IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO.1 OF 2025

Commissioner of Central GST
and Central Excise, Aurangabad,
Town Center, N-5, Cidco,
Aurangabad - 431003

...APPELLANT
(Orig. Respondent)

VERSUS

M/s. Dish TV India Limited,
(Formerly known as Videocon D2H Ltd.),
FC-19, Film City, Sector 16A,
Noida – 201 301 (U.),
Having its local office at
IB90 Pratap Nagar, Near Osmanpura
Police Station, Aurangabad 431 001.

...RESPONDENT
(Orig. Appellant)

...

Mr. D.S. Ladda Advocate for Appellant.
Mr. A.R. Madhav Rao Advocate a/w. Mr. Mukund Rao
Advocate and Mr. Krishna Rao Advocate for Respondent.

...

CORAM: SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATE : 28th NOVEMBER, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard learned Advocate Mr. Ladda appearing for the

appellant and learned Advocate Mr. A.R. Madhav Rao appearing for respondent, who appears *suo moto*.

2. The present Appeal arises out of the Judgment and final order No. FO/ST/A/85261/2025-ST[DB], dated 25th February 2025, passed by Customs, Excise and Service Tax Appellate Tribunal, Mumbai, in Service Tax Appeal No.87927 of 2019, which was arising out of order in Original No.04/ST/COMMR/2019-20, dated 4th July 2019, passed by the Commissioner of Central GST and Central Excise, Aurangabad.

3. Learned Advocate appearing for the appellant has given the brief statement of facts that M/s. Dish TV India Limited (formerly known as M/s. Videocon D2H Limited) was providing broadcasting services to their customers. The assessee for rendering broadcasting services and for completing the Conditional Access System (CAS), procured Set Top Boxes (STB) domestically in India. However, the assessee imported 'smart cards' from the overseas supplier located abroad and the CVD amount paid on the said imported smart cards was availed as Cenvat Credit by the assessee. Further, the assessee was sending smart cards free of cost to the manufacturer of Set Top Box, namely M/s. Trend Electronics Limited on delivery challans.

On inquiry about the removal of smart cards free of cost, the department officers were told that smart cards were inserted in Set Top Boxes manufactured by M/s. Trend Electronics Limited and thereafter the assessee was purchasing the said Set Top Boxes from M/s. Trend Electronics Limited. It was then found by the department that the assessee was availing Cenvat Credit on the smart cards and after that they were removing them for use in the manufacture of Set Top Boxes and not for job work. Therefore, Cenvat Credit availed by the assessee on smart cards was not admissible to them. The assessee was required to reverse the Cenvat Credit availed by them at the time of clearance of smart card to M/s. Trend Electronics Limited under Rule 3(5) of Cenvat Credit Rules, 2004. The amount of Cenvat Credit was not reversed by the assessee during the period from January 2014 to June 2017, which was to the tune of Rs.42,19,49,134/-. When all these detailed investigations were done, department had issued show cause notice on 11th January 2019 for the demand of the Cenvat Credit amount as aforesaid, along with interest and penalty. The show cause notice was adjudicated vide order in Original (OID) No.4/ST/COMMR/ 2019-20 dated 4th July 2019 and the assess was directed to pay the aforesaid amount along with interest and penalty. Thereafter

the assessee preferred an appeal to the appellate tribunal which allowed the appeal and quashed the show cause notice. Against the said decision, the present Appeal has been filed.

4. Learned Advocate appearing for the appellant department has vehemently submitted that the activity of pairing and testing of smart cards and subsequent assembling of the Set Top Boxes, does not fall within the term 'job work'. The assessee has not maintained the job work register. There was also no record kept at consignor end or consignee end in respect of inputs cleared and received. In fact the Appellate Tribunal ought to have held that smart cards were tested, paired and assembled in the Set Top Boxes, such process undertaken should be termed as manufacturing activity as per Section Note 6 of Section XVI of Central Excise Tariff Act, 1985. The assessee was availing Cenvat Credit of imported/purchased smart cards and clearing them to M/s. Trend Electronics Limited for manufacture of Set Top Boxes on delivery challans free of cost on a returnable basis. The claim of the assessee that the clearance of smart cards to M/s. Trend Electronics Limited was on job work is not correct. No job work challans were used for the movement of goods from the assessee to M/s. Trend Electronics Limited as required under Rule 4(5)(a) of Cenvat Credit Rules, 2004 and also no job work

charges had been paid/recovered on account of job work. At the time of clearance of smart cards, the assessee was not reversing the Cenvat Credit availed by them on import/purchase of the same. The process and procedure adopted by the assessee for clearance of smart cards to M/s. Trend Electronics Limited was not as per law and therefore, the assess is required to pay an amount equal to Cenvat Credit availed by them on the smart cards at the time of clearance as it was nothing but the removal of smart cards. The assessee has contravened the provisions of Rule 3(5) of Cenvat Credit Rules, 2004. The documents were not available at the time of visit and investigation. The movement of smart cards was without job work challans. When all these important aspects have not been considered, substantial questions of law are arising and therefore, the Appeal needs to be admitted. The proposed substantial questions of law involved are thus:-

