IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 59243 of 2013

[Arising out of Order-in-Appeal No. No.106/S.Tax/D-II/13 dated 16.4.2013 passed by the Commissioner of Central Excise (Appeals), Delhi II]

M/s. Competent Software Pvt. Ltd. **Appellant**

Vs.

Commissioner of Service Tax **Respondent**
New Delhi

Appearance:
None for the Appellants
Shri Ranjan Khanna, DR for the Respondent

<u>CORAM</u>:
Hon'ble Mr. D M Misra, Member (Judicial)
Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing/ Decision: 19.06.2017

FINAL ORDER NO. 54103 /2017

<u>Per: D M Misra :</u>

This is an appeal filed against order-in-Appeal No.106/S.Tax/D-II/13 dated 16.4.2013.

2. Briefly stated the facts of the case are that the appellant are engaged in export of software service and filed quarterly cash refund claims, during the period July, 2009 to December, 2011, totaling to Rs. 65,13,971/- of accumulated credit under Rule 5 of the Cenvat

Credit Rules, 2004 read with Notification No. 05/2006-CE(NT) dated 14.3.2006. After analyzing the evidences filed with the claims, the adjudicating authority has come to the conclusion that the appellant could not establish the nature of export services hence not eligible to the refund claims. On appeal, the learned Commissioner (Appeals) concurred with the view of the adjudicating authority and rejected their Appeal. Hence, the present Appeal.

4. The appellant through their letter dt. 23.5.2017 requested to decide the case on merits dispensing with their appearance before this Tribunal.

5. The learned DR Shri Ranjan Khanna, for the Revenue vehemently argued supporting the orders of the authorities below that since the appellant could not establish the nature of export services, therefore the periodical / quarterly claims filed by them for the input credit have been rightly denied to them.

6. On going through the memorandum of appeal and the impugned order, we find that the adjudicating authority after examining the invoices observed at para 7 of the order that the exact nature of the output service has not been correctly described in the export invoices nor the appellant had produced the service agreement with their foreign clients in establishing the nature of service. In absence of sufficient record, the adjudicating authority rejected their

claim; also upheld by the learned Commissioner (Appeals). We do not find any evidence placed by the appellant in their memo of appeal to rebut the finding of authorities below. In these circumstances, we do not find it fit and proper to interfere with the orders of lower authorities. In the result the impugned Order is upheld and, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open Court)

(Ashok K Arya)	**(D M Misra)**
Member (Technical)	**Member(Judicial)**

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