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

Appeal No. ST/262 /2007-SM[BR] Date 14/05/2008

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

To :
M/S NATIONAL ENGINEERING INDUSTIES LTD.
KHATIPURA ROAD, JAIPUR

M/S NATIONAL ENGINEERING INDUSTIES LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 770 /2008 –SM[BR] dated 13.12.2007 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.R. BIPIN GARG ADV.
   B-1/ 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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Service Tax Appeal No.262 of 2007-SM

(Arising out of Order-in-Appeal No.31/GRM/ST/JPR-1/2007 dt.7.2.07 passed by the Commissioner(Appeals), Jaipur)

For approval and signature:

Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

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 Department Authorities:	:	

M/s. National Engg. Industries Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance

Sh. Bipin Garg, Adv. For Appellant

Sh. S.L.Meena, Authorised Representative(DR) For Respondent

Coram: Hon'ble Mr.P.K.DAS, MEMBER JUDICIAL

Date of decision: 13.12.07

Final Order No. 770/08-SM(BR)

Per P.K.Das:

The appellant filed this appeal against rejection of refund claim of Rs.3,64,418/- wrongly paid by them on "Business Auxiliary Services".

2. The relevant facts of the case in brief are that the appellant is the agent of General Motors Corpn. USA(in short "GMC") and had provided services of sourcing them the contract from Indian Railways. Under Rule 3 of Export of Services Rule,2005, export of service is exempted from service tax. The appellant wrongly paid service tax on the commission got from M/s. General Motors Corpn. through Indian Railways and claimed the refund of tax. The adjudicating authority rejected the refund claim because it is hit by Rule 3(1)(b) of the said Rules. The Commissioner(Appeals) upheld the adjudication order.

3. Ld. Advocate on behalf of the appellant placed the copy of the contract between the parties. He submits that it is revealed from the Purchase Order of Indian Railways that the appellant would get the commission in foreign-exchange. But the Indian Railways deducted the appellant's commission in their bills raised to GMC for the purpose of releasing less foreign exchange from Reserve Bank of India for payment. Therefore, the appellant received the commission from M/s. GMC through Indian Railways in Indian rupees in lieu of foreign exchange. He submits that it is clearly evident that the payment received by the appellant in Indian

rupees in lieu of foreign-exchange and therefore, there is no violation of Rule 3(1)(b) of the Rules.

4. Ld. DR on behalf of the revenue submits that it is admitted position the appellant received the commission in Indian rupees and therefore, it is hit by Rule 3 of the said Rules. He further submits that proviso to Rule 3 provides export of service only if payment for such service provided is received by the service provider in convertible foreign exchange.

5. After hearing both the sides and on perusal of the record, the relevant portion of the Annexure to Purchase Order dt.31.12.04 is reproduced below:

> "5. Agency Commission – 5% i.e. USD 60433.73 shall be paid in equivalent to non-convertible Indian Rs. at the T.T.buying Rate of Exchange prevailing on the date of supply order which is USD 1.00 – Rs.43.50 on 31.12.04 to your Indian Agent M/s. N.E.I. Ltd., Jaipur. Agent will submit the bill together with certificate issued by consignee regarding receipt of material in good condition in accordance with the contract and current valid I.T.C.C.".

6. It appears from the Annexure to Purchase Order that necessary foreign exchange would be released to the Indian Railways for payment to GMC. It further appears that the appellant shall raise the bill to the consignee(Indian Railways) at 5% agency commission at USD which shall be paid in equivalent to non-convertible Indian rupees. Ld. Advocate submits that Indian Railways deducted the commission of the appellant in their bill raised to M/s. GMC,USA and the less amount of foreign-exchange was released. Thus, if GMC would pay the appellant agency commission in foreign-exchange, then the same amount of foreign-exchange shall be

released to Indian Railways to pay GMC,USA. In effect, the amount of foreign-exchange was not released to the Indian Railways, which may be treated as the appellant received payment in convertible foreign-exchange. Rule 4 of Export of Services Rules,2005 provides any service, which is taxable under Clause (105) of Section 65 of the Act, may be exported without payment of service tax. Sub-rule (2) of Rule 3 of the Rules, is as under:

"(2) The provision of any taxable service shall be treated as export of service when the following conditions are satisfied, namely:-

(a) such service is delivered outside India and used outside India; and

(b) payment of such service provided outside India is received by the service provides in convertible foreign exchange".

7. In order to avail the benefit of Rule 4, the assessee has to fulfil the conditions of Rule 3(2) of the said Rules. I agree with the submission of the Ld. DR that the purpose of Rule 3(2) of the said Rules is to earn convertible foreign exchange and then benefit of exemption of service tax would be extended to the assessee. In the present case, it is revealed from the Purchase Order that payment would be made to the appellant by convertible foreign exchange from USA company through Indian Railways, who paid in Indian Rupees as the same amount of foreign exchange was not released by them. It is well settled that machinery of a statue should be interpreted so as to promote the object and purpose of the scheme. Further, once the

legislative intention is properly understood, then the case should be decided in fulfilment with the legislative intention. In the present case, it is revealed from contract that the appellant would be paid USD equipment to non-convertible Indian Rupee at the Rate of Exchange prevailing on the date of supply order. It is noted that the equivalent amount of foreign exchange payable to the appellant was not released to the Indian Railways, and therefore, the appellant complied with the provision of Rule 3(1)(b) of the Rules.

8. In view of the above discussion, I find that the denial of benefit of Rule 4 of the said Rules is not justified. So, the impugned order is not sustainable and accordingly, it is set aside. The appeal is allowed with consequential relief.

Order dictated in the open Court.

(P.K.Das)
Member Judicial

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