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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75689 of 2015

(Arising out of Order-in-Appeal No. 29/SH/CE(A)/GHY/2015 dated 24.03.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Custom House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005)

M/s. Bharti Hexacom Limited : **Appellant**
Laitumkhrah, Shillong,
Meghalaya – 793 003

VERSUS

Commissioner of Customs, Central Excise and Service Tax : **Respondent**
Custom House, Nilamoni Phukan Path, Christian Basti,
Guwahati – 781 005

APPEARANCE:

Shri Deepro Sen, Advocate for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77626 / 2024

DATE OF HEARING / DECISION: 18.11.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Appeal No. 29/SH/CE(A)/GHY/2015 dated 24.03.2015 passed by the Ld. commissioner (Appeals), Customs, Central Excise & Service Tax, Custom House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005, wherein he has upheld the demands confirmed in the Order-in-Original No. 07/Additional Commissioner/ST/2014 dated 30.04.2014.

2. M/s. Bharti Hexacom Limited (hereinafter referred to as the '**Appellant**') is engaged in the

business of rendering taxable services under the category telecommunication services and accordingly, obtained registration with the Service Tax Department. During the underlying period, the Appellant duly paid the applicable service tax and availed CENVAT Credit of inputs, capital goods and input services used in the course or furtherance of business.

2.1. During the course of audit of the records of the Appellant for the underlying period, the audit team made certain observations regarding availment of CENVAT Credit by the Appellant. On the basis of the said observations, a Show Cause Notice was issued to the appellant alleging wrong availment of CENVAT Credit on the following inward supplies:

a. Services of transportation, procurement and filling of diesel

b. DG sets and tower dismantling services

2.2 The said Notice was adjudicated by the Ld. Additional Commissioner vide Order-in-Original dated 30.04.2014, wherein CENVAT Credit of Rs. 41,91,154/- availed on services of transportation, procurement and filling of diesel and CENVAT Credit of Rs. 26,729/- availed on DG set and tower dismantling services, were disallowed as ineligible credit.

2.3. On appeal, the disallowance of credit was upheld vide the impugned order.

2.4. Aggrieved against the disallowance of the said credits, the Appellant has filed this appeal.

3. It is the submission of the Appellant that the impugned order has upheld the disallowance of credit based on the following findings:

(i) Diesel does not fall under the definition of 'input', therefore CENVAT credit on services used for transportation and procurement of diesel is not admissible. Further, the Appellant failed to provide any evidence in support of their contentions that the input services were received for providing output services.

(ii) Regarding dismantling services used for DG sets and towers, such services are not used for providing telecommunication services. Further, the Appellant failed to provide any evidence in support of their contentions that they were received for providing output services.

3.1. The Appellant further submits that at the cell site, uninterrupted power supply is required to effectively provide telecommunication services to the subscribers; accordingly, DG sets are installed at the cell site as a part of passive infrastructure of the cell sites, which run on diesel; during the underlying period, the Appellant outsourced the said activity of performing Operations & Maintenance to service providers who were responsible to ensure that the DG sets are always up and running and the required diesel for the running the same is always available. Thus, they submit that as a part of providing operations & maintenance services, the service providers procured, transported and filled diesel in the DG sets to ensure their continuous operation and sustenance of the cell site; on such activity of procurement, transportation and filling, the service providers charged service tax to the Appellant under the head Business Support Services. The Appellant stated that they have availed

CENVAT Credit of service tax charged on such business support services, including that of service tax charged on reimbursements charged from them.

3.2. It is also submitted by the Appellant that the 'means' clause of the definition of 'input service' includes those services which are used by the service provider for providing output services; given the wide ambit of the said definition, the CENVAT credit on the business support services qualifies as 'input services' and hence the credit ought not be denied. The impugned order has mis-construed the nature of services to deny the credit thereon; that the services are for operation of sites, which is utmost necessary for rendering of telecommunication services by the Appellant. They contend that the impugned order has incorrectly understood the scope of services and tried to reclassify the same as GTA at the end of the Appellant, to deny the eligible credit. Therefore, the appellant submits that the CENVAT Credit on such business support services ought not be denied to them.

