CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 85991 of 2024

and

Service Tax Appeal No. 87244 of 2016

(Arising out of Order-in-Original No.51-55/STC-IV/MRRR/16-17 dated 31.05. 2016 passed by the Commissioner of Service Tax, Mumbai-IV, Mumbai)

Commissioner of CGST & Central Excise, Mumbai Central .... **Appellant**
GST Bhavan, 115, Maharshi Karve Road,
OPP. Church Gate Station,
Mumbai - 400 020.

Versus

Vodafone Idea Limited .... **Respondent**
(Formerly known as Idea Cellular Limited)
Windsor, 5th Floor, off CST Road
Near Vidyanagari, Kalina
Santacruz (East), Mumbai – 400 098.

Appearance:

Shri Shambho Nath, Special Counsel for the Appellant

Shri Mehul Jivani, Chartered Accountant for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85703/2025

Date of Hearing: 28.10.2024

Date of Decision: 16.04.2025

Per: M.M. PARTHIBAN

This appeal has been filed by the Commissioner of Service Tax-IV, Mumbai (herein after, referred to as "the appellant", for short) on the basis of Review Order No.37/Review/CCO/S.TAX/2016 dated 21.09.2016 passed by the Committee of Chief Commissioners, Mumbai, assailing the Order-in-Original No.51-55/STC-IV/MRRR/16-17 dated 31.05.2016 (herein after, referred to as "the impugned order") passed by the Commissioner of Service Tax, Mumbai-IV, Mumbai.

2. Revenue has also filed this miscellaneous application bearing No.85991 of 2024, seeking change of name and address of the appellant arising on account of change in jurisdiction of the Service Tax authorities from 'Commissioner, Service Tax-IV, Mumbai' to 'Commissioner of CGST & Central Excise, Mumbai Central' and change in the name of the respondent, on account of the merger of the company and consequently, the Registrar of Companies, Ahmedabad issuing the Certificate of incorporation dated 31.08.2018 for the changed name as "Vodafone Idea Limited". The prayers made by the Revenue are considered and accordingly, the changed name is incorporated for the purpose of disposal of the appeal.

3. Briefly stated, the facts of the case are that the respondent herein is engaged in providing telecommunication service, maintenance or repair service, erection, commissioner and installation service, business auxiliary services, business support services, sponsorship service etc., and for the purpose of due discharge of service tax and for compliance with the Chapter V of the Finance Act, 1994, have obtained centralized registration bearing No. AAACB2100PST007. During the course of CERA audit conducted, the department had objected to the CENVAT credit availed on the basis of debit notes issued by the respondent's supplier M/s GTL Infrastructure Limited, Mumbai and the credit taken on service tax paid in respect of diesel and electricity charges. Hence, show-cause proceedings were initiated for denying the inadmissible CENVAT Credit amounting to Rs.13,91,68,093/- for the period April, 2006 to September, 2011 vide Show Cause Notice (SCN) dated 12.04.2012 under the provisions of Rule 14 *ibid* and for recovery of such tax along with interest under Section 73(1), 75 of the Finance Act, 1994 besides imposition of penalty under Section 78 *ibid* read with Rule 15(3) and 15(4) *ibid*. For the subsequent period too, four SCNs dated 12.03.2013, 13.01.2014, 30.03.2015 and 08.09.2015 were also issued covering the period 01.10.2011 to 31.03.2015. The SCNs were adjudicated on the basis of appellant's reply letter dated 31.03.2016 to the SCNs and the submissions made during the personal hearing. Vide Order-in-Original dated 31.05.2016, which is impugned herein, the original authority had dropped all the proceedings initiated in the SCNs. Feeling aggrieved with this impugned order, the appellant had filed this appeal before the Tribunal.

4. Heard both sides and perused the records of the case. we have also considered the additional written submissions given in the form of paper book by both sides.

5. The issue in dispute is availment of CENVAT Credit of service tax paid on reimbursement of diesel and electricity cost and its admissibility to the respondent; and whether CENVAT credit availed by the respondent on the basis of debit notes issued by the vendor, is admissible or not, in terms of the CENVAT Credit Rules, 2004. We find that these issues under dispute have been dealt with in detail by the learned Commissioner in the impugned order. The relevant paragraphs of the said order is extracted and given below:

> *"24.1 To understand the issue at Sr no 1 above, it is necessary to understand the business set up of the noticee for providing telecommunication services. For the purpose of providing telecommunication on services, the noticee has used two types of Infrastructure Support services Active Infrastructure Support services and Passive Infrastructure Support services*
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> *24.2 The Active Infrastructure Support services are developed and owned by the Telecom operators whereas for Passive Infrastructure Support services the same is either developed or owned by Telecom operators or it is outsourced to different vendors. Active Infrastructure*
>
> *24.5 From the above, I find that, the Noticee has entered into agreement with the Vendor for obtaining the service of Passive Infrastructure Support services. For these Passive Infrastructure support services, the Vendor raises an Invoice as per agreed terms. To have a clear understanding based on different charges against provision of Passive Infrastructure support services, the Invoice so raised by the Vendor is bifurcated into the following categories and separate Invoices are raised for each category:*
>
> > *a) Infrastructure professional fees -The invoice is raised for this amount for providing passive infrastructure.*
> > *b) Site operation service fees -The amount represents the fees in respect of operations carried out on the site.*
> > *c) Reimbursement of expenses towards electricity, diesel etc. -The Vendor is required to use electricity and diesel for providing 24 x 7 power back, so that the equipments owned by the Noticee can function. The electricity and diesel are Inputs for the Vendor to provide Passive Infrastructure Support services to the Noticee.*
>
> *24.6 Further, I find that there is no contract or agreement between the noticee and the Vendor for supply of Diesel or electricity to the noticee. What is entered between is for providing the support service In the course of providing such support Service to the noticee tle vender consumes some Diesel and electricity, which being not a fixed amount like the other ingredients/ items in the agreement, is charged separately on actual basis under a Debit Note, which is reimbursed by the noticee, Therefore the entire amount involved in the transaction is towards services of Passive Infrastructure Support services provided by the Vendor and not towards payment of diesel or electricity. Diesel and electricity is being used by the Vendor to provide Passive Infrastructure support*

> *services to the Noticee. Hence it form a part of the services provided by the Vendor to the Noticee….*
>
> *Thus I hold that the cost Diesel and Electricity form a part of the value of the services provided by the Vendor.*
>
> *xxx xxx xxx xxx*
>
> *25.3 Thus from a combined reading of the above provisions, I find that a document issued by a service provider containing the details like Serial Number, the name, address, the registration number of the person providing the service, the name and address of the person receiving taxable service, description, classification, value of taxable service provided and the service tax payable thereon, can be considered as a valid document for availment of Cenvat credit. The noticee submitted sample copies of the debit noted issued by M/s GTL Infra on which the Cenvat Credit has been availed by them. The details available on one such Debit note dated 15/2/2011 issued by M/s GTL infrastructures are as follows:….*
>
> *25.4 From the above. I find that the debit notes issued by the vendor contains all the relevant details as prescribed/required under Rule 4A of Service Tax Rules, 1994 and hence qualifies as a specified document for availing Cenvat Credit under Rule 9 of Cenvat Credit Rules, 2004. Thus I hold that debit notes on which Cenvat credit has been taken by the noticee are valid documents for availing the Cenvat Credit and hence the allegation made in the show cause notices that debit notes is not an specified document to avail Cenvat credit, is not justifiable and required to be set aside.*
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> *26. In view of the above, the demands raised on the noticee vide the subject five Show cause notice are required to be dropped. Further the noticee in their written submissions argued that, interest under section 75 is not applicable in their case for recovery of interest, to which I do not agree. However since I am proposing to drop the demands, I do not intent to further discuss either on the demand of interest or levy of penalty on the noticee as proposed in the show cause Notices."*

Since, on both the issues of dispute, as the requirement of CENVAT credit Rules, 2004 were fulfilled, the learned Commissioner had allowed the CENVAT credit taken by the respondent, and dropped all the SCN proceedings. Therefore, we do not find any inconsistency in the findings and decision of the adjudicating authority in the impugned order.

