**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**

**CHENNAI**

REGIONAL BENCH – COURT NO. III

**Service Tax Appeal No. 42404 of 2013**

(Arising out of Order-in-Original No.09/2013-Commissioner dated 31.07.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Coimbatore)

**M/s. Vodafone Cellular Limited** **: Appellant**
No. 1045/1046, Avinashi Road,
Coimbatore – 641 018.

**VERSUS**

**The Commissioner of GST &Central Excise** **: Respondent**
Coimbatore Commissionerate,
6/7, A.T.D. Street, Race Course Road,
Coimbatore – 641018.

**APPEARANCE:**

Shri Raghavan Ramabadran, Advocate for the Appellant

Shri Vikas Jhajharia, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**
**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 42352 / 2021**

**DATE OF HEARING:23.09.2021**

**DATE OF PRONOUNCEMENT: 01.10.2021**

**Order: Per Shri P. Anjani Kumar**

The appellants are reputed providers of cellular mobile telephone services to their subscribers, taxable under the category "Telecommunication services". The appellants assailed, vide this appealNo. ST/42404/2013-DB, impugned the Order-in-Original No. 09/2013-Commissioner dated 31.07.2013, which was a culmination of the proceedings initiated vide three different Show Cause Notices, seeking to disallow the CENVAT Credit on various inputs and input services. The disputed credit was mainly pertaining to capital goods and input services used in the fabrication. Erection and commissioning of towers and shelters for base units and credit availed on other services. Whereas, a total amount of demand was Rs. 97, 76, 70,042/-, the adjudicating authority confirmed an amount of Rs.80, 93, 75,263. Details of Show Cause Notices are as under.

| SCN No. & Date | Period | Amount (Rs.) |
|---|---|---|
| 26/2010 08.10.2010 | 2009-10 | 21,91,58,701 |
| 27/2010 14.10.2010 | 2008-10 | 75,27,87,242 |
| 10/2011 13.10.2011 | 2010-11 | 57,24,099 |

**2.** Learned Counsel for the appellant submits his submissions Show Cause Notice wise. Regarding the first Show Cause Notice dated 08.10.2010, he submits that the credit involved on capital goods and inputs was only 2,19,754 and the credit involved on Erection, Commissioning or

Installation Service and Construction Service, availed from companies like M/s Aster Tele Services, was Rs 21,89,38,947; Learned Commissioner has wrongly held that the erection of towers and shelters and the services utilized in the erection, commissioning or installation of towers and shelters is not in or in relation to the services rendered by the appellants; the appellants did not substantiate as to how these services were related to the output services. The appellants submit that the entire demand is prior to 01.04.2011 when the rules were amended to decide the eligibility of credit on the capital goods used in the fabrication and construction of structures, etc. He submits that the question of whether credit is eligible on inputs and capital goods used in towers and shelters is fully covered by the Hon'ble Delhi High Court in Vodafone Mobile Services Ltd. vs. CST [2018 (11) TMI 713- Delhi High Court]; the above judgment in Vodafone Mobile Services (supra) considered the Hon'ble Bombay High Court's decision in BhartiAirtel Vs CCE-2014 (35) STR 865 (Bom) and disagreed with the ratio thereof; Larger Bench of Hon'ble Tribunal in Tower Vision India Pvt LtdVs CST 2016 (3) TMI 165 - CESTAT New Delhi (LB) had followed the decision of the Hon'ble Bombay High Court in BhartiAirtel (*supra*); as the decision of the Hon'ble Bombay High Court in BhartiAirtel (*supra*) stands reversed by the Hon'ble Delhi High Court in Vodafone Mobile Services (*supra*), the decision of the Larger Bench of the Hon'ble Tribunal must also be considered as having been overruled; Chandigarh Bench of the Hon'ble Tribunal considered all the above decisions in CCE VsBhartiInfratel - 2019 (2) TMI 1736 - CESTAT Chandigarh and held that credit of duty paid on inputs used in towers and shelters is eligible. He submits that the period of dispute in the present proceedings is entirely

prior to the amendment of Rule 2(l) of the Credit Rules w.e.f. 01.04.2011; this Hon'ble Tribunal had allowed credit of service tax paid on the very same services in the following cases.

*(i). Final Order No. 40194-40207 of 2018 dated 22.01.2018 in the case of Vodafone Essar South Ltd Vs CCE*

*(ii). Vodafone Essar Cellular Limited Vs CST – 2018-VIL-193-CESTAT-CHE-ST*

*(iii). Final Order No. 42376 of 2018 dated 03.09.2018 in case of Vodafone Essar Cellular Limited vs. CST)*

**3.** Regarding the second Show Cause Notice27/2010 dated 14.10.2010, proposing to deny credit of service tax paid on input services for period from 01.04.2008-31.03.2010, covering extended period from 01.04.2009-31.03.2010. Learned Counsel submits that the demand of credit of service tax is made without identifying the service and the applicable demand; demand was computed all the input services availed by the assessee giving only ear-wise break up and not the service-wise breakup; actual credit attributable to the services mentioned in the Show Cause Notice comes to only Rs 3,66,70,444; in respect of other services mentioned in the Show Cause Notice, the appellants did not avail credit on the same; there is an overlap of demand for the period 2009-10,on the credit availed of duty paid on materials/services used in erection, painting, installation of towers and shelters; subsequent Show Cause Notice has been issued invoking extended Period. Learned Counsel submits that the impugned order finds that the credit on disputed services adds up only to Rs 36,45,08,112**;** the SCN dated 14.10.2010 did not carry any proposal for Rs 38,44,55,550; however, proceeds to confirm the total amount giving relief only to the extent of demand already raised in the Notice dated 8-

10-2010.He submits that such Show Cause Notice and impugned order being vague, un-substantiating should be set aside.

**3.1.** In the alternative, Learned Counsel submits that Cenvat credit is admissible on all the services mentioned therein as per the reasons or the case law cited against the services as below:

| Input services held to be inadmissible | Submissions |
|---|---|
| Civil construction, electrical work, Erection, Installation | Final Order No. 42376 of 2018 dated 03.09.2018; Final Order No. 40194-40207 of 2018 dated 22.01.2018 and Vodafone Essar Cellular Limited Vs CST – 2018-VIL-193-CESTAT-CHE-ST |
| Freight | Freight incurs freight and warehousing charges in transporting and warehousing the equipment. These are expenses directly related to their Business. |
| Collection Charges | Final Order No. 42376 of 2018 dated 03.09.2018 |
| Cleaning | do |
| Insurance | do |
| Rent Paid | do |
| Manpower | The appellants are availing the service of man power recruitment agencies and most of their activities are performed by contract employees. |

**4.** Learned Counsel for the appellants submits, disputed service wise, regarding the third Show Cause Notice dated 13.10.2011, that all the services are eligible to be held as input services for the furtherance of their

business for the reasons given thereunder and /or held by the decisions cited therein.

| Input services held to be inadmissible | Submissions |
|---|---|
| Civil construction, electrical work | Final Order No. 42376 of 2018 dated 03.09.2018; Final Order No. 40194-40207 of 2018 dated 22.01.2018 and Vodafone Essar Cellular Limited vs. CST – 2018-VIL-193-CESTAT-CHE-ST. |
| Dismantling of Towers | These services are used for dismantling towers and are related to the Appellant's business. |
| Freight | Freight incurred for transporting telecom equipment. |
| Collection Charges | Final Order No. 42376 of 2018 dated 03.09.2018 |
| Insurance | -do- |
| Land Survey | -do- |