3.3. The Appellant has further submitted that the issue is no more *res integra* as this Tribunal has already decided the same issue of the Appellant for the prior period viz. April 2011 to December 2011 and allowed the CENVAT Credit on such services in the case of ***M/s. Bharti Hexacom Limited vs. Commissioner of Central Excise and Service Tax [Final Order No. 77058 of 2024 dated 10.09.2024 in Service Tax Appeal No. 75111 of 2015 – CESTAT, Kolkata].***

3.4. The appellant also placed reliance on the following decisions, wherein the credit on identical services has been allowed to the assessees:

a. *Idea Cellular Ltd. v. Commr. of ST, Mumbai, [2016 (9) TMI 1136].*
b. *B4S Solutions Pvt. Ltd. v. CCE, Ghaziabad, [2018 (4) TMI 964 - CESTAT Allahabad]*
c. *Vodafone Essar South Ltd., v. CCE, Meerut-I, [2017 (51) S.T.R. 77 (Tri. - All.)]*

3.5. Therefore, the Appellant submits that CENVAT Credit availed on the said services ought not be denied specifically where there is no dispute regarding payment of service tax thereon.

4. Regarding disallowance of CENVAT Credit of Rs. 26,729/- availed on DG set and tower dismantling services, the Appellant pointed out that for the functioning of the DG sets, it is absolutely necessary for running of the cell sites and pointed out further that the towers are essential to provide the network to the subscribers of the Appellant; without such towers, it would be completely impossible to perform the telecommunication services. It is contended that for installation of such infrastructure and provision of telecommunication services, the Appellant takes various sites on lease basis; when the lease period expires, the tower and DG sets need to be uninstalled/ dismantled, shifted to a new site and installed in the new site. Further, it is submitted that even during repair and maintenance activity, at times, the DG sets are dismantled and sent for repair. In few cases, when the DG sets stop working due to wear and tear, the same needs to be dismantled and a new DG set needs to be installed in its place; thus, such input services which are used in relation to dismantling are used by the Appellant only in the course or furtherance of the telecommunication business. Accordingly, they

submitted that they are eligible for the credit of service tax paid on such services.

4.1. In this regard, the Appellant placed their reliance on the following decisions wherein it has been held that CENVAT Credit is eligible on dismantling services of assets used in the business:

a. *Paradise Plastics Enterprises Ltd. v. CCE & ST, Noida [2015 (39) S.T.R. 889 (Tri. - Del.)]*
b. *Technocraft Industries India Ltd. v. CCE, Thane-I [2019 (11) TMI 1471 - CESTAT Mumbai]*
c. *CCE, Meerut-II v. Jindal Pipes Ltd. [2013 (30) S.T.R. 686 (Tri. - Del.)]*

5. The Appellant further submits that they have not suppressed any information from the Department. In the absence of any suppression of facts or mala fide intent on their part, extended period of limitation is not invokable. Further, it is submitted in this regard that they have availed the CENVAT Credit on the underlying services based on the bona fide interpretation adopted based on the aforementioned settled precedents and hence, extended period cannot be invoked when the issue involves interpretation of statute. In this regard, the appellant placed their reliance on the following decisions:

a. *Amit Metaliks Limited v. Commr. of Central Excise, Bolpur [2023 (11) TMI 721 – CESTAT Kolkata]*
b. *Reliance Jio Infocomm Ltd. v. CCE & CGST Belapur, Navi Mumbai [2024 (9) TMI 239 - CESTAT Mumbai.]*

6. Thus, the Appellant have prayed for setting aside the demands confirmed in the impugned order and allowing their appeal.

7. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal documents.

9. We observe that the issues to be decided in this appeal is whether the Appellant is eligible to avail CENVAT Credit on the following inward supplies: -

A. Services of transportation, procurement and filling of diesel.
B. DG set and tower dismantling services.

9.1. Regarding availment of CENVAT Credit of Rs. 41,91,154/- on the services of transportation, procurement and filling of diesel by the appellant, we observe that that the DG sets are necessary for running of the cell sites and providing the telecommunication service by the appellant. For continuous running of the DG sets, diesel should always be available. Thus, as a part of providing operations & maintenance services, the service providers procured, transported and filled diesel in the DG sets to ensure their continuous operation and sustenance of the cell sites. On such activity of procurement, transportation and filling, the service providers charged service tax to the Appellant under the head Business Support Services. We observe that the 'means' clause of the definition of 'input service' includes those services which are used by the service provider for providing output services. Given the wide ambit of the said definition, we hold that the CENVAT credit availed by the appellant on the business support services qualifies as 'input services'. Accordingly, we hold that the Appellant is eligible for the credit as 'input service'.

