

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41118 of 2015

(Arising out of Order-in-Original No. 40/2014-Commr. dated 31.12.2014 passed by Commissioner of Customs, Central Excise and Service Tax, No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Vodafone Idea Limited

No. 1046, Avinashi Road,
Coimbatore – 641 018.

...Appellant

Versus

Commissioner of GST and Central Excise

Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course Road,
Coimbatore – 641 018.

...Respondent

APPEARANCE:

For the Appellant : Ms. Shwetha Vasudevan, Advocate

Mr. Deepak Krishnan, Advocate

For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40727 / 2025

DATE OF HEARING : 24.01.2025

DATE OF DECISION : 14.07.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/41118/2015 has
been filed by M/s. Vodafone Idea Limited, Coimbatore
(hereinafter referred to as 'Appellant') assailing the Order-in-
Original No. 40/2014-Commr. dated 31.12.2014 passed by

the Commissioner of Customs, Central Excise and Service Tax, Coimbatore who has disallowed the Cenvat credit of Rs.1,81,47,708/-, ordered for recovery along with interest and also imposed equivalent penalty under Section 15 of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

1.2 The facts obtaining in this appeal are that the Appellant is providing telecommunication services to its subscribers for which it engages and uses services of various other service providers. Consequent to special audit of the Appellant's Accounts, a Show Cause Notice bearing No. 03/2014 – Commr. dated 07.04.2014 was issued to the appellant where it was proposed to disallow Cenvat Credit of Rs.1,81,47,708/- availed by the appellant on inputs and input services, viz., (a) Tower related services i.e., services relating to erection and construction of towers, shelters, electrical and laying of optical fibre cables; (b) post-sale services i.e., commission paid to agents and dealers; and (c) other input services such as catering, insurance, healthcare, police and traffic booth maintenance etc. The total demand pertains to the period October 2008 to March 2013.

2. After following due process of adjudication, the impugned order was passed confirming the entire demand on the following grounds:

- i. In terms of exclusion clause 'B' of Rule 2(l) of CENVAT Credit Rules, 2004, credit is not available for a civil structure and therefore, the appellant is ineligible for input credit on Tower related services, i.e., services relating to erection and construction of towers, shelters, electrical and laying of optical fibre cables.
- ii. The Towers and structures are immovable property, as held by the Larger Bench of the Tribunal in 'Vandana Global Ltd., 2010 (253) ELT 440' and also by the Hon'ble Bombay High Court in 'Bharti Airtel Ltd 2014 (35) S.T.R. 865. Hence, credit is not available to the appellant on Tower related services such as services relating to setting up of towers, shelters *etc.*
- iii. Tower is classifiable as capital asset and not capital goods. Therefore, credit cannot be taken on Tower materials, i.e., Tower parts, shelter parts and PFBs.
- iv. Collection agent service, which is an after sales service, is not covered under the definition of 'input service'.
- v. Service Desk Payments, being after-sales expenditure, is not included in the definition of 'input service'.
- vi. Outdoor Catering is not an 'input service'.

vii. Healthcare Services and Insurance are not covered under 'input service'.

viii. Shifting services are not connected to the appellant's output services.

ix. Police and traffic booth maintenance are Corporate Social Responsibilities voluntarily accepted by the appellant and hence credit cannot be availed for the same.

3. The appellant has preferred the present appeal assailing the impugned order dated 31.12.2014.

4.1 The appellant submitted that the entire demand confirmed in the OIO by invoking the extended period is barred by limitation as the facts were well within the knowledge of the department and several show cause notices were issued and SCN on the same issue was issued for the earlier period. The appellant relied on paragraph 27 of the judgment of the Hon'ble Supreme Court in *Anand Nishikawa Co Ltd v. Commissioner of Central Excise, Meerut [(188 ELT 149 (SC))]* and paragraph 9 of the judgment of the Hon'ble Apex Court in *Nizam Sugar Factory v. Collector of Central Excise [2006 (197) ELT 465 (SC)]*. The order dated 01.10.2021 in appellant's own case of Vodafone Cellular

Limited v. Commissioner Service Tax in Appeal No. 42404 of 2013 was also relied upon.

