CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86537 of 2016

(Arising out of Order-in-Original No. 25-30/STC-III-PP/15-16 dated 31.03.2016 passed by the Principal Commissioner of Service Tax-III, Mumbai).

Vodafone Idea Limited **.... Appellant**
(Formerly known as Idea Cellular Limited)
10th Floor, Birla Centurion, Century Mills Compound,
Pandurang Budhkar Marg, Worli,
Mumbai – 400 030.

Versus

Commissioner of Service Tax-IV, Mumbai **.... Respondent**
12th Floor, Lotus Info Centre, Near Parel Station,
Parel (East), Mumbai – 400 012.

WITH

Service Tax Appeal No. 85156 of 2017

(Arising out of Order-in-Original No. 34-35/STC-III-PP dated 31.10.2016 passed by the Principal Commissioner of Service Tax-III, Mumbai).

Vodafone Idea Limited **.... Appellant**
(Formerly known as Idea Cellular Limited)
10th Floor, Birla Centurion, Century Mills Compound,
Pandurang Budhkar Marg, Worli,
Mumbai – 400 030.

Versus

Commissioner of Service Tax-IV, Mumbai **.... Respondent**
12th Floor, Lotus Info Centre, Near Parel Station,
Parel (East), Mumbai – 400 012.

Appearance:
Shri Aditya Jain, Chartered Accountant for the Appellant
Ms. S. Varalakashmi, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85948-85949/2025

Date of Hearing: 10.06.2025

Date of Decision: 10.06.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that during the disputed period, the appellants were engaged in erection/installation of Transmission Towers (BTS Towers) and goods like pre-fabricated buildings/shelters etc., which were used for housing/storage of Generating sets and other equipment. The appellants had availed CENVAT Credit of Central Excise duty paid on the towers and shelters, which were procured in completely knockdown (CKD) condition. Taking of CENVAT Credit by the appellants was disputed by the Department on the ground that such availment of credit under the head 'capital goods' cannot be sustained inasmuch as the disputed goods are not to be considered as 'capital goods', as defined under Rule 2(a)(A) of the CENVAT Credit Rules, 2004. Show cause proceedings initiated by Department, seeking confirmation of the CENVAT demand was adjudicated by the original authority, vide the impugned orders dated 31.03.2016 and 31.10.2016, wherein the adjudged demands were confirmed on the appellants. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

3. The issue whether, the goods in question i.e., towers and shelters should be considered as 'capital goods', as per the definition provided in the CENVAT statue, we find that the same is no more *res integra,* in view of the judgment of Hon'ble Supreme Court, delivered in the case of *Bharti Airtel Ltd. Vs Commissioner of Central Excise, Pune - 11 TMI 1042 –SUPREME COURT*. The relevant paragraphs recorded in the said judgement are extracted herein bellow :

> *"11.9.5 The tower is brought to the site in CKD or SKD form and assembled at the site. If it is to be dismantled, it only involves unbolting of the nuts and bolts. Dismantling the tower may entail some damages, but such damages will be on the cables which may be required to be stripped of but no damage is caused to the tower. If one says that there may be some damage caused, it will be with reference to the BTS which consists of the antenna, connected by cables and other electrical equipment. But there is no damage to the tower per se. Similarly, in case of PFB, there is no damage to it, though damage may be caused to the wiring or cables connecting the various parts of the Base Transceiver System (BTS) or the Base Station Sub-System (BSS).*
>
> *11.9.6 The tower which is affixed to the earth and thus appears to be immovable, can be dismantled from the existing site and re-assembled without causing any change in its character. It can be moved to any other place and also sold in the market. These*

attributes negate the permanency test, which is a characteristic of immovable property. The tower when fixed to the earth or the building or the civil foundation by nuts and bolts does not get assimilated with the earth or building permanently. Such affixing is only for the purpose of maintaining stability of the tower and keep it wobble free so that the antenna which is hoisted on it can receive and transmit the electromagnetic signals effectively and without any disturbance. Affixing of the tower to the earth or building is not for the permanent beneficial enjoyment of the land or building, but to make it stable for effective functioning of the antenna for seamless rendering of mobile services by the service provider to the consumers/subscribers. Same is the case with prefabricated buildings (PFB)".

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11.11.12 We, therefore, agree with the conclusion arrived at by the Delhi High Court that towers and shelters (PFBs) support the BTS/antenna for effective transmission of mobile signals and thus enhance their efficiency and since these articles are components/accessories of BTS/antenna which are admittedly "capital goods" falling under Chapter 85 within sub-clause (i) of Rule 2(a) (A) of CENVAT Rules, these items consequently are covered by the definition of "capital goods" within the meaning of sub-clause (iii) read with sub-clause (i) of Rule 2(a)(A) of CENVAT Rules. Further, since these are used for providing output service, i.e., mobile telecommunication service, and since these are "capital goods" received in the premises of the provider of output service as contemplated under Rule 3(1)(i), the Assessees would be entitled to CENVAT credit on the excise duties paid on these goods."

4. In view of the settled position of law as referred above, we are of considered view that the adjudged demands confirmed by the original authority cannot be sustained. Therefore, the impugned orders passed by the learned adjudicating authority are set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha