

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**

PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No. 608 of 2009

[Arising out of Order-In-Appeal No. 94-ST/APPL/KNP/2009 dated 23.04.2009 and Review Order in C No. IV/568/R/O/2008 dated 6.8.2009 passed by Commissioner of Customs & Central Excise Kanpur]

For approval and signature:

Hon<sup>ble</sup> Mr Ashok Jindal, Member (Judicial)

Hon'ble Mr. R K Singh, 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 should 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?

Commissioner of Central Excise & ST, Kanpur

Appellants

Vs.

M/s. Roger Exports

Respondent

Appearance:

Shri B B Sharma, AR for the Appellants

Ms. Priyanka Goel, Advocate for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Hon'ble Mr. R K Singh, Member (Technical)

Date of Hearing /decision: 12.6.2015

FINAL ORDER NO. A/51896 /2015-ST

Per Ashok Jindal :

Revenue has filed the appeal against the impugned order for allowing refund claim to the respondent.

2. The facts of the case are that respondents are manufacturing and exporting. They paid commission to their foreign agent and paid service tax thereon during the period June, 2005 to June, 2007. They availed services of foreign commission agent during the period 1995-1997 and paid the amount of commission to the agent during the period 2005 to September, 2007. On the said amount, the respondents inadvertently paid the service tax. Thereafter, on realization that the respondent is not required to pay service tax for the services received during the period 1995-1997, they filed refund claim of service tax paid on commission paid to foreign agent. The adjudicating authority denied the refund claim but on appeal, learned Commissioner (Appeals) examined the issue and held that as per the decision of Apex Court in the case of Indian National Ship owners Association vs. UOI [2011 (21) S.T.R. 3 (SC)] in the impugned year, the respondents was not required to pay service tax, allowed the refund claim. Aggrieved from the said order, Revenue is before us.

3. Heard the parties. Considered the submissions.

4. In this case, it is admitted fact that respondent has received the services during the period 1995 to 1997. Although remuneration of the services has been paid during 2005- 2007, but as service tax is

payable when the services has been provided as held by Hon<sup>ble</sup> High Court of Delhi in the case of Consulting Engineering Services (I) Pvt. Ltd. [2013 (30) STR 586(Tri-Del)]. Therefore, we hold that respondents were not required to pay service tax on the services received from foreign agent during the impugned period as per decision of Hon<sup>ble</sup> Apex Court in the case of Indian National Ship Owners Association(supra). In these circumstances, learned Commissioner (Appeals) has rightly allowed the refund claim to the respondent. Consequently, we do not find any infirmity in the impugned order and the same is upheld.

5. Appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

( Ashok Jindal )

Member (Judicial)

( R K Singh )

Member (Technical)