

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

**APPLICATION NO: ST/ROM/85759/2018**  
**IN**  
**APPEAL NO: ST/85506/2014**

***Arising out of:*** Order-in-Original No. 07/ANS-07 to  
09/IDEA/ST-I/TH-I/2013 dated 11/11/2013

***Passed by:*** Commissioner of Central Excise, Thane-I

Idea Cellular Ltd.  
*versus*

***Appellants – Represented by:***  
Shri Mehul Jiwani, CA

CCE, Thane-I

***Respondent – Represented by:***  
Shri M.P. Damle, Assistant  
Commissioner

**Date of hearing :** 12/11/2018  
**Date of pronouncement:** 20/12/2018

**CORAM**

**Hon'ble Shri Ajay Sharma, Member (Judicial)**  
**Hon'ble Shri P. Anjani Kumar, Member (Technical)**

**ORDER NO: M/86324/2018**

***Per: P. Anjani Kumar***

This application for ROM is directed against the CESTAT final order A/91424/2017 dated 07.12.2017 in appeal no. ST/85506/2017.

2. The learned Counsel for the Appellant has submitted that there were three issues involved in that appeal no.;

I. Sale of sim cards. In this regard he submitted that Hon'ble Supreme Court in the case India Mobile

Communication 2011(8) TMI 3(SC) held that service tax is payable on the value of the sim cards. However in the cases of M/s. Bharti Airtel Ltd. 2016 (43) STR 400 Tribunal, Delhi; Idea Mobile Communication Ltd 2012 (26) STR 27, Tribunal Delhi held that extended period is not invocable and penalty is not imposable on extended period. It was also held in M/s. Bharti Airtel Ltd. 2015 (11) TMI 728, CESTAT, Mumbai and M/s. Bharti Televentures Ltd. report in 2016 (2) TMI 659-CESTAT, Mumbai, it was held that penalty shall not be levied and come duty benefit shall be granted. In the impugned order though the demand was limited to normal period and penalty was set aside in Para 6 of the order in the operative portion in Para 6.4 it was held that penalty was payable under section 78 to the extent of service tax confirmed.

- II. An issue of demand of service tax and international roaming services provided to persons coming to India Tribunal in the impugned order has set aside the demand.
- III. As regards the category of Business Auxiliary Service though the Tribunal has held that the same falls under business support service from 01.05.2016 and was being discharged by the Appellants. However, the Tribunal

observed in Para 6.2 that the Adjudicating Authority shall scrutinize the service tax payment made by the Appellant and shall communicate the deficiency to the Appellant. The Tribunal has also did not specify the clause of the definition of business auxiliary service under which the services rendered by appellant are taxable. None of the clauses specify the services of renting of equipment as a taxable service under business auxiliary service therefore, the demand was also liable to be set aside.

3. The learned Counsel for the appellants relied upon the following case laws to elaborate the circumstances under which ROM can be entertained by the Tribunal;

Index M/s. Idea Cellular Limited		
Sr. No	Description	Pg. No.
1	Dewsoft Overseas Pvt. Ltd. 2016 (44) S.T.R. 597 (Tri. – Del.)	1-2A
2	Roots Multiclean Ltd 2016 (336) E.L.T. 25 (Mad.)	3-6
3	Honda Siel Power Products Ltd 2008 (221) E.L.T 11(S.C.)	7-6
4	Stanlek Engineering Pvt. Ltd. 2008 (229) E.L.T. 61 (Bom.)	10
5	Atul Ltd 2016 (332) E.L.T 97 (Guj.)	11-12
6	Saurashtra Kutch Stock Exchange Ltd. 2008 (230) E.L.T. 385 (S.C.)	13-18
7	Allied Fibers Ltd 2017 (357) E.L.T. 123 (Bom.)	19-21

4. The Learned Authorised Representative for the Appellants has

submitted that by filing ROM the Appellants are reopening the settled case. The contentions of the Appellants do not come under the purview of ROM and considering the same would tent amount to review of their own order by the Hon'ble Tribunal.

5. Heard both sides and perused the records of the case, we find that in the impugned order, Tribunal has held that extended period and penalty is not sustainable. However, in Para 6.4 a finding was given to the extent that the Appellant shall be liable to penalty under Section 78 to the extent of service tax amount stands confirm. We find that to this extent there is a mistake apparent on record. Having held that penalty is not imposable, it cannot be held that penalty under Section 78 would be restricted to the extent of confirmation of demand. Regarding the other submissions of the Appellant about granting the come duty benefit or treating the VAT paid as service tax we find that the Tribunal as not discuss the same in the impugned order therefore, we find the same should be discussed at this juncture. We refrain to pass any order in this regard.

5.1 Regarding the submissions in respect of service tax payable on the infrastructure facilities provided by the Appellants to other service providers we find that the impugned order in Para 6.2 has categorically held the service provided by the Appellants to be business support services. Therefore, we cannot seek injudgment on the same.

6. In view of the above, Para 6.4 of the impugned order 91424/17 of CESTAT, is modified and the para would read as under in place of the existing para

6.4 penalty confirmed under Section 77 stands reduced to Rs. 5000/-.

*(Pronounced in Court on .....)*

**(Ajay Sharma)**  
**Member (Judicial)**

**(P. Anjani Kumar)**  
**Member (Technical)**

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