

Vodafone moves SC for stay on Rs 92-crore tax demand

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Vodafone India on Monday moved the Supreme Court seeking stay on a demand of Rs 92 crore, including penalties, slapped on it by the excise department. The demand is on the premise that the firm can't claim credit for the tax content on some of its telecom infrastructure in meeting the tax liability on output (telecom) service.

A bench headed by Chief Justice HL Dattu issued notice to the central excise department after Vodafone challenged the Bombay High Court's ruling that held that the company was not entitled to credit of input duties paid on tower parts/shelter on the ground that tower/shelter is an 'immovable property'.

In the CENVAT chain, input tax credit is available, which means duties/taxes paid on inputs can be offset against output tax liability.

The company said that to classify the goods as immovable properties, attachment there of 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. Besides, the goods could never be termed as immovable property as there was no generic difference between 'capital goods' and other 'goods' other than their treatment in relation to their use in manufacture, it added.

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, Vodafone said.

It also 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.

According to the assessee, 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, the company stated.

It said that 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 are eligible for credit and therefore, towers and pre-fabricated shelters which are received as goods should be allowed as credit for utilisation under the rules.

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