**5.** Learned Counsel for the appellants further submits that the scope of Rule 2(l) is vast especially for the period up until 01.04.2011; input service credit was admissible for all 'activities relating to businesses; in the absence of any specific allegation or finding that the above input services were not related to the Appellant's business, the demand must be set aside *in toto.* He further submits that extended period has been invoked and confirmed on the allegation of suppression of facts; Appellant denies the allegation in entirety as the credit was availed in compliance with law and under a *bona fide* belief that they are eligible to credit; these facts were always in the knowledge of the Department, and the Appellant

has been diligently complying with all statutory prescriptions; in any case, the dispute involves interpretation of complex statutory provisions, having travelled up to the Larger Bench of the Hon'ble CESTAT; the very same issue was subjected to wide litigation where two co-ordinate Benches of the Hon'ble High Courts have courted differing views; in view of the same, Hon'ble Tribunal had set aside the invocation of extended period in disputes of credit availed on towers and shelters in Final Order No. 40194-40207 of 2018 dated 22.01.2018; further, the decision of the Hon'ble Supreme Court in Nizam Sugar Factory Vs CCE – 2008 (9) STR 314 (SC) is applicable; Show Cause Notices dated 14.10.2010 13.10.2011issued subsequent to the Show Cause Notice dated 08.10.2010, cannot invoke extended period of limitation.

**6.** Learned Authorised Representative reiterates the findings of the impugned order.

**7.** Heard both sides and perused the records of the case. Brief issues require ourconsideration is in the instant appeal are as to

(i) Whether the credit on inputs and capital goods / services used in fabrication, erection, installation of towers and shelters is admissible to the appellants.

(ii) Whether the credit of various services disputed in the show cause notice issued to the appellants is admissible to them.

(iii) Whether in the facts and circumstances of the case extended period can be invoked in respect of show cause notices dated14.10.2010 and 13.10.2011.

(iv) Whether in the facts and circumstances of the case the imposition of penalty is justified.

**8.** We find that the issue relating to the admissibility of credit of inputs/capital goods and services used in the fabrication, erection and installation of towers and shelters has been long in dispute.Bombay High Court in the case of BhartiAirtel Ltd. Vs CCE Pune III 2014(35) STR 865 (Bom,), Vodafone India Ltd. VS CCE Mumbai 2015 (40) STR 422 (Bom.) held that to produce telecommunication service, cenvat credit on towers, prefabricated shelters and their accessories cannot be availed as the towers are fixed to the earth and became immovable property and ipso facto, non-marketable and non-excisable. Delhi High Court in the case of Vodafone Mobile Services Ltd., Tower Vision India Pvt Ltd., BhartiInfratel Ltd Vs CST Delhi - 2018 (11) TMI 713-Delhi High Court have taken a contrary view after examining and distinguishing the judgment of Bombay High Court as cited above. The Hon'ble Delhi High Court finds as below :

> **"36.** In view of this Court, in the facts of the present case, the permanency test has to be applied, in the context of various objective factors and cannot be confined or pigeonholed to one single test. In the present case, the entire tower and shelter is fabricated in the factories of the respective manufacturers and these are supplied in CKD condition. They are merely fastened to the civil foundation to make it wobble free and ensure stability. They can be unbolted and reassembled without any damage in a new location. The detailed affidavit filed by the assessees demonstrate that installation or assembly of towers and shelters is based on a rudimentary "screwdriver" technology. They can be bolted and unbolted, assembled and re-assembled, located and re-located without any damage and the fastening to the earth is only to provide stability and make them wobble and vibration free; devoid of intent to annex it to the earth permanently *for the beneficial enjoyment of the land of the owner*. The assessees have also placed on record the copies of the leave and license agreements, making it clear that the licensee has the right to add or remove the aforesaid appliances, apparatus, equipment etc.
>
> **37.** On an application of the above tests to the cases at hand, this Court sees no difficulty in holding that the manufacture of the plants in question do not constitute annexation and hence cannot be termed as immovable property for the following reasons :
>
> (i) The plants in question are not *per se* immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.

(iii)The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv)The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.

**38.** A machine or apparatus annexed to the earth without its assimilation by fixing with nuts and bolts on a foundation to provide for stability and wobble free operation cannot be said to be one permanently attached to the earth and therefore, would not constitute an immovable property. Thus, the Tribunal erred in relying on the Bombay High Court in *BhartiAirtel Ltd.* (supra). It is also important to understand that when the matter was carried out in the Bombay High Court and the judgment was delivered, the whole case proceeded on the presumption that these are immovable properties. The Tribunal failed to appreciate the 'permanency test' as laid down by the Supreme Court in *Solid and Correct Engineering* (supra).

*Re Question No. 2 i.e. whether the assessees are entitled to claim Cenvat credit on the towers, shelter either as capital goods or inputs in terms of Rule 2(a) or 2(k) of the CCR, 2004 and whether towers and shelters would qualify as "accessories"?*

**.... .... .....**

**43.** In the present case, the debate mainly centers round the definition of 'capital goods' in clause (a) of Rule 2 of the Credit Rules. The definition of 'input' in clause (k) of the said Rule also cropped up, at times, in connection with the appellant's alternative claim of Cenvat credit on certain items as inputs. Both the definitions as they stood in the period of dispute are reproduced below :-

(a) "capital goods" means :-

(A) the following goods, namely :-

(i) *all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Central Excise Tariff Act :*

(ii) pollution control equipment;

(iii)*components, spares and accessories of the goods specified at (i) and (ii);*

(iv)moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi)tubes and pipes and fittings thereof; and

(vii) storage tank,

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) *for providing output service,*

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

(k) "input" means -

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service.

*Explanation 1.* - The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

*Explanation 2.* - Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

"Explanation 2 was amended by Notification No. 16/2009-C.E. (N.T.), dated 7-7-2009. The amended text, which has been referred to by both sides, reads as follows :

*Explanation 2.* - Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels. Centrally Twisted Deform (CTD) bar or Thermo-Mechanically Treated (TMT) bar and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods.

**44.** From the above definition, clearly for goods to be termed "capital goods", in the present set of facts, should fulfil the following conditions :

1. They must fall, *inter alia*, under Chapter 85 of the first schedule to the CET or must be component, parts or spares of such goods falling under Chapter 85 of the first schedule to the Central Excise Tariff Act (CET); and

2. Must be used for providing output service.

**45.** Accordingly, all components, spares and accessories of such capital goods falling under Chapter 85, would also be treated as capital goods. Now, given that Cenvat credit is available to accessories, it is important to address whether towers and shelters would qualify as "accessories". Black's Law dictionary, (fifth edition), defines "accessory" as :

"anything which is joined to another thing as an ornament or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment. A thing of subordinate importance. Aiding or contributing in secondary way of assisting in or contributing to as a subordinate. ''

**46.** On the basis of the above analysis, it is apparent that the primary test to qualify as an accessory is whether does the item in question adds to the beauty, convenience or effectiveness of something else. An accessory is an article or device that adds to the convenience or effectiveness of but is not essential to the

main machinery. It was highlighted during the hearing of the appeals that the towers are structures installed to support GSM and microwave antennae. These antennae receive and transmit signals and are used for providing output service. Without them, the antennae cannot be installed high above the ground and cannot receive or transmit signals. Therefore, the towers too have to be considered as essential component/part of the capital goods, namely BST and antennae. Further, BTS is an integrated system and each component in the BTS, have to work in tandem to provide cellular connectivity to phone users and to provide efficient services. In the facts of the present case, it is evident that the towers form part of the active infrastructure as the antennae cannot be placed at that altitude to generate uninterrupted frequency. Further, these shelters are accessories for the placement of various BTS equipment and other items for it to remain in a dust-free, ambient temperature.

**47.** From the foregoing discussion, clearly towers and shelters support the BTS in effective transmission of the mobile signals and therefore, enhance their efficiency. The towers and shelters plainly act as components/parts and in alternative as accessory to the BTS and would are covered by the definition of "capital goods".

**48.** In the present cases, the Tribunal, in this Court's view erred in interpreting the definition of "capital goods". It merely adopted the ratio laid down by the Bombay High Court in the case of the *BhartiAirtel* (supra) and *Vodafone India* (supra). Both those are subject matter of appeals before the Supreme Court. This Court is of the opinion, with due respect to the Bombay High Court that those two judgments are contrary to settled judicial precedents, including the later view of the Supreme Court in *Solid and Correct Engineering* (supra). In this conclusion, it is held that the Tribunal clearly erred in concluding that the towers and parts thereof and the prefabricated shelters are not capital goods with the meaning of Rule 2(a) of the Credit Rules. This question is answered in favour of the assessee and against the Revenue.

**49.** The allied question is alternatively, whether towers and shelters would qualify as "inputs" under Rule 2(k) of the Credit Rules. The assessees had urged that the tower (and parts thereof) and the pre-fabricated shelters would also qualify as 'inputs' used for providing output service. This contention is based on sub-clause (ii) of clause (k) of Rule 2 (definition of "input") of the Credit Rules. They rely on *Godfrey Phillips India Ltd.* v. *Union of India* - 1990 (48) E.L.T. 508, where the term 'input' was interpreted and the Court held as follows :

"All that the company then seeks is relief or credit *qua* duty already once and earlier paid on Tariff Item No. 68 goods going into the manufactured product which is finally rendered marketable to the consumer. In all such circumstances, the word 'Inputs' (with which word the authorities seem to have been overwhelmed) in the - 1979 notification cannot have the effect of superseding and setting at naught the entire relevant earlier recital preceding thereto. The word 'Inputs' is only a cryptic abbreviated form not meant to change and alter the meaning and intention of the substantive and the really relevant part of the notification but only indicative thereof. The interpretation put by the authorities on the said word is too narrow and technical defeating the very object of the notification and running counter thereto. Reading the said notification as a whole, it is obvious and clear that a much wider meaning to the word 'inputs' is intended. It is not used as the grammatical equivalent of or otherwise synonymous with the word 'ingredients'. The effort to equate the two would render the notification to a great extent infructuous and nugatory. Indeed, the notification itself clarifies the word (Inputs) to mean : "...any goods falling under Item No. 68."

The sum and substance is to enable manufacturers to claim credit for all Tariff Item 68 goods that go into the manufactured product and on which product full duty is being paid.‘‘

**50.** It was submitted that the definition of ‘input’ is but an abbreviation and whatever is used for providing output service, would be an input. The assessee submitted that it is impossible to provide the telephone services, without the tower. Further, pre-fabricated shelters and panels are used for the installation of transmission devices, DG sets and other electronic instruments. It was further, argued that a reading of the rule, made out a clear distinction between the inputs used in the manufacture of excisable goods and the inputs used for providing output service. While, in the case of manufacturing activity, for the goods to qualify as “input” within the meaning of Rule 2(k) of the Credit Rules, they had to be “used in” or “relation to” to the manufacturing activity. In the case of service, the goods only need to be “used for” providing the output service, and the definition does not stipulate that the goods should be used in or consumed in the provision of the output service. The assessees relied on *Indian Chamber of Commerce* v. *Commissioner of Income Tax, WB* - AIR 1976 SC 348, while interpreting the term ‘for’ it was held that :

“For used with the active participle of a verb means for the purpose of (See judgment of Westbury C, 1127). ‘For’ has many shades of meaning. It connotes the end with reference to which anything is done. It also bears the sense of ‘appropriate’ or ‘adapted to’; ‘suitable to purpose’ vide Black’s Legal Dictionary”.

