CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

SERVICE TAX APPEAL No. 50961 OF 2017

(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-0074-0085-16-17 dated 22 February, 2017 passed by the Commissioner of Central Excise, Jodhpur)

M/s Vodafone Mobile Services Limited..... Appellant
5th Floor, Gaurav Tower, Malviya Nagar
JAIPUR – 302 017(RAJ.)

versus

Commissioner of Central Excise ..... Respondent
117/5, PWD Colony, Near Riktiya Bheruji Circle
JODHPUR – 342 001 (RAJ.)

APPEARANCE:

Shri B.L. Narasimhan, Advocate for the Appellant
Shri Ajay Jain, Special Counsel & Shri Harshvardhan, Authorised Representative for the Respondent

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 06.06.2022
Date of Decision: 23.09.2022

FINAL ORDER NO. 50891/2022

JUSTICE DILIP GUPTA:

This appeal has been filed by M/s/ Vodafone Mobile Services Limited[1] for setting aside the order dated February 22, 2017 passed by the Commissioner adjudicating the twelve show cause notices by confirming the denial of CENVAT credit on inputs, input services and capital goods used by the appellant for provision of telecommunication services.

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1. **the appellant**

2. The details of the twelve show cause notices and the period involved are as follows :

S. No.	Show Cause Notice	Period
1	07.04.2006	October, 2004 to September, 2005
2	20.04.2007	October, 2005 to March, 2006
3	16.10.2007	April, 2006 to March, 2007
4	13.10.2008	April, 2007 to March, 2008
5	23.09.2009	April, 2008 to March, 2009
6	14.10.2010	April, 2009 to March, 2010
7	13.10.2015	April, 2010 to March, 2014
8	19.04.2016	April, 2014 to March, 2015
9	15.10.2008	April, 2004 to March, 2008
10	12.10.2009	April, 2008 to March, 2009
11	18.10.2010	April, 2009 to March, 2010
12	14.06.2013	April, 2010 to March, 2012

3. The demand of CENVAT credit has been confirmed along with interest under rule 14 of the CENVAT Credit Rules, 2004[2] read with section 75 of the Finance Act, 1994[3] and penalties under rule 15 of the 2004 Rules read with sections 76 and 78 of the Finance Act.

4. The appellant is a provider of telecommunication services to customers and business support services to fellow telecommunication service providers. The appellant claims to have discharged service tax liability on such services. As a provider of output services, the appellant availed CENVAT credit on inputs, input services and capital goods under the 2004 Rules.

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2. the 2004 Rules
3. the Finance Act

5. The issue involved in the present appeal is about the eligibility of the appellant to claim CENVAT credit on tower, tower material, shelter, input services for the period from October 2004 to March 2012 and April 2014 to March 2015. The impugned order has confirmed the denial of CENVAT credit primarily on the ground that the subject goods, being attached to earth, are immovable in nature, and thus not used for providing output services. The Commissioner has relied on Board Circular dated 26.02.2008 and has held that such goods/services are received at cell sites and not at the registered premises and, thus CENVAT credit is not admissible.

6. Shri B.L. Narasimhan, learned counsel for appellant made the following submissions:

(i) The items in question are movable goods received in CKD condition by the appellant and its eligibility to avail CENVAT credit thereon is determined at the time of receipt of these items. It is for the reason of movability of these items only that Excise Duty is paid thereon by the suppliers, whose credit is availed by the appellant;

(ii) The input services received by the appellant are also used for provision of output services and the denial of credit by alleging creation of immovable property is untenable. Without use of these services, the appellant will not be in a position to render any output service to the customers;

(iii) The eligibility of the appellant to avail credit is to be determined at the time of receipt of goods in terms of rule 4(1) of the 2004 Rules. So long as such goods received are used for provision of output services, the appellant would be eligible

to avail CENVAT credit. Thus, immovability is not a criterion for determining the eligibility to avail CENVAT credit. This is more so, when the appellant is also engaged in providing business support services by providing the telecom infrastructure to fellow telecommunication companies;

(iv) The finding that towers are immovable in nature is factually incorrect;

(v) The exclusion clause under rule 2(k) of the 2004 Rules is not applicable to the present case;

(vi) CENVAT credit is admissible to the appellant, irrespective of whether goods/services are received in registered or other premises;

(vii) The above issue stands decided in favour of the assesse by Delhi High Court in appellant"s own case in **Vodafone Mobile Services Limited v. CST, Delhi[4].** Reliance has been placed on a Larger Bench decision of the Tribunal in **CCE, Chandigarh vs Kashmir Conductors[5]** to support the view that the decision of the jurisdictional High Court is binding on all Tribunals under its superintendence;

