

***In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad***

ST/10574/2018-SM

[Arising out of OIA No. OIA-CCESA-SRT-APPEAL-PS-90-2017-18 dated 16.10.2017 passed
by C(A) Surat-i]

M/s Finlogic Technologies India Pvt. Ltd.

Appellant

Vs

C.C.E.& S.T. Surat -i

Respondent

Represented by:

For Appellant: Shri. Jigar Shah (Advocate)

For Respondent: Shri. S.N.Gohil (A.R.)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Date of Hearing/Date of Decision:11.12.2018

Final Order No. A/ 12862 /2018

Per: Ramesh Nair

The issue involved is of Cenvat Credit admissibility on outdoor catering Service for the period post 01.04.2011.

2. Shri. Jigar Shah, Ld. Counsel with Ms. Priyanka Kalwani, appearing on behalf of appellant submits that though there is a Larger Bench judgment of this Tribunal against the appellant but subsequently the Hon'ble High Court of Madras in the case of Ganesh Builders Ltd. 2018 TIOL 2303-High Court, Madras (ST) held that the beneficiary is Company even though the service was used by the individual, it will not get hit by mischief of clause(C)of Rule 2(l) of Cenvat Credit Rule, 2004. He further submits that very same issue has been referred to the Larger Bench in the case of Wipro Limited, therefore, the issue involved is of interpretation of Clause (C) which was resolved by the Larger Bench, therefore, there is no suppression of fact on the part of the appellant. Accordingly the demand for the

extended period is time barred. He placed reliance on the judgment of Continental Joint Venture Holding Vs. CCE 2007 TIOL (152) SC-CX.

3. Shri. S.N Gohil, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He further submits that the judgment of Madras High Court is not on the issue of outdoor catering service, therefore, the same is not relevant. The issue of admissibility of outdoor catering service has been considered by the Larger Bench and held that as per Clause(C) of Rule 2(I) of Cenvat Credit Rules 2004, credit on outdoor catering service is not admissible as the same is for personal use of the employee.

4. I have carefully considered the submissions made by both the sides and perused the records, I find that the issue of admissibility of Cenvat Credit of outdoor catering service has been decided by the Larger Bench in the case of Wipro Limited (Supra) but as per submissions of Ld. Counsel, the Honble Madras High Court dealt with the Clause (C) of Cenvat Credit Rules, 2004 and held that even that the service was used by the employee but the beneficiary is a Company then the said input services will not fall under Clause (C) and the service will not be excluded from the definition of input service.

5. The Ld. Counsel also made a strong submission on the limitation on the ground that the issue was not free from doubt and referred to Larger Bench, therefore the demand for extended period is time barred. From the impugned order I observed that none of these issues raised by Ld. Counsel has been properly considered by lower authority, therefore, the matter should be remanded back to

the adjudicating authority for passing a fresh order after consideration the later development of the law on the issue of merit as well as on limitation. Accordingly, I set aside the impugned order and allow the appeal by way of remand to the adjudicating authority.

(Dictated and Pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Neha