

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 11273/2016-DB

(Arising out of OIO-AHM-EXCUS-002-COMMR-03-04-ST-2015-16 dated 01/02/2016 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Bharat Sanchar Nigam Limited

Vastrapur Telephone Exchange,
Building, Satellite,
Ahmedabad,Gujarat.

.....Appellant

VERSUS

C.S.T.-Service Tax - Ahmedabad

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD,GUJARAT-380015

.....Respondent

With

Service Tax Appeal No. 11275/2016-DB

(Arising out of OIO-AHM-EXCUS-002-COMMR-03-04-ST-2015-16 dated 01/02/2016 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Bharat Sanchar Nigam Limited

Vastrapur Telephone Exchange,
Building, Satellite,
Ahmedabad,Gujarat.

.....Appellant

VERSUS

C.S.T.-Service Tax - Ahmedabad

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD,GUJARAT-380015

.....Respondent

APPEARANCE:

Shri KARAN PARMAR CA, Shri Jilesh Sheth AO, Shri Rahul Ahir, JAO for the
Appellant

Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

Final Order No._10168-10169/2024

DATE OF HEARING: 11.01.2024

DATE OF DECISION:17.01.2024

RAMESH NAIR

The issue involved in the present appeals are that whether the appellant is entitled for Cenvat Credit on goods or services such as monopole supply, monopole installation, monopole supply and installation, prefabricated shelters, raw material – towers (GBT,RTT-MP), shelter, tower supply and

transportation and towers transportation, under the category of "inputs /capital goods".

2. Shri Karan Parmar learned Chartered Accountant with Shri Rahul Ahir Junior Account Officer and Shri Jilesh Sheth Account Officer of the appellant appearing on behalf of the appellant submits that on this issue the Honorable Bombay High court in the case of Bharati Airtel Limited passed the Judgment which was against assessee against which an appeal is pending before the Honorable Supreme Court. However, after referring the aforesaid decision of Bombay High Court the, Honorable Delhi High Court in the case of M/s. Vodafone Mobile Services Limited, taken a contrary view relying on Honorable Supreme Court Judgment in the case of Commissioner of Central Excise, Ahmedabad Vs. Solid And Correct Engineering Works & Ors.,2010 Supreme Court. Thereafter, the Honorable Bombay High Court Judgment is not good law and Honorable Delhi High Court Judgment in the case of M/s. Vodafone Mobile Services Limited shall prevail. He further submits that after the above development this Tribunal consistently decided that the assessee on the goods in question is eligible for CENVAT credit. He placed Reliance on the following Judgments:-

- M/s. Vodafone Mobile Services Limited Vs Commissioner of Centre Excise vide Final Order No. 50891/2022 dated 23.09.2022 passed by (CESTAT New Delhi).
- M/s Bharat Sanchar Nigam Limited V/s Commissioner of Service Tax, Kolkata vide Final Order No. 75925/2023 dated 28.06.2023 passed by (CESTAT Kolkata)
- Tower Vision India Private Limited V / s Commissioner of Service Tax-Delhi vide Final Order No. A/60335/2023 dated 06.09.2023 passed by (CESTAT Chandigarh)

He submits that in the view of the above decisions. The present appeals deserve to be allowed.

3. Shri Rajesh Nathan learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the Honorable Bombay High Court has decided that the assessee is not entitled for CENVAT credit on the goods in the question in the present case. However, thereafter the Honorable Delhi High Court in the case of M/s. Vodafone Mobile Services Limited held that the assessee are entitled for CENVAT credit on the same goods relying on the

Honorable Supreme Court Judgment in the case of Solid Engineering and correct to works, 2010 (Supra). Since, the Honorable Bombay High Court has not considered the Honorable Supreme Court Judgment in the case of Solid And Correct Engineering Works & Ors.(Supra) and on the contrary the Delhi High Court in the case of M/s. Vodafone Mobile Services Limited Passed the Judgment Relying on the Honorable Apex Court Judgment on Solid And Correct Engineering Works & Ors. (Supra) Delhi High Court Judgment prevails over the Judgment of Bombay High Court in the case of Bharti Airtel Limited. Moreover, Relying on the M/s. Vodafone Mobile Services Limited (Supra) of Delhi High Court, this Tribunal consistently taken a view that assessee is entitled for CENVAT Credit on various goods related to supply and installation of Telecom tower. Some of the Tribunal Judgments are referred as below:-

- M/s. Vodafone Mobile Services Limited Vs Commissioner of Centre Excise vide Final Order No. 50891/2022 dated 23.09.2022 passed by (CESTAT New Delhi).
- M/s Bharat Sanchar Nigam Limited V/s Commissioner of Service Tax, Kolkata vide Final Order No. 75925/2023 dated 28.06.2023 passed by (CESTAT Kolkata)
- Tower Vision India Private Limited V / s Commissioner of Service Tax-Delhi vide Final Order No. A/60335/2023 dated 06.09.2023 passed by (CESTAT Chandigarh)

As per the above development in the law, we are of the view that appellants are entitled for the CENVAT Credit.

5. Hence, the impugned orders are set aside and appeals are allowed.

(Pronounced in the open court on 17.01.2024)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(C. L. MAHAR)
MEMBER (TECHNICAL)**