CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86740 of 2022

(Arising out of Order-in-Original No. 09-10/MG/Pr.COMMR/ME/2022-23 dated 29.04.2022 passed by the Principal Commissioner, CGST & Central Excise, Mumbai East Commissionerate, Mumbai.)

Capgemini Technology Services India Limited .... Appellants
(formerly known as iGATE Global Solutions Limited)
Block 2, 3, 5, IT3/IT4 Airoli Knowledge Park,
TTC Industrial Area, MIDC,
Navi Mumbai – 400 708.

Versus

Pr. Commissioner of CGST & Central Excise .... Respondent
Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Near Parel Station, Parel (East)
Mumbai – 400 012.

Appearance:

Shri. Mihir Mehta, along with Shri Mohit Rawal, Advocates for the Appellants

Shri A P S Parihar , Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86925/2025

Date of Hearing: 20.08.2024
Date of Decision: 19.12.2025

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. 09-10/MG/Pr.COMMR/ME/2022-23 dated 29.04.2022 (hereinafter referred to, for short, as "the impugned order") passed by the Principal Commissioner, CGST & Central Excise, Mumbai East Commissionerate, Mumbai. The appellants were previously known as iGATE Computer Systems Limited and earlier to that was also known as Patni Computer Systems Limited.

2.1 The brief facts of the case are that the appellants herein is engaged in the business of providing Information Technology (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 and for statutory compliance, the appellants have registered themselves with jurisdictional service tax authorities and have obtained service tax registration certificate No. AABCP6219NST001. 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 scrutiny of ST-3 returns filed by the appellants, the Department had enquired about the appellant's availing of Cenvat Credit. On scrutiny of the documents and the books of accounts for the period 2015-2016 to 2017-2018, 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 the term 'input service' under Rule 2(l) of CCR of 2004 and therefore the appellants are not eligible for such credits. Thus, the department had concluded that certain input services on which CENVAT credit was availed by the appellants 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. On the basis of above objections, the department initiated show cause proceedings against the appellants, seeking for disallowance and recovery of wrongly availed/utilized CENVAT credit.

2.3 The Show Cause Notices (SCNs) dated 24.10.2018 covering the period April, 2015 to March, 2017; and 27.02.2019 covering the period April, 2017 to June, 2017, was issued to the appellants; and these were adjudicated vide common Order-in-Original dated 29.04.2022, which is impugned herein. In the impugned order, learned Principal Commissioner of Service Tax, Mumbai had rejected CENVAT credit amounting to Rs.19,53,266/-, and allowed CENVAT credit of eligible input services for Rs. 33,37,70,873/- as against the total demand of Rs.33,57,24,139/- made out in the SCNs. The details of these are given below:

Period	**SCN No. reference**	**Amount of Service Tax demand (in Rs.)**		
		As in SCN	**Dropped**	**Confirmed**
April, 2015 to March, 2017	ME/Commr./IGATE (CTSIL)/60/2018 dt. 24.10.2018	18,32,50,693	18,16,87,788	15,62,905
April, 2017 to June, 2017	ME/Commr./IGATE (CTSIL)/72/2018 dt. 27.02.2019	15,24,73,446	15,20,83,085	3,90,361
Total		33,57,24,139	33,37,70,873	19,53,266

Feeling aggrieved with the impugned dated 29.04.2022, the appellants have preferred this appeal before the Tribunal.

2.4 Earlier, in respect of similar disputed issue, for the self-same appellants, involving ineligible CENVAT credit in respect of various input services, for the period involving April, 2006 to March, 2009; April, 2009 to March, 2010; April, 2010 to March, 2011 ; April, 2011 to March, 2012 ; April, 2012 to March, 2013 ; April, 2013 to March, 2014 and April, 2014 to March, 2015 in seven separate SCNs, the learned Commissioner in adjudication of the case had partly confirmed the demand in respect of ineligible input services and allowed partly the CENVAT credit in respect of eligible input services, as determined by him. The matter was appealed against before the Tribunal in Service Tax Appeal No.87513/2018. Upon hearing both the sides, and on perusal of the factual details of the case, the Tribunal in its Final Order No. A/85863/2023 dated 25.04.2023 had observed that in order to find out the eligibility of a particular service as 'input service' under definition contained in Rule 2 (l) *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 self-same appellants in that case, 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 to properly examine the actual use/utilization of the disputed services in the provision of the output service and also the duty paying documents for a conclusion regarding lawful entitlement to the Cenvat credit by the appellants along with the case laws relied upon by both sides for the fact finding, whether the benefit of CENVAT credit should be available to the appellant.

2.5 In adjudication of such dispute in earlier period by way of remand proceedings, the learned Commissioner in the *de novo* adjudication order dated 25.09.2023, had allowed CENVAT credit in respect of various input services viz., (i) management, maintenance and repair services including software and IT equipment maintenance, other maintenance and repair of business premises, office equipment, servers, CCTVs etc. (ii) membership of club service for industry and statutory bodies (iii) photography service for business purposes (iv) public relations service (v) event management service (vi) insurance service, general insurance service (vii) construction service (viii) design service (ix) architect service (x) real estate agent service

(xi) erection, commissioning & installation (xii) interior decorator service; while disallowing CENVAT credit for (xiii) outdoor catering service not having nexus with business (xiv) health checkup & treatment service (xv) stock broker service for investment in mutual funds (xvi) rent-a-cab service post 01.04.2011.

3.1 Learned Advocate for the appellants stated that 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 their own case vide Final Order No. A/85266/2025 dated 25.02.2025 and the in the *de novo* order of the Commissioner of CGST & Central Excise, Mumbai East vide Order dated 25.09.2023 (supra) passed in remand proceedings from the Tribunal. Therefore, he claimed that the confirmation of adjudged demands in the impugned order is not sustainable.

3.2 Learned Advocate had also relied upon the following case laws in support of their stand.

(i) Nizam Sugar Factory Vs Collector of Central Excise, A.P., 2006 (197) ELT 465 (SC)

(ii) Caprihans India Ltd. Vs Commissioner of Central Excise, Surat., 2015 (324) ELT 8 (SC)

(iii) ECE Industries Limited Vs Commissioner of Central Excise, New Delhi., 2004 (164) ELT 236 (SC)

(iv) Aveco Technologies Pvt. Ltd. Vs Commissioner of Customs, Hyderabad, 2018 (362) ELT 624 (Tri. - Hyd.) Affirmed by Supreme Court-2018 (362) ELT A164 (SC)

(v) Coastal Housing Vs Commr. of C. Ex. & Central Tax, Mangalore Commissionerate, 2021 (53) GSTL 39(Tri.-Bang.)

(vi) Shalimar Paints Ltd. Vs Commissioner of Central Excise, Kolkata-II, 2017 (3) GSTL 270 (Tri. Kolkata)

(vii) HCL Technologies Ltd. Vs Commissioner of Cus., EX, & ST Nodia, 2017 (48) STR 129 (Tri. All)

(viii) Integra Software Service Pvt. Ltd. Vs Commr. of C. Ex, Pondicherry., 2017 (3) GSTL 356 (Tri.- Chennai)

(ix) Xilinx India Technology Services (P) Ltd. Vs CCE & ST, Hyderabad-IV, 2016 (44) STR 129 (Tri.-Hyd.)

(x) Integra Software Service Pvt. Ltd. Vs Commr. of C. Ex., Puducherry, 2017 (48) STR 137 (Tri.-Chennai)

(xi) Order-in-Original No. 73-79/MRM/COMMR/ME/2023-24 dated 25.09.2023

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(l) 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.

5. Heard both sides and perused the records of the case. I 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(l) 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 April, 2015 to March, 2017 and April, 2017 to June, 2017.

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. The definition of the term 'input service' has been provided under Rule 2(l) of the Rules of 2004 as follows:

> ***Definitions.***
> ***Rule 2.*** *In these rules, unless the context otherwise requires,—*
> 01.07.2012 to 22.04.2017
> (l) *"input service" means any service,—*
> *(i) used by a provider of output 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 up to the place of removal,…..*
>
> 23.04.2017 onwards
> (l) *"input service" means,—*
> (i) *services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods; or*

(ii) *any service used by a provider of output service for providing an output service; or*

(iii) *any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,;…..*

Common for both periods referred above

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 up to the place of removal;

but excludes
(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,

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(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
(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.
Explanation.—For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis."

On plain reading of the above legal provisions, it transpires that insofar as the definition of 'input service' is concerned, Rule 2(l) *ibid* defining the said term has three main category of services specified for coverage or exclusion under its scope. These are explained in detail as follows:

(i) 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.

(ii) The second category of input services are those which have been specifically provided under the 'inclusion' part, which are viz., 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 as these are consumed directly or indirectly in provision of output services.

(iii) 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 Learned Adjudicating Authority had broadly grouped the disputed services under various categories for his examination and in 42 such categories, he allowed the input CENVAT credit, while in 9 categories of services he had denied the CENVAT credit on the basis of his findings recorded in the impugned order. I have also examined these aspects and in respect of the each of the disputed services, I would herein deal with the issue of its eligibility in the following paragraphs.

8.2 In respect of 'construction services' it has been submitted by the learned Advocate for the appellants that these are for repair and maintenance work within the office premises and it is not related to civil construction. In the case of self-same appellants vide the order of the Commissioner of CGST & Central Excise, Mumbai East vide Order dated 25.09.2023 (supra), the said services were allowed for taking CENVAT credit on the following ground:

"I find that 'services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises' are part of inclusive clause of the definition of 'input service'….."

It is also a fact on record that the second category of the definition of input service. in the 'inclusive' part, has specific mention of the above nature of service. The department cannot on the one hand deny the input credit for the same service, while accepting the same for an earlier period, by having pick and choose method to agitate the issue before the Tribunal, as has been held in a number of cases by the Hon'ble Supreme Court such *Union of India & Others* v. *Kaumudini Narayan Dalai & Another* - (2001) 10 SCC 231; *Collector of Central Excise, Pune* Vs. *Tata Engineering & Locomotives Co. Ltd.* - 2003 (158) E.L.T. 130 (S.C.); *Birla Corporation Ltd.* v. *Commissioner of Central Excise* - 2005 (186) E.L.T. 266 (S.C.); and *Jayaswals Neco Ltd.* v. *Commissioner of Central Excise, Nagpur* - 2006 (195) E.L.T. 142 (S.C.). Therefore, I do not find merits in denying the CENVAT credit on input service of 'construction services'.

8.3 As regards 'Health club and fitness centre services' the records placed in file 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, I am of the view that these services are eligible to be considered as 'input service'. Further, I 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."

8.4 In respect of 'restaurant services, services by air-conditioned restaurants', it has been claimed by the appellants that being an IT service provider and 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 have been by the employees at personal level and they do not have any relation to output services. The appellants stated that they had provided these services to specific projects in which they are providing output services through such projects. I 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, particularly in respect of BPO/Call Centre/IT services. Therefore, I am of considered view that 'restaurant services, services by air-conditioned restaurants' can be considered as eligible input service under Rule 2(l) ibid in the present case. Further, the appellants have also paid the ineligible input credit of Rs.91,049/- along with interest, where such services were related to employees for their personal benefit, which is not related to output services. In any case, the said input credit relates to the period 2015-2016 for which the SCN was issued on 24.10.2018, which is beyond the normal period of limitation for recovery and since there were seven more SCNs having been issued and in the absence of any ground for invocation of extended period time, this demand would also fail on account of limitation of time.

8.5 With respect to examination of the eligibility of rest of the input services, which was denied in the impugned order, I find that in respect of self-same appellants vide the order of the Commissioner of CGST & Central Excise, Mumbai East vide Order dated 25.09.2023 (supra) and in the various orders of the Tribunal, input credit have been allowed for the following category of input services viz., information technology services and its maintenance; management consultancy services; membership of club service, subscription services for industry and statutory bodies; erection, commissioning & installation; manpower recruitment service; technical

inspection, housekeeping services; photography service; public relations service; event management service; commercial training, market research services etc. as being eligible for taking CENVAT credit. Furthermore, these services are also found to be eligible services as they are covered under the first 'means' part or in the 'inclusion' part of the definition and not covered by the exclusion part of the definition of 'input service'.

8.6 On the other hand, certain specific services such as (i) Rent-a-cab services covered under the exclusion category; (ii) outdoor catering services, (iii) services of air conditioning restaurants, which are not related to provision of output services; (iv) share transfer agent, not relating to statutory requirement (v) general maintenance services not having any relation to the provision of output services, having not been found eligible in terms of the definition provided under Rule 2(l) ibid, totalling to an amount of Rs.4,39,177/- are not eligible to be considered for allowing CENVAT credit. Therefore, I find that these are rightly disallowed by the learned adjudicating authority in the impugned order.

9. In view of the foregoing discussions and analysis, and on the basis of the Orders passed by the Tribunal referred above, I am of the considered view that to the extent the input services amounting to Rs.15,14,084/- have been confirmed in the impugned order does not stand the legal scrutiny. However, the demand of CENVAT credit in respect of ineligible input service to the extent of Rs.4,39,177/- as confirmed in the impugned order is not interfered with.

10. Therefore, the impugned order dated 29.04.2022 is partly set aside to the extent it had confirmed the adjudged demands proposed in the SCNs for Rs. 15,14,084/-. 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 19.12.2025)

(M.M. Parthiban)
Member (Technical)

Sinha