

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B3]**

Appeal Nos.: E/41701, 41702 & 41703/2018

[Arising out of Order-in-Appeal Nos. 18, 19 & 20/2018
(CTA-II) dated 28.02.2018 passed by the Commissioner of
G.S.T. & Central Excise (Appeals-II), Chennai]

M/s. Wipro Enterprises (P) Ltd., : **Appellant**
(Formerly 'M/s. Wipro Ltd.'),
Plot No. C-1, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur Taluk – 602 105

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai Outer Commissionerate

Appearance:-

Shri. K. Sreedhar, Asst. Executive (Taxation)
for the Appellant
Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 17.12.2018

Date of Pronouncement: 19.12.2018

Final Order No. 43130-43132 / 2018

The appellants are engaged *inter alia* in the business of manufacture of Hydraulic Cylinders falling under Chapter 84 of the Central Excise Tariff Act, 1985 and are holders of Central Excise Registration. The appellants were also availing CENVAT Credit on inputs, capital goods and input services.

2. On verification of records it was noticed that the appellant had availed the services of Water Treatment Service and Garden Maintenance Service for the period January 2015 to December 2015 as well as Rent-a-Cab/Tour Operator Services for the periods from April 2008 to March 2009 and December 2011 to October 2012 and had taken input service Credit on the same which was apparently wrong. This prompted the issuance of Show Cause Notices proposing to recover the wrongly availed Credit along with interest and penalty on the ground that the above said services were ineligible input services as per Rule 2(l) of the CENVAT Credit Rules (CCR), 2004. Thereafter, the above proposals came to be confirmed vide Orders-in-Original No. 46/2016, 06/2017 & 10/2017 dated 27.12.2016, 27.02.2017 and 28.02.2017 respectively. On appeal by the assessee/appellant before the first appellate authority, the above Orders-in-Original came to be upheld vide impugned Order-in-Appeal Nos. 18, 19 & 20/2018 (CTA-II) dated 28.02.2018, however, the penalty imposed under Rule 15 of CCR was set aside. Aggrieved, the appellant has filed the present appeals before this forum.

3. Today when the matter came up for hearing, Ld. Assistant Executive (Taxation) Shri. K. Sreedhar appeared on behalf of the

assessee while Ld. AC (AR) Shri. L. Nandakumar appeared on behalf of the Revenue.

4.1 During the course of hearing, Ld. Assistant Executive for the appellant submitted that the appellant has a large number of employees on its rolls who are engaged in rendering activities in relation to their business; that Rent-a-Cab Service is utilized by the appellant to deploy the employees for work at odd hours or even for official duty within the city owing to back log and deliverables within the agreed schedules. Hence, the same would be covered within the inclusive part of the definition of "input service" under Rule 2(l) of CCR, 2004, even for the period post 01.04.2011.

4.2.1 He further submitted that Water Treatment Service and Garden Maintenance Service form an integral part of the activities relating to business of the appellant as well as manufacture of final products; that Water Treatment Service is mandatory as per Pollution Control Board (PCB) norms and is a statutory obligation under the prevailing law for units having a full-fledged manufacturing set-up. He placed reliance on the cases of *Commissioner of C.Ex. & Service Tax (LTU) Vs. Lupin Ltd. – 2012* (285) E.L.T. 221 (Tri. Mum.) and *Hinduja Foundries Ltd. Vs.*

Commissioner of Central Excise, Chennai-I – 2017 (47) S.T.R. 241 (Tri. – Chennai).

4.2.2 He submitted that Gardening Services were used for the objective of a better work atmosphere leading to increased productivity thereon; that the same had nexus with their manufacturing activity as well. He submitted that even as per the guidelines of PCB, the appellant was required to maintain garden inside the factory area. He relied on the cases of *Commissioner of C.Ex. & S.T., LTU, Chennai Vs. Rane TRW Steering Systems Ltd. – 2015 (39) S.T.R. 13 (Mad.)* and *Toyota Kirloskar Motor Pvt. Ltd. Vs. Commissioner of C.Ex., LTU, Bangalore – 2016 (46) S.T.R. 69 (Tri. – Bang.)* to buttress his contentions.

5. *Per contra*, Ld. AR for the Revenue supported the findings of the authorities below. He contended that although the appellant is eligible for input service tax Credit prior to the amendment, i.e. up to 31.03.2011, they were not eligible for Credit for the post amendment period as the definition of “input service” thereafter specifically excluded Rent-a-Cab services.

6. I have heard the rival contentions, perused the documents placed on record and have also gone through the judgements/Orders referred to during the course of arguments.

7. The issue on hand relates to the denial of CENVAT Credit on Rent-a-Cab Services and Water Treatment and Gardening Service availed by the assessee for the impugned periods, a portion of which covers even the period post 01.04.2011.

8. With regard to Rent-a-Cab services availed by the appellant, I find that the appellant is rightly covered by the definition of "input service" in terms of Rule 2(l) prior to 01.04.2011 when the said definition had a wide ambit. I also note that this issue stands decided by this Bench in the appellant's own case vide *Final Order Nos. 43081-43082/2018 dated 12.12.2018* and therefore, the same is required to be followed. Therefore, I hold that the appellant is eligible for CENVAT Credit on the said service for the period from April 2008 to March 2009, for which reason I set aside the demand for this period. However, for the post amendment period i.e. after 01.04.2011, the above definition was amended to specifically exclude Rent-a-Cab Service, and includes services which are "used by a manufacturer, whether directly or indirectly, in or in relation to manufacture of final product and clearance of final products up to the place of removal". From the above discussions, I am of the view that the Commissioner (Appeals) has rightly disallowed the Credit on Rent-a-Cab Services for the period from December 2011 to

October 2012 and the same does not call for any interference. I therefore uphold the demand raised for this period.

9. Coming to Water Treatment Service, I find that the same is utilized by the appellant as per the guidelines or norms of PCB according to which establishment of Effluent Treatment Plant in the factory is a statutory requirement for the treatment of polluted water. With regard to Garden Maintenance Services too, I find that the same is required as per the guidelines of the PCB for the purpose of a better work atmosphere. Further, I find that this issue stands decided by a plethora of decisions including the decision of the Hon'ble Madras High Court in the case of *Wipro Ltd. Vs. Commissioner of C.Ex., Pondicherry – 2018 (10) G.S.T.L. 172 (Mad.)* wherein the jurisdictional High Court has held that Housekeeping and Landscaping Services were entitled to CENVAT Credit of service tax paid on them. In the light of the discussions made hereinabove, I am of the view that the appellant has rightly availed Credit on Water Treatment Service and Garden Maintenance Service for which reason I set aside the demand raised on this count.

10. To sum up:

- (i) Demand on Rent-a-Cab Service for the period from April 2008 to March 2009 is set aside;

- (ii) Demand on Rent-a-Cab Service for the period from December 2011 to October 2012 is upheld with interest thereon;
 - (iii) The demand raised on Water Treatment Service and Garden Maintenance Service for the period January 2015 to December 2015 is set aside;
11. The appeals are partly allowed on the above terms.

(Pronounced in open court on 19.12.2018)

(P. Dinesha)
Member (Judicial)

Sdd