4.2 The appellant averred that the issues raised in this case have been subject matters of extensive litigation involving interpretation of complex provisions of law. The issue of eligibility of Cenvat credit on Towers and its parts has recently been settled by the Hon'ble Supreme Court in the case of *M/s. Bharti Airtel Ltd. v. The Commissioner of Central Excise, Pune* [2024 SCC OnLine SC 3374] and the other services for which credit is denied involves interpretation of Rule 2(l) of the CENVAT Credit Rules.

4.3 The appellant argued that in the above scenario, extended period cannot be invoked in this case. The judgment of the Hon'ble Supreme Court in *Commissioner of Central Excise v. Chemplast Drugs & Liniments* [1980 (40) ELT 276 (SC)] has been cited in support of this argument.

4.4 It was further submitted that aspects in relation to sales commission, etc. are also interpretative as seen from various decisions and that other aspects of input services are also matters of interpretation and therefore extended period cannot be invoked.

5.1 On merits, the main argument advanced by the appellant is that credit should be allowed to them in respect of Tower Related Services (Civil Works, Electrical Works, Erection Works, Optical Fiber Cable Laying etc.) as (a) the appellant cannot render output service without mobile towers, for which services are availed for erection of telecommunication towers; and (b) the services availed are used ultimately for providing Output Services of 'Telecom Service'. In this regard, the appellant has relied on (a) para 7 of the decision in *Vodafone Idea Limited v. CST, Mumbai 2024 (10) TMI 149 – CESTAT MUMBAI*; (b) paras 9 and 10 of the order dated 01.10.2021 in appellant's own case of *Vodafone Cellular Limited v. Commissioner in Service Tax Appeal No. 42404 of 2013*; and (c) para 72 of the judgment of the Hon'ble Delhi High Court in *Vodafone Mobile Services Ltd v. Commissioner of ST, Delhi [2019 (27) GSTL 481 (Del)]*, which was furthered affirmed by the Hon'ble Supreme Court in *M/s. Bharti Airtel Ltd. v. The Commissioner of Central Excise, Pune [2024 SCC OnLine SC 3374]*.

5.2 The appellant averred that Tower Related Services (such as services relating to setting up of towers, shelters, etc.) are input services and therefore, the demand of credit availed by them on the same merits to be dropped as (a) the judgments of the Larger Bench of the Tribunal and

Hon'ble Bombay High Court relied on by the Adjudicating Authority have been overturned by the Hon'ble Chattisgarh High Court in *Vandana Global Ltd. v. Commissioner of C.Ex. & Cus.* [2018 (16) GSTL 462 (Chattisgarh)] and the Hon'ble Supreme Court in *M/s. Bharti Airtel Ltd. v. The Commissioner of Central Excise, Pune* [2024 SCC Online SC 3374] respectively; (b) in *Bharti Airtel Ltd.* (supra), the Hon'ble Supreme Court has held at para 14 that the tower and pre-fabricated buildings (PFBs) are "goods" and not immovable property and since these goods are used for providing mobile telecommunication services, the inescapable conclusion is that they would also qualify as "inputs"; (c) considering tower as an input, services used in relation thereto are input services and therefore the impugned order runs contrary to the finding of the Hon'ble Supreme Court.

5.3 The appellant submitted that Tower Materials (Tower parts, shelter parts and PFBs) which are used for rendering telecom services qualify as inputs as it is held in para 11.12.6 of the judgment of the Hon'ble Supreme Court in *M/s. Bharti Airtel Ltd. v. The Commissioner of Central Excise, Pune* [2024 SCC Online SC 3374] that Towers are goods, and not immoveable property. It is also submitted that the demand suffers from erroneous computation, as the

duty paid on material is INR 6,25,833/- and the balance of INR 13,66,004/- is on the input services.

5.4 The appellant has contended that the demand on Commission Expenses for Collection agent services deserves to be set aside as the appellant would not be able to run its business and provide output services; and therefore, the collection agent services are imperative input services. The appellant has relied on (a) para 14 of the decision in *Commissioner of Central Goods & Service Tax, Jaipur Vs. Bharti Hexacom India Ltd. [2023 (5) TMI 520 – CESTAT NEW DELHI]*; (b) para 7.1 of the judgment in *Vodafone Essar Cellular Limited v. Commr. Of G.S.T. and Central Excise, [2018 (9) TMI 985 – CESTAT CHENNAI]*; (c) para 17 of the decision of the Hon'ble CESTAT, Kolkata in *M/s Vodafone Idea Ltd v. Commr. of CGST & Central Excise, Kolkata South Commissionerate [2023 (3) TMI 575 – CESTAT Kolkata]*; and (d) para 23.1 of the order dated 12.07.2021 passed in *Vodafone Mobile Services Ltd. v. Commr. by the Hon'ble Tribunal, Chennai in Service Tax Appeal No. 41188/2017*.

5.5 The demand on Service Desk payments has been challenged on the ground that it is an arrangement akin to collection agent as desks/outlets are set up by service providers for collection of dues from various subscribers and

such collection is integral for rendering output services. The same case laws cited in support of the contentions made against the demand on Commission Expenses for Collection agent services have been relied upon for challenging the demand on Service Desk payments.

5.6 The appellant averred that the disallowance of credit on Outdoor Catering Service is incorrect as the said service has been used by them while conducting business meetings with its distributors and dealers at various hotels; and the said meetings are squarely covered within "sales promotion" under the inclusive clause of 'input service' under Section 2(l) of the CENVAT Credit Rules, 2004, as the meetings are conducted for the purpose of promoting the business of the appellant.

5.7 The appellant has stated that it took a commercial call to reverse the credit availed on Healthcare Services.

5.8 The argument of the appellant in so far as the demand relates to insurance is that (a) the Credit availed is in relation to business support service and is not insurance service; (b) the services, viz., insurance of the goods such as laptops, cell phones, etc. and for accident benefit of the

employee, are not used for personal use or consumption of the employee and therefore, the services are outside the purview of Clause (C) of the exclusion clause of the definition of input service, on which the demand is based.

5.9 The appellant has stated that it took a commercial call to reverse the credit availed on Shifting Services, *viz.* reimbursement of the cost incurred by the employee of the appellant towards transportation whenever the employee is transferred to a different job location.

5.10 The appellant has contended that the services availed for advertising their logo at various traffic locations and signals are in the nature of Advertisement and Brand promotion and therefore, disallowance of credit on such services is *prima facie* incorrect as the said services are specifically included under the inclusive clause of 'input service' under Section 2(l) of the CENVAT Credit Rules, 2004.

5.11 The appellant has submitted that the demand on the value added service on the ground that it pertains to caller tunes, ring tones, astronomy, cricket match scores etc. which is pertinent to render telecom service.

5.12 The Appellant averred that the demand on discount pertains to the discount provided on behalf of other units of the appellant in the transaction of international roaming.

6. The Ld. Counsel Ms. Shwetha Vasudevan appeared and argued for the appellant and reiterated the above submissions of the Appellant.

7.1 The Ld. Authorized Representative Mr. M. Selvakumar appeared and argued for the Department and submitted that in terms of exclusion clause (A) of the definition of 'input service' under Rule 2(l) of CENVAT Credit Rules, 2004 Service Tax paid on 'specified services' like architect service, commercial construction service, construction of complex service, works contract service etc. availed in relation to construction of a building or a civil structure or part thereof; or for laying foundation or making of structures for structures of capital goods are not eligible for credit as "input service" EXCEPT when they are used for provision of one or more of the specified services to themselves. It was submitted that "Telecommunication Service" is a taxable service and not a specified service and from 01.07.2012 also, 'Telecommunication Service' is not a specified service since it is not a 'works contract'. Therefore,

the disallowance of CENVAT Credit on civil works, electrical works, erection works, optical fibre cable laying etc. amounting to Rs.36,68,763/- (Annexure-A to the notice) for the period from April 2011 to March 2013 is in order.

7.2 The Ld. Authorized Representative has further submitted that the services relating to outdoor catering, health and insurance fall under the exclusion clause (C) of the definition of 'input service' under Rule 2(l) of CENVAT Credit Rules, 2004 and therefore, disallowance of credit which was taken on the same during the period between April 2011 and March 2013 is also in order.

7.3 On the issue of disallowance of credit taken on "Personal use – household goods shifting", it is submitted that the service is personally enjoyed by the employees and is in no way connected to provision of output service, viz. telecommunication service. In regard to 'police booth maintenance', it is argued that it is nothing more than discharge of social responsibilities of the corporate, viz. Vodafone, and is in no way aiding the provision of telecommunication service. In this regard, Ld. A.R. relied on the decision of the Tribunal in the case of *Stanadyne Amalgamations Pvt Ltd. [2011 (22) CTR 344]* to buttress the argument that the term 'input service' means that there

should be some nexus between the services utilized and the output service provided by the appellant.

7.4 Insofar as services related to towers are concerned, it is submitted that the department has rightly disallowed the credit taken during the period from October 2008 to March 2011 on electrical work, civil work and erection work. The decision of Larger Bench of the Tribunal in the case of Vandana Global reported in [2010 (253) ELT 440] which was also cited by the Hon'ble Bombay High Court in *Bharti Airtel Ltd* [2014 (35) S.T.R. 865] is relied on.

7.5 It is argued that credit taken on service charges paid to recovery agents for collection of overdue payments from post-paid subscribers has been rightly disallowed as the said activity is done after telecommunication service is provided. Coming to 'Service Desk Payments', the Ld. A.R submitted that these payments are made for activities like sale of SIM cards, collection of dues from customers etc. which are not services used in providing the output service, viz. telecommunication service.

7.6 The point put forth for disallowance of credit taken on materials used for raising towers / shelters and also on the services procured for erection, painting, civil work etc.

by treating them as inputs and input services is that towers / shelters are immovable properties, and therefore, they are not capital goods but capital assets.

8. Heard both sides and considered the rival submissions including the evidence available on appeal records and the case laws relied upon.

9. The issues that arise for decision in this appeal relate to denial of Cenvat Credit of Rs.1,81,47,708/- availed by the appellant on inputs and input services, viz. (a) Tower related services i.e., services used to erect and construct towers, shelters, electrical and laying of optical fibre cables; (b) Tower materials like parts, shelter and PFBs (c) post-sale services i.e., commission paid to agents and dealers; and (d) other input services such as catering, insurance, healthcare, police and traffic booth maintenance etc.

10.1 The first issue, viz. Tower related services i.e., services used to erect and construct towers, shelters, electrical and laying of optical fibre cables, is squarely covered by the decision of the Hon'ble Tribunal in the case of *Vodafone Idea Limited v. CST, Mumbai [2024 (10) TMI 149 – CESTAT MUMBAI]* in favour of the Appellant. It is apt to reproduce the relevant portion: -

"7. The referral Bench has referred the issue to the Larger Bench because according to them the issue about admissibility of Cenvat Credit in respect of input services used for erection and commissioning of Telecom Towers by the Telecom Service providers have been decided by various Benches of the Tribunal without examining the issue in the light of the definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004 as well as the decision of the Hon'ble Bombay High Court in the matter of Bharti Airtel (supra). As per the referral Bench the Hon'ble High Court while deciding the issue about admissibility of Cenvat Credit against the assessee therein, did not make any distinction in respect of inputs and input services. It also observed that the services in respect of which the Cenvat credit has been claimed are not for providing the output services but have been used for commissioning and erection of telecom towers, which have been held by the Hon'ble High Court as immovable property, not goods and thus the Cenvat chain is broken the moment it is admitted that these services have been used for erection and commissioning of the immovable property.

8. The Larger Bench on the aforesaid issues/doubts raised by the referral Bench, while answering the reference, has observed that the decision in Bharti Airtel is limited to 'input' as source of credit consequent on finding of ineligibility for claim as 'capital goods' and, therefore, not relevant in dispute over entitlement of 'input service' as credit. There is no break in CENVAT chain insofar as 'input service' is concerned. The decision of the coordinate benches survives as precedent to the extent appropriate to the facts of the present dispute.

9. Since the issue referred by the referral Bench has been answered by the Larger Bench in the above terms

therefore following the same, the impugned order is set aside and the appeal filed by the appellant is allowed."

10.2 Further, the Hon'ble Delhi High Court in the Appellant's own case *vide M/s. Vodafone Mobile Services Ltd. Vs. Commissioner of ST, Delhi [2019 (27) GSTL 481 (Del.)]* has held that Towers and the Prefabricated shelters are not immovable property. The order reads as under: -

"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 Bharti Airtel (supra)."*

10.3 Further, in the case of *M/s. Bharti Airtel Ltd. vs. The Commissioner of Central Excise, Pune [2024 SCC Online SC 3374]*, the Hon'ble Apex Court ruled that Towers and Prefabricated buildings are goods and not immovable property and as these goods are used for providing mobile telecommunication services, they would qualify as inputs under Rule 2(k) for the purpose of credit under the Cenvat Credit Rules, 2004.

10.4 In view of the above discussion, we hold that the Appellant is eligible for Cenvat Credit on tower related services and tower materials used for erecting towers and shelters which has been quantified to be Rs.88,86,165/-. So, ordered accordingly.

11. The next issue for consideration is regarding disallowance of credit on post-sale services i.e., commission paid to agents and dealers. The same issue was decided against Revenue by the Tribunal, Delhi in *Central Goods & Service Tax, Jaipur vs. Bharti Hexacom India Ltd. [2023 (5) TMI 520-CESTAT NEW DELHI]* wherein it was held as under: -

"14. This apart, what needs to be noticed is that the view taken by the Joint Commissioner that since the activities in respect of collection /recovery of post-paid plan outstanding dues had been undertaken after completion of

*the provision of taxable output services they would not be covered in the main part or the inclusive part of the definition of input service is not correct. Rule 2(l) of the 2004 Rules provides that the input service must be used for providing output service. The provider of output service, therefore, shall be eligible to avail CENVAT Credit on all those services which are used for providing output services without which the provision of the said output service would become impossible or commercially inexpedient. What, therefore, follows is that services having relation with the business of providing of output service would be covered by the definition of input service. In this connection, reference can be made to the decision of the Tribunal in Bajaj Finance Ltd. Vs. Commissioner of Central Excise, Pune **2018 (10) GSTL 251 (Tri.-Mumbai)** wherein the Tribunal held as follows:*

4. xxxxxxxxxxxx From the above definition it can be seen that any service used for providing output service. As discussed above, the service of taking repossession of the vehicle which is an activity in relation to recovery of the loan is used for overall service of lending. Therefore as per the main part of the definition, the service of recovery agent received by the appellant is an input service. The appellant also claimed that his service is related to "Security" which is specified in the inclusion part of the definition as one of the input service. We find that the vehicle on which the appellant have given the loan is hypothecated with the appellant as the security. Therefore in connection to the recovery of the loan this vehicle is taken under repossession, therefore this service is clearly covered under the definition of "Security" which means "a thing deposit or pledged as a guarantee of the fulfilment of an undertaking or the repayment of the loan, to be forfeited in case of default. In view of this definition

the service of taking repossession of the vehicle from the borrower is a part of security service which is specifically included in the definition of input service. For this reason also the service of repossession provided by the recovery agent to the appellant is an input service. Therefore the appellant is clearly entitled for the Cenvat credit on such input service. However it is observed from the submission of the Ld. Counsel that the amount of recovery charges was recovered by the appellant from the individual borrowers at the time of giving repossession of the vehicle in case the borrower has repaid the amount. In this regard the proceedings related to demand of Service Tax on such part is pending before this Tribunal. Since that is not a subject matter of the proceedings of the present case, the same cannot be taken into consideration for deciding the issue on merit involved in the present case. However, the Revenue is free to take appropriate action in accordance with law, if it is found that against the credit of input service i.e. seizing charges if any exempted service is provided. As per our above discussion, the appellant is entitled for the Cenvat credit on the service of repossession of vehicle provided by the various recovery agent to the appellant against the output service of the appellant i.e. lending of money (Banking and Other Financial Service), accordingly the impugned order is set aside. The appeal is allowed.

15. In Vodafone Essar Cellular Ltd., the Tribunal also reiterated the aforesaid views in the following manner:-

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 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-1 - 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 SI. No. 22, have been held to be eligible for credit in various decisions as cited in the table.

16. In view of the aforesaid discussion, it has to be held that the respondent was entitled to avail CENVAT Credit of service tax discharged on the commission paid by the respondent to collection agents for collection of dues of post-paid plans from the subscribers.

17. The appeal filed by the Department would, therefore, have to be dismissed and is dismissed."

12. Service Desk Payments are akin to payments to collection agents. Hence the ratio of the decision in *Commissioner of Central Goods & Services Tax, Jaipur Vs*

Bharti Hexacom India Ltd. (supra), which is in favour of the appellant, is applicable.

As such, we set aside the demand raised disallowing Cenvat Credit on Commission Agent Services and service desk payments amounting to Rs.85,44,785/-. So, ordered accordingly.

13. As to, outdoor catering services being used by the appellant for business meetings conducted for promotion of appellant's business are covered under "sales promotion" in terms of the inclusive clause of the definition of 'input service' under CENVAT Credit Rules, 2004 and so the Appellant is eligible for availing Cenvat credit amounting to Rs.7,16,762/-.