10. We also observe that the issue is no more *res integra* as this Tribunal has already decided the same issue of the appellant for the prior period April 2011 to December 2011 and allowed the Cenvat Credit on such services as reported in ***M/s. Bharti Hexacom Limited vs. Commissioner of Central Excise and Service Tax [Final Order No. 77058 of 2024 dated 10.09.2024 in Service Tax Appeal No. 75111 of 2015 – CESTAT, Kolkata]***. The relevant portion of the said decision is reproduced below:

> *"5. Regarding the CENVAT Credit on diesel transportation, procurement and filling services used in respect of DG sets at cell sites, the appellant submits that at the cell site, uninterrupted power supply is required to effectively provide telecommunication services to the subscribers; that accordingly, DG sets are installed at the cell site as a part of passive infrastructure of the cell sites, which run on diesel. During the underlying period, it is submitted that the appellant outsourced the said activity of performing Operations & Maintenance to service providers who were responsible to ensure upkeep of cell site including the DG; Diesel is always required for the running the DG sets and thus, as a part of providing operations & maintenance services, the service providers procured, transported and filled diesel in the DG sets to ensure their continuous operation and sustenance of the cell site. It is also submitted that on such activity of procurement, transportation and filling, the service providers charged service tax to the Appellant under the head Business Support Services.*
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> *5.1. They also contend that on perusal of the agreement as a whole, it is clear that these services qualify as 'business support services' and the*

Appellant used such services in the course and furtherance of business. Thus, the Appellant submits that they are eligible to avail CENVAT Credit of service tax charged on such business support services.

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12. Regarding Services used for transportation, procurement and filling of diesel for the period from April 2011 to December 2011, we observe that during the underlying period, the Appellant have outsourced the said activity of performing Operations & Maintenance to service providers who were responsible to ensure upkeep of cell site including the DG sets . Diesel is always required for the running the DG sets. Thus, as a part of providing operations & maintenance services, the service providers procured, transported and filled diesel in the DG sets to ensure their continuous operation and sustenance of the cell site. On such activity of procurement, transportation and filling, the service providers charged service tax to the Appellant under the head Business Support Services. We observe that at the cell site, uninterrupted power supply is required to effectively provide telecommunication services to the subscribers. Thus, we hold that the said services are 'input services' for the Appellant for rendering their output services. In view thereof, we hold that the appellant are eligible for the CENVAT Credit availed on these 'input services'. "

10.1. In view of the above, we find that the appellant is eligible for the CENVAT credit availed on the business support services, which qualifies as 'input services' and accordingly, we set aside the disallowance of the credit in the impugned order.

11. Regarding availment of CENVAT Credit of Rs. 26,729/- on DG sets and tower dismantling services, we observe that the DG sets needs to be dismantled when they stop working due to wear and tear or due to various administrative reasons. When they are dismantled and a new DG set needs to be installed in its place, the appellant availed the services of some service providers for the dismantling work. We observe that such services which are used to dismantle the DG sets or Towers, are used by the Appellant only in the course or furtherance of the telecommunication business. Accordingly, we hold that the Appellant are eligible for the credit of service tax paid on such services, as 'input service' and accordingly, we set aside the disallowance of the credit in the impugned order.

12. We also observe that that the Appellant has not suppressed any information from the Department. In the absence of any suppression of facts or mala fide intent on the part of the Appellant, extended period of limitation is not invokable. Further, we agree with the submission of the Appellant that extended period cannot be invoked when the issue involves interpretation of statute. Thus, we hold that the demands confirmed in the impugned order by invoking the extended period of limitation are not sustainable.

12.1. Since the Appellant are eligible for the credit, the question of demanding interest and imposing penalty does not arise. Accordingly, we set aside the same.

13. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the Appellant.

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

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd