IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. IV

Appeal No. ST/85632/18

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/ 481/17-18 dated 9.11.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nagpur).

M/s Spacewood Office Solutions Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise & Customs, Nagpur	Respondent

Appearance:

None	for Appellant
Shri M.P. Damle, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 18.09.2018

Date of Decision: 18.09.2018

ORDER NO. **A/87408 / 2018**

Per: Dr. D.M. Misra

None present for the appellant. Heard the learned AR for the Revenue.

2. This is an appeal filed by the Order-in-Appeal No. NGP/EXCUS/000/APPL/ 481/17-18 dated 9.11.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nagpur.

3. The short issue involved in the present appeal is whether the appellants are entitled to avail CENVAT Credit of Service Tax paid on outdoor catering services (canteen service) for the period June, 2011 to September, 2015.

4. Learned AR for the Revenue submitted that after amendment to the definition of input service prescribed under Rule 2(l) of the CENVAT Credit Rules, 2004, Service Tax paid on outdoor catering services (canteen service) brought under the exclusion clause, hence held to be inadmissible by the larger Bench of this Tribunal in the case of *Wipro Ltd. – 2018 (4) TMI 149-CESTAT (Bang)*. However, he fairly submits that even though the demand was confirmed for the extended period and penalty was imposed under Section 11AC of the Central Excise Act, 1944, the benefit to discharge 25% of the penalty was not extended to the appellant.

5. I find that the issue of admissibility of CENVAT Credit of Service Tax paid on outdoor catering services (canteen service) post 1.4.2011 has been settled by the Larger Bench in the case of Wipro Ltd. (supra). Following the said judgment, the credit availed by the appellant on Service Tax paid on outdoor catering services during the period is not admissible. However, I find that the authorities below while imposing penalty under Section 11AC of the Central Excise Act has not extended the benefit to discharge 25% of penalty subject to fulfillment of the conditions laid down in the said provision. Accordingly, the impugned order is modified to the extent of allowing the benefit to discharge 25%

of the penalty subject to fulfillment of the conditions laid down under Section 11AC of the Central Excise Act, 1944.

6. In the result, the impugned order is modified and appeal is partly allowed to the extent mentioned as above.

(Operative portion of the order pronounced in the Court)

(Dr. D.M. Misra)
Member (Judicial)

Sinha