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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

Date 10/11/2008

Appeal No. ST/72 /2006 - CU[DB]

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

To :
M/S AKSH OPTIFIBERS LTD
F-1080, INDUSTRIAL AREA, BHIWADI

Appellant

M/S AKSH OPTIFIBERS LTD

Vs

Respondent

C.C.E JAIPUR

I am directed to transmit herewith a certified copy of **Final order No.** ST/333/08 CU[DB] dated 07.11.08 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
   C.C.E JAIPUR
   NCRB, C-SCHEME, JAIPUR
2. Adv. / Consult
   MR.BIPIN GARG, ADV
   B-A/1289-A VASANT KUNJ NEW DELHI 70
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 72 of 2006

(Arising out of Order-in-Appeal No. 230(MPM)/CE/JPR-I/2005 dated 31.8.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur)

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.	

M/s Aksh Optifibers Ltd. — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:
Shri Atul Gupta, C.O. - For appellant
Shri A.K. Rastogi, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 10.7.2008
Date of Pronouncement: 7/11/08

Final Order No. 57/333/08 dated 7/11/08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby the demand of Service Tax has been confirmed on the ground that the appellant provided the service of consulting engineer.

3. The appellant developed technical know-how for themselves for providing e-governance and rural governance in rural India and named the same as Gramdoot Project. As the appellant could not implement themselves the project the ~~same~~ technical knowhow was sold to M/s Akash Broadband Ltd. through an agreement. The contention is that the appellant never provided the service of consulting engineering rather the agreement is for the transfer of technical know-how, therefore, the demand of Service Tax as provider of consulting engineering service is not sustainable.

4. The contention of the Revenue is that the agreement is for rendering advise for setting up the Gramdoot Project, therefore, the appellant being provider of consulting engineering service are liable for Service Tax.

5. We find that the demand is confirmed on the ground that the appellant provided the service of consulting engineering. As the Section 65 (ii) of Finance Act, consulting engineering means any professionally qualified engineer or any engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering. We have gone through the agreement the agreement is for ~~technical~~ technology transfer and as per the agreement the appellant had developed and launched a project named as Gramdoot and under the agreement the project was sold to M/s Aksh Broadband Ltd. and as per the agreement even ownership was also transferred to M/s Akash Broadband Ltd. for consideration. The consideration is for the Gramdoot technology transfer. In these circumstances as the agreement between the appellant and M/s Aksh Boradband Ltd. is for transfer of technology and not for providing any technical know-how service, therefore the demand by treating the appellant as

provider of consulting engineering service is not sustainable hence set aside. The appeal is allowed.

(Pronounced on 7/11/08

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM