

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY ,THE TWENTY EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

CENTRAL EXCISE APPEAL No: 157 OF 2017

Appeal filed under Section 35G of the Central Excise Act, 1944 against the Order No. A/31533/2016 dated 08/11/2016 passed in Appeal No. ST/931/2009 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, at Hyderabad preferred against the Order in Original No. 28/2009 dated 11.08.2009 passed in O.R.No. 12/2009-Adjn-ST on the file of the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, Basheerbagh, Hyderabad.

Between:

M/s. Vodafone Essar South Ltd., (Presently M/s. Vodafone Mobile Services Limited) D.No. 1-10-178, 6th Floor, Varun Towers-II Begumpet, Hyderabad-500016.

...Appellant

AND

Commissioner of Customs, Central Excise and Services Tax, Hyderabad-II Commissionerate, 7th Floor, Kendriya Shulk Bhavan, L.B.Stadium Road, Basheerbagh, Hyderabad-500004.

...Respondents

I.A. NO: 1 OF 2017(CEAMP. NO: 189 OF 2017)

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents not to take any coercive steps for the recovery of the alleged amount payable, pending disposal of the above appeal.

I.A. NO: 2 OF 2017(CEAMP. NO: 202 OF 2017)

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased grant stay of all further proceedings including recovery, while quashing the notices issued by the respondent u/s 87 of the Finance Act, 1994 and

consequently direct the respondents to refund the recoveries made in an illegal, arbitrary and high handed fashion pending disposal of the appellant's stay application.

I.A. NO: 3 OF 2017(CEAMP. NO: 209 OF 2017)

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased set aside the notices issued by the respondent u/s 87 of the Finance Act, 1994 dated 20.11.2017 & 24.11.2017 (Served on 21.11.2017 on 27.11.2017 respectively) to the bankers of the appellant and consequently direct the respondents to refund the recoveries made in an illegal, arbitrary and high handed fashion pending disposal of the appellant's stay applications before this Hon'ble Court.

**Counsel for the Appellant : Ms. Anushka Rastogi, representing
Mr. Lakshmi Kumaran Sridharan**

**Counsel for the Respondent : Ms. K. Mamata Choudary, Senior SC for
Central Board of Indirect Taxes and Customs**

The Court delivered the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

CENTRAL EXCISE APPEAL No.157 of 2017

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Ms. Anushka Rastogi, learned counsel, representing Mr. Lakshmi Kumaran Sridharan, learned counsel for the appellant.

Ms. K.Mamata Choudary, learned Senior Standing Counsel for the Central Board of Indirect Taxes and Customs for the respondent.

2. This appeal under Section 35G of the Central Excise Act, 1944, emanates from the order dated 08.11.2016 passed in Appeal No.ST/931/2009 by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad.

3. The issue in this appeal pertains to the assessee claiming CENVAT credit on the tower parts and pre-fabricated buildings.
4. It is a common ground that the aforesaid issue is no longer *res integra* and has been answered by the Supreme Court in **Bharti Airtel Limited v. Commissioner of Central Excise, Pune**¹.
5. In view of the aforesaid enunciation of law by the Supreme Court, the substantial questions of law framed by this Court are answered in favour of the assessee.
6. The impugned order dated 08.11.2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad is set aside.
7. In the result, the appeal is allowed. There shall be no order as to costs.

¹ 2024 SCC OnLine SC 3374

Miscellaneous applications pending, if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, at Hyderabad.
2. The Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, Basheerbagh, Hyderabad.
3. One CC to Mr. Lakshmi Kumaran Sridharan, Advocate [OPUC]
4. One CC to Ms. K. Mamata Choudary, Advocate [OPUC]
5. Two CD Copies

Njb/DL

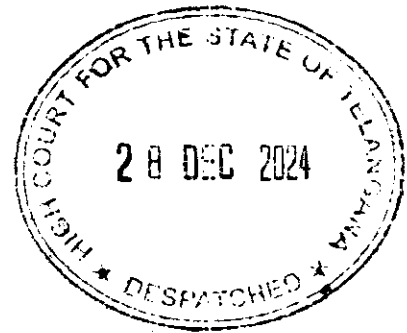
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HIGH COURT

DATED:28/11/2024

JUDGMENT

CEA.No.157 of 2017



ALLOWING THE CEA
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9/12/24