

Service Tax already deposited cannot be demanded again from a person who has taken over the business

A Case Study

Udyog Software (India) Ltd.

30/09/2014

**Essar Projects Ltd. vs. CCE & ST. Rajkot
[2014 (9) TMI 462-CESTAT Ahmedabad]**

In the instant case, Essar Projects Ltd. (Essar) sold the entire business pertaining to their 'Construction Division' to Essar Construction (I) Ltd. (the **New Company**), w.e.f. June 30, 2006 as per 'Business Transfer Agreement'.

The Department contended that amount received by the New Company on account of the services rendered post June 30, 2006, though the entire Service tax liability pertaining to these services had already been discharged by Essar, the New Company is liable to pay Service tax on same. The Department issued Show Cause Notice to the New Company and the demand was confirmed by the Adjudicating authority.

On appeal to the Hon'ble CESTAT-Ahmedabad, the Hon'ble CESTAT relied on the earlier audit report of the Revenue that the entire Service tax liability had already been discharged by Essar. Accordingly, it was held that Service tax liability which has already been discharged cannot be again recovered from the New Company, which has taken-over the business from a particular day.

Assessment:

This would amount to double taxation on the same service which is not contemplated in law.