**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**
**WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

**Service Tax Appeal No. 85873 of 2015**

(Arising out of Order-in-Original No. 7-8/ST-VII/RS/2014 dated 15.12.2014 passed by Commissioner of Service Tax-VII, Mumbai)

**M/s. Capgemini India Private Limited** …..**Appellant**
Plant 2, M7 Godrej and Boyce Compound,
LBS Marg, Vikhroli,
Mumbai - 400079

*VERSUS*

**Commissioner of Service Tax-VII, Mumbai** …..**Respondent**
115 New Central Excise Bldg.,
M.K. Road, Churchgate,
Mumbai-400020

**Appearance:**

Shri Prasad Paranjape, Shri Mihir Mehta and Shri Mohit Raval, Advocates for the Appellant
Shri M.K. Sarangi, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85770/2019**

Date of Hearing: 07.03.2019
Date of Decision: 07.03.2019

**Per: S.K. MOHANTY**

Brief facts of the case are that the appellant is engaged in providing various taxable services, including Management Consultancy Service, defined under Section 65 of the Finance Act, 1994. The appellant avails Cenvat credit of service tax paid on the input services used/utilized for providing the taxable output services. During the period from 2007-08 to 2012-13, the appellant had availed Cenvat credit on various taxable services, considering the same as input service. However, during the course of verification of records under EA-2000 audit, the department observed that the appellant had wrongly availed Cenvat credit in respect of certain services, which were not used for providing the output services and that some of the branch offices were not included in the Centralization Registration Certificate issued by the department in favour of the appellant. Thus, the audit wing concluded that the services on which Cenvat credit was availed by the appellant were not confirming to the definition of 'input service', contained in Rule 2 (l) of the Cenvat Credit Rules, 2004 for the purpose of availment of Cenvat credit of service tax paid thereon. Further, the audit wing also observed that the appellant had contravened the provisions of Rule 9 (2) *ibid* read with Rule 4A of the Service Tax Rules, 1994. On the basis of audit objections, the department initiated show cause proceedings against the appellant, seeking for disallowance and recovery of wrongly availed/utilized Cenvat credit. The show cause notices dated 15.10.2012 and 09.05.2014 issued to the appellant were adjudicated vide the impugned order dated 15.12.2014, wherein the learned Commissioner of Service Tax, Mumbai has rejected the Cenvat credit amounting to Rs.3,30,85,645/-, against the proposed demand of Rs.45,79,21,556/- made in the show cause notices. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The learned Advocate appearing for the appellant submitted that the disputed services on which cenvat credit was availed by the appellant are confirming to the definition of 'input service' under Rule 2 (l) *ibid.* He further submitted that all the disputed services were used/utilized by the appellant for providing the taxable output services and as such, the Cenvat benefit of service tax paid on the disputed services cannot be denied to the appellant. With regard to availment of Cenvat credit for unregistered premises, he submitted that the addresses of the said premises of the appellant were subsequently included in the Centralized Registration and

accordingly, Cenvat credit pertaining to the said premises should be available to the appellant. To strengthen the case of the appellant that Cenvat benefit should be available to it, the learned Advocate has relied upon the following decisions rendered by the judicial forum:

(i) *DBOI Global Services Pvt. Ltd. Vs. Commissioner of Service tax, Mumbai, 2017 (48) STR 157*
*(ii) Accenture Services Pvt. Ltd. Vs. Commissioner of ST, Mumbai-II, 2015 (40) STR 719 (Tri-Mum.)*
*(iii) Commissioner of Central Excise, Vadodara Vs. Videocon Industies Ltd., 2016 (41) STR 527 (Tri.-Mum.)*
*(iv) Genus Power Infrastructure Ltd. Vs. Commr. of Service Tax, Jaipur-I, 2017 (48) STR 257 (Tri-Del.)*
*(v) Commissioner of C. Ex., Nagpur Vs. Ultratech Cement Ltd., 2010 (20) STR 577 (Bom.)*
*(vi) J.P. Morgan Services India Pvt. Ltd. Vs. Commr. of C. Ex. (S.T.), Mumbai, 2016 (42) STR 196 (Tri-Mumbai)*
*(vii) Prudential Process Mgmt. Services (I) (P) Ltd. Vs. C.S.T. Mumbai Zone-II, 2016 (42) STR 764 (Tri-Bom.)*
*(viii) Commissioner of Central Excise, Vadodara Vs. Videocon Industries Ltd., 2009 (14) STR 692 (Tri-Ahmd.)*
*(ix) P&P Overseas Vs. Commissioner of Central Excise, Delhi III, 2015 (317) E.L.T. 586 (Tri-Del)*
*(x) Commissioner of C. Ex., Delhi-III Vs. Hollister Medical India Pvt. Ltd., 2017 (49) STR 426 (Tri-Del.)*
*(xi) Commr. of S.T., Chennai Vs. Ford Business Services Centre Pvt. Ltd, 2015 (38) STR 700 (Tri-Chennai)*
*(xii) Idea Cellular Ltd. Vs. Commissioner of C.Ex., Meerut-I, 2011 (22) STGR 450 (Tri-Del.)*
*(xiii) Heartland Bangalore Transportation Ser. (P) Ltd. Vs. C.S.T. Bangalore 2011 (21) STR 430 (Tri-Bang.)*
*(xiv) mPortal India Wireless Solutions Pvt. Ltd. Vs. C.S.T. Bangalore, 2012 (27) STR 134 (Kar.)*
*(xv) Commissioner of S.T., Bangalore Vs. Kyocera Wireless (India) Pvt. Ltd, 2017 (43) STR 542 (Kar.)*

3. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order and relied upon the following judgments delivered by the judicial forums to strengthen the stand of Revenue that Cenvat credit availed and utilized by the appellant is not in conformity with the Cenvat statute and thus, denial of such credit by the department is proper and justified:

(i) *CCE Vs. Ultra Tech Cement, 2018-TIOL-42-SC-CX*
*(ii) CCE Vs. Manikgarh Cement Ltd, 2010-20-STR-456-Bom*
*(iii) Wipro Ltd. Vs CCE, 2018-4-TMI-149-CEST-Bang-LB*
*(iv) TCS E-Serve Ltd Vs. CCE, 2017-TIOL-1811-CEST-Mum*
*(v) CCE Vs. Veeda Clinical Research, 2018-TIOL-2051-CEST-AHM*
*(vi) Jayashree Polymer Vs. CCE, 2018-TIOL-2046-CEST-Mum*
*(vii) Solar industries Vs. CCE, 2018-TIOL-2245-CEST-Mum*
*(viii) Empire Industries Vs. CCE, 2018-TIOL-228-CEST-Mum*
*(ix) Vinayak Steel Vs. CCE, 2017-4-GSTL-188-T-Hyd*
*(x) Applied Micro Circuits Vs. CCE, 2016-TIOL-403-CEST-MUM*
*(xi) S.K.D Lashmanan Fireworks Vs. CCE, 2016-42-STR-359-T- Mad*

4. Heard both sides and perused the case records

5. Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a service provider for availment of the credit facility in respect of service tax paid on the input services used/utilized for accomplishing the activities of providing the taxable output services. Insofar as the definition of 'input service' is concerned, Rule 2(l) *ibid* defining the said term has undergone an amendment vide Notification No. 3/2011 – C.E. (N.T.), dated 01.03.2011, w.e.f. 01.04.2011. Under the un-amended provisions (effective up to 31.03.2011), the phrase 'activities relating to business' was specifically finding place in the inclusive part of the definition of 'input service'. The inclusive definition in a fiscal statute is a well recognized device to enlarge the meaning of the word defined and it expands the meaning of the basic definition. If the expenses incurred by the assessee for using the disputed services are meant for accomplishing the business activities and also the same form part of the cost of the ultimate services provided by it, then the

same should be considered as 'input service' under such definition clause. The effect of amendment of the definition of input service w.e.f. 01.04.2011 is that certain services namely, Health Insurance etc., were excluded from the purview of definition of input service, in the eventuality, when the said excluded category of service(s) are used primarily for personal use or consumption of any employee. In other words, Cenvat credit of service tax paid on such service(s) should not be considered as input service, entitling an assessee to avail Cenvat credit thereon.

6. The case of the appellant falls under the ambit and scope of the definition of input service, both under the un-amended as well as amended provisions contained in Rule 2 (l) *ibid.* In order to find out the eligibility of a particular service as 'input service' under such definition, the nature and the purpose of use of the service in the ultimate provision of the output service is required to be examined inasmuch as the parameters of eligibility of such credit differs from case to case basis and standard practice cannot be adopted uniformly in judging such eligibility to the Cenvat benefit. On perusal of the case records, we find that the nature of use of the disputed services as explained by the appellant was not properly addressed by the original authority in the impugned order passed by him. Further, he has also not discussed the ratio of the judgments relied upon by both sides to conclude that the Cenvat benefit on the disputed services would not be available to the appellant. Hence, we are of the considered view that the matter should be remanded to the original authority for a proper fact finding on issue of eligibility of Cenvat credit on the disputed services. The other aspects involved in the case also require proper adjudication.

7. In view of above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for proper and effective adjudication of the matter, in line with the

above observations. The original authority should examine the case laws relied upon by both sides for the fact finding, whether the benefit of Cenvat credit should be available to the appellant. Needless to say, that opportunity of personal hearing should be granted to the appellant, before deciding the issues afresh.

8. In the result, the appeal is allowed by way of remand.

(Operative part of the order pronounced in the open court)

**(S.K.Mohanty)**
**Member (Judicial)**

**(Sanjiv Srivastava)**
**Member (Judicial)**

*HK*