

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.126 OF 2015
WITH
NOTICE OF MOTION NO.868 OF 2015
IN
CENTRAL EXCISE APPEAL NO.126 OF 2015
WITH
CENTRAL EXCISE APPEAL NO.127 OF 2015
WITH
NOTICE OF MOTION NO.869 OF 2015
IN
CENTRAL EXCISE APPEAL NO.127 OF 2015**

Vodafone India Ltd.	... Appellant
v/s	
The Commissioner of Central Excise, Mumbai II	... Respondent

Mr Harish Salve, Sr. Counsel i/b M/s Duttmenon Dunmorrsett for the Appellant.
Mr Pradeep S. Jetly with Mr Jitendra B. Mishra for Respondent.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

**Reserved On : 1st September, 2015
Pronounced On : 10th September, 2015**

Judgment:- [Per B. P. Colabawalla J.] :-

1. These Appeals, filed under section 35G of the Central Excise Act, 1944 read with section 83 of the Finance Act 1994, take exception to the final order dated 16th March, 2015 (**“impugned order”**) passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (**“CESTAT”**). In a nutshell, CESTAT confirmed the order of the Commissioner (TAR), Mumbai, who held that the Appellant was not entitled to claim CENVAT credit of duty paid on towers (in CKD/SKD form), parts of towers, shelters / prefabricated buildings (**for short the “said goods”**) purchased by them and used for providing output service. In both the Appeals, the Appellant and the Respondent are one and the same and the questions of law, as framed, are also identical. The only difference between the two Appeals is the period for which the Appellant had availed of CENVAT credit and which was now being demanded and recovered from them under Rule 14 of the “CENVAT Credit Rules, 2004” r/w section 73 of the Finance Act 1994, alongwith interest and penalty. In these circumstances, both the Appeals are being disposed of, by

consent of parties, by this common order and judgment. For the sake of convenience, we shall refer to the facts in Central Excise Appeal No.127 of 2015.

2. According to the Appellant, these Appeals give rise to the following substantial questions of law:-

- (a) *Whether in the facts and circumstances of the case the Tribunal has erred in law by adding an additional condition through interpretation in Rule 2(k) of the CENVAT Credit Rules, 2004 being that the goods that are used for providing output services should not be embedded in earth?*
- (b) *Whether the Tribunal has erred in law in interpreting Rule 2(k) of the CENVAT Credit rules 2004 which clearly provides that 'all goods' 'used' for providing any output service is eligible for credit and therefore, towers and pre-fabricated shelters which are received as goods ought to be allowed as credit for utilization under the CENVAT Credit Rules 2004 ?*
- (c) *Whether the Tribunal has erred in law in not appreciating that goods which do not fall under the definition of capital goods continue to fall under the definition of input and, therefore, are eligible for credit under the CENVAT Credit Rules 2004 ?*
- (d) *Whether in the facts and circumstances of the case, the Hon'ble appellate Tribunal was correct and justified in applying the ratio of the Bharti Airtel Ltd. in disallowing the credit to the appellant when the said decision is distinguishable on various counts as argued before the Hon'ble Appellate Tribunal ?*
- (e) *Whether the Tribunal committed a fundamental error in not appreciating that shelter / parts of tower and the tower*

would qualify as inputs under the scheme of the CENVAT Credit Rules 2004 which are integral to the provision of output service ?

- (f) *Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal was correct and justified in holding that the Appellant was not entitled to credit of duty paid on tower parts / shelter on the ground that tower / shelter is 'immovable property' and hence, do not qualify as 'capital goods' on 'inputs' as defined under the CENVAT Credit Rules 2004 ?*
- (g) *Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal erred in not appreciating that the towers (in CKD and SKD form), parts of tower / shelter would qualify as components, parts and accessories of goods falling under Chapter 85 ?*
- (h) *Whether in the facts and circumstances of the case the Hon'ble Appellate Tribunal erred in not appreciating that for the purposes of availing credit under the CENVAT Credit Rules, towers (in CKD and SKD form) and parts of the towers were goods when received and credit was taken and it is immaterial whether the same were erected later ?*
- (i) *Whether the Hon'ble Appellate Tribunal erred in not considering and appreciating the technical literature and evidence placed before it showing that both the towers and the shelters were capable of being shifted or moved and rendering perverse findings ?*
- (j) *Whether in the facts and circumstances of the case, the Hon'ble Appellate Tribunal erred in not appreciating that towers were accessories to the capital goods ?*
- (k) *Whether the Tribunal erred in law to appreciate that the identity of towers and pre-fabricated buildings / shelters are not lost merely when they are embedded in the earth prior to use and continue to qualify as 'inputs' under Rule 2(k) of the CENVAT Credit Rules 2004 ?*
- (l) *Whether the Tribunal erred in law in appreciating that there is no embargo under Rule 2(k) of the CENVAT Credit Rules,*

2004 in relation to the manner in which goods ought to be used for providing any output service and therefore, even upon installation as a part of an overall system they can qualify as inputs for rendition of output services ?

- (m) Whether the Tribunal failed to appreciate that even the capital goods can fall under definition of 'inputs' and are, therefore, eligible for credit under Rule 2(k) of the CENVAT Credit Rules, 2004 ?*
- (n) Whether the Tribunal failed to appreciate that the process of embedding the Towers and pre-fabricated buildings / shelters is not a permanent process and the same can be removed and reinstalled at another location and they are merely embedded for proper functioning and, therefore, are not immovable property ?*
- (o) Whether the fact finding of the Tribunal is perverse in so far as it failed to appreciate that Towers and pre-fabricated buildings / shelters under common trade parlance are regarded as 'goods' and, therefore, credit will be allowed on such Towers and pre-fabricated buildings / shelters under the CENVAT Credit Rules, 2004 as either capital goods or inputs ?*
- (p) Whether the Tribunal failed to appreciate that Towers and pre-fabricated buildings / shelters in common trade parlance are known as parts of base station and are, therefore, liable to be classified under Chapter 85 of the Central Excise Tariff Act and consequently eligible for credit under the CENVAT Credit Rules, 2004 ?*

3. To decide the present controversy, it would be necessary to refer to some basic facts. The Appellant is inter alia engaged in the business of providing telecom services under the category 'telecommunication services' within the telecom circles of Mumbai. It

is the case of the Appellant that during the course of its business, it is required to set up various equipments which are integral to, and used for providing such services. Such equipments are essential and an integral part of the telecom service delivery across the world and is the backbone of the telecom service. Such infrastructure includes public switching equipment, transmission equipment and various customer premises equipment. At the heart of the whole infrastructure is the Base Transceiver Station (BTS) which facilitates wireless communication between the customers equipment (eg. mobile phones) and the main network. The general architecture of the BTS system involves various equipment such as antennae, towers, pre-fabricated buildings etc. and all these, in combination, are used by the Appellant in delivering telecom services to its customers.

4. According to the Appellant, in its ordinary course of business, it had availed of CENVAT credit for duty paid on inputs and capital goods as well as availed of credit of service tax paid on input services used for providing output service, and utilised the same for discharging their output service tax liability. The Appellant had

inter alia availed of CENVAT credit for duty paid on towers (in CKD/SKD form), parts of towers, shelter / prefabricated buildings purchased by them and used for providing output service.

5. As the statutory authorities were of the view that the Appellant is not entitled to avail of CENVAT credit under the “CENVAT Credit Rules 2004”, show cause notices were issued to the Appellant for the period from 2005-2006 to 2010-2011, the details of which are given at paragraph 11 of the Memo of Appeal. These show cause notices were replied to by the Appellant denying all the allegations set out therein and contending that the said goods were capital goods and / or in the alternative, should be treated as inputs and therefore they were entitled to claim CENVAT credit. Thereafter, the Commissioner (TAR), Mumbai, after granting the Appellant a personal hearing, adjudicated the said show cause notices and by his order dated 30th October 2012, confirmed the demand therein alongwith interest and penalty. As far as the demand to the extent of Rs.45,05,15,200/- was concerned, the same was dropped on account of duplication in computation of two show cause notices dated

31.03.2009 and 22.04.2010 respectively.

6. Being aggrieved by this order of the Commissioner, the Appellant preferred an Appeal before the CESTAT under section 86 of the Act and also filed a stay application therein. This Appeal was disposed of by CESTAT by its judgment and order dated 16th March, 2015 inter alia confirming the order of the Commissioner (TAR), Mumbai. Being aggrieved by this order of CESTAT, the Appellant is before us.

