CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

Regional Bench – Court No. III

Excise Appeal No. 41631 of 2018

(Arising out of Orders-in-Appeal No. 30/2017 (CTA-II) dated 31.01.2018 passed by the Commissioner of Central Tax (Appeals-II): C.G.S.T. & Central Excise, Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Sharda Motor Industries Ltd., **: Appellant**
Plot No. G-20, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur,
Kancheepuram, Tamil Nadu – 602 105

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

WITH

(i) Excise Appeal No. 41632/2018 (M/s. Sharda Motor Industries Ltd.);
(ii) Excise Appeal No. 41633/2018 (M/s. Sharda Motor Industries Ltd.);
(iii)Excise Appeal No. 41634/2018 (M/s. Sharda Motor Industries Ltd.);

(Arising out of Orders-in-Appeal No. 30/2017 (CTA-II) dated 31.01.2018 passed by the Commissioner of Central Tax (Appeals-II): C.G.S.T. & Central Excise, Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

(iv) Excise Appeal No. 42225/2018 (M/s. Ucal Fuel Systems Ltd.);
(v) Excise Appeal No. 42227/2018 (M/s. Ucal Fuel Systems Ltd.);
(vi) Excise Appeal No. 42228/2018 (M/s. Ucal Fuel Systems Ltd.);

(Arising out of Order-in-Appeal No. 289, 290 & 291/2018 (CTA-II) dated 22.06.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

APPEARANCE:

Shri. G. Natarajan, Advocate for the Appellant
Shri. Santhana Gopalan D., Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOS. 40858-40864 / 2019

DATE OF HEARING: 24.06.2019

DATE OF DECISION: 24.06.2019

The issue involved in all these appeals being connected, they are heard together and disposed of by this common order.

1.2 The issue to be considered is whether credit is eligible on Outdoor Catering Services post 01.04.2011.

2.1.1 Ld. Counsels Shri. G. Natarajan and Shri. Santhana Gopalan D. appearing on behalf of the appellants submitted that it has been held that consequent to the change in the definition of 'input service' as per Rule 2(l) of the CENVAT Credit Rules, 2004 with effect from 01.04.2011, the service of preparation and supply of food in the factory canteens is not entitled for credit. The definition of input service, as amended with effect from 01.04.2011, is reproduced below.

> *"input service" means any service, -*
>
> *(i) used by a provider of taxable service for providing an output service; or*
>
> *(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*
>
> *and includes 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 upto the place of removal;* ***but excludes services,-***
>
> *(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for -*
>
> *(a) construction of a building or a civil structure or a part thereof; or*
>
> *(b) laying of foundation or making of structures for support of capital goods,*
>
> *except for the provision of one or more of the specified services; or*
>
> *(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a*

motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to 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 on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

(Emphasis supplied)

2.1.2 The authorities below have disallowed the credit availed on Outdoor Catering Services stating the reason that these services are for personal consumption and excluded as per the definition of 'input service'. It is argued by the Ld. Counsels that only services which are availed for personal use are exempted. In the present case, the food supply/catering service is done in the premises of the factory by the service provider, as mandated in the Factories Act. These services are not for personal use of employees. The necessity to provide such food facilities within the factory premises is a statutory mandate as regards the manufacturer. If not complied with, he may face legal consequences. The legislature, by excluding Outdoor Catering Services used for personal consumption, had intended to exclude only such services used for a special event, marriage, party, etc., and not when these services are provided on a day-to-day basis. Prior to introduction of negative list based levy of service tax, individual taxable services have been defined under Section 65 (105) of the Finance Act, 1994. As per clause (zzt) of sub section (105) of Section 65,

"Taxable service means any service provided or agreed to be provided to any person by an outdoor caterer".

The term "outdoor caterer" was originally defined under Section 65 (76a) of the Act, at the time of introduction of the levy in 2004 as

"outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own.

With effect from 16.06.2005 the above definition has been amended as,

"outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services.

2.1.3 The purpose behind such amendment has been explained in letter No. B1/6/2005 TRU Dt. 27.07.2005 as,

> *"5.1 Service tax is already leviable on the services provided by an outdoor caterer. Prior to 16-6-2005, outdoor caterer was defined as a caterer providing catering services "at a place other than his own". Doubts were expressed about the scope of the term "at a place other than his own" where the caterer provides catering service from a premises provided by the recipient of the service, on rent. In such cases, whether the place is to be treated as the place owned by the caterer and therefore the services are not subject to service tax or the place is to be treated as not owned by the caterer and therefore subject the services to service tax. To remove the doubt, the present definition of "outdoor caterer" has been modified so as to provide that "outdoor caterer" includes caterer engaged in providing services in connection with catering at a place provided by way of tenancy or otherwise by the person receiving such services."*

As per the above definition of "outdoor caterer", the contractors appointed by the appellant to prepare and serve food in their factory canteens would be "outdoor caterers" as they are engaged in providing services in connection with catering at a place other than their own, i.e., at the appellant's premises and hence the services provided by them would be a taxable service as defined under Section 65 (105) (zzt) of the Act.

