(2015) 11 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 602 Of 2009

National Engineering Industries Ltd. APPELLANT

Vs

C.C.E., Jaipur I RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Citation : (2015) 11 CESTAT CK 0023

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Bipin Garg, Ranjan Khanna

Final Decision : Allowed

Judgement

1. 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.