> "1) Whether the Hon'ble Tribunal is correct in allowing the retention of the Cenvat credit of 'smart cards' to the respondent, when such inputs are cleared 'as such' to the premises of STB manufacturer i.e. M/s. Trend Electronics Ltd.?
>
> 2) Whether the Cenvat credit availed on 'smart cards' is required to be reversed under Rule 3(5) of the Cenvat

Credit Rules of 2004, or, there is no requirement of any such reversal, in terms of Rule 4(5)(a) of Cenvat Credit Rules of 2004, particularly in context with the facts and evidences available on records?

3) Whether the Hon'ble Tribunal is correct in allowing the retention of the Cenvat Credit of 'Smart Cards' to the respondent in terms of Rule 4(5)(a) of Cenvat Credit Rules of 2004, when the respondent has not followed the prescribed procedure under said Cenvat Rules in respect of inputs sent to STB (Set Top Box) manufacturer?"

5. Learned Advocate for respondent relied on the reasons given by the appellate tribunal and submits that elaborate reasons have been given and interpretation of law that has been made is correct. Sub-rule (1) of Rule 3 of the Rules 2004 is the enabling provision, which entitles either a manufacturer of excisable goods or a provider of the output service to take Cenvat Credit of various duties and service tax itemized therein. A manufacturer is permitted to take Cenvat Credit of such duties or taxes paid by it on any inputs or capital goods, when the same are received in the factory of manufacture of final product. The Cenvat Credit so taken under sub-rule (1) is permitted to be utilized in the manner prescribed in sub-rule (4) there under. The basic objective behind allowing Cenvat Credit on inputs, input

services or capital goods is to provide instant credit of duties/taxes paid thereon and consequential reduction in the cost, by avoiding the cascading effect. The pairing and testing of smart cards with the Set Top Boxes get completed only when the bar code of the smart card matches with the bar code of Set Top Box, which is essential in providing access to DTH services under the conditional access system. The adjudicating authority has not considered the entire process but had considered only the part of it.

6. We find much substance in the submissions made on behalf of the respondent. Elaborate reasonings are given. Herein this Appeal we are required to see whether any substantial question of law has been made out. Taking assessment of the facts is to a limited extent in order to arrive at the conclusion that any substantial question of law has been shown. Now, the appellant say that above three substantial questions of law are involved in the matter. As per our opinion, those substantial questions which have been suggested by the appellant are not purely the substantial questions of law, taking into consideration the assessment that has been done by the first appellate

authority i.e. Customs, Excise and Service Tax Appellate Tribunal, Mumbai.

7. There is no dispute regarding the facts, in a way that though the smart cards were imported, yet they were not inserted in the Set Top Boxes as it is. They were required to be given for processing to M/s. Trend Electronics Limited. Now, M/s. Trend Electronics Limited has not carried out any manufacturing activities as regards the smart cards received from the assessee. They have simply paired the bar code of the smart card with that of Set Top Box. Rule 2(n) of the Cenvat Credit Rules, 2004 prescribes "job work". It means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process. The testing and pairing was only with a view to see whether they are suitable for the customer i.e. the end user. There is no manufacturing activity carried out by M/s. Trend Electronics Limited, as aforesaid. It has been rightly observed by the Tribunal that the basic objective behind allowing Cenvat Credit on inputs, input services or capital goods is to provide instant credit of duties/taxes paid thereon and consequential reduction in the cost. If the Cenvat credit availed

on inputs or capital goods are not used for the intended purpose then to counteract such eventualities, an embargo has also been created in the statute for not extending the benefit of Cenvat facility. Rule 2(n) has to be read in conjunction with Rule 4(5)(a)(i) of the Cenvat Credit Rules, 2004. Job work per se may or may not lead to manufacture. But the usage of the Rule 4(5)(a) is wide enough to cover any activity carried on the input by the job worker and in those cases the Cenvat credit on inputs need not be reversed under Rule 3(5) of the Cenvat Credit Rules, 2004. In fact, the facts of the case disclose that the operations of testing and pairing of the smart cards sent to the Set Top Box manufacturer would be covered under the phrase 'further processing, testing or any other purpose.'

8. Therefore, we are of the opinion that no substantial question of law is arising in the present matter and therefore, the Appeal stands dismissed.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DEC25