7. In this factual background, Mr Salve, learned Senior Counsel appearing on behalf of the Appellant, firstly contended that CESTAT erred in coming to the finding that the towers / pre-fabricated buildings (the said goods) of the Appellant, and on which CENVAT credit was claimed, are immovable properties. To classify the said goods as immovable properties, attachment thereof to the land has to be for the permanent beneficial enjoyment of the land and should not have a separate existence devoid of the land, was the submission of Mr. Salve. In support of this proposition, Mr Salve

relied upon a decision of the Supreme Court in the case of ***Commissioner of Central Excise, Ahmedabad v/s Solid and Correct Engineering Works and others.***¹ According to Mr Salve, in the present case, the said goods of the Appellant did not satisfy this test and therefore, could never be termed as immovable property. In this regard, he also invited our attention to the affidavit of Ms. Srabasti Bhattacharjee dated 07.01.2015 filed on behalf of the Appellant before the CESTAT. This affidavit sets out details of how a new tower is set up, preparation of its civil foundation and erection, and how it is dismantled.

8. In the alternative, Mr Salve submitted that in any event of the matter, there was no generic difference between ‘capital goods’ and other ‘goods’ other than their treatment in relation to their use in manufacture. According to Mr. Salve, there is no difference in relation to the use of any ‘goods’ in relation to provision of output service. In this regard, he drew our attention to the definition of the words ‘capital goods’ and ‘input’ appearing in rule 2(a)(A) and rule

¹ (2010) 5 SCC 122

2(k) of the CENVAT Credit Rules, 2004 respectively. According to Mr Salve, in the facts of the present case, and looking to the definition of the word ‘input’, only two conditions need to be satisfied for the Appellant to avail of CENVAT credit. These are (a) the CENVAT credit is claimed for goods in relation to the tax paid on the goods; and (b) the said goods are used for providing output service. According to Mr Salve, at the time the input duty is paid, the duty should relate to the goods acquired by the service provider. Thereafter, if the goods are required to be fastened to immovable property to facilitate their use, would not by itself, make them lose their character as ‘goods’, was the submission of Mr Salve.

9. Mr Salve, in his usual fair manner, pointed out to us a decision of a Division Bench of this Court in the case of ***Bharti Airtel Ltd. v/s Commissioner of Central Excise, Pune – III***,² to which one of us (S.C. Dharmadhikari J.) was the party. He submitted that though a Division Bench of this Court in ***Bharti Airtel’s case*** has taken the view that the telecom service provider is not entitled to

² 2014 (35) S.T.R. 865 (Bom.)

CENVAT credit for the duty paid on the said goods on the ground that it is immovable property and hence, do not qualify as 'capital goods' or 'inputs', the same required a relook in view of the fact that the submissions now made before us were either not made nor considered in the case of *Bharti Airtel Ltd.*² For all the aforesaid reasons, Mr Salve submitted that these Appeals raise substantial questions of law that need to be considered by this Court and a finding be rendered thereon.

10. On the other hand, Mr Jetly, learned counsel appearing on behalf of the Respondent, submitted that the issues raised and the questions of law as projected in the Appeals, are squarely covered by the judgment of this Court in *Bharti Airtel's case*.² He submitted that after lengthy arguments and considering the law on the subject, this Court has come to the conclusion that a telecom service provider is not entitled to credit of duty paid on towers (in CKD and DKD form), parts of towers, shelter / prefabricated buildings allegedly used by the Appellant for providing output service. He submitted that the Division Bench in *Bharti Airtel's case*² has considered all the issues

and therefore, the present Appeals raise no substantial questions of law that need to be considered by us. He therefore submitted that the Appeals were meritless and ought to be dismissed.

11. With the help of learned counsel for both sides, we have perused the papers and proceedings in both the Appeals as well as the common order impugned therein. It is to be noted that in ***Bharti Airtel's case*²**, the identical issue as the one canvassed before us, was raised before this Court. The substantial questions of law that were framed by this Court in ***Bharati Airtel's case*²** are as under:-

- “1) *Whether in the facts and circumstances of the case, the Appellate Tribunal was correct and justified in holding that the appellant was not entitled to credit of duty paid on tower parts, green shelter, printers and office chairs ?*
- 2) *Whether in the facts and circumstances of the case, the Appellate Tribunal was correct and justified in holding that the appellant was not entitled to credit of duty paid on tower parts, green shelter on the ground that tower / green shelter is 'immovable property' and hence, do not qualify as 'capital goods' or 'inputs' as defined under the Cenvat Credit Rules, 2004 ?*
- 3) *Whether in the facts and circumstances of the case, the appellate Tribunal was correct and justified in holding that tower would not qualify as 'part' or 'component' or 'accessory' of the capital goods i.e. antenna ?”*

12. On these questions of law, as framed, this Court at paragraph 16 noted the arguments canvassed on behalf of M/s Bharti Airtel Ltd. In a nutshell, and so far as they are relevant for our purposes, the arguments of the Appellants therein were as follows:-

- (a) The Tribunal has misinterpreted the application of CENVAT Credit Rules, 2004 in rejecting the Appellant's claim to avail credit of the duty paid on the towers and parts thereof, prefabricated shelters and the printers. The goods in question clearly fall within the ambit of the definition of “capital goods” under rule 2(a)(A) of the Cenvat Credit Rules 2004;
- (b) that in the alternative, the goods in question fall within the definition of “input” under rule 2(k) of the Credit Rules. The tower and shelter were received by the Appellants in knocked down condition (CKD) and were used for providing telecom services and hence these goods qualify as “inputs” in terms of rule 2(k) of the Credit Rules. Rule 2(k)(2) uses the words “all goods” which are “used for providing any “output service” and therefore, these goods completely fall within the purview of rule 2(k) so as to mean inputs;

- (c) that a combined reading of these definitions, read with rules 3 and 4 of the Credit Rules, entitle the Appellants to avail the credit of duty paid on purchase of these goods, and the Appellant's case was fully covered under Rule 3 of the CENVAT Credit Rules 2004;
- (d) The contention of the Revenue that after the use of the towers and parts thereof and PFB, they have become “immovable”, is misconceived and credit cannot be denied accepting this contention. In support of this submission, reliance was placed on several decisions of the Supreme Court and various High Courts;
- (e) that capital goods viz. Antenna and BTS are fitted into the tower and shelter to provide telecommunication services and therefore, they qualify as inputs under Rule 2(k);
- (f) that it is impossible to conceive that the telecommunication services can be provided without towers and shelters and that necessity or the functional utility test is required to be applied.

13. Several other arguments were also noted in paragraph 16 of ***Bharti Airtel's decision***². Thereafter, this Court at paragraph 19 took note of the relevant provisions viz. the definition of the words '***capital goods***' [Rule 2(a)(A)], '***input***' [Rule 2(k)] and **Rule 3** which inter alia provides under what circumstances CENVAT Credit can be availed of. After noting the aforesaid provisions and a lengthy discussion in relation thereto, this Court in ***Bharti Airtel's case***² held that the said goods are neither 'capital goods' as defined in rule 2(a)(A) of the CENVAT Credit Rules, 2004 and nor do they fall within the definition of 'input' as defined in rule 2(k) thereof. This Court has further held that in any event the towers and parts thereof are in the nature of immovable property and are non-marketable and non-excisable and therefore, they cannot be classified as 'inputs' so as to fall within the definition of rule 2(k) of the CENVAT Credit Rules, 2004. The relevant portion of ***Bharti Airtel's decision***² reads thus:-

“23. In the context of these definitions the contentions as raised by the appellant are required to be examined. The position of the goods in question vis-a-vis the plain application of the rules is that the tower and parts thereof are fastened and are fixed to the earth and after their erection become immovable and therefore cannot be goods. Further in the CKD or SKD condition the tower and

parts thereof would fall under the chapter heading 7308 of the Central Excise Tariff Act. Heading 7308 is not specified in clause (i) or clause (ii) of rule 2 (a)(A) of the Credit Rules so as to be capital goods. The goods in question would not be capital goods for the purpose of CENVAT credit as they are neither components, spares and accessories of goods falling under any of the chapters or headings of the Central Excise Tariff Schedule as specified in sub-clause (i) of the definition of capital goods.

