

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI  
COURT NO. IV**

Appeal No. ST/88185/2018
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(Arising out of Order-in-Appeal No. MUM-DGPM-WRU-APP-119/2017-18 dated 19.04.2018 passed by the Principal Additional Director General, DPGM, WRU, Mumbai).
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M/s SurePrep (India) Pvt. Ltd.	Appellant
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Vs.

Commissioner of CGST, Mumbai West	Respondent
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Appearance:

Mrs. Puloma Dalal, C.A.	for Appellant
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Shri S.K. Hattangadi, AC (AR)	for Respondent
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CORAM:

<b>HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)</b>
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Date of Hearing: 01.01.2019
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Date of Decision: 01.01.2019
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ORDER NO. **A/85004 / 2019**

***Per: Dr. D.M. Misra***

This is an appeal filed against Order-in-Appeal No. MUM-DGPM-WRU-APP-119/2017-18 dated 19.04.2018 passed by the Principal Additional Director General, DPGM, WRU, Mumbai.

2. Briefly stated the facts of the case are that the appellant had filed two refund claims for the period April, 2016 to June, 2016 and July, 2016 to Sept, 2016 on 24.08.2016 and 15.12.2016 respectively, involving a total amount of Rs.16,63,605/- in terms of Notification No. 27/2012-CE (NT)

dated 18.6.2012 read with Rule 5 of CENVAT Credit Rules, 2004. Alleging that the services namely, Computer Data Processing in relation to Accounting and Professional services rendered to M/s SurePrep LLC, USA for preparation of Income Tax Returns of the USA clients, did not fall under the scope of Place of Provision of Service Rules, 2012, being not export, accordingly, refund claims were rejected. Aggrieved by the same, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. Learned C.A. for the appellant submits that the appellants are engaged in providing Business Process Outsourcing (BPO) service in relation to preparation of Income Tax returns to clients of their principal based in USA. The appellant is an 100% EOU with the STPI. All the considerations were received by the appellant for providing the said services in convertible foreign exchange. It is her contention that the appellants have been providing the said services prior to the period in dispute and subsequently also. It is her contention that for the period prior to the impugned period, refund claims were processed and sanctioned and also for the subsequent period i.e. from October, 2016 to March, 2017, refund claims were also sanctioned by the Department. It is her contention that only for the period from April, 2016 to September, 2016, the refund claims were rejected alleging the services are not 'export'. The learned C.A. further argued that the present refund claim falls within the scope of Rule 3 of Place of Provision of Service Rules, 2012 and not under Rule 4 of the said Rules as erroneously held by the learned Commissioner (Appeals) in the impugned order. The learned C.A.

further submitted that the impugned order is cryptic and devoid of reasoning, hence bad in law and cannot be sustained. Accordingly, the impugned order is liable to be set aside. In support, she relied upon the judgment of this Tribunal in the case of *M/s American Express (India) Pvt. Ltd. Vs. Commissioner of Service Tax – 2017-TIOL-445-CESTAT-DEL.*

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. Undisputedly the appellant, under a professional service agreement dated 1.4.2004, rendered services to SurePrep LLC, USA in relation to preparation of Income Tax returns and Software Development & Support services to the said overseas client. The entire services rendered by the appellant to the overseas customers have been consumed in the foreign territory. The findings of the learned adjudicating authority and confirmed by the learned Commissioner (Appeals) that the relevant data were processed in India and ultimately sent to the foreign company, hence not export service, is devoid of merit and substance. In my view, the services provided by the appellant fall under Rule 3 of the Place of Provision of Service Rules, 2012 and not under Rule 4 of the Place of Provision of Service Rules, 2012. Besides, I also find that the Department has allowed refund claims for the earlier and subsequent period, hence denying the claim for the impugned period without change in circumstances,

in my opinion, is devoid of merit and accordingly, the impugned order deserves to be set aside.

7. In the result, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the Court)

**(Dr. D.M. Misra)**  
**Member (Judicial)**

Sinha