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CUSTOMS, EXCISE & SER[illegible] TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/137 /2006 - CU[DB] Date 07/11/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
THE COMMISSIONER CUSTOMS & CENTRAL EXCISE, M.P
P.B.NO 10, MANIK BAGH PLACE, INDORE (M.P)

THE COMMISSIONER CUSTOMS & CENTRAL EXCISE, M.P — Appellant

Vs

M/S INDORE COMPOSITE PVT LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/327/08 **CU[DB]** dated 07.10.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   M/S INDORE COMPOSITE PVT LTD
   PLOT NO S-4/2, INDUSTRIAL AREA, SECTOR-1, PITHAMPUR
2. Adv. / Consult
   MR.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI
COURT – II

ST/Misc./789 OF 2007 IN AND SERVICE TAX APPEAL NO. 137 OF 2006

[Arising out of Order-in-appeal No. IND-I/83/2006 dated 22.02.2006 passed by the Commissioner (Appeals-I), Central Excise & Customs, Indore]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the 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?	

CCE, Indore Appellant

Vs.

M/s. Indore Composite Pvt. Ltd. Respondents

Appearance:

Shri V. Kumar, Departmental Representative, for the Revenue;
Shri Alok Barthwal, Advocate for the respondents;

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 7th October, 2008

FINAL ORDER NO. 57/327/08 **dated** 7/10/08

Per S.S. Kang:

Heard both sides.

2. Revenue filed Misc. application to place on record the fresh authorization. Misc. application is allowed.

3. Revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) held that under the agreement respondent has not received any service falling under the ambit of 'Consulting Engineer' as the agreement is for transfer of technology.

4. Contention of the Revenue is that as per terms of the agreement, agreement is for technical assistance. Revenue relied upon the decision of the Tribunal in the case of Indian Farmers Fertilizers Coop. Ltd. vs. CCE, Bareilly, reported in 2007 (5) STR 281 (Tri. – Del.) to submit that consideration for technical assistance for the use of know-how is covered under Consulting Engineer Service.

5. Respondents submitted that the agreement is for grant of licence to use and employ the glassline technology for the manufacture of wire cable and a consolidated amount has been paid as per terms of the agreement. Respondents relied upon the decision of the Tribunal in the case of CCE & ST, Bangalore vs. Toyoda Iron Works Co. Ltd., reported in 2007 (7) STR 603 (Tri.-Bang.) to submit that the agreement for

transfer of technology know-how would not fall under the category of consulting engineer for service tax liability. The same view is taken in the case of CCE, Bangalore vs. Toyota Motor Corpn., Japan, reported in 2007 (8) STR 478 (Tri.-Bang.).

6. We have gone through the terms and conditions of the agreement. The agreement is for transfer of technology and a consolidated amount is the consideration for transfer of technology. In the case of Indian Farmers Fertilizer Coop. Ltd. (supra), relied upon by the Revenue the terms of agreement in that case was that fees for technical assistance shall be paid against monthly invoice duly certified by TISCO. In these circumstances the Tribunal held that service tax is liable in respect of technical assistance. In the present case there is no such clause. Therefore, ratio of the said decision is not applicable in the present case. In these circumstances we find no merit in the contention of the Revenue. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNCIAL)

Dated 10th October, 2008
RK