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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/711 /2010 – SM[BR] ST / STAY / 1282/2010-SM[BR] Date 16/11/2010

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

To :
M/S. RAJRATAN GLOBAL WIRES LTD.

PLOT NO. 200A & B, SECTOR-1, PITHAMPUR, DISTT.
DHAR (MP)

M/S. RAJRATAN GLOBAL WIRES LTD. Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No**.1267/2010-SM[BR]&S/540/2010 dated 29.10.2010 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
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. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
**West Block No. 2, R.K. Puram,**
**NEW DELHI-110 066**

**ST/STAY/1282/2010-SM IN &**
**SERVICE TAX APPEAL NO. 711 OF 2010**

[Arising out of Order-in-Appeal No. IND-I/042/2010 dated 11.02.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

**Date of Hearing/decision: 29th October, 2010**

M/s. Rajratan Global Wires Ltd. Appellant

Versus

CE & C, Indore Respondent

**Appearance:**
None for the appellant;
Shri K.P. Singh, D.R. for the respondent

Coram: Hon'ble Shri D.N. Panda, Judicial Member

**FINAL ORDER NO.** 267/2010 SM(BR) & S-540/2010 SM (BR) **dated**

**Per D.N. Panda:**

None present for the appellant. Learned D.R. appearing for Revenue submits that the order passed by the learned adjudicating authority is proper and that should be upheld.

2. Learned Counsel for the appellant submits that during the material period Engineering Consultancy service availed from foreign service provider was not

brought to tax net w.e.f. 1.1.2005 while the appellant's adjudication has been done for the period 2002-03 and 2004-05.

3. The appellant submitted further that considering that the amount in question was paid under protest and utilized for availing Cenvat credit being reversed subsequently, learned adjudicating authority allowed the claim of refund of that amount to the appellant. But such decision was reversed by the Commissioner (Appeals) for no good reason. While passing reversal order, the learned Appellate Authority by his order dated 6.8.2008, although agreed with the decision made by his predecessor in the case of the same appellant, rejected the claim of refund.

4. Heard both sides and perused the record. Record reveals that the period under dispute was 2003-04 and 2004-05. Learned Commissioner (Appeals) has brought out that service tax was payable on the part of consultancy service w.e.f. 1.1.2005 and that particular fact made the appellant handicapped to claim Cenvat credit. Record also transpires that while passing the order, the judgment of the Apex Court affirming Indian

National Ship Owners Association vs. UOI - 2009 (13) STR 235 (Bom.) was not before him. So also, following the decision of the Bombay High Court in the same case the order passed by the Tribunal in the case of Dimensional Stone vs. CCE, Jaipur - 2009 (16) STR 313 (Tri. - Del.) was also not before him. Therefore, he considered that Cenvat credit is not admissible.

5. There appears that there is no dispute that certain amount was deposited by the appellant who had subsequently availed Cenvat credit on the same amount. Pleading of the appellant was also that deposit was also made under protest. It appears that pleading of the appellant did not appeal to the learned appellate authority for which he denied relief. But the law as that was existing during the year 2003-04 & 2004-05 appears to have not brought foreign engineering consultancy service into the fold of service tax. Therefore, it would be proper to re-examine the entire issue as to immunity from taxation for the material period in the light of the decision of the Apex Court affirming the decision of the Hon'ble High Court of Bombay in the case of Indian National Ship Owners Association case (supra). While reconsidering the

matter, the manner of protest, if any, should receive his consideration to test the bar of unjust enrichment. Accordingly, he is expected to examine from both angle i.e. the angle of immunity from tax and doctrine of unjust enrichment following the statutory provisions as well as the law laid down by the Apex Court for Sehakari Khand Udyog Mandal Ltd. vs. CCE&C – 2005 (181) ELT 328 (SC). So also, if there shall be taxability, the law should be applied properly. When the matter suggested as above, it would not be desirable to keep the appeal pending just disposing off the stay application. Accordingly, pre-deposit is dispensed with and appeal is remand to the learned Commissioner (Appeals) to re-examine the matter in terms of above guideline and pass appropriate proper order. Thus, the impugned order is set aside in the manner indicated above and appeal is disposed off. So also stay application disposed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK