CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 642 of 2011

[Arising out of Order-in- Appeal No 610/2010 dated 26.11.2010 passed by the Commissioner of Central Excise (Appeals-II), Bangalore]

M/s. WIPRO TECHNOLOGIES **....Appellant**
DODDA KANNELL SARJAPURA ROAD,
BANGALORE 560035

VERSUS

Commissioner of Service Tax **....Respondent**
BANGALORE SERVICE TAX- I
1ST TO 5TH FLOOR,
TTMC BUILDING, above BMTC BUS
STAND,DOMLUR
BANGALORE, - 560071
KARNATAKA

WITH

(i) Service Tax Appeal No. 1326 /2012 (Wipro Technologies);
(ii)Service Tax Appeal No. 1327 /2012 (Wipro Technologies);
(iii) Service Tax Appeal No. 1328 /2012 (Wipro Technologies

[Arising out of Order-in- Appeal No. 25 to 27/2012 dated 16.02.2012 passed by the Commissioner of Central Excise (Appeals-II), Bangalore]

APPEARANCE:

Shri Rajesh Chander Kumar, Advocate for the Appellant
Shri P. Gopakumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO. 20579-20582 /2020

DATE OF HEARING: 03.09.2020
DATE OF DECISION: 03.09.2020

PER: P.ANJANI KUMAR

The appellants, M/s Wipro Technologies, have filed the following appeals:

Sl. No.	Appeal No.	OIA No.	Period Involved
1.	ST/642/2011	610/2010 dated 26.11.2010	October 2007 to March 2008
2.	ST/1326/2012	25-27/2012 dated 16.02.2012	April 2008 to 15th May 2008
3.	ST/1327/2012	-do-	16th May 2008 to June 2008
4.	ST/1328/2012	-do-	July 2008 to December 2008

All the appeals relate to different applications for refund of duty filed by the appellants under Rule 5 of the CCR, 2004 read with Notification No. 5/2006 CE (N.T) dated 14.03.2006. In respect of the Appeals at Sl No. 1 & 2, the Department contends that the Information Technology Software Services was not taxable for the relevant period and it became taxable only w.e.f. 16.05.2008 hence refund under Rule 5 of CCR, 2004 is not available. In respect of the other Appeals at Sl No. 3 & 4, the refund claims were rejected on the basis that the service provider was un-registered under ITSS for the period 11.05.2008 to 11.06.2008; the appellants did not have centralised registration and that there was no nexus between the output services provided and input services availed.

2. In respect of Appeals at Sl No. 1 & 2, learned Counsel for the appellants submits that the issue is no longer *res integra* in view of the following decisions:

(i) mPortal India Wireless Solutions P Ltd Vs CST, Bangalore, 2012 (27) STR 134 (Kar)

(ii) Axa Business Services Pvt Ltd Vs CST, Bangalore, 2017 (49) STR 556 (Tri Bang)

(iii) KPIT Cummins Infosystems Ltd Vs CCE, Pune-I, 2013 (32) STR 356 (Tri. Mumbai)

(iv) Infosys Technologies Ltd Vs CCE, Pune-I, 2017 (47) STR 24 (Tri. Mumbai)

2.1. He also submits that by Section 74 of the Finance Act, 2010 since clause (b) of the opening portion of Notification 5/2006-CE (NT) dated 14.03.2006 has been amended with retrospective effect, by substituting the words "used in" by the words "used for", the scope of admissibility of input services has been broadened to include input services used for providing output services. This amendment has been taken cognizance of in the decision in CST, Mumbai-II Vs J.P. Morgan Services India Pvt. Ltd, 2015 (38) STR 410 (Tri-Mumbai). Further, CBEC vide D.O.F. No. 334/1/2010-TRU dated 26.02.2010 has clarified that the retrospective changes are to ensure that the provisions of the refund notification and the Cenvat credit rules are aligned and that refund is granted on all goods and services on which Cenvat can be claimed by the exporter of goods or services.

2.2. He also submits that the dispute as to what constitutes an input service has been finally settled for the following cases:

(i) CCE, Nagpur Vs Ultratech Cement Ltd, 2010 (20) STR 577 (Bom)

(ii) CCE, Bangalore-III Vs Stanzen Toyotetsu India (P) Ltd, 2011 (23) STR 444 (Kar.)

(iii) CST, Mumbai-II Vs J.P. Morgan Services India Pvt Ltd. Mumbai, 2015 (38) STR 410 (Tri. Mumbai)

(iv) J.P. Morgan Services India Pvt Ltd Vs CST, Mumbai, 2016 (42) STR 196 (Tri-Mumbai)

(v) Arms Embedded Technologies Pvt Ltd Vs CCE, Cus & ST, Bangalore, 2016 (45) STR 133 (Tri-Bang)

(vi) CST, Mumbai-II Vs WNS Global Services, 2016 (44) STR 454 (Tri Mumbai)

(vii) CC & ST, Bangalore Vs Suprajit Automotive Pvt Ltd, 2015 (37) STR 408 (Tri. Bang)

2.3. He further submits that he has given elaborate submissions before the Original Authority as well as Appellate Authority regarding the nexus of each and every input service. However, his submissions were not considered. He further submits that the Department has not challenged the credit taken on services, therefore the same cannot be looked into or denied at the time of granting of refund. He places reliance on the following decisions:

(i) CST, Delhi Vs Convergys India Pvt Ltd, 2009 (16) STR 198 (Tri. Del)

(ii) CCE, Pune-I Vs Rosy Blue (India) Pvt Ltd, 2016 (41) STR 994 (Tri. Mumbai)

(iii) Arm Embedded Technologies Pvt Ltd Vs CCE, Cus & ST, Bangalore, 2016 (45) STR 133 (Tri Bang.)

(iv) 3D PLM Software Solutions Ltd Vs CST, Mumbai-VII, 2018 (13) GSTL 325 (Tri. Mumbai)

(v) Kijji (India) Pvt Ltd Vs CCE, Mumbai-I, 2013 (32) STR 661 (Tri. Mumbai)

2.4. He further submits that the appellant have been totally into exports and have utilised the input services in export of services and have earned foreign exchange. Refund should not have been denied. It is not the policy of the Government to export duties to international market. He relies upon the following decisions:

(i) CST Vs Convergys India Pvt Ltd, 2010 (20) STR 166 (P & H)

(ii) Jobelle Vs CCE, Mumbai I, 2016 (203) ELT 627 (Tri-Mumbai)

(iii) Amalgamations Repco Ltd Vs CCE, Chennai, 2013 (31) STR 370 (Tri-Chennai)

(iv) Chennai III Vs Same DuetzFahr India (P) Ltd, 2017 (6) GST 453 (Mad.)

(v) KPIT Cummins Infosystems Ltd Vs CCE, Pune-I, 2013 f(32) STR 356 (Tri. Mumbai)

(vi) CC & ST, Bangalore Vs Suprajit Automotive Pvt Ltd, 2015 (37) STR 408 (Tri. Bang.)

3. The learned AR appearing for the Department reiterates the findings of OIO & OIA.

4. We have gone through the rival submissions and the records of the case. We find that all the issues raised in the instant appeals are no longer *res integra*. We find that Notification No. 5/2006 has been amended by the Finance Act, 2010 substituting the words "used for" in place of "used in". We also find that it has been clarified that the retrospective changes are made to ensure that the provisions of refund Notification and the CCR are aligned. We find that in the case of mPortal India Wireless Solutions Pvt Ltd, Hon'ble Karnataka High Court has held that:

> ***6.*** *The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation under Section 11B does not apply for refund a accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee.*

> ***7.*** *Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside.*
>
> ***8.*** *That does not mean that the assessee is entitled to refund as claimed by him consequent to setting aside these orders. As is clear from the order of the original authority in the show cause notice, they have categorically called upon the assessee to furnish the particulars of the taxes paid on input services. They called upon the assessee to produce the invoices, bills, receipts to substantiate their claim for their verification. The assessee would be entitled to the refund of the Cenvat credit only on his proof that he has paid input Service tax.*