(viii) Confirmation of demand in the impugned order pertaining to show cause notices dated 07.04.2006, 15.10.2008, 12.10.2009, 18.10.2010 and 14.06.2013 is illegal, for being beyond show cause notices for the reason that the confirmation of demand is based on the finding that the subject items do not qualify as inputs/capital goods for the appellant. Such allegations were not made in these show cause

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4. 2018-TIOL-2409-HC-DEL-ST
5. 1997 (96) ELT 257 (Tri-LB)

notices dated 07.04.2006, 15.10.2008, 12.10.2009, 18.10.2010 and 14.06.2013 and the whole demand is based on the allegation that the subject items are not received in the registered premises of the appellant;

(ix) The extended period of limitation could not have been invoked in the facts and circumstances of the case; and

(x) No interest is payable and no penalties are imposable.

7. Shri Ajay Jain, learned special counsel assisted by Shri Harshvardhan, learned authorized representative appearing for the Department, however, supported the impugned order and submitted that it does not call for any interference. Learned special counsel made the following submissions :

(i) The decision of the Bombay High Court in **Bharti Airtel Ltd. vs CCE, Pune-III**[6] and the decision of the Delhi High Court in **Vodafone Mobile Services** are pending consideration before the Supreme Court in Civil Appeal Nos. 10409/2014 and 5036/2021;

(ii) Only a general assertion has been made that the towers are immovable in nature without placing any evidence;

(iii) As the capital goods were not received in the registered premises, the Commissioner was justified in denying credit on capital goods;

(iv) The eligibility of CENVAT credit on input services for providing output service, namely, support structure, which is an immovable property

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6. 2014 (35) STR 865 (Bom)

attached to earth has been rightly denied as it is neither service nor goods and so input credit of service tax cannot be taken;

(v) It is not correct that the confirmation of demand in the show cause notices dated 07.04.2006, 15.10.2008, 12.10.2009, 18.10.2010 and 14.06.2013 is beyond the show cause notices; and

(vi) The extended period of limitation has been correctly invoked and interest and penalty have also been correctly imposed.

8. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the Department have been considered.

9. In order to appreciate the contentions advanced on behalf of the appellant and the respondent, it would be useful to examine the definition of „capital goods“ and „input“ under rule 2(a) and rule 2(k) respectively, of the 2004 Rules.

10. „Capital goods“ have been defined in rule 2(a) and the relevant portion is as follows:

"**2(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 and wagons of sub-heading 860692 of the First Schedule to the 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;

(vii) storage tank, and

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers.

used -

(1) in the factory of the manufacturer of the final products,; or

(1A) xxxxxxxxxxx

(2) for providing output service;

(B) xxxxxxxxxxxxx

(C) xxxxxxxxxxxxx

(D) xxxxxxxxxxxxx"

11. „Input" has been defined in rule 2(k) and the relevant portion is as follows:

"**2(k)** "input" means –

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) xxxxxxxxx

(iii) xxxxxxxxx

(iv) all goods used for providing any output service, or;

(v) xxxxxxxxx

but excludes –

(A) xxxxxxxxxx

(B) xxxxxxxxxx

(C) xxxxxxxxxx

(D) xxxxxxxxxx

(E) xxxxxxxxxx

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - xxxxxxxxxx"

12. Rule 3(1) of the 2004 Rules permits a provider of output service to take credit of the excise duties paid on any „inputs" and „capital goods".

13. The first and fundamental issue that needs to be decided in the present appeal is as to whether towers are movable property or

immovable property. This is for the reason that if they are immovable property, they would not be excisable goods.

14. Learned counsel for the appellant submitted that towers are not immovable structures and can be moved around from one place to another as per the needs of the appellant, since the mode of their installation is completely different from that of construction of a civil structure. The only activity of civil construction nature, if at all, is laying of the foundation for the tower. The main legs, which are also called as L-angled metal pieces, are fixed to the foundation stubs/anchor bolts and joined with bracing members to form the structure. The tower is formed by connecting all the L-angled metal pieces, which are tightened with nuts and bolts. These nuts and bolts can be unfastened and the dismantled tower can be transported to and reassembled at another location. The attachment of tower with the help of nuts and bolts to a foundation to provide stability and functionality does not qualify as "attached to the earth".

