CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.40702 of 2021

(Arising out of Order-in-Appeal No.101/2021 (CTA-I) dt. 28.07.2021 passed by Commissioner of GST & Central Excise (Appeals-I), Chennai]

M/s.TIDC India Ltd. **Appellant**
P.O.No.11, C.T.H. Road,
Ambattur,
Chennai 600 053.

VERSUS

The Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate,
No.26/1 Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate
For the Appellant

Shri Arul C. Durairaj, Superintendent (AR)
For the Respondent

CORAM: HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 24.03.2022
DATE OF PRONOUNCEMENT:25.03.2022

FINAL ORDER No. 40126 / 2022

The issue that arises for consideration in the appeal is whether the appellants are eligible to avail cenvat credit on outdoor catering services for the period from March 2016 to June 2017.

2.1 Ld. Counsel Shri Raghavan Ramabadran appeared for the appellant and submitted the facts of the case which are as under :

2.2 The appellant is engaged in the manufacture of Automotive and Industrial chains, Parts and accessories of motor vehicle steel tubes and is registered with the Central Excise Department. Appellant availed cenvat credit on various inputs and input services which are used in the manufacture of the final products. In compliance of provisions of the Factories Act, 1948 and the Tamil Nadu Factories Rules, 1950, the appellant has been providing canteen facilities to its employees working in the factory. For providing such canteen services (outdoor catering service) the appellant engages third-party caterers. As per the terms of the contract, the appellant agrees to pay a predetermined sum towards food provided by the caterer to the employees. The caterer is responsible for maintenance of canteen facility in accordance with mandates of the Factory Rules. The appellant recovers a nominal sum from its employees towards provision of food in canteens. Such sum is adjusted against the monthly compensation paid to the employees. These facts are not under dispute. The appellant discharged service tax on the consideration paid to the caterer. They then availed credit for this service tax as these services are integral to its manufacturing activity. The Department was of the view that the appellant is not eligible to avail cenvat credit on outdoor catering services as it does not have any nexus to the manufacturing activity. Further that appellant is not eligible on account of amendment introduced with effect from 01.04.2011 to Rule 2 (l) of CCR 2004 wherein the services in the nature of outdoor catering services are specifically excluded.

2.3 After due process of law, the original authority confirmed the demand along with interest holding that appellant is not eligible for credit and also imposed penalty. Against this appellant filed appal before the Commissioner (Appeals) who upheld the same. Hence this appeal.

2.4. Ld. Counsel submitted that even after 01.04.2011, cenvat credit is eligible on outdoor catering services as these services are not used for personal use / consumption of employees. The service is availed in compliance of the Factories Act and Rules. Therefore, providing canteen services to its employees is integral to the manufacturing activity and appellant is not rendering the service for the employees' personal use and consumption. It is submitted that once the appellant recovers some money in the form of consideration from the employees for these canteen services, it cannot be termed as being provided for personal use or consumption. He relied on the decision in the case of *Hindustan Coca Cola Beverages Pvt. Ltd. Vs CCE* – 2014 (12) TMI 596 – CESTAT Mumbai; *Roca Bathroom Products (P) Ltd. V CCE* – 2018 (11) TMI 1446 – CESTAT Chennai to argue that cenvat credit is admissible if input services are availed for compliance of statutory requirements.

2.5 The decision in the case of *Ganesan Builders Ltd. Vs CCE* – 2018-VIL-475-MAD-ST and *Rane TRW Steering System Ltd*. – 2018 (2) TMI 1745 – MADRAS HIGH COURT was also relied.

2.6 Ld. Counsel was fair enough to submit that in the case of *Wipro Ltd. Vs CCE* - 2018 (363) ELT 1111 (Tri.-LB), the Larger Bench had held that post-01.04.2011 credit on outdoor catering services is ineligible. He

submitted that the ratio laid in *Ganesan Builders* (supra) is applicable to the facts and circumstances of the case as services have been availed for compliance of the Factories Act, 1948 / Tamil Nadu Factories Rules, 1950 without which the appellant cannot carry out the manufacturing activity.

2.7 Ld. Counsel also argued on the ground of limitation. He submitted that entire demand for the disputed period was raised by issuing show cause notice dated 06.02.2020 by invoking extended period of limitation under proviso to Section 73 (1) of the Act. The present issue involves interpretation of legal provisions. There were conflicting decisions by different Bench of the Tribunal and the issue was referred to Larger Bench in the case of *Wipro Ltd.* (supra). The issue being interpretational, appellant cannot be saddled with intention to evade payment of duty by wilful misstatement or suppression of facts. To support this argument, he relied upon the decision in the case of *Bharti Airtel Ltd. Vs CCE* - 2021 (4) TMI 306-CESTAT Bangalore. Ld. Counsel explained that appellant was under bonafide belief that they have correctly availed credit in accordance with the provisions of law. It was their belief that credit on outdoor catering services would be ineligible only if the services are availed for personal use / consumption of the employees. Since the canteen services were provided in compliance of the statutory requirement, they have availed the credit.

3. Ld. A.R Shri Arul C. Durairaj appeared for the department. He supported the findings in the impugned order.

4. Ld. A.R relied upon the Tribunal's Larger Bench decision in the case of *Wipro Ltd.* (supra) and submitted that the Tribunal has held that credit is not eligible on outdoor catering services after 01.04.2011. The relevant paragraphs of the decision of the Larger Bench relied by the Ld. A.R are reproduced as under :

> "7.1 Further, we find that there is no dispute about the fact that all these disputes relates to post 2011. The period involved in the present appeals is admittedly after 2011 and the amendment to the provisions of rule 2 (I) defining the 'input service' came into effect from 1.4.2011 only. The definition of input service post amendment contains exclusion clause. The exclusion clause was effective from and clause (C) of the said exclusion specifically exclude the services provided in relation to "outdoor catering service". Admittedly, such services prior to 1042011 have been held to be covered by the definition of 'input service'. In fact, the need for exclusion would arise only when the services are otherwise covered by the definition. The legislature in its wisdom has excluded certain services from the availment of CENVAT credit w.e.f. 1.4.2011, when such services are otherwise covered by the main definition clause of the 'input service'. To interpret, the said input clause, in such manner so as to hold that such services have direct or indirect nexus with the assessee's business and thus would be covered by the definition, would amount to defeat the legislative intent.
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> 7.2 It is well settled that the legislative intent cannot be defeated by adopting interpretation which is clearly against such intent. Further, we find that from the Budget Speech of the Finance Minister dated 28.2.2011 wherein the Hon'ble Minister has categorically stated that due to complexities there has been many legal issues on the availability of credit on a number of inputs or input services which are being rationalized by laying down clear definition so that the scope of inputs and input services that are eligible and those that are not, is clear. Further, we also find from the clarification issued by the Joint Secretary (TRU) explaining the intention of the legislature for the changes brought by way of amendment in the definition of 'input service'. Further, we also note that primarily the service should be first covered under the definition of 'input service' and once the service is not covered due to exclusion clause irrespective of the fact whether the cost of service has been taken as expenditure in the books of accounts does not render the services as an admissible for CENVAT credit. We also find that the food is always mainly for personal consumption only. The canteen provided in the company is mainly for the personal consumption of the employee and it cannot be interpreted in any other way. Therefore, once such services are excluded, whether the employer or employee bears the cost partially or fully, has no bearing on the amendment. Therefore, keeping in view above discussions and the various decisions cited by both the parties, we are of the considered view that the "outdoor catering service" is not eligible for input service credit post amendment dated 1.4.2011 vide Notification No.3/2011 dated 18.3.2011.
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> 8. The reference is answered accordingly.
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> 9. With the above observations, we revert the matter to the regular Bench for deciding the respective appeals."

5. Heard both sides.

6. The issue stands covered by the decision of Larger Bench of the Tribunal in *Wipro Ltd*. (supra). Following the same, I am of the view that appellants do not have case on merits.

7. Ld. Counsel for appellant has argued on the ground of limitation also. As seen from the narration of the submissions made by the Ld. Counsel for appellant, it is clear that the issue is interpretational in nature and there were conflicting decisions of different Benches of the Tribunal after which the matter was referred to Larger Bench. Taking these aspects into consideration, I am of the view that it cannot be said that appellant has wilfully suppressed facts with intention to evade payment of duty so as to invoke the extended period. The entire demand is raised by invoking extended period. After considering the facts of the case as well as the decisions cited supra, I am of the view that invocation of extended period cannot sustain and the demand is time-barred. Impugned order is set aside on the ground of limitation.

8. In the result, the appeal is allowed on limitation with consequential relief, if any, as per law.

(Pronounced in court on 25.03.2022)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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