

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court - I

APPEAL No. ST/1004/2009

(Arising out of **Order-in-Original** No. 39/2009-ST, dt. 29.09.2009 passed by
CCCE&ST, Hyderabad-II Commissionrate)

Bharati Airtel Limited	..	APPELLANT
	Vs	
CCE, C&ST, Hyderabad-II	..	RESPONDENT

Appearance

Shri G. Prahlad, Advocate for the Appellant.

Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 01.01.2019

Date of Decision: 01.01.2019

FINAL ORDER No.A/30009/2019

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Original No. 39/2009-ST, dt. 29.09.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding eligibility to avail CENVAT Credit of the Central Excise duty paid on capital goods like equipments/modules, channels, angles and shelters which were used by the appellant in the output services provided by them i.e. telephoning services. It is the case of the appellant that they are eligible to avail CENVAT Credit of Central Excise duty paid on angles, beams, channels etc., which are used to install the towers and the pre-fabricated buildings and panels which are used in connection with providing of output services as unless these items were to be in place, they cannot provide the telephoning services, as also on the input services which were required for installing and erection of such towers and pre-fabricated buildings. The period involved in this case is 2004-05 to 2007-08. The adjudicating authority did not agree with the contentions raised by the appellant by invoking the extended period as well as on limitation and confirmed the demands so raised.

4. After considering the submissions made by both sides, we find that this entire case can be disposed of on the question of limitation only. It is seen from the records that the demand for the relevant period is issued by a show cause notice dated 19.05.2009 by invoking the extended period. We find that the adjudicating authority in para 19 of the Order-in-Original dated 29.09.2009 has stated that appellants have been filing the ST-3 returns but they did not give the required information and stating that there was no information regarding availment of CENVAT Credit on angles, channels

and beams and pre fabricated buildings. Ld. Counsel's argument is that the said returns do not specifically indicate the mention on which the credit has been availed. We find that on a similar issue, this Bench in the case of Vodafone Mobile Services Limited [2017-TIOL-1904-CESTAT-HYD.] on the very same issue held in favour of the appellant therein on limitation. The ratio in para 6 is reproduced-

*"However on the matter of penalty we find that the issue is interpretational in nature. Concerning the eligibility of credit on the parts used in the towers, there has been sufficient confusion in the matter. It is also not disputed that there was more than one view in the matter and hence following the ratio laid down in Hon'ble Apex Courts judgments in the case of Continental Foundation Jt. Venture case [2007 (216) ELT 177 (SC)] = **2007-TIOL-152-SC-CX** and also following the view taken by Co-ordinate Bench in M/s Tata Teleservices Ltd., and others Vs Commr of ST, Pune - **[2015-TIOL-628-CESTAT-MUM]** and M/s Vodafone Essar Digilink India Ltd., Vs Commr of CE, Panchkula **[2016-TIOL-873-CESTAT-CHD]**, we hold that the penalties imposed on the appellant on these cases will have to be set aside. For the same reason, the demand which is barred by limitation (for the period 09/2005 to 09/2007) for an amount of Rs. 9,04,98,881/- will require to be set aside, which we hereby do. However demand of Rs. 6,90,51,921/- for the normal period is not hit by limitation, (for the period 10/2007 to 09/2008) will sustain and is upheld. Penalty imposed on the appellant under Rule 15 (4) of the CENVAT Credit Rules, 2004 read with section 78 of the Finance Act, 1994 is also set aside. Appeal disposed of on above terms with consequential reliefs, if any."*

5. Respectfully following the same as also that during the relevant period, different views were expressed by the adjudicating authority as well as the Tribunal, we hold that appellant could have entertained a bonafide

belief as to eligibility to avail CENVAT Credit on angles, channels and beams and pre fabricated buildings as also various input services. Accordingly, impugned order is set aside only on the ground of limitation.

6. Appeal is disposed of as indicated herein above.

(Dictated and pronounced in open court on 01.01.2019)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg