HC-KAR

NC: 2026:KHC:51316-DB
CEA No. 18 of 2025

CNR: KAHC010309542025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

CENTRAL EXCISE APPEAL NO. 18 OF 2025

BETWEEN:

1. THE COMMISSIONER OF CENTRAL TAX - GST
BANGALORE EAST
COMMISSIONERATE TTMC BUILDING
ABOVE BMTC BUS STAND, DOMLUR
BANGALORE - 560 071
[FORMERLY COMMISSIONER OF
SERVICE TAX BANGALORE]

...APPELLANT

(BY SRI SUSHAL TIWARI, ADVOCATE)

AND:

1. M/S WIPRO LTD
(INFOTECH DIVISION)
DODDAKANNELLI, SARJAPUR ROAD
BANGALORE - 560 035
REP. BY ITS MANAGING DIRECTOR

...RESPONDENT

(BY SRI RAVI RAGHAVAN, ADVOCATE AND
SRI SUTYA S. VASISHT, ADVOCATE)

THIS CEA FILED UNDER SECTION 35G OF THE CENTRAL EXCISE ACT, 1944, PRAYING TO SET ASIDE THE CESTAT FINAL ORDER NO.FO/ST/A/-20544/2024-ST(DB) DATED 09.07.2024 (ANNEXURE-A) AND DECIDE THE SUBSTANTIAL QUESTIONS OF

LAW FRAMED IN THE ABOVE APPEAL BY ALLOWING THE APPEAL AND ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. For the reasons stated in the application, I.A No.1/2026, the application is allowed. The delay of 93 days in filing the appeal is condoned.

2. The Revenue has filed the present appeal under Section 35G of the Central Excise Act, 1944, impugning an order dated 09.07.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal [**CESTAT**] in Service Tax Appeal Nos.548/2009 and 549/2009. Wipro Limited (Infotech Division) [**Wipro**] had filed the said appeals impugning orders No.15 and 16 of 2009 dated 27.02.2009 passed by the Commissioner of Service Tax, Bengaluru [**the Commissioner**], confirming the demands of aggregate value of ₹22,52,87,920/-.

3. The learned CESTAT found that part of the said demands were unsustainable because they were pursuant to show cause notices issued beyond the stipulated period. The learned CESTAT held that there was no suppression of any facts and, therefore, the proviso to Section 73(1) of the Finance Act, 1994 [**the Act**] for invoking the extended period of limitation was not available.

4. In view of the above, the only question that falls for consideration in the present appeal is whether the Revenue was entitled to invoke the extended period of limitation under Section 73(1) of the Act.

5. Wipro is engaged in the business of development of software, manufacture of hardware, trading of hardware and software, manufacture and sale of consumer goods. Wipro is also involved in providing IT Facility Management Services. It is registered with the Service Tax Commissionerate for rendering various services.

6. Wipro is *inter alia* involved in supplying hardware, software installation and also in upgrading and maintenance of the entire

equipment, coordinating with vendors and assisting its clients in respect of the business requirements. Wipro entered into agreements with Texas Instruments (India) Private Limited, Vijaya Bank, and Export Credit Guarantee Corporation of India to provide the aforementioned services. The learned CESTAT noted that under the agreement with Vijaya Bank, the assessee was required to render core banking solutions involving customisation, implementation, and training of the core team, Enterprise Management System, Software, Call Centre along with Help Desk Application, Infrastructure Audit Tools, Security Applications, budgeting, and forecasting. Wipro also provided Anti-Money Laundering Software, which involved reviewing compliance and a business intelligence system to enable the bank to design its Know Your Customer (KYC) system. According to the Commissioner, Wipro was rendering these services but, was not discharging service tax liability in regard to the said service.

7. The Commissioner issued a show cause notice dated 24.09.2007, calling upon Wipro to show cause why an amount of ₹22,52,87,920/- (Rupees Twenty Two Crore Fifty Two Lakh Eighty

Seven Thousand Nine Hundred and Twenty only) should not be demanded as service tax payable on IT facility management services for the period April 2002 to March 2007 under the proviso to Section 73(1) of the Act. Wipro claimed that the services provided were in the nature of Information Technology Services, which were covered under the description of Business Auxiliary Services. Hence, it was not liable to tax. Wipro also provided details of the amounts billed to clients for the period April 2003 to March 2007. The order in original also records that Wipro had provided data relating to facility management services during the period April 2003 to March 2007 but, could not provide data for the period April 2002 to March 2003 as the backup system was unavailable. On the basis of the average quantum of services, the Commissioner estimated that Wipro had received a sum of ₹4,33,01,883/- for the year 2002-03 and accordingly, determined the service tax payable for the said period. The Commissioner was of the view that the IT Facility Management Services ought to be classified as services rendered by Wipro as a "Management Consultant" under the Act and that the amount of ₹22,52,87,920/-

be recovered as service tax payable on IT Facility Management Services.

8. Wipro responded to the show cause notice, denying that it was a Management Consultant providing Management Consultancy Services. It further submitted that it had no intention of evading its liability, as the agreements clearly provided that customers were obliged to reimburse the applicable taxes. It was also pointed out that its customers could avail CENVAT credit, and the levy did not impose any additional monetary burden on Wipro, as customers would have reimbursed the service tax charged. Wipro contended that it had several units, each with separate service tax registrations. These units discharged the service tax liability for different services provided by them, including manpower recruitment and supply agency services.

9. The Commissioner rejected Wipro's contention and held that the IT Facility Management Services rendered by it were taxable under the category of "Management Consultant Service" as defined under Section 65 of the Act.

10. The learned CESTAT concurred with the Commissioner's view that the service in question rendered by Wipro ought to be classified as "Management Consultant Service". However, the learned CESTAT found that the demand for the period beyond limitation period was not sustainable. The learned CESTAT held that the Revenue could not invoke the extended period of limitation because Wipro had not suppressed any information. The learned CESTAT found that Wipro had furnished its trial balance claiming exemption on infrastructure management services and accepted the contention that the Revenue was aware of the services rendered, as evidenced by the audit report dated 31.03.2004 and the explanation provided by Wipro in its letter dated 19.04.2004. The relevant extract of the impugned order is set out below:

> "19. With regard to limitation in Service Tax Appeal No.548 of 2009 in respect of M/s. Wipro Ltd., the Commissioner while invoking the extended period of limitation held that the activity undertaken by the assessee was never brought to the notice of the department and it came to light only on detailed investigation after the perusal of the Agreements. It is also held that mere filing of ST-3 returns and payment of Service Tax without disclosing the actual nature of other activities undertaken by them does not negate the fact that the relevant activities undertaken by them were suppressed. Per contra, the submission of the learned Sr. Counsel that the appellants had submitted their Trial Balance on 31.03.2005 and as on 30.11.2005 vide letter dated 12.12.2005 emphatically had stated that the

appellant had claimed exemption on infrastructure management services cannot be ignored. It is also submitted that the appellant was not paying Service Tax on the above services was very well known to the Department as seen from the audit report dated 31.03.2004 which was followed by a detailed explanation vide their letter dated 19.04.2004. Therefore, the show-cause notice dated 24.09.2007 is partially time barred. These facts cannot be brushed aside because the audit conducted by the Revenue revealed that they were aware of the fact that various services were being rendered by the appellant. Having accepted their explanation in the year 2004, the Revenue cannot turn around and claim that the facts came to known only after DGGEI investigated the cases. Therefore, having not brought out anything on record and alleging suppression or misdeclaration of facts for invoking extended period cannot be sustained.

20. Summing up, in view of the above, the impugned orders are modified and upheld on merit and since there is no suppression of facts, invocation of extended period is not sustainable, therefore, the demands are to be restricted to normal period. Further, there being no justification for imposition of penalties, the same are set aside. Consequently, all the matters are remanded to the Commissioner for redetermination of Service Tax for the normal period. Needless to say, that the appellants be allowed a reasonable opportunity to present their case in the de novo proceedings."

11. At this stage, we may refer to Section 73 of the Act which was applicable at the material time. The same is set out below:

> **"73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded**.—(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax

which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—
(*a*) fraud; or
(*b*) collusion; or
(*c*) wilful mis-statement; or
(*d*) suppression of facts; or
(*e*) contravention of any of the provisions of this chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words “one year”, the words “five years” had been *substituted*.

Explanation.—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

(2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own

ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

Provided that the Central Excise Officer may determine the amount of short-payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation.—For the removal of doubts, it is hereby declared that the interest under Section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section.

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—
(*a*) fraud; or
(*b*) collusion; or
(*c*) wilful mis-statement; or
(*d*) suppression of facts; or
(*e*) contravention of any of the provisions of this chapter or of the rules made thereunder with intent to evade payment of service tax.

(5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.

> (6) For the purposes of this section, "relevant date" means, —
>
> (*i*) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —
>
> (*a*) where under the rules made under this chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
>
> (*b*) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
>
> (*c*) in any other case, the date on which the service tax is to be paid under this chapter or the rules made thereunder;
>
> (*ii*) in a case where the service tax is provisionally assessed under this chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;
>
> (*iii*) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund."

12. The show cause notice dated 24.09.2007 also covered a period beyond one year from the relevant date. Thus, the same could be sustained only if the conditions as specified in the proviso to Section 73(1) of the Act were satisfied, namely that the service tax had not been paid or short-paid by reason of (a) fraud; or (b) collusion; or (c) willful mis-statement; or (d) suppression of facts; or

(e) contravention of any of the provision of the relevant provision of the Act or Rules with an intent to evade payment of service tax.

13. In the present case, Wipro claimed that the services rendered were covered under the description "Business Auxiliary Services" and thus, were not taxable. According to the Commissioner, classifying the services as Business Auxiliary Services amounted to suppression of facts with an intention to evade service tax.

14. Paragraph 12 of the show cause notice which sets out this allegation is reproduced below:

> "12. Further, it appears that M/s. WIPRO have not disclosed the nature of services rendered by them to the department. They have taken the argument that the services rendered by them as discussed above are excluded by the definition under "Business Auxiliary Service' and hence not taxable. Hence, this act of M/S.WIPRO amounts to suppression of facts, with an intention to evade payment of service tax and therefore it appears that the extended period is invocable."

15. Clearly, the allegation of suppression of facts has no merit. The controversy involves the classification of the services rendered by Wipro. The learned CESTAT found that there was no

suppression of services rendered, which were clearly discernible from the accounts, audit report and the explanation provided by Wipro in its the letter dated 19.04.2004. The Revenue has not contested that the documents referred to by the learned CESTAT did not disclose the services rendered by Wipro.

16. In view of the above, we find no infirmity with the decision of the learned CESTAT in holding that the extended period of limitation would not be available to the Revenue.

17. In view of the above, the appeal is dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB
List No.: 2 Sl No.: 10