

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.1

**Service Tax Appeal No.76031 of 2015**

(Arising out of Order-in-Original No.Commr./B-I/ST-03/2015 dated 16.07.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar)

**M/s Bharat Sanchar Nigam Limited**

CMTS, BJB Nagar, Bhubaneswar, Odisha

**Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Bhubaneswar-I**

C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha

**Respondent**

**APPEARANCE :**

Ms. Payal Bharwani, Chartered Accountant for the Appellant  
Shri P.K. Ghosh, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 75577/2024**

DATE OF HEARING : 21.03.2024

DATE OF DECISION : 21.03.2024

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order for denial of cenvat credit on various steel items used for setting towers, which were ultimately used for providing telephone communication service.

2. The facts of the case are that the appellant is engaged in providing cellular telephone services and availed cenvat credit on channels, beams, angles and shelters for setting up of cell sites and for erecting towers. Such towers are embedded to earth.

2.1 The Revenue is of the view that the same becomes immovable property and the same are neither input or capital goods for providing taxable output telecom services. Accordingly, the appellants are not

entitled to avail the cenvat credit on the said items in terms of Rule 2(k) & 2 (a) of the Cenvat Credit Rules, 2004.

2.2 In these set of facts, two show-cause notices were issued to the appellants to deny the cenvat credit on the said items. Accordingly, the impugned orders are passed by denying the cenvat credit to the appellant and recovery thereof along with interest. Penalty is also imposed on the appellants.

2.3 Aggrieved from the said order, the appellant is before us.

3. Heard both the parties and considered the submissions.

4. We find that the present issue is no more res integra in the light of the decision of the Hon'ble Delhi High Court in the case of Vodafone Mobile Services Limited Vs. Commissioner of Central Excise, Jodhpur reported in 2019 (27) GSTL 481 (Del.) wherein the Hon'ble High Court has held that the inputs used for fabrication of tower and shelter, which are ultimately used for providing telephone services, the assessee is entitled to avail the cenvat credit as inputs/capital goods.

5. In view of the above, we hold that the appellant is entitled to avail the cenvat credit on the items in question. Accordingly, we do not find any merits in the impugned order and the same is set aside.

6. In the result, the appeal is allowed with consequential relief.

(Dictated and Pronounced in the open court)

Sd/  
**(Ashok Jindal)**  
**Member (Judicial)**

Sd/  
**(K.Anpazhakan)**  
**Member (Technical)**