2.1.4 With effect from 01.04.2011, the definition of "input service" under Rule 2 (l) of CCR, 2004 has been amended, which has been reproduced earlier. The pre-amended definition is reproduced below.

> *"input service" means any service, -*
>
> *(i) used by a provider of taxable service for providing an output service, or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*
>
> *and includes services used in relation to setting up, modernization, 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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"*

It may be noted that there is no exclusion from the ambit of the definition prior to 01.04.2011, which was introduced only from 01.04.2011.

2.1.5 A careful reading of the exclusion would reveal that certain taxable services are excluded from the definition with reference to relevant sub clause of Section 65 (105) of the Finance Act, 1994, viz., Clause (A) and (B) of the definition, when they are used for certain specific purposes. For example, under Clause (A) certain services are not entitled for credit, if they are used for construction of a building. Under Clause (B), certain services are not entitled for credit, if they pertain to motor vehicles which are not entitled for credit. Similarly, under clause (C) certain services are not entitled for credit, if they are "*used primarily for personal use or consumption of any employee".* When such service are used, not primarily for personal use, then credit would be entitled. For example, if for effective marketing, if the Director of a Company has to be a member of a club for socializing, then it is not primarily for personal consumption, though incidentally it may be for personal use. Similarly, for a company engaged in brand promotion through celebrities, beauty and healthcare and fitness services availed for such celebrities is not primarily for the personal consumption of such employees. Hence, when an assessee is mandated by the Factories Act, to compulsorily to provide a canteen facility and when such assessee avails the services of a contractor in this regard, such services are primarily for the statutory compliance of the assessee and only incidentally for the personal use of the employees.

2.1.6 However, the above view has not found favour before the Larger bench of the Tribunal in the case of ***M/s. Wipro Ltd. Vs Commissioner of Central Excise, Bangalore-III reported in 2018 (363) E.L.T. 1111 (Tri.-LB).*** The decision of the Larger Bench holding that canteen services in all circumstances would only be for personal consumption of the employees, is not in tune with the plain language of the exclusion clause. While qualifying the entitlement for credit, the rule makers have in their wisdom disallowed credit only when such services are for personal use of the employees. While laying down so, they also recognized that there may be instances where such services are not primarily for personal use of the employees. But if the view of Larger Bench is accepted, then there is

no rationale for such qualification in the exclusion clause. If even providing canteen facility as per the requirements of the Factories Act can be considered as for personal use, then such catering services would never be eligible for credit, thereby rendering the requirement of being primarily for personal use, as redundant. In this connection, reliance is placed on the decision of the Hon'ble Supreme Court in ***Union of India Vs. Hansoli Devi & Ors. in Civil Appeal No. 9477 of 1994 dated 12.09.2002*** wherein it has been observed,

> *"In Quebec Railway, Light Heat and Power Co. v. Vandray, AIR (1920) PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons."*

2.2.1 It is further submitted that in the Budget Speech of 2011, the then Hon'ble Finance Minister has said,

> ***"194.*** *Many experts have argued that it will be desirable to tax services based on a small negative list, so that many untapped sectors are brought into the tax net. Such an approach will be very conducive for a nationwide GST. I propose to initiate an informed public debate on the subject to help us finalise the approach to GST."*

2.2.2 Later, the Government has circulated a Concept Paper for Public debate on Taxation of services based on a negative list of services. To quote from it,

> *"2.2 The selective taxation of services by way of incremental additions over the years served well in the past in acclimatizing both the tax payers and tax administrators to the new levy. However, with considerable expansion of the list, the administrative challenge has multiplied manifold. Service tax has now gained considerable maturity and many practitioners of the subject believe that incremental approach to taxation is not suitable for providing a stable system for taxation of services that is at the threshold of getting subsumed into a comprehensive GST."*

2.2.3 Based on various inputs gathered, the negative list based levy was made part of the 2012 Budget and to again quote from the Hon'ble Finance Minister's Budget speech of 2012,

> *"159. Last year, I had initiated a public debate on the desirability of moving towards taxation of services based on a negative list. In the debate that continued for the better part of the year, we received overwhelming support for this new concept. It has been perceived both as sound economics and prudent fiscal management.*

160. Thus, I propose to tax all services except those in the negative list. The list comprises 17 heads and has been carefully drawn up, keeping in view the federal nature of our polity, the best international practices and our socio-economic requirements.

167. Movement towards the negative list will result in reducing nearly 290 definitions and descriptions in the Act to 54, and the exemptions from the existing 88 to 10, of course merging some of the existing exemptions into a revised notification. In terms of number of pages, the law will be shorter by nearly 40 per cent."

2.2.4 It may be noted from the above that the new service tax regime from 01.07.2012 is completely based on a new concept and international practices. The ad hoc approach of taxing services selectively, by defining each and every service separately, is a thing of the past and hence the definitions of such individual services, which are in vogue up to 30.06.2012 are not at all relevant to understand scope service tax levy from 01.07.2012. Hence, the definition of "outdoor caterer" under Section 65 (76a) of the Act, which ceases to have effect from 01.07.2012 is not at all relevant to understand the scope of the term "outdoor catering" used in the definition of "input service" for the period post 01.07.2012.

2.3.1 The demands in this case pertain to the period after introduction of negative list based levy of service tax, i.e. after 01.07.2012. The individual definition of taxable services are no more in vogue from this date and section 65 of the Act ceased to have any effect from 01.07.2012. As a consequence, the definition of the term "input service" under Rule 2 (l) of the CCR was also amended as below.

(d) in clause (l),-

(i) for the words "taxable service", the words "output service" shall be substituted;

(ii) in sub-clause (ii), for the words "but excludes services", the words " but excludes" shall be substituted;

(iii) for sub-clause (A), the following sub-clause shall be substituted, namely :-

"(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services; or";

(iv) in sub-clause (B), for the words, brackets, letters and figures "specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act", the words "services provided by way of renting of a motor vehicle" shall be substituted;

(v) for sub-clause (BA), the following sub-clause shall be substituted, namely :—

"(BA) service of general insurance business, servicing, repair and maintenance , in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

2.3.2 It may be noted that clause (C) definition has not been amended. It is submitted that in the absence of any definition for the term "outdoor catering" and in view of the fact that the definition of the term "outdoor caterer" is no more in vogue from 01.07.2012, the scope of the term "outdoor catering" used in the definition of "input service" has to be understood only with reference to international practices on classification of service, based on which the negative list based levy of service tax has been introduced and common parlance.

2.4.1 In this connection, reference is invited to United Nations Central Product Classification – Division 63 and the Explanatory Notes therefor, which are appended below :

			***99 Non-metallic minerals and other products n.e.c.					
Division 63			**Accommodation, food and beverage services**					
631			**Accommodation services for visitors**					
	6311		Room or unit accommodation services for visitors					
		63111	Room or unit accommodation services for visitors,	63111	5510	with daily housekeeping services		
		63112	Room or unit accommodation services for visitors,	63112	5510	without daily housekeeping services		
		63113	Room or unit accommodation services for visitors,	63113	5510	in time-share properties		
		63114	Accommodation services for visitors, in rooms for	63114	5510	multiple occupancy		
	6312		63120	Camp site services	63120	5520		
	6313		63130	Recreational and vacation camp services		63130	5520	
632			**Other accommodation services for visitors and others**					
	6321	63210	Room or unit accommodation services for students	63210	5590	in student residences		
	6322	63220	Room or unit accommodation services for workers	63220	5590	in workers hostels or camps		
	6329	63290	Other room or unit accommodation services n.e.c.			63290	5590	
633			**Food serving services**					

	6331	63310	Meal serving services with full restaurant services	63310	5610		
	6332	63320	Meal serving services with limited services		63320	5610	
	6339		Event catering and other food serving services				
		63391	Event catering services	63391	5621		
		63392	Contract food services for transportation operators	63392	5629	63393	Other contract food services 63393 5629
		63399	Other food serving services			63399	5610
634			**Beverage serving services**				
	6340	63400	Beverage serving services			63400	5630

6339 Event catering and other food serving services

63391 Event catering services

This subclass includes:
- food preparation and supply services based on contractual arrangements with the customer, at institutional, governmental, commercial, industrial or residential premises or location/s specified by the customer, for a specific event

This subclass does not include:
- food preparation and supply services, on an ongoing basis, cf. 63392, 63393

It may be observed from the above that catering services are event based and services provided on ongoing basis would not be considered as a catering service.

2.4.2 A Hotel, or a restaurant or a factory canteen, which is operating in a continuous basis is not at all understood as "outdoor catering" even in common parlance. Persons running such Hotels, restaurants or canteens are not identified as "outdoor caterers" by common public. "Outdoor catering" is normally understood with reference to temporary supply of food, at customers location, for an event or occasion, like meeting, wedding, etc.

2.4.3 Most of the food items are prepared in the central kitchen of the outdoor caterer and transported to the place where the food has to be served. Over a period more sophistication in the form of on the spot preparation of certain items, heating of food before serving have become certain features of outdoor catering. While upholding the levy of service tax on outdoor caterer, the Hon'ble Supreme Court in ***Tamil Nadu Kalyana Mandapam Assn. Vs. Union of India reported in 2006 (3) S.T.R. 260 (S.C.)*** held as under :

> *"As a result of the outdoor catering services rendered, the food and beverages desired by the customer, are caused to be prepared or procured, transported to the place specified by the customer at the time desired by him and served in the manner required. Therefore, the contention of the appellant that there is no service element in outdoor catering is not based on fact. In such catering services the person who*

participate and avail the service give more importance to the manner of service than the quality of food provided for consumption."

2.4.4 The classification of services introduced under GST regime also supports this view as can be seen from the below classification service under GST. As introduction of negative list based levy of service tax was aimed to be a precursor to the introduction of GST and a step in that direction, treatment of the transactions under GST could provide clue as to interpretation of similar terms under the negative list regime, rather than the pre 01.07.2012 legal provisions, which have been disregarded. The two concept papers on Negative List based levy of service tax, published by the Government can be noted in this regard.

80	**Group 99633**		**Food, edible preparations, alcoholic and non-alcoholic beverages serving services**
81		996331	Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food
82		996332	Services provided by Hotels, Inn, Guest House, Club and the like including room services, takeaway services and door delivery of food
83		996333	Services provided in canteen and other similar establishments
84		996334	Catering Services in exhibition halls, events, marriage halls and other outdoor/indoor functions
85		996335	Catering services in trains, flights and the like
86		996336	Preparation or supply services of food, edible preparations, alcoholic and non-alcoholic beverages to airlines and other transportation operators
87		996337	Other contract food services
88		996339	Other food, edible preparations, alcoholic and non-alcoholic beverages serving services nowhere else classified

2.5 The intention is also made clear from the following Explanation under Notification 11/2017 Central Taxes (Rate), prescribing rate of GST for various services.

Explanation 1. - This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional.

2.6 On the basis of the above, it is submitted by the Ld. Counsels for appellants that the services provided by the contractors to the appellant, by way of cooking and serving food to the appellant's employees, on a continuous basis is not "outdoor catering" as it is commonly understood but is in the nature of "other contract food services" and hence the exclusion in the definition of "input service" for "outdoor catering" services, would not apply to such services and the appellants are eligible for credit.

3. Ld. AR Shri. L. Nandakumar supported the findings in the impugned order. He emphasized that the issue whether Outdoor Catering Services are eligible for credit after 01.04.2011 or not is decided by the Larger Bench in the case of *M/s. Wipro Ltd. (supra).*

4. Heard both sides.

5.1 Ld. Counsels Shri. G. Natarajan and Shri. Santhana Gopalan have explained in detail as to the position with regard to the definition of 'Outdoor Catering Services' after 01.07.2012. In the present case, the disputed period is entirely after 01.07.2012. The definition of 'input service' underwent an amendment with effect from 01.04.2011, which has already been reproduced in the contentions of the appellant as above. In Clause (A) of the said exclusions, it does not mention Sub-Clause (zzt) which is for taxable services provided under Outdoor Catering Services. The Ld. Counsels are correct in their assertion that the specific exclusion contained in Clause (A) does not take within its ambit the Outdoor Catering Services.

5.2 However, the exclusion is brought forth in Clause (C) wherein it is stated that services provided in relation to outdoor catering are excluded when such services are used primarily for personal use or consumption of any employee. In ***M/s. Hindustan Coca Cola Beverages Pvt. Ltd. Vs. C.C.E., Hyderabad-I reported in 2017 (49) S.T.R. 88 (Tri. – Hyd.)*** the application of this exclusion clause was analyzed by the Single Member decision, which is reproduced as under :

> *"**6.** In Circular No. 334/3/2011-TRU, dated 28-2-2011, the Board has discussed the highlights of the changes brought forth by Finance Bill,*

2011. The amendment to the definition of input service is discussed and the specific portion regarding the exclusion portion of clause (c) is as under :-

> *1.9 On the same lines, a service meant primarily for the personal use or consumption of employees will not constitute an input service. A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.*

7. *The appellants contend that canteen/outdoor catering services is provided within the factory premises in compliance to the provisions of the Factories Act, 1948. It is also submitted that such services are not used primarily for personal use or consumption of employee. In P. Ramanathan Aiyar's Advanced Law Lexicon 3rd edition, the word primarily is defined as "that which is first in order, rank or importance, anything from which something else arises or is derived." The word means something which is more proximate or more important. When outdoor catering services, beauty treatment, health services, etc. used for personal use or consumption of an employee, it would not qualify as 'input service'. In the instant case, as per Factories Act, 1948, the appellants are compelled to provide food facilities inside the factory. It is more importantly used by the appellant to comply with the mandatory requirement under Factories Act. If they do not comply with such provision of the Factories Act, the appellants will definitely not be able to engage in the production/manufacture of final products. Therefore outdoor catering services are used by appellant in relation to the business of manufacture and not for any personal use or consumption of employee.*

8. *In view thereof following the decision laid in the appellants' own case as well as the decision of the Tribunal in Yazaki Wiring Technologies India (P) Ltd. case and Reliance Capital Asset Management case (supra), I hold that the disallowance of credit is not legal or proper. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any."*

Thus, in the above judgement it was held that the appellants therein were compelled to provide food facilities inside the factory as mandated by the Factories Act and therefore, it was more proximate or more important for the manufacturer to avail the services.

5.3 The Single Member Bench of the Tribunal later in ***M/s. AET Laboratories Pvt. Ltd. Vs. C.C.E., Cus. & S.T., Hyderabad-I reported in 2016 (42) S.T.R. 720 (Tri. – Bang.)*** had taken the view that Sub-Clause (C) of the definition of 'input service' excludes Outdoor Catering Services from its ambit.

5.4 The two conflicting judgements were then referred to the Larger Bench of the Tribunal and thereafter, in the case of *M/s. Wipro Ltd.*

(supra), the Larger Bench took the view that after 01.04.2011, Outdoor Catering Services were excluded from the definition of input services. The relevant paragraph is 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(l) 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 1-4-2011 and clause (C) of the said exclusion specifically exclude the services provided in relation to "outdoor catering service". Admittedly, such services prior to 1-4-2011 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.*
>
> ***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 [the] 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 1-3-2011.*
>
> ***8.*** *The reference is answered accordingly.*
>
> ***9.*** *With the above observations, we revert the matter to the regular Bench for deciding the respective appeals."*

6.1 Today when the matter came up for hearing, Ld. Counsels for appellants stressed on their argument that the Larger Bench decision did not take note of the change of law after 01.07.2012 and has confined to the exclusion contained in Clause (C) of the definition of 'input service'. It is pointed that after 01.07.2012, the definition with respect to specific categories of services has been done away with. All services are taxable unless they fall within the negative list. This being so, there is no definition as such for catering services provided outside the premises of the service provider.

6.2 They have also taken efforts to draw my attention to the Budget Speech of 2011 wherein it is stated that the amendment of 2012 doing away with the separate categories of services is a step towards G.S.T. Appellants have provided services classified under G.S.T. wherein the services provided under canteen and other similar establishments fall under 996333. Only those services falling under 996334 would be in the nature of Outdoor Catering Services, which are rendered for specific events like marriage, party, etc.; 996337 would be provision of services regularly i.e., on a day-to-day basis. Needless to say that in the present case, the service providers are providing catering services/food supply services to the appellants in their canteens within the factory of the manufacturer as per the Factories Act. Thus, it is not contract services for any specific event or occasion. This being so, it is more akin to 996337 of G.S.T. It is also submitted that as per the C.G.S.T. Act, credit is eligible when the said food supply services are provided under the Factories Act.

7.1 Though I am persuaded by the arguments that food supply services to a factory under the Factories Act cannot be considered as services for personal consumption of employees, I am bound by the decision of the Larger Bench of the Tribunal in the case of *M/s. Wipro Ltd. (supra).*

7.2 Ld. Counsels for appellants have emphasized that the Larger Bench did not take note of the change in law after 01.07.2012. It has to be stated that the CENVAT Credit Rules have not been amended in line with the change in law after 01.07.2012 so as to take away the exclusion provided in Clause (C) of the definition of input services. Therefore, the decision of the Larger Bench prevails as such and respectfully following the same, I am of the view that the credit is ineligible.

7.3 However, the situation being interpretational as also having been referred to the Larger Bench, I am of the view that the penalties imposed are unwarranted and require to be set aside, which I hereby do.

8. The impugned orders are modified to the extent of setting aside the penalties imposed without disturbing the demand or interest thereon.

9. The appeals are partly allowed in above terms.

(Dictated and pronounced in open court)

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

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