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

Service Tax Appeal No. ST/60435/2013-Ex[SM]
[Arising out of Order-In-Appeal No. 190/S-Tax/DII/2013 dated 29.08.2013 passed by Commr. Delhi-II]

M/s Competent Software Pvt. Ltd. ...Appellant(s)

Vs.

C.S.T. Delhi-II ...Respondent(s)

Appearance:
On merits for the Appellant
Mr. G.R. Singh (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 27.06.2017

Final Order No. 54360 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 29.08.2013 passed by the Commissioner (Appeals) Central Excise, New Delhi.

2. Brief facts of the case are that the appellant is registered with service tax department for providing taxable service, namely information technology software services. The appellant had filed the refund application under Notification No. 5/2006-CE(NT) dated 14.032006 issued under Rule 5 of the Cenvat Credit Rules, 2004. The refund application was rejected by the department on the ground that the correct classification of services rendered by the appellant was not ascertainable. On appeal, the Commissioner (Appeals) has also upheld the adjudication order holding that proper classification of

service rendered by the appellant is not possible on the basis of the documents submitted by it.

3. None appeared for the appellant. Heard Sh. G.R. Singh, the Ld. DR for the Revenue.

4. On perusal of the case records, I find that sufficient opportunity of personal hearing has not been granted by the original authority, while rejecting the refund claim. Since the proper classification of service has to be furnished by the appellant for the purpose of consideration of refund application, I am of the view that ends of justice will be met if the matter is remanded to the original authority for verification of relevant documents to be submitted by the appellant.

5. Therefore, after setting aside the impugned order, I remand the matter to the original authority for passing de novo adjudication order upon verification of the documents to be submitted by the appellant. Needless to say, opportunity of personal hearing shall be granted before adjudicating the matter afresh. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha