

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066  
CUSTOMS APPEAL BRANCH**

Dated: 03/02/2016

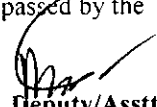
To

Appellant as per address in table below

Respondent as per address in table below

**Final Order No. ST/A/53938/2015-CU[DB] dated 26/11/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

  
Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

| Application | Appeal      | Name and Address of Appellant                                                                               |
|-------------|-------------|-------------------------------------------------------------------------------------------------------------|
| 1           | ST/602/2009 | <b>NATIONAL ENGINEERING INDUSTRIES LTD</b><br>Khatipura Road, Jaipur.<br><br>Name and Address of Respondent |
| 2           |             | -C.C.E. JAIPUR I<br>N.C.R. Building, Statue Circle,<br>"C" Scheme, jaipur 302005.                           |

Copy To

3 Advocate(s) / Consultant(s):

**Pankaj Malik**  
**Chartered Accountants 207-**  
**208, Shree Gopal Tower,**  
**Krishna Marg, C-Scheme,**  
**Jaipur, Rajasthan**  
**302001**

4 Additional Party's Name &amp; Address :

5 Bar Association, CESTAT, Delhi

6 Director Publications, Customs. Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

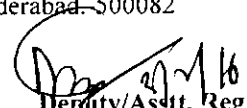
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

14 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad-500082

15 C.D.R.      16 Office Copy      17 Guard File

  
Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)



# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

## COURT-I

**Date of hearing/decision: 26.11.2015**

### **Service Tax Appeal No.602 of 2009**

Arising out of the order in appeal No.37/DK/ST/JPR-I/09 dated 15.5.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur I.

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President  
Hon'ble Mr. R.K. Singh, Technical Member

|   |                                                                                                                                   |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------|--|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?      |  |
| 2 | Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? |  |
| 3 | Whether their Lordships wish to see the fair copy of the Order?                                                                   |  |
| 4 | Whether Order is to be circulated to the Departmental authorities?                                                                |  |

National Engineering Industries Ltd. .. Appellant

Vs.

C.C.E., Jaipur I .. Revenue

Appearance:

Present Shri Bipin Garg, Advocate for the appellant  
Present Shri Ranjan Khanna, A.R. for the Respondent/ Revenue

Coram: Hon'ble Mr. Justice G.Raghuram, President  
Hon'ble Mr. R.K. Singh, Technical Member

Final Order No . 53938/2015

(2)

Per R.K. Singh.

This appeal is filed against order-in- appeal dated 15.5.2009 which upheld order -in - original dated 30.01.2008, in terms of which service tax demand of Rs.26,69,580/- for the period April 2005 to December 2005 was confirmed under Business Auxiliary Service along with interest and penalties. The demand was confirmed on the ground that the appellant received commission of Rs. 2,61,72,355/- in foreign currency from M/s NTN Corporation Singapore for services rendered in India but did not pay service tax.

2. The appellant has contended that the service was rendered to a company located outside India and the payment for that was also received in convertible foreign exchange and therefore it amounted to export of service and hence there is no liability to service tax.

3. Ld. Department representative contended that even if the payment was received in foreign exchange, the service was rendered in India, and therefore impugned service tax was leviable.

4. We have considered the contentions of both sides. The appellant was providing the service of commission agent to the Singapore-based company and was being paid by that company in convertible foreign exchange. Thus the service was rendered to a foreign-based company and as the payment was received in convertible foreign exchange, it amounted to export of service and therefore the liability to service tax would not arise. This issue is no longer *res integra*, having been settled by judgement of CESTAT in the case of **Bayana Builders (P) Ltd. vs. Commissioner of Service Tax, New Delhi** – 2013. Even earlier, the same view was held in the case of **Lenovo (India) Private Limited vs. Commissioner of Central Excise** - 2009 – TIOL – 911 – CESTAT – Bangalore.

5. In the light of the foregoing, the impugned order is not sustainable and is set aside. The appeal is allowed.

  
(Justice G. Raghuram)  
President

  
(R.K.Singh)  
Technical Member

scd/