

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

Appeal Nos. E/41397 & 41398/2018

(Arising out of Order-in-Appeal No. 67 to 70/2018 (CTA-II) (UN)(CO) dated 28.3.2018 passed by the Commissioner of GST & Central Excise (Appeals), Puducherry)

M/s. Wipro Enterprises

Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Outer

Respondent

Appearance

Shri R. Rajesh, Authorized Rep. for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **12.12.2018**

Final Order Nos. **43081-43082 / 2018**

The appellant is aggrieved by the disallowance of credit on rent-a-cab service.

2. On behalf of the appellant, Shri R. Rajesh, Head - Taxation of the appellant-company appeared and argued the matter. He submitted that the appellant is engaged in manufacture of hydraulic cylinders and part thereof. They have availed rent-a-cab service for the period from January 2011 to March 2013. These services were availed for pick up and drop facilities of the employees. The employees are deployed for

work even in odd hours being related to IT work. The services are therefore directly linked with the performance of the employees for performing the work efficiently. Thus, he argued that the credit on the services has been rightly availed. It is also submitted by him that even though Clause B of the definition of input services excludes the services provided by the motor vehicle service provider, it is difficult for the service recipient to verify whether the motor vehicles are capital goods for the service provider. He submitted that the issue being interpretational and also during transitional period, when the amendment was introduced to the definition of input services, he pleaded that the penalties may be waived.

3. The Id. AR Shri L. Nandakumar supported the findings in the impugned order. He submitted that for the first three months upto 31.3.2011, the appellant is eligible for credit. Thereafter, the definition of input services has been amended and has excluded the services related to motor vehicles and the appellant could be eligible for credit only if such motor vehicles are capital goods for the service provider. He therefore submitted that the credit has been rightly disallowed.

4. Heard both sides.

5. The period involved is from January 2011 to March 2013. Ld. AR is fair enough to concede that only for the first three months, since the definition of inputs had a wide ambit, credit is eligible. I hold that the credit for the period upto 31.3.2011 is eligible and the demand for this period is set aside. After

1.4.2011, the definition of input service has been amended to include certain exclusion clauses. Clause B of the said definition excludes services relating to motor vehicles and the said credit would be eligible only if the motor vehicles are capital goods for the service provider. This Tribunal in the case of Sundaram Clayton Ltd. vide Final Order No. 41952/2018 dated 9.7.2018 has discussed the issue in detail. Taking into consideration the fact that the appellant has not produced any evidence to establish that the motor vehicles are capital goods for the service provider for the period from 1.4.2011 to 31.3.2013, I am of the view that credit is ineligible and the demand for the said period is therefore upheld.

6. The appellant has also pleaded to waive the penalties. Taking into consideration the fact that the issue is interpretational and also transitional period, I am of the view that the penalties imposed are unjustified. The impugned order is modified to the extent of allowing the credit for the period upto 31.3.2011 and also waive the penalties imposed without disturbing the demand or interest from 1.4.2011 to 31.3.2013. The appeals are partly allowed in the above terms with consequential benefit if any.

(Dictated and pronounced in open court)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex