circumstances, no case of falsification of record and/or suppression or any contumacious conduct is made out against the appellant. Accordingly, I hold that the extended period of limitation is not available to the Revenue. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefit.

[Order dictated and pronounced in open court]

(Anil Choudhary)
Member (Judicial)

Ckp