6. In this regard, we also find that the issues under dispute is no more *res integra* in view of the decision of the Co-ordinate Bench of the Tribunal in the case of self-same respondents *in Final Order No. A/85901/2022 dated 26.09.2022*, wherein it has been held that the respondents are eligible for CENVAT credit and the appeal filed by Revenue was dismissed. The relevant paragraphs of the said order is extracted and given below:

"2. In this appeal of Revenue against order-in-original no. 74/STCIV/MRRR/16-17 dated 30th June 2016 of Commissioner of Service Tax – IV, Mumbai dropping proceedings for recovery of CENVAT credit availed by M/s Idea Cellular Ltd amounting to Rs. 11,28,86,302/- for 2008-2009 and 2009-2010, the issue for resolution is whether

(a) 'debit note' suffices for the documentation requirements prescribed in rule 9 of CENVAT Credit Rules, 2004, and

(b) if it does, whether such debit notes/invoices pertaining to reimbursements of diesel and electricity costs incurred by the service provider on which tax under Finance Act, 1994 has been duly discharged enables the recipient to take credit.

xxx xxx xxx xxx

3. It is seen from records that M/s Spice Communications Ltd (since taken over by the respondent herein, M/s Idea Cellular Ltd) came under audit scrutiny for the said years and, based on their objection, proceedings were initiated for recovery of credit of `4,05,31,447 and ` 7,23,54,855 availed in April 2008 - March 2009 and April 2009 - February 2010 respectively. It was taken note that the said credit had been taken against 'debit notes' issued by M/s GTL Infrastructure Ltd to them in which charges for electricity, diesel and rent had been adjusted in accordance with the terms of 'infrastructure provision agreement' dated 8th May 2006 between them and the provider. It was also held that the CENVAT Credit Rules, 2004 does not incorporate diesel as eligible input and that electricity is not a taxable service under Finance Act, 1994 to enable such availment.

xxx xxx xxx xxx

9. On considering the submissions made by both sides, it is seen that availment of credit, whether against invoices or against debit notes that contain substantially the same information as prescribed in rule 9 of CENAT Credit Rules, 2004 stands settled by the decision of the Tribunal and of the several High Courts as noted supra. It is seen from the debit notes, as well as the invoices in question, that, while the adjustments reflect the separate charges as provided in the master service agreements, discharge of tax liability therein under Finance Act, 1994 by the provider of service and raising of the amount as due from the recipient of the service is not in doubt. It is settled law that once the tax has been collected, it is not within the jurisdiction of the tax authorities governing the recipient to contend that such payment of tax was not in consonance with the law. Furthermore, the grounds of appeal relied upon definition of the 'inputs' to contend that diesel is not a permissible 'input. It would appear that the competent authority has not been able to draw a distinction between diesel as goods and any duties paid thereon being ineligible for availment of credit and a charge raised upon the recipient of the service as value of the service on which tax liability under Finance Act, 1994 has been duly discharged.

10. In view of the above we find that the grounds of appeal lack merit and appeal of Revenue is consequently dismissed."

7.1 In view of the above, we are of the considered opinion that the issues under dispute having been already decided by the Co-ordinate Bench of the Tribunal, we cannot take a different stand in respect of the self-same respondents under the same Service Tax jurisdiction. We also find that for the reasons quoted in paragraph 5 above capturing the findings of the impugned order dated 31.05.2016, we do not find any grounds to interfere with it.

7. 2 In the result, the impugned order is upheld and the appeal filed by the appellant-department is dismissed.

(Order pronounced in open court on 16.04.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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