

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

**SERVICE TAX Appeal No. 10617 of 2014-SM**

[Arising out of Order-in-Original/Appeal No RJT-EXCUS-000-APP-567-13-14 dated 15.11.2013 passed by Commissioner of Central Excise-RAJKOT]

**D P Patel**

**...Appellant**

Shridhar, 2, Goverdhan Society, RajnagarChowk, Rajkot,  
Gujarat -360001

*VERSUS*

**C.C.E. & S.T.-Rajkot**

**...Respondent**

Central Excise Bhavan, Race Course Ring Road... Income Tax Office,  
Rajkot, Gujarat-360001

**APPEARANCE:**

Shri . R Subramanya, Advocate for the Appellant  
Shri. Prakash Kumar Singh Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

**FINAL ORDER NO. A / 11376 / 2023**

DATE OF HEARING: 23.06.2023

DATE OF DECISION: 23.06.2023

**SOMESH ARORA**

The appellant at this stage is only contesting the service tax demanded from it on construction services provided to assist Telecom Companies laying optical fiber cables. The period involved are the years 2006-2007 to 2009-2010 (upto Spetember-2009).

2. Learned Advocate made his submissions on various issues raised in the appeal memo excepting for the construction services which were undertaken to assist various telecom companies in laying fiber cables for which duty is already paid. The period involved is 2006-2007 to 2009-2010 (upto Spetember-2009). The learned Advocate submits that the matter is squarely covered in his favor as far as providing service of laying of optical fibre cables and construction services related to it are concerned, by virtue

of decision as reported in 2016 (42) STR 397 (Tri.- Mumbai) in the matter of H.M. Satyanarayana Vs CCE, Nagpur.

3. Learned AR points out that the issues are made on the combined basis for various services, a portion of it pertains to Cable laying services. The point emphasized is that even in the case of construction services laying of optical fiber various companies they had paid certain amounts, which in any case cannot be refunded at this belated stage to the appellant. Even if the decision cited is followed in relation to Industrial Construction Services.

4. Considered, the decision cited above is squarely applicable as far as commercial and industrial construction services relating to laying of 'Optical Fibre Cables' is concerned. This being the situation the appellant is entitled to benefit on account of this service only. The demand, therefore, needs to be reworked by the original authority, considering and excluding the portion, which has already discharged tax as per law and which was collected by the appellant from telecom companies. The demand is to be confirmed to the extent, duty was not paid even after collecting the same from telecom companies. Other portion of the demand relating to the same service will stand dropped with consequential relief, as per ratio of decision cited (supra)

5. Appeal allowed in the above terms.

(Dictated & Pronounced in the open Court)

**SOMESH ARORA  
MEMBER (JUDICIAL)**

PRACHI