IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/85922/18

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-766-2017-18 dated 04.12.2017 passed by Commissioner of Central Tax (Appeals), Pune I)

Vodafone Mobile Services Pvt. Ltd. **Appellant**

Vs.

Respondent

Commissioner of CE & ST
Pune I

Appearance:

Shri Jay Chaddha, C.A. for appellant
Shri M. Suresh, Dy. Commr (AR) for respondent

CORAM:

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing & Decision: 24.05.2018

FINAL ORDER NO...A/86798/2018

Per: Sanjiv Srivastava

In the present case the claim of the appellant is in respect of ineligible capital goods for Rs.6,54,779/- and notice was issued without invoking any suppression within the normal period of limitation. The said show-cause notice was adjudicated and the demand confirmed and penalty under Rule 15 of Cenvat Credit Rules, 2004 have been imposed. Arguing for the appellant Shri Jay Chaddha, learned C.A. submitted that the issue on merits have been decided in series of cases including his own case as appended below:-

1. Tata Teleservices Ltd. v. CST – 2015-TIOL-628-CESTAT-MUM
2. Vodafone Essar Mobile Services Ltd. v. CST – 2016-TIOL-2648-CESTAT-DEL
3. Spice Communications Ltd. v. CCE & ST – 2017-TIOL-3872-CESTAT-CHD
4. M/s Vodafone Essar South Ltd. v. CST – 2018-TIOL-1169-CESTAT-Bang
5. M/s Vodafone Essar Digilink India Ltd. v. Commissioner of Central Excise – 2016-TIOL-873-CESTAT-CDH
6. Bharat Sanchar Ltd. v. Commissioner of Central Excise & ST – 2014-VIL-325-CESTAT-DEL-ST
7. M/s Vodafone Essar Digilink Ltd. vs. CCE – 2-18-TIOL-669-CESTAT-CHD

2. The Hon'ble High Court of Panjab & Haryana have decided with regard to the same issue in the case of *Barnala Builders & Property Consultants v. CCE - 2014 (35) STR 65* (P & H). All the said orders are under challenge before the Hon'ble Supreme Court. With regards to penalty imposed, his submission was that, since the issue is in respect of interpretation of Cenvat Credit Rules, 2004, this Tribunal has constantly taking view that no penalties should have been imposed on them. He pointed out to the order of the Commissioner (Appeals) and stated that even in the order No. A/546-558/15 dated 16.03.2015 of the Tribunal, quoted by the Commissioner (Appeals), the demand for penalty have been set aside. Since the Commissioner (Appeals) has found that the issue is squarely covered by the decision, the said decision should have been followed for penalty also.

3. Learned A.R reiterated the order of the Commissioner (Appeals). He pointed out that in this case no suppression has been invoked. Accordingly for the purpose of penalty these judgements are not applicable.

4. I have considered the submissions made by both sides.

5. I find that in all the cases referred to by learned Counsel for the appellant, demands have been upheld for the normal period only and penalties have also been set aside. Attention was invited to the decision in the case of *Vodafone Essar South Digilink India Ltd. - 2018-TIOL-1169-CESTAT-Bang* wherein penalties imposed under sections 76, 77 and 78 have been set aside while demands have been held for the normal period of limitation. Following the said decision, I set aside the penalties imposed. Accordingly, order of the Commissioner (Appeals) stands modified to that extent. Appeal to this extent is allowed. Demands confirmed by the adjudicating authority are upheld and only penalties are set aside.

(Order dictated in Court)

(Sanjiv Srivastava)
Member (Technical)

nsk