31. In the light of the aforesaid discussion we examine whether on the rules as they stand the appellants would be entitled to the credit of the duty paid on the item in question on the output service namely the cellular service. We may observe that a plain reading of the definition of 'capital goods' as defined under Rule 2(a)(A) of the Credit Rules show that all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No.6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Central Excise Tariff Act; pollution control equipments; components, spares and accessories of the goods specified at sub clauses (i) and (ii) which are used either in the factory for manufacture of final products but does not include any equipment or appliance used in the office and those used for providing output service. Further in the CKD or SKD condition the tower and parts thereof would fall under the chapter heading 7308 of the Central Excise Tariff Act. Heading 7308 is not specified in clause (i) or clause (ii) of rule 2 (a)(A) of the Credit Rules so as to be capital goods. Further the Appellants contention that they were entitled for credit of the duty paid as the Base Transceiver Station (BTS) is a single integrated system consisting of tower, GSM or Microwave Antennas, Prefabricated building, isolation transformers, electrical equipments, generator sets, feeder cables etc. and that these systems are to be treated as "composite system" classified under Chapter 85.25 of the Tariff Act and be treated as 'capital goods' and credit be allowed, also is not acceptable. It is clear that each of the component had independent functions and hence, they cannot be treated and classified as single unit. It is clear that all capital goods are not eligible for credit and only those relatable to the output services would be eligible for credit. The goods in question in any case cannot be held to be capital goods for the purpose of CENVAT credit as they are neither components, spares and accessories of goods falling under any of the chapters or headings of the Central Excise Tariff Schedule as

specified in sub-clause (i) of the definition of capital goods. Hence a combined reading of sub-clause (a)(A) (i) and (iii) and sub-rule (2) indicates that only the category of goods in Rule 2(a)(A) falling under clause (i) and (iii) used for providing output services can only qualify as capital goods and none other. Admittedly the goods in question namely the tower and part thereof, the PFB and the printers do not fall within the definition of capital goods and hence the appellants cannot claim the credit of duty paid on these items. Even applying the ratio of the judgments as relied upon by the appellants as observed above the said goods in the present context cannot be classified as capital goods.

32. As regards second contention of the appellants that the tower and part thereof, the PFB and the printers would also falls under the definition of 'input' as defined Rule 2(k) also cannot be sustained. The definition of inputs as defined under rule 2(k) includes all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production, and as provided in sub-clause (ii) all goods except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service. Explanation (2) of sub-rule (k) is also which provides that input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. A plain reading of the definition of input indicates that in the present context, clause (i) of Rule 2 (k) may not be of relevance as same pertains to manufacturing activity and pertains to goods used in relation to manufacture of final product or any other purpose within the factory of production. Sub-clause (ii) has been referred to as relevant by the appellant as the same pertains to goods except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service. Tower and parts thereof are fastened and are fixed to the earth and after their erection become immovable and therefore cannot be goods.

33. *The alternative contention of the appellant is that tower is an accessory of antenna and that without towers antennas cannot be installed and as such the antennas cannot function and hence the tower should be treated as parts and components of the antenna. It is urged that antennas fall under chapter 85 of the schedule to the Central Excise Tariff Act and hence being capital goods used for providing cellular service falling under rule 2(a)(A)(iii) as part of capital goods falling under rule 2(a)(A)(i) towers become accessories of antenna and should be held as capital goods for availing of credit of duty paid. The argument at the first blush appeared to be attractive however a deeper scrutiny shows that the same is without substance. It would be misconceived and absurd to accept that tower is a part of antenna. An accessory or a part of any goods would necessarily mean such accessory or part which would be utilized to make the goods a finished product or such articles which would go into the composition of another article. The towers are structures fastened to the earth on which the antennas are installed and hence cannot be considered to be an accessory or part of the antenna. The position in this regard stands fortified from the decision of the Supreme Court in the case of “Saraswati Sugar Mills vs CCE Delhi, (2011 (270) ELT 465)”. From the definition of the term ‘input’ as defined in 2 (k) of the Credit rules it is clear that the Appellant is a service provider and not a manufacturer of capital goods. A close scrutiny of the definition of the term capital goods and input indicates that only those goods as used by a manufacturer would qualify for credit of the duty paid. As observed hereinabove a service provider like the appellant can avail of the credit of the duty paid only if the goods fall within the ambit of the definition of capital goods as defined under Rule 2(a)(A) of the Credit Rules. The contention of the appellant that they are entitled for the credit of the duty paid towers and PFB and printers is defeated by the very wording of the definition of input. In any case towers and PFB are in the nature of immovable goods and are non-marketable and non-excisable. If this be the position then towers and parts thereof cannot be classified as inputs so as to fall within the definition of Rule 2(k) of the credit rules. We clarify that we are not deciding any wider question but restricting our conclusion to the facts and circumstances which have fell for our consideration in these appeals.”*