15. The expression „movable property" has been defined in section 3(36) of the General Clauses Act, 1897 to mean property of every description, except immovable property. Section 3 of the Transfer of Property Act, 1882, provides that unless there is something repugnant in the subject or context, „immovable property" would not include standing timber, growing crops or grass. Section 3(26)of the General Clauses Act, 1897, provides that „immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. The term „attached to the earth" has not been defined in the General

Clauses Act, 1897 but section 3 of the Transfer of Property Act defines the expression „attached to the earth“ to mean:

> (a) rooted in the earth, as in the case of trees and shrubs;
>
> (b) imbedded in the earth, as in the case of walls and buildings;
>
> (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

16. The „permanency test“ was examined at length by the Supreme Court in **Commissioner of Central Excise, Ahmedabad** vs. **Solid & Correct Engineering Works[7].** In this case the Supreme Court drew a distinction between machines which by their very nature are intended to be fixed permanently to the structures embedded in the earth and those machines which are fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because foundation was necessary to provide a wobble free operation to the machine. The relevant portion of the judgment is reproduced below:

> "33. It is noteworthy that in none of the cases relied upon by the assessee referred to above was there any element of installation of the machine for a given period of time as is the position in the instant case. **The machines in question were by their very nature intended to be fixed permanently to the structures which were embedded in the earth.** The structures were also custom made for the fixing of such machines without which the same could not become functional. **The machines thus becoming a part and parcel of the structures in which they were fitted were no longer movable goods. It was in those peculiar circumstances that the installation and erection of machines at site were held to be by**

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7. 2010 (252) E.L.T. 481 (S.C.)

> **this Court, to be immovable property that ceased to remain movable or marketable as they were at the time of their purchase.** Once such a machine is fixed, embedded or assimilated in a permanent structure, the movable character of the machine becomes extinct. The same cannot thereafter be treated as movable so as to be dutiable under the Excise Act. **But cases in which there is no assimilation of the machine with the structure permanently, would stand on a different footing. In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.** In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty."
>
> **(emphasis supplied)**

17. Earlier, the Supreme Court in **Triveni Engineering & Indus. Ltd.** vs. **Commissioner of Central Excise**[8] had also observed that while determining whether an article is permanently fastened to anything attached to the earth, both the intention as well as the factum of fastening have to be ascertained from the facts and circumstances of each case and the relevant portion of the judgment is reproduced below:

> "**There can be no doubt that if an article is an immovable property, it cannot be termed as "excisable goods" for purposes of the Act.** From a

8 **2000 (120) E.L.T. 273 (S.C.)**

> combined reading of the definition of "immovable property" in Section 3 of the Transfer of Property Act, Section 3(25) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the excise law. **Whether an article is permanently fastened to anything attached to the earth requires determination of both the intention as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case.**"
>
> **(emphasis supplied)**

18. It would also be relevant to refer to the decision of the Supreme Court in **Sirpur Paper Mills Ltd.** vs. **Collector of Central Excise, Hyderabad**[9] wherein the Supreme Court observed that merely because a machine is attached to earth for more efficient working and operations it would not per se become immovable property. The observations are as follows:

> "5. **Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound.** For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of the water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper-making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the Company. **Just because a plant and machinery are fixed in the earth for better functioning, it does**

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9. 1998 (97) E.L.T. 3 (S.C.)

> **not automatically become an immovable property.**"
>
> **(emphasis supplied)**

19. In **Mallur Siddeswara Spinning Mills (P) Ltd. vs CCE, Coimbatore**[10], the Supreme Court held that mere bolting of machine to a frame from which it can be unbolted and then shifted would not render the machine to be an immoveable property. The observations of the Supreme Court, in this connection, are reproduced below:

> "2. Briefly stated the facts are as follows :-
>
> The Appellants are in the business of spinning cotton yarn. It is claimed that in Salem there is acute power shortage. Thus two generator sets were installed in their factory one on 13th March, 1991 and the second on 15th January, 1992. Show Cause Notice dated 2nd July, 1993 was issued to them claiming duty on manufacture of generating sets. The Collector confirmed the demand for duty holding that there was deliberate suppression of the fact of manufacture of generating sets. The Appeal preferred by the Appellants has been dismissed by the Tribunal by the impugned Judgment.
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> 3…….
>
> 4…….
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> 5…….
>
> 6. It was next submitted that in any event the generating set was immovable property and thus no excise duty was payable on it. We are unable to accept this submission also. It is admitted position that the generating sets have been bolted on a frame. **If the generating set is only bolted on a frame it is capable of being unbolted and being shifted from that place.** It is then capable of being sold. **Under these circumstances it could not be said that the generating sets manufactured by the Appellants are immovable property."**
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> **(emphasis supplied)**

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10 2004 (166) ELT 154 (SC)

19. The Delhi High Court in **Vodafone Mobile Services** had also examined whether the towers, shelters and accessories used by the appellant were immovable property and in this connection, after referring to the decision of the Bombay High Court in **Bharti Airtel Ltd.,** on which reliance was placed by the Department, observed as follows:

> "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 Bharti Airtel 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)."
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> **(emphasis supplied)**

20. This issue was also examined at length by a Division Bench of the Tribunal in **Reliance Jio Infocomm Ltd. vs Assistant Commissioner, CGST & Central Excise, Belapur-IV Division**[11] and it was held that towers and shelters would not be immovable property.