4.1. We also find that this Bench in the case of Axa Business Services (supra) held that:

> ***5.*** *The first ground in which the refund stands rejected is that the services which have been exported were not taxable during the relevant period. The Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006 which has been issued under Rule 5 of the Cenvat Credit Rules, 2004 specifically allows refund of Cenvat credit availed on inputs or input services which have been used for providing output services which have been exported. There is no condition in the Notification which prescribes that the refund will be allowable only in cases where the output services exported is liable for payment of service tax. Hence we find that such a view taken by the authorities below is without any basis. In any case the Tribunal in the case of KPIT Cummins Infosystems Ltd. v. CCE reported in 2013 (32) S.T.R. 356 (Tri.) held that Cenvat credit for export of exempted service would be available as refund.*

4.2. We further find that Hon'ble Bombay High Court in the case of Ultratech Cement (supra) held as follows:

> ***28.*** *In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of "input service". The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing .... etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in*

relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product.

34. *Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.*

35. *The argument of the Revenue, that the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service' purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing..... etc. Thus the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is nothing in the definition of 'input service' to suggest that the Legislature intended to define that expression restrictively. Therefore, in the absence of any intention of the Legislature to restrict the definition of 'input service' to any particular class or category of services used in the business, it would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacturing the final product are covered under the definition of 'input service' and in the present case, the outdoor catering services being integrally connected with the business of the manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal.*

4.3. We also find from the submissions of the appellant before the Original and Appellate authorities that various services availed by the appellant have been held to be admissible for input services by the Tribunal as follows:

(i) Manpower recruitment agency service, Commercial Training & Coaching Service, Rent a cab Service, Maintenance and Repair Service, Outdoor Catering Service, Advertising Service, Management, Consultancy Service, Telephone/ Telecom Service, Security Agency Service in the case of Tavant Technologies India Pvt Ltd, 2016 (43) STR 57 (Kar)

(ii) Cleaning Service, Scientific and Technical Certification Service, Construction Service, Technical Service, Event Management Service, Goods Transport Agency in the case of WNS Global Services, 2016 (44) STR 454 (Tri. Mumbai)

(iii) Health and Fitness Club Service in the case of ITC Ltd, 2018 (12) GSTL 182 (Tri. Kolkata)

(iv) Courier Service in the case of Arms Embedded Technologies Pvt Ltd, 2016 (45) STR 133.

(v). Servicing of motor vehicle Service in the case of Dr. Reddys Lab Ltd, 2019 (19) STR 71 (Tri. Bang.)

(vi) Photography Service in the case of Toyota Kirloskar, 2011 (24) STR 645

4.4. In view of the above, we find that most of the services utilized by the appellants are held to be input services for providing output services in the field Information Technology Services. We find that CBEC vide Circular No. 120/1/2010 dated 19.01.2010 clarified that:

> *3.1.2 Therefore, the phrase, "used in" mentioned in Notification No. 5/2006-C.E. (N.T.) to show the nexus also needs to be interpreted in a harmonious manner. The following test can be used to see whether sufficient nexus exists. In case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. In the case of BPOs/Call Centres, the services directly relatable to their export business are renting of premises; right to use software; maintenance and repair of equipment; telecommunication facilities; etc. Further, in the instant example, services like outdoor catering or rent-a-cab for pick-up and dropping of its employees to office would also be eligible for credit on account of the fact that these offices run on 24x7 basis and transportation and provision of food to the*

> *employees are necessary pre- requisites which the employer has to provide to its employees to ensure that output service is provided efficiently. Similarly, since BPOs/Call Centres require a large manpower, service tax paid on manpower recruitment agency would also be eligible both for taking the credit and the refund thereof. On the other hand, activities like event management, such as company-sponsored dinners/picnics/tours, flower arrangements, mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. prima facie would not appear to impact the efficiency in providing the output services, unless adequate justification is shown regarding their need.*

In view of the above, we find that most of the disputed services are covered by the case law cited above. Moreover, going by the explanation submitted by the appellants before the lower authorities we find that the services are integral and required for the rendering of output services. Further, as elucidated in the circular, input services and their nexus with output service needs to be construed in a harmonious manner. We also find that there is force in the appellant's arguments that the Department did not dispute the availment of credit in the first instant and therefore, it is not open for them to deny the same when a refund is filed. Therefore, we find that the appellants are entitled for refund and the impugned orders are not sustainable to that extent.

5. In the result, we allow the appeals with consequential relief, if any, as per law.

(Order pronounced in the open court on **03.09.2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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