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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	**NATIONAL ENGINEERING INDUSTRIES LTD** Khatipura Road, Jaipur.
		Name and Address of Respondent
2		-C.C.E. JAIPUR I N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

Copy To

3Advocate(s) / Consultant(s):

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

4 Additional Party's Name & 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

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/