

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86352 of 2021

(Arising out of Order-in-Original No. 61-62/CGST-NM/Commr/KV/2020-21 dated 25.03.2021 passed by the Commissioner, Central Tax & Central Excise, Navi Mumbai)

Capgemini Technology Services India Limited

.... Appellants

(formerly known as Capgemini India Private Limited)
SEZ, IT3/IT4 Airoli Knowledge Park,
Thane Belapur Road, Airoli
Mumbai - 400079.

Versus

Commissioner of Central Tax & Central Excise

.... Respondent

Navi Mumbai CGST Commissionerate

16th Floor, Satra Plaza, Palm Beach Road,
Sector 19D, Vashi, Navi Mumbai - 400 705.

Appearance:

Shri Kevin Gogri, Advocate a/w Shri Rishin Gala, C.A. for the Appellant

Shri S B P Sinha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85266/2025

Date of Hearing: 05.09.2024

Date of Decision: 25.02.2025

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Capgemini Technology Services India Limited, Navi Mumbai (herein after referred to, for short, as "the appellants") assailing Order-in-Original No.61-62/CGST-NM/Commr/KV/2020-21 dated 25.03.2021 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner, Central Tax & Central Excise, Navi Mumbai.

2.1 The brief facts of the case are that the appellants herein is engaged in the business of providing IT and IT enabled services in various technology areas, Management Consultancy and other services which are taxable under the Finance Act, 1994 for payment service tax. For this purpose the

appellants have registered themselves with the jurisdictional service tax authorities and have obtained service tax registration certificate No.AAACK2632BST002. The appellants also avail CENVAT credit of service tax paid on input services as per the provisions of CENVAT Credit Rules, 2004 (for short, referred to as 'CCR').

2.2 During the course of EA-2000 audit conducted by the Department on the books of account maintained by the appellants, the Department had enquired about the appellant's availing of Cenvat Credit and the exemption benefit availed on export of services by way of filing periodical refund claims with the department. On scrutiny of the documents and the books of accounts for the period 2007-2008 to 2008-2009, the Department had interpreted that the appellants have taken CENVAT credit of service tax on some of the input services in an irregular manner as these are not covered within the scope of input service' under Rule 2(I) of CCR of 2004 and therefore the appellants are not eligible for such credits. Further, some of the branch offices were not included in the Centralized Registration Certificate issued by the department in favour of the appellants, for which CENVAT credit have also been taken irregularly. Thus, the audit wing concluded that the services on which Cenvat credit was availed by the appellants were not confirming to the definition of 'input service', contained in Rule 2 (I) 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 appellants 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 appellants, 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 appellants were adjudicated vide Order-in-Original dated 15.12.2014 read with Corrigendum dated 15.01.2015, wherein the learned Commissioner of Service Tax, Mumbai had rejected Cenvat credit amounting to Rs.3,30,85,645/-, against proposed demand of Rs.45,79,21,556/- made in the SCNs, the details of which are given below:

Period	SCN No. reference	Amount of Service Tax demand (in Rs.)		
		As in SCN	Dropped	Confirmed
2007-2008 to 2011-2012	V.ST-II/Dn.V/Gr.I/Capgemini R/2012dt. 15.10.2012	29,76,70,666	26,72,45,297	3,04,25,371
2012-2013	V.ST/II/Dn.V/Gr.I/Capgemini R/2012 dt. 09.05.2014	16,02,50,888	15,75,90,615	26,60,274
				3,30,85,645

Feeling aggrieved with the said Order-in-Original dated 15.12.2014, the appellants had preferred appeal before the Tribunal, earlier in the first round of litigation. Upon hearing both the sides, and on perusal of the factual details of the case, the Tribunal in its Final Order No. A/85770/2019 dated 07.03.2019 had observed that in order to find out the eligibility of a particular service as 'input service' under definition contained in Rule 2 (I) *ibid*, 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. Therefore, the Tribunal had allowed the appeal filed by the appellants, by way of remand to the original authority for proper and effective adjudication of the matter, in line with the observations made therein. Further, the said order of the Tribunal also directed that 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.

2.3 In adjudication of the dispute in remand proceedings, the learned Commissioner in the impugned order dated 25.03.2021 had confirmed the demand of service tax amounting to Rs. 3,60,81,814/- along with interest; and imposed penalties under Section 77, 78 of the Finance Act, 1994. Feeling aggrieved with the impugned Order, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate for the appellants submitted that the appellants herein are engaged in providing various IT and IT enabled services for various technology like SAP/Oracle/Microsoft/Jawa/Business Intelligence/Testing and other data processing support services to its worldwide group companies and certain domestic clients. For the purposes of provision of taxable output services, the appellants had used several taxable services and availed service tax paid thereon as CENVAT credit under the scheme of CENVAT Credit Rules, 2004. He further submitted that the details of CENVAT credit availed on various services procured by the appellants were correctly reported in their periodical returns filed with the jurisdictional Service Tax Commissionerate for the disputed period April, 2007 to March, 2013 on various dates within the prescribed period. As the appellants are primarily engaged in export of services and is unable to utilise the credit availed on various input services, they had filed refund claim in terms of

Rule 5 *ibid*. Further, learned Advocate stated that appellants having filed service tax returns periodically in the past as well as having claimed refund of service tax which could not be utilised on account of exports, there was proper disclosure of service tax payment and CENVAT credit utilization on the appellants' side, and therefore there was no suppression of facts before the Department and there was no intention for availing CENVAT credit in an irregular manner.

3.2 On the various input services for which the Department had objected to taking input credit as CENVAT, he submitted that the issues are no longer in dispute as these have been covered by the precedent decisions of the Tribunal. In this regard, he further submitted that for the Insurance Auxiliary Service and General insurance services, the appellant is required to indemnify itself from the likely losses due to the actions of key managerial personnel and in these services, there is no personal consumption involved. As regards, Rent-a-Cab services are concerned, he stated that the entire services relate to the period prior to April, 2011 and the CBIC had clarified in its Circular No.120/01/2010-ST dated 19.01.2016 that credit on such services received prior to 01.04.2011 were allowed as CENVAT credit. Similarly, he stated that they had provided the decisions of the Tribunal, specimen documents on the basis of which credit was taken in their detailed written submissions, additional written submissions made before the Tribunal. He further stated that in their own case, the Tribunal vide Final Order dated 30.05.2019 had allowed CENVAT credit in respect of input services viz. Event management, Mandap keeper service, General insurance & Insurance auxiliary service and Goods Transport Operator services. Therefore, he claimed that the confirmation of adjudged demands in the impugned order is not sustainable.

3.3 Learned Advocate in support of their stand, relied upon the following CBIC Circular, decisions of the Tribunal:

(i) Tata Teleservices (Maharashtra) Limited Vs. Commissioner of Service Tax, Mumbai-II – Larger Bench Interim Order No.05/2024 dated 18.03.2024

(ii) CBIC Circular No.943/2/2011-CX dated 29.04.2011

(iii) Innovasynth (I) Technologies Ltd. Vs. Commissioner of C.Ex., Raigad– 2015 (38) S.T.R. 1232 (Tri. - Mumbai.)

(iv) J.P. Morgan Services India Pvt. Ltd. Vs. Commr. of C.Ex. (S.T.), Mumbai, 2016 (42) S.T.R. 196 (Tri-Mumbai)

(v) Orient Bell Limited Vs. Commissioner of Central Excise, Noida – 2017 (52) S.T.R. 56 (Tri-All.)

(vi) Reliance Industries Ltd. Vs. Commissioner of Central Excise & Service Tax, Mumbai – 2016 (45) S.T.R. 383 (Tri-Mumbai)

(vii) Red Hat India (P) Ltd. Vs. Principal Commissioner of Service Tax, Pune – 2016 (44) S.T.R. 451 (Tri-Mumbai)

(viii) Capgemini Technology Services India Ltd. Vs. Commissioner of CGST, Mumbai East – Final Order No.A/85977/2019

(ix) Microsoft Global Services Center (I) Pvt. Ltd. Vs. Commissioner of Customs, C.Ex& S.T., Hyderabad-IV – 2021 (44) G.S.T.L. 264 (Tri.-Hyd.)

(xi) SITEL India Ltd. Vs. Commissioner of C. Ex., Mumbai-II - 2016 (43) S.T.R. 424 (Tri.-Mumbai)

(xi) mPortal India Wireless Solutions Pvt. Ltd. Vs. C.S.T. Bangalore, 2012 (27) STR 134 (Kar.)

(xii) Collector of Central Excise Vs. Malleable Iron & Steel Castings Co. Pvt. Ltd. - 1998 (100) E.L.T. 8 (S.C.)

4. On the other hand, learned Authorised Representative for Revenue reiterated the findings of the Commissioner in the impugned order, and submitted that in order to claim input credit of CENVAT, the input services is required to be covered under the definition of Rule 2(I) of CCR of 2004 and these have been examined in detail by the learned Commissioner. Therefore, he prayed that the appeal preferred by the appellants is liable to be set aside. Further, in support of the case for denial of input credit on Rent-a-Cab service and outdoor catering, learned AR stated that these services are specified in the definition of Rule 2(I) *ibid* under the exclusion clause. He further relied upon the following decision in his support:

(i) Solar Industries India Limited Vs. Commissioner of Central Excise, Customs & Service Tax, Nagpur – 2022 (380) E.L.T. 270 (Bom.)

(ii) Toyota Kirloskar Motor Pvt. Lt. Vs. Commissioner of Central Tax, Bangalore – 2021 (50) G.S.L.T. 286 (Kar.)

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper books for this case.

6. The issue for consideration in the present case is to examine, whether or not, the disputed services on which the CENVAT credit is taken by the appellants is duly covered under the scope and definition of Rule 2(I) of the CENVAT Credit Rules, 2004 as 'input service', in order to decide on the eligibility for availing CENVAT credit on the service tax paid thereon. The disputed period covered in the two SCNs are from 2007-08 to 2011-12 and 2012-13.

7. 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(I) *ibid* defining the said term has three main category of services specified for coverage or exclusion under its scope. The first category is the 'means' part, which includes any service used by a provider of output service for providing an output service, where the usage of services can be explicitly observed as being used for providing output service. The second category of input services are those which have been specifically provided under the 'inclusion' part, which are like services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal etc., as these are consumed directly or indirectly in provision of output services. The third category of input services are covered under the 'exclusion' part, as those which are specifically excluded from the scope of the definition of input service. Therefore, in order to decide about the eligibility of an input service for taking CENVAT Credit, it has to satisfy that the same can be covered under either 'means' part or 'inclusion' part and the same should not be covered under the 'exclusion' part.

8.1 It is also noted that the aforesaid definition had undergone an amendment vide Notification No. 3/2011 – C.E.(N.T.), dated 01.03.2011,

w.e.f. 01.04.2011. Under the unamended 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. However, such an yardstick cannot be applied for the period w.e.f. 01.04.2011, as by way of amendment of the definition of input service, certain services like general insurance services, Health Insurance, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees etc., were excluded from the purview of definition of input service, and 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.

8.2 As the disputed period covers both the pre-amended and post amendment period, by applying the aforesaid yardsticks, we may carefully examine each of the disputed services, to determine whether those services are covered under the definition of 'input service' as specified in Rule 2(I) of CCR of 2004 in the following paragraphs. 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.

8.3 Learned Adjudicating Authority had broadly grouped the disputed services under 15 categories for his examination and in all such cases, except in the case of club & association services and Storage & warehousing services had denied the CENVAT credit on the basis of his findings recorded in the impugned order. We have also examined these aspects and in respect of the each of the disputed services, we would herein deal with the issue of its eligibility in the following paragraphs.

8.4 In respect of 'catering, food and outdoor catering services', it has been claimed by the appellants that being an IT service provider and as the offices operate on 24 X 7 basis, it is necessary for providing such basic facilities to their employees. Further, they have claimed that these input services are attributable to specific projects for which the employees are working or the events are hosted and therefore, these are eligible to be treated as 'input service'. The adjudicating authority had given a finding that these services appear to have been used for some specific events and not for regular employees engaged in providing output services. We had perused the representative invoices issued by the hospitality services, caterers services and food management services and each of such bills have been specifically allocated to a project code No. under which the appellants are providing output services through such projects. We further find that the Tax Research Unit of the Central Board of Excise and Customs in the Ministry of Finance vide in its Circular No. 120/01/2010-S.T. dated 19.01.2010 had clarified that the nexus of the input service with that of the provision of output service has to be examined in a harmonious manner to determine its eligibility. Outdoor catering and Rent-a-Cab services are shown as examples of eligible input services for the BPO/Call Centre/IT services. Therefore, we are of considered view that 'catering, food and outdoor catering services' can be considered as eligible input service under Rule 2(I) ibid in the present case.

8.5 We find that the Tribunal in the case of self-same appellants for the subsequent period of 2013-2015 in its Final Order No. A./85977/2019 dated 30.05.2019 have held that input services namely Event Management service, Mandap Keeper service, General Insurance, Insurance Auxiliary service, Goods Transport Service are eligible to be considered as input service, as these are used/utilized in or in relation to providing output service, and on the basis of the decisions delivered by the Tribunal in support the same in a number of cases referred therein. The relevant extract of the said Order is given below:

"7. In view of above, the impugned order is set aside, to the extent it has confirmed the Cenvat demand on the taxable services namely, Event Management & Mandap Keeper Service, General Insurance & Insurance Auxiliary Service and GTA Service and the appeal is allowed in favour of the appellant. The impugned order sustains, so far as it denied the Cenvat Credit on catering service. However, interest and penalty confirmed on such service is set aside."

8.6 In respect of 'health & fitness service', the records placed in file and sample invoices indicate that these services have been used to keep a check over the wellness or health of a person, before taking up the assignment in the appellants company and for taking up job assignments/projects from time to time. Further, the invoices have been billed to the company and not for the individuals for their personal consumption. Hence, we are of the view that these services are eligible to be considered as 'input service'. Further, we also find that the Tribunal in the case of *SITEL India Limited* (supra) have held that health and fitness service as eligible input service, where the output service is being provided on 24X7 basis, which is also the situation in the present case. The relevant paragraph of the said order is given below:

"5.I find that to decide whether service is an input service or otherwise, it cannot be decided only by the nomenclature of the service. It is necessary to ascertain what is the output service and whether the service in question is required for providing the output service. In the present case, the appellant is providing the BPO services. In the BPO services the major involvement is manpower who are required to perform their duties on 24x7 basis when the manpower work in odd times during the 24 hours it adversely affects the health of the employee which directly affects the performance of the services. In the BPO companies the health and fitness of the employees is very essential factor in order to run the function of a BPO company. Therefore, health and fitness services availed by the company for their employee is a necessity for providing the better quality of output service. It is to be kept in the mind that business organization is not meant for an entertainment of the employees but the ultimate objective is to achieve optimum performance by the employee. For that purpose health and fitness of the employees are very necessary."

8.7 In respect of 'interior decorator service', it has been claimed by the appellants on the ground that these are in relation to modernization, renovation or repair of premises of service provider. In the representative sample invoice submitted by the appellants, it is shown as the renovation works under taken for the guest house at Vikhroli. No other details are available to relate such renovation or interior decoration work having a relation to the provision of output service, either directly or indirectly. Therefore, we are unable to agree with the view that in the present case, there is sufficient evidence to consider the interior decorator service as an eligible input service. Therefore, CENVAT credit to the extent of Rs.6,93,107/- relatable to the 'interior decorator service' is not admissible as eligible input service.

8.8 As regards 'packaging services', the adjudicating authority had held that the invoices produced before him indicated that these are in respect of packaging, transportation of house hold items. We find that in all the five invoices produced before us, the nature of services are mentioned as packing, unpacking, loading, unloading and transportation of household goods for transportation from one location to another with respect to few employees. Though it is claimed by the appellants that such services were used for packaging and movement of various goods procured for use in the provision of output services, we are not able to find any evidence to such claim in the documents placed in the appeal records or in any of the written submissions given by the appellants. In such a factual position, we are unable to find any basis for allowing such services used for personal consumption of employees under the category of eligible input service and therefore consider these services as ineligible input service.

8.9 It has been claimed by the appellants that 'public relations service', 'people relationship management service' have been engaged to conduct events by professional consultants to increase the brand value and visibility in order to promote its business. We find that the Co-ordinate Bench of the Tribunal in the case of Orient Bell Limited (supra) have examined the public relations service and have held that these are having an objective of enhancing Brand Value, support to Marketing & Promotional Initiatives, Building Corporate image, Creating Awareness etc. to enable the company in providing enhanced output services. In view of the above, we are of the view that these services could be considered as eligible input service.

