

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85085 of 2017

(Arising out of Order-in-Original No. 32-33/STC-III/PP dated 18.10.2016 passed by the Principal Commissioner, Service Tax-III, Mumbai)

M/s Vodafone India Ltd.

Peninsula Point, Peninsula Corporate Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013

.... Appellant

Versus

Commissioner of Service Tax-III, Mumbai

9th Floor, Lotus Infocentre,
Near Parel Railway Station, Parel,
Mumbai – 400 020

.... Respondent

WITH

Service Tax Appeal No. 89602 of 2018

(Arising out of Order-in-Original No. 51/COMMR/(DR.KNR)/CGST & CEX/MC/2018-19 dated 27.07.2018 passed by the Commissioner of CGST & Central Excise, Mumbai Central)

M/s Vodafone India Ltd.

10th Floor, Birla Centurian,
Pandurang Budhkar Marg, Worli,
Mumbai – 400 025

.... Appellant

Versus

**Commissioner of CGST & Central Excise,
Mumbai Central**

4th Floor, GST Bhawan,
115, Maharshi Karve Road,
Churchgate, Mumbai – 400 020

.... Respondent

APPEARANCE:

Shri Vinay Jain, Advocate a/w Ms. Shambhavi Dewalkar, C.A. for the Appellants

Shri Dhananjay Dahiwal, 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/86083-86084/2025

Date of Hearing: 08.07.2025

Date of Decision: 08.07.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2 The appellants herein are engaged *inter alia*, in providing the taxable services under the category of 'telecommunication service'. For the purpose of providing such output services, the appellants had received 'towers & shelters' in Completely Knock Down (CKD) condition. Further, for installation of Base Transceiver Stations (BTS), the appellants had procured capital goods viz., angles, shelter of steel structure, nuts & bolts and other tower materials. The said goods were procured by the appellants on payment of Central Excise duty. On the basis of the excise invoices issued by the suppliers of such goods, the appellants had availed CENVAT credit of central excise duty indicated therein. The CENVAT credit was availed by the appellants, considering the same as 'capital goods', defined under Rule 2(a) of the CENVAT Credit Rules, 2004. CENVAT credit availed on the above said capital goods was sought to be denied by the department in the Show Cause Notices (SCNs) issued for the period April, 2005 to March, 2011, which were adjudicated vide the order-in-original dated 30.10.2012, in confirming the proposals made therein. The said adjudication order dated 30.10.2012 was appealed against before the Tribunal, which was dismissed vide Final Order dated 16.03.2015, by holding that the appellants should not be entitled for the CENVAT credit availed on the disputed goods. The order dated 16.03.2015 of the Tribunal was appealed against by the appellants by way of filing of an appeal in C.E.A. Nos. 126 & 127 of 2015 before the Hon'ble High Court of Bombay, which was dismissed vide Order dated 10.09.2015. Feeling aggrieved with the order dated 10.09.2015 of the Hon'ble High Court of Bombay, the appellants have filed the Civil Appeals before the Hon'ble Supreme Court, which were listed as C.A. Nos. 7119 of 2015 and 7179 of 2015. The civil appeals filed by the appellants together with other appeals filed by some more appellants were disposed of by the Hon'ble Supreme Court vide judgement dated 20.11.2024 (titled as *M/s Bharati Airtel Ltd., Vs. The Commissioner of Central Excise, Pune*). In the said judgement, the Order(s) passed by the Hon'ble Bombay High Court was/were set aside and the civil appeals filed by the petitioners, including the appellants herein were allowed by the Hon'ble Supreme Court.

2.3 The period of dispute involved in the present appeals is from April, 2012 to March, 2015. For denial of CENVAT credit availed on the capital goods during the said period, show cause proceedings were initiated by the department in line with the first show cause notice dated 22.04.2010 issued under sub-section (1) of Section 73 of the Finance Act, 1994, stating/alleging the self-same grounds raised therein. Therefore, the present SCNs dated 27.11.2013, 23.01.2015 and 07.04.2016 were issued under Section 73(1A) *ibid*. The said SCNs were adjudicated by the learned Commissioner of Service Tax-III, Mumbai, vide the impugned orders dated 18.10.2016 and 27.07.2018, in confirming the proposals made therein.

2.4 Feeling aggrieved with the impugned orders dated 18.10.2016 and 27.07.2018, the appellants have preferred these appeals before the Tribunal.

3. We find that the issue involved in the present appeals is squarely settled by the Hon'ble Supreme Court in appellants favour, vide judgement dated 20.11.2024, reported in 2024-VIL-49-SC-CE. The relevant paragraphs recorded in the judgement dated 20.11.2024 by the Hon'ble Supreme Court are extracted herein below:

"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 pre fabricated buildings (PFB).

xxx

xxx

xxx

11.12 The alternative plea taken by the Assessee is that these items, viz., mobile tower and the prefabricated buildings (PFBs) are "inputs" used for providing output service of telecommunication and hence, being "inputs" under Rule 2(k) which are used for providing output service i.e., mobile service, CENVAT credit will be available in terms of Rule 3(1) which provides that a provider of a taxable service shall be allowed to take credit on duties paid on any input received in the premises of that provider of output service on or after 10th September,

2004 and this may be utilised for payment of service tax on any output service under Rule 3(1) read with Rule 3(4) of the CENVAT Rules.

xxx

xxx

xxx

11.12.6 Having held 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" under Rule 2(k) for the purpose of credit benefits under the CENVAT Rules."

4. The show cause proceedings involved in the present appeals were initiated by the department under Section 73(1A) *ibid*, for the subsequent period, than those urged for earlier period containing the identical grounds, for which, the earlier SCNs were issued under sub-section (1) of Section 73 *ibid*. Since, the earlier SCNs adjudicated vide Order-in-Original dated 30.10.2012, which was upheld by the Tribunal and Hon'ble High Court of Bombay, is no more valid and cannot be acted upon, in view of the judgement of the Hon'ble Supreme Court (*supra*). Thus, in our considered view, the adjudged demands confirmed against the appellants for the period in dispute, cannot be sustained.

5. In view of the foregoing discussions, we do not find any merits in the impugned orders, insofar as the adjudged demands were confirmed against the appellants therein. Therefore, the impugned orders 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)