IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 2.3.2017

Appeal No. ST/98/2012-DB

(Arising out of Order-in-Appeal No. 387/S.Tax/D-II/2011 dated 24.10.2011 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s Wipro BPO — Appellant

Vs.

CST, Delhi — Respondent

Appearance

Shri Gunjan Mishra, Advocate - for the appellant

Shri Ranjan Khanna, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 52207/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 387 dated 24.10.2011.

2. The brief facts of the case are that the appellant are engaged in the business of providing export of services of Back Office Processing and Knowledge Process Outsourcing pertaining to the period under consideration (16.3.2006 to 30.4.2006). The appellant was registered with the service tax department under the 'Business Auxiliary Services'. The service tax was paid and appellant has

claimed the refund which was denied by the order in original. However, by the impugned order in appeal, the Commissioner (Appeals) has allowed the refund after 1.5.2006. For the prior period the claim was denied by the Commissioner (Appeals) in part by mentioning that the appellant was not providing the services under the "Business Auxiliary Service". Being aggrieved, the appellant has filed the present appeal.

3. With the above background, we have heard Shri Gunjan Mishra, ld. Advocate and Shri Ranjan Khanna, ld. DR and perused the material available on record.

4. After hearing both the sides, it appears that prior to 1st May, 2006, the appellant was not only manages the outsourced processes of the client, but also re-engineers and refines them. Resultantly, the client benefits through significant cost savings in terms of time, money and output quality. It is the claim of the appellant that the part of the services rendered by the appellant were classifiable under BSS which were not taxable prior to 1st May, 2006, as per the ratio laid down in their own case ***M/s Wipro Ltd. Vs. Union of India*** – 2013 (29) STR 545 (Del.). The services exported by the appellant were covered under the category of BSS as per ratio laid down in the following cases :

(i) ***Mahindra & Mahindra Ltd. Vs. CCE*** – 206 (196) ELT 62 (Tri.-Mum);

(ii) **Chawla Trading Company Vs. CC (Export), Nhava *Sheva*** – 2015 (330) ELT 470 (Tri.-Mumbai).

5. From the record, it appears that the above mentioned aspects were not examined by the lower authorities. When it is so, then we set aside the impugned order and remand the matter to the original authority to decide the issue de novo but by providing an opportunity of hearing. Additional evidence, if need be, may be admitted as per law.

6 In the result, appeal filed by the appellant is allowed by way of remand.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

RM