14. On Healthcare Services, the Appellant has taken Cenvat credit of Rs.9,368/- which was admittedly reversed by the Appellant on its own accord. No need to discuss what is not contested.

15. Regarding denial of credit on the insurance taken for goods such as Laptops, Cell Phones, etc., and also for employees personal accident benefit. The Appellant submits that this would not be coming under the exclusion Clause (C) of the definition of input service as these are not provided for

personal use or consumption of the employees. The above contention of the Appellant is acceptable and as such, we hold that Cenvat credit availed on Business Support Services as above is not to be denied and they are eligible for the same amounting to Rs.2,77,999/-.

16. For the period from April 2011 to March 2013, the Appellant has availed Cenvat Credit to the tune of Rs.94,333/- for shifting charges of the employees from one location to other. As the appellant has not contested and have agreed to reverse the credit, no finding is required to be given. Such a reversal has to be done along with interest if not done by this time.

17. Police booth maintenance done by the appellant for advertisement and brand promotion comes under the inclusive clause of definition of 'input service' and so credit is to be allowed amounting to Rs.1,35,656/-.

18.1 The Appellant being a provider of Telecommunication Service has provided certain value-added services like Caller Tunes, Ring Tones, Astronomy, Health Tips, Cricket Scores, etc. The Appellant receives the services of Living Media Ltd. which charges service tax and the same was paid and taken as credit. As such, the Appellant is

eligible to take Cenvat credit of Service Tax paid to provide VAS totalling to Rs.10,363/-

18.2 The Appellant has submitted that their parent company provides discounts to other Telecom Companies in respect of International Roaming Services, and these are recovered by way of debit notes from the Appellant and other group companies. Since this activity amounts to procurement of services on behalf of other, their parent company discharges service tax under BAS which was availed by the Appellant. We do not find any irregularity in taking Cenvat credit on the debit notes raised which amounted to Rs.3,59,018/-.

19.1 Further, the Appellant has argued on limitation too. The perusal of the appeal records indicate that multiple Show Cause Notices were issued demanding reversal of Cenvat credit taken on Tower parts and other related services. It was informed that substantial portion of the demands made which is the subject matter of this appeal have already been made *vide* SCNs whose details were incorporated in their Grounds of Appeal filed.

19.2 The Appellant has relied on the following decisions against limitation: -

- i. The Hon'ble Apex Court in the case of *Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut* [2005 (188) ELT 149 (SC)] has held that when the facts are within the knowledge of the Department and when SCN on the same issue was issued for the earlier period, the Department cannot invoke the extended period of limitation.
- ii. In the case of *Collector of Central Excise Vs. Chemphar Drugs & Liniments* [1989 (40) ELT 276 (SC)] it was held therein that when the issue involves interpretation of the provisions of the law, extended period of limitation cannot be invoked.
- iii. Further, in the case of *Nizam Sugar Factory Vs. Collector of Central Excise, AP* [2006 (197) ELT 465 (SC)] it was held that suppression of facts cannot be taken as ground in SCN when there are prior SCN for the same facts as there facts were already in the knowledge of the authorities.

19.3 As the issues involved arising out of this appeal are complex and interpretational in nature as proved by contradictory judicial precedents on the issue of Cenvat credit eligibility on Towers & Parts and related services, we are of the clear view that invocation of extended period cannot be supported. Thus, the Appellant succeeds on merits as well as on Limitation.

20. In the result, the impugned Order-in-Original No. 40/2014-Commr. dated 31.12.2014 passed by the Commissioner of Customs, Central Excise and Service Tax is set aside on the above terms allowing Cenvat credit on Tower related services and Tower materials, commission paid to agents and dealers, Service Desk Payments, Outdoor Catering, Business Support Services in respect of insurance on Laptops and Cell Phones and employees personal accident benefits and police booth maintenance.

21. However, the Appellant has voluntarily reversed the credit on Healthcare Services to the tune of Rs.9,368/- and Shifting Charges of the employees from one location to other to the tune Rs.94,333/- which are not interfered with. But, it is stated that the Cenvat credit reversal has to be done along with interest applicable.

22. Thus, the appeal is allowed as above with consequential relief, if any, as per the law.

(Order pronounced in open court on 14.07.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)