

STA-15-2018 (O&M)

2025:PHHC:069080-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-10045-CII-2025 in/and
STA-15-2018 (O&M)
Date of decision: 16.05.2025

M/S. IDEA CELLULAR LTD.

..... Appellant(s)

Versus

COMMISSIONER OF CENTRAL EXCISE, ROHTAK

.... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Amrinder Singh, Advocate for appellant.

Mr. Sourabh Goel, Advocate for respondent.

LISA GILL, J.

1. Prayer in this appeal under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, is for setting aside final Order No.A/62128-62129/2017-CU[DB] dated 04.12.2017 (Annexure A-1), passed by learned Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chandigarh in ST/762/2008.

2. Learned counsel for appellant submits that the controversy involved for adjudication is squarely covered in favour of appellant by judgment of Hon'ble the Supreme Court in ***Bharti Airtel Ltd. Vs. Commissioner of Central Excise, Pune, 2024(132) GSTR 404 (SC)***. It has been held by Hon'ble the Supreme Court in the said judgment that *“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.”*

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3. Learned counsel for appellant further submits that question of law involved in this appeal is whether CKD/SKD towers and pre-fabricated buildings are goods and not immovable property and would qualify as inputs under Rule 2(k) of CANVAT Credits Rules, 2004. The question of law in this appeal thus has to be answered in favour of appellant and against respondent-Department. CM-10045-CII-2025 has been filed in this regard.

4. Learned counsel for respondent is unable to deny the same and fairly states that the matter is indeed covered in favour of appellant in view of judgment of Hon'ble the Supreme Court in *Bharti Airtel's* case (supra).

5. At request and with consent of learned counsel for the parties above mentioned appeal is taken on Board today itself for disposal.

6. Keeping in view the facts and circumstances as above and authoritative decision of Hon'ble the Supreme Court in *Bharti Airtel's* case (supra), the question of law as above is answered in favour of appellant and against the Department.

7. Accordingly, CM-10045-CII-2025 is allowed. Present appeal is also allowed and final Order No.A/62128-62129/2017-CU[DB] dated 04.12.2017 (Annexure A-1), passed by learned CESTAT, Chandigarh in ST/762/2008, is set aside.

6. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

16.05.2025
Sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No