(emphasis supplied)

14. On carefully going through the decision in ***Bharti Airtel's case***² we find that the said decision squarely applies to the case of the Appellant before us. We find that this Court has considered all aspects of the matter and then come to the conclusions that it did. Mr Salve, despite all the finesse at his command, was unable to persuade us to hold that the decision in ***Bharti Airtel's case***² requires a relook. The very provisions that were relied upon by Mr Salve, were considered and interpreted by the Division Bench in ***Bharti Airtel's case***². Not only are those findings binding on us but we are in full agreement with the same. Once the very rules that have been relied upon by Mr Salve, are interpreted by the Division Bench of this Court, judicial discipline demands that this interpretation be followed by us. It is now quite well settled that an interpretation of a statutory provision, and equally a misinterpretation, by one Bench of the High Court would be binding on a coordinate Bench of that very High Court. The subsequent Bench cannot come to the opinion that a particular provision was misinterpreted and under that pretext seek to reinterpret it again. If the subsequent Bench is of the view that the

statutory provisions are misconstrued and / or misinterpreted, the only recourse available to it would be to refer it to a larger Bench. In the present case, we see no reason to adopt this course of action. We are in full agreement with the reasoning given in ***Bharti Airtel's case***² and therefore, are unable to accept the submissions of Mr Salve that the aforesaid decision requires a relook. If for any reason, the Appellant is of the opinion that the decision in ***Bharti Airtel's case***² does not lay down the correct law, then the remedy to correct the same lies before a Superior Court. On the issue of a binding precedent, it would be apposite to refer to the observations of the Supreme Court in the case of ***State of Gujarat v. R.A. Mehta***³ which read thus:-

“Binding effect of the judgment

61. There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding, particularly when the same is that of a coordinate Bench or of a larger Bench. It is also correct to state that even if a particular issue has not been agitated earlier or a particular argument was advanced but was not considered the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced has actually been decided. The decision therefore, would not lose its authority “merely because it was badly argued, inadequately considered or fallaciously reasoned”. The case must be considered taking note of the ratio decidendi of the same i.e. the general reasons or the general grounds upon which the decision of the court is based, or on the test or abstract from the specific peculiarities of the particular case which finally gives rise to the decision. (Vide Somawanti v. State of Punjab [AIR

³ (2013) 3 SCC 1

1963 SC 151] , Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur [(1970) 2 SCC 267 : AIR 1970 SC 1002] , Ambika Prasad Mishra v. State of U.P. [(1980) 3 SCC 719 : AIR 1980 SC 1762] , SCC p. 723, para 6 and Director of Settlements v. M.R. Apparao [(2002) 4 SCC 638 : AIR 2002 SC 1598] .)”

(emphasis supplied)

15. To be fair to Mr Salve, we must mention here that the decision in *Bharti Airtel's case*² has been challenged before the Supreme Court in *Civil Appeal Nos.10409 and 10410 of 2014* in which notice has been issued and the Supreme Court has ordered that these Civil Appeals be tagged with *Civil Appeal Nos.5698 and 5699 of 2012 arising out of SLP (Civil) Nos.22864 and 22865 of 2011 [Commr. Of Cen. Exc. Vishakhapatnam Vs. M/s. Sai Samhita Storages P. Ltd.]*. However, as far as we are concerned, the issue stands concluded by the decision of this Court in *Bharti Airtel's case*.²

16. In view of our discussion earlier in this judgment, we find that the issues raised in the present Appeals are squarely covered by the decision of this Court in *Bharti Airtel's case*² and therefore raise

no substantial questions of law that need to be answered by us. In this view of the matter, we find no merit in these Appeals. They are accordingly dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B.P. COLABAWALLA, J.) (S.C.DHARMADHIKARI J.)