21. Thus, in view of the factual position and the decisions referred to above, the towers and shelters would not be immovable property.

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11. Service Tax Appeal No. 86623 of 2021 decided on 18.04.2022

22. The alternative argument of learned counsel for the appellant that towers and shelters would also qualify as „inputs“ under rule 2(k) of the 2004 Rules was also examined by the Delhi High Court in **Vodafone Mobile Services** and it was held that :

> "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 word "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."
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> **(emphasis supplied)**

23. Another alternative submission advanced by the learned Counsel for the appellant that the items in dispute are „capital goods" and, therefore, credit was correctly taken as „capital goods" also deserves to be accepted.

24. The Delhi High Court in **Vodafone Mobile Services** had also examined this issue and the observations are as follows:

> "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:
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> "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 Bharti Airtel (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."
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> **(emphasis supplied)**

25. Thus, the appellant was also entitled to take CENVAT credit since the items in dispute are „capital goods".

26. Learned special counsel appearing for the Department, however, submitted that the Bombay High Court in **Bharti Airtel Ltd.** held that subject items are neither „capital goods" under rule 2(a) nor „inputs" under rule 2(k) of the 2004 Rules and hence the CENVAT credit of the duty paid was not admissible.

27. Two conflicting views have been expressed by the Delhi High Court in **Vodafone Mobile Services** and the Bombay High Court in **Bharti Airtel Ltd.** A Larger Bench of the Tribunal in **Kashmir Conductors** has considered which decision should be relied upon when conflicting views have been expressed by High Courts and it was held :

> "In case the conflict of decisions among High Courts does not relate to vires of any provision or Notification, it has been held that the Tribunal has to proceed in accordance with the decision in Atma Steels P. Ltd. in the light of the decision of Supreme Court in the East India Commercial Company case i.e. where the jurisdictional High Court has taken a particular view on interpretation or proposition of law, that view has to be followed in cases within such jurisdiction."

28. It would be seen from the aforesaid decision of the Larger Bench of the Tribunal that when a Jurisdictional High Court has

expressed any view in regard to the issue and conflicting views have been taken by High Courts, other than the Jurisdictional High Court, then the Tribunal will follow the jurisdictional High Court.

29. What also needs to be noticed is that the judgment of the Bombay High Court rendered in **Bharti Airtel** was considered by the Delhi High Court in **Vodafone Mobile Services** and it was distinguished as is clear from paragraph 48 of the judgment that has been reproduced above. In this connection the Delhi High Court had also placed reliance upon the later decision of the Supreme Court in **Solid and Correct Engineering Works.**

30. The decision of the Delhi High Court in **Vodafone Mobile Services** would have to be followed. The appellant would, therefore, be entitled to claim CENVAT credit on tower/tower material and pre-fabricated buildings/shelters.

31. This decision of the Delhi High Court in **Vodafone Mobile Services** has also been followed by the Tribunal in following decisions:

i. **Bharti Hexacom Limited** vs. **Commissioner of Central Excise and Customs, Central Goods and Service Tax, Jaipur-I**[12]**;**

ii. **Bharti Airtel Limited** vs. **CCE & ST – Gurgaon-II**[13]**;**

iii. **CCE Gurgaon-II** vs. **Bharti Infratel Ltd.**[14]**;**

iv. **Bharti Infratel Limited** vs. **Commissioner of Service Tax, Delhi – IV**[15]**; and**

v. **Reliance Jio Infocomm Ltd.**

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12. **ST Appeal No. 50835 of 2017 decided on 25.05.2021**
13. **ST Appeal No. 55383 of 2013 decided on 03.09.2019**
14. **ST Appeal No. 52951, 52377-52378 of 2015 decided on 21.02.2019**
15. **ST Appeal No. 52382 of 2015 decided on 22.05.2019**

32. It would, therefore, not be necessary to examine other contentions raised by learned Counsel for the appellant.

33. The order dated February 22, 2017 passed by the Commissioner, therefore, deserves to be set aside and is set aside. The appeal is, accordingly allowed.

(Pronounced in the open Court on September 23, 2022)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Golay