**… … ….**

**53.** On examination of the definition and the decisions, the Court is of the considered opinion that the term “all goods” mentioned in Rule 2(k) of the Credit Rules would cover all the goods used for providing output services, except those which are specifically excluded in the said Rule. Therefore, the definition is wide enough to bring all goods which are used for providing any output service. Further, from the decisions of the Supreme Court and other judgments referred to previously, the test applicable for determining whether inputs are used in the manufacture of goods is the ‘functional utility’ test. If an item is required for providing out the output services of the service provider on a commercial scale, it satisfies the functional utility test. In the facts of the present case, what emerges is that, BTS is an integrated system and each of its components have to work in tandem with each other in order to provide the required connectivity for cellular phone users and for efficient telecommunication services. The towers and pre-fabricated shelters form an essential in the provision of telecommunication service. The CESTAT - in the opinion of this Court - failed to appreciate that it is well settled that the work “used” should be understood in a wide sense, so as to include passive as well as active use. The towers in CKD condition are used for the purpose of supplying the service and therefore, would qualify as ‘inputs’. There is actual use of the tower and shelters in conjunction with the Antenna and the BTS equipment in providing the output service, which also includes provision of the Business Support Service. The CESTAT has failed to appreciate that the towers and the parts thereon and the prefabricated shelters are inputs, in accordance with the provisions of Rule 2(k) of the Credit Rules. The CESTAT has erred in holding that there is no nexus between the inputs and the output service. The CESTAT also failed to consider the decision of the AP High Court in case of *M/s. Indus Towers Ltd.* v. *CTO, Hyderabad* -(2012) 52 VSR 447, which clearly ruled that the towers

and shelters are indeed used and are integrally connected to the rendition of the telecommunication services.

*Re Question No. 3 : Whether the CESTAT erred in applying the nexus test with reference to MS angles and Channels, whereas according to the appellant what was bought to the site were towers, shelters and accessories in CKD/SKD conditions for providing services?*

**... ... ....**

**73.** The conclusion of CESTAT, denying the assessee Cenvat credit on the premise that the towers erected result in immovable property, is erroneous and plainly contrary to *Solid and Correct Engineering* (supra). The towers that are received in CKD condition, are erected at site, subsequently, giving rise to a structure that remains, safe and stable (commercial reasons of use). The fact that in the intermediate stage, an immovable structure emerged, is of no consequence, in the facts of the present case. It is a settled principle of law that entitlement of Cenvat credit is to be determined at the time of receipt of the goods. If the goods that are received qualify as inputs or capital goods, the fact that they are later fixed/fastened to the earth for use would not make them a non-excisable commodity when received. The CESTAT failed to consider the fact in the event antennae and BTS are to be relocated, the assessee also has to relocate the tower and the pre-fabricated shelters, thereby, implying that the towers and the prefabricated shelters, are not immovable property. Therefore, the CESTAT erred in relying upon the decision of the *BhartiAirtel* (supra).**"**

**9.** We find that Chandigarh Bench of this Tribunal has considered the decisions of the Larger Bench, Bombay High Court and Delhi High Court and have dismissed the appeal filed by Revenue and allowed the appeal filed by appellant M/s.BhartiInfratel Ltd[Final Order A/60267-60269/2019 dated 21.02.2019]. We were informed that the jurisdictional High Court has not passed any orders on this issue as on date. Therefore, we are required to follow the decision of the Delhi High Court being subsequent to that of Bombay High Court and the decision of Chandigarh Bench in this regard. In view of the same, we are of the considered opinion that credit, of inputs / capital goods and services utilized in fabrication, erection, installation of towers and shelters by the appellants, is admissible to them.

**10.** Now we turn our attention to the various disputed services. We find that, as submitted by the Ld. Counsel for the appellants, this Bench has gone into the issue of credit of various services availed by the providers of telecom service.We find that this Bench has, vide Final Order No.42376/2018 dated 03.09.2018 in respect of the sister company of the appellants i.e. M/s.Vodafone Essar Cellular Ltd., discussed various services and held as under:

> "7.1 The third issue that arises for consideration is the credit availed on various input services. The appellant has given the details of the various input services in the table as shown above. The services of erection, construction and installation of towers and shelters was availed by the appellant for providing output service of telecommunication. These services have direct nexus with the output service and therefore, is eligible for credit. The Tribunal in the appellant's own case vide Final Order dated 22.01.2018 has allowed the credit. For this reason, we hold that the credit on this service is eligible. The appellant has availed credit on collection charges which are nothing but charges paid to Bill Collection Agencies. In the case of Bajaj Finance Ltd. Vs. C.C.E., Pune-I – 2018 (10) G.S.T.L. 251 (Tri. – Mum.) it was held that assessee is entitled to CENVAT Credit on input services which were used for repossession of vehicle by recovery agent. Here, the appellants have used the facility of Bill Collectors/Agents for recovery of the bills from customers. Thus, the said credit availed on such collection charges, in our view, is eligible. The various other services as shown in the table, except that shown in Sl. No. 22, have been held to be eligible for credit in various decisions as cited in the table.
>
> 7.2 It is also to be noted that the definition of input services during the period prior to 01.04.2011 had a wide ambit as it included the words "activities relating to business". Thus, all the services in the said table from Sl. No. 1 to 25 (except Sl. No. 22) are held to be eligible by us."

In view of the above, we find that the appellant's claim of credit of various inputs services is no longer *res integra* as the same has been decided by this very Bench vide order cited above. We hold that the credit taken and availed by the appellants on all the impugned services except the service relating to dismantling of towers (in respect of show cause notice dated 13.10.2011) is admissible to them. We find that the appellants have not submitted any suitable reason to consider that the said service is required

and the same is in the furtherance of their business. Therefore, to that extent, we find that credit availed on service relating to dismantling of towers is not admissible to them.

**11.** Coming to the other submissions of the appellants that the show cause notice dated 14.10.2010 was vague and not substantiated, we find that the show cause notice, dated 14-10-2010, at Para 4.2 lists 37 specific services the credit of which is supposed to be denied. However, no servicewise break up of duty on credit is given. The Annexure-I to the show cause notice only gives the amount pertaining to ineligible inputs service periodwise / financial year wise.The impugned order mentions that the Range Officer was directed to verify the amount of credit of various services availed by the appellants; that the Range officer informed that a total number of 18476 invoices were to be verified but the assessee did not produce any invoices for verification. Under such circumstances, it is not understood as to how the learned Commissioner has come to the conclusion on the credit availed by the appellants in respect of each of the services. Understandably, the onus of identifying the service and the credit irregularly availed, if any, by the appellants is squarely on the department. So, it is very difficult to uphold show cause notices and orders issued without clarity of either allegation or confirmation.

**12.** Coming to the issue of limitation, we find that in addition to the fact that the appellants are regular assessees who have been filing ST-3 Returns, the appellants have been issued show cause notices dated 22.09.2009 and 08.10.2010. This being the case, it is not possible to invoke extended period by alleging suppression of fact with an intent to evade payment of duty in respect of show cause notices dated 14.10.2010

and 13.10.2011. We find that the appellants have correctly relied on the following cases wherein, it was categorically held that extended period cannot be invoked in the subsequent show cause notices;

*(i) Hyderabad Polymers (P) Ltd. Vs CCE 2004 (166) ELT 151 (SC)*

*(ii) ECE Industries Ltd. Vs CCE – 2004 (164) ELT 236 SC)*

*(iii) Nizam Sugar Factory Vs CCE – 2006 (197) ELT 465 (SC)*

*(iv) MAA Communications Bozell Ltd. Vs CST – 2006 (3) STR 748 (Tri.-Bang.)*

**13**. In view of the above, it is not possible for this Bench to hold that the department is free to invoke extended period in the subsequent show cause notices. However, as per our discussion above, we have held that the credit is admissible to the appellants and as such the appeal survives on merits and any findings on limitation etc. would be redundant. As we hold that the impugned order does not survive on merits (except for the credit availed by the appellants on services relating to dismantling of towers), the question of imposition of any penalty does not arise.

**14.** In view of our discussions above, we set aside the impugned order, except to the extent of confirmation of credit availed on services relating to dismantling of towers for the normal period and allow the appeal in above terms.

(Order pronounced in the open court on 01.10.2021)

**(SULEKHA BEEVI C.S.)**
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**
MEMBER (TECHNICAL)

Sdd/gs