9.1 The appellants have claimed that photography service, video tape service have been used for picturisation of various events organized by the appellants and video tape and pictures are projected at various commercial events and seminars which promote their output services. In this regard we find that the adjudicating authority on examination of the invoices submitted before him had given a finding that he is unable find any information other than the name of service provider, in order to relate to the output service provided by the appellants. We also could not examine the factual aspect as no invoices or supporting documents have been produced by the appellants. Therefore, we are of the view that these services are not eligible to be considered as eligible input service.

9.2 In respect of Rent-a-Cab service, the adjudicating authority had given a finding that even though the services have been availed prior to 01.04.2011, that may not be the ground to allow these services as eligible input service. In this regard, we find that it is an undisputed fact that such services have been availed by the appellants for the period upto 31.03.2011 for claiming as eligible input credit and not thereafter. The CBIC in its Circular No.943/4/2011-CX dated 29.04.2011 had clarified that the credit available on rent-a-cab service received before 01.04.2011 should be available as input credit if its provision had been completed before 01.04.2011 even though the invoices could have been received subsequently i.e., after 01.04.2011. We further find that the Larger Bench of the Tribunal in the case of TATA Teleservices (Maharashtra) Limited in Interim Order No. 05/ 2024 dated 18.03.2024 have held that rent-a-cab services and insurance premium services for employees received prior to 01.04.2011 are eligible to be considered as input service. The relevant paragraph of the said order is extracted below:

"52. The answer to the reference made to the Larger Bench is as follows:

'The appellant would be entitled to avail CENVAT credit of the service tax paid by the appellant on the insurance premium paid for procuring insurance services for the employees and their family members, as the said service would be an 'input service' under rule 2(I) of the CENVAT Rules, both under the main limb of the definition as also under the inclusive limb of the definition. It is not necessary for the appellant to establish an integral connection between the service and business of manufacture for the said service to be categorized as 'input service' under rule 2(I) of the CENVAT Rules for the period prior to 01.04.2011'."

On the basis of above CBIC circular and the decision held by the Larger Bench of the Tribunal, we one of the view that the Rent-a-Cab services received prior to 01.04.2011 in the present case is eligible input service, for taking CENVAT Credit.

9.3 In respect of 'ship management services', transport services through waterways' and 'sound recording service', the adjudicating authority had found that no invoice have been produced by the appellants before him to substantiate the nature of such service and its usage in provision of output service. Further, in respect of 'short term accommodation service', the adjudicating authority had found that such stays by the employees traveling for work are more in the nature of personal consumption. We also could not examine the factual aspect as no invoices or supporting documents have been produced by the appellants for such services.

Therefore, we are of the view that these services are not eligible to be considered as eligible input service.

10. With respect to denial of input credit on the ground that the address of the premises are not included in the registration certificate, we find that the appellants had submitted a letter for inclusion of unregistered premises in the Service Tax Registration certificate by submission of their application for addition of such addresses to the jurisdictional authority on 17.10.2008. Inasmuch as the process of revising or updation of registered certificate with additional/new addresses for new branches/office is a deemed approval procedure on intimation basis as priced under Service Tax Rules, 1944. Further, as the appellants is a regular assessee/registrant with the Service Tax authorities, the input credit cannot be denied on such procedural lapses and that too for the failure to approving such amendments by the department within the prescribed time.

11. In view of the foregoing discussions and analysis, and on the basis of the Orders passed by the Tribunal referred above, we are of the considered view that to the extent the input services amounting to Rs.3,49,78,125/- have been confirmed in the impugned order, it does not stand the legal scrutiny. However, the demand of CENVAT credit in respect of ineligible input service to the extent of Rs.11,03,689/- as confirmed in the impugned order is not interfered with.

12. Therefore, the impugned order dated 25.03.2021 is partly set aside to the extent it had confirmed the adjudged demands proposed in the SCNs for Rs.3,49,78,125/-. Accordingly, by setting aside the impugned order to the above extent, the appeal filed by the appellants is partly allowed in their favour.

(Order pronounced in open court on 25.02.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)