IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75938 of 2015

(Arising out of Order-in-Original No. Commr/B-I/ST-01/2015 dated 18.06.2015 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I Commissionerate, C.R.Building, Rajaswa Vihar Bhubaneswar-751 007)

M/s. Bharat Sanchar Nigam Limited, **: Appellant**
GMTD, Bhubaneswar-751022, Odisha

VERSUS

Commissioner of Central Excise, Customs & Service Tax, **: Respondent**
Bhubaneswar-I Commissionerate

APPEARANCE:

Ms. Payal Bharwani, Advocate for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.__________/2024

DATE OF HEARING / DECISION: 23.07.2024

Order: [PER SHRI ASHOK JINDAL]

The short issue involved in the matter is whether the appellant is entitled to avail credit on tower and shelter in terms of Rule 2(k) of the CENVAT Credit Rules, 2004 and whether the appellant is entitled to avail credit on input service used for providing telecommunication services/passive infrastructure in terms of Rule 2(l) of the CENVAT Credit Rules, 2004 or not?

2. Heard the parties and considered their submissions.

3. We find that the issue has been settled by this Tribunal in the case of ***M/s Bharati Infratel Limited vide Final Order No. A/60267-60269/2019 dt. 21.02.2019,*** wherein this Tribunal has observed as under:-

> *"5. We have gone through the decision of the Hon'ble Delhi High Court in the case of Bharti Infratel Ltd. (supra) wherein the Hon'ble High Court allowed the cenvat credit in respect of towers, shelter parts thereof has observed as under:-*
>
> *(i) The Revenue did not dispute that the towers and shelters are merely bolted or fastened The foundation is necessary only to make a wobble free operation (stability) of the equipment and there is no assimilation of the machine with the structure permanently.*
>
> *(ii) The installation or assembly of towers and shelters on a foundation cannot be said to be "attached to earth" and can be moved without any damage.*
>
> *(iii) Fastening to earth is only to provide stability.*
>
> *(iv) Manufacture of the plant does not therefore constitute annexation and cannot be termed as immovable property.*
>
> *(v) The Hon'ble Tribunal failed to appreciate the permanency test as established in the case of CCE. Ahmedabad vs. Solid & Correct engineering Works, 2010 (252) ELT 481 (SC).*
>
> *(vi) Towers are constructed to form the active infrastructure for placement of BTS equipment, antennae and other items. Therefore, toweres form part of the active infrastructure and sheiters are the accessories for placement of BTS and other items.*

(vii) Alternatively, towers are shelters qualify as "inputs" the test used for determining whether the capital goods are used in the manufacture of goods" is the functional utility test- BTS is an integrated system and each component in the BTS have to work in tandem to provide cellular connectivity Thus, there is an actual use of towers and shelters in conjunction with the capital goods, namely BTS and antennae. The pre-fabricated shelters are therefore inputs as per rule 2(K) of the Cenvat credit Rules.

(viii) The eligibility to claim credit on inputs is to be determined at the time of receipt of goods in terms of Rule 4(1) of the Credit Rules. The definition of "inputs" does not contain any condition relating to emergence of immovable property to be ineligible for taking credit.

(ix) Towers which are received CKD condition, are assembled/eracted at the site subsequently giving rise to structure that remains immovable till its use for safety, stability and commercial reasons cannot be disentitled for credit. The fact that goods are later on fastened to earth cannot make them non-excisable.

(x) Further that, in any case, immovability cannot determine eligibility to avail credit Emergence of immovable property in the intermediate stage also cannot disentitle the Assessee-Appellant's eligibility to avail credit.

therefore we hold that the assessee-appellant are entitled to avail cenvat credit on items, towers, shelter parts thereof being input used for providing output service. In these circumstances, we dismiss the appeal filed by the Revenue and allow the appeals filed by the assessee appellants."

The said order has been relied by this Tribunal in the case of ***Indus Towers Ltd. v. Commissioner of Central Excise & Service Tax, Delhi-V [2020 (6) TMI 493 – CESTAT, Chandigarh] (Final Order No. 61221/2019 dated 19.12.2019 in Service Tax Appeal No. 51211 of 2015)***

4. Therefore, relying on the above said decisions, we set aside the impugned order and allow the CENVAT Credit availed by the appellant. Consequently, no demand is sustainable against the appellant.

5. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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