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

Appeal No. ST/473 /2006 Date 19/08/2008

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

To :
M/S JCB INDIA LTD.
23/7,MATHURA ROAD,FARIDABAD.

M/S JCB INDIA LTD. Appellant
Vs
C.S.T.DELHI. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/208/08 **Customs** dated 06.08.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.S.T.DELHI.
   C.R. BUILDING,I.P.ESTATE,N.DELHI.
2. Adv. / Consult
   MR.ANITA RASTOGI
   PRICE WATER HOUSE COPERS PVT LTD,SUCHETA BHAWAN 11-A,VISHNU DIGAMBER MARG NEW DELHI 110002
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.1

Service Tax Appeal No. 473 of 2006
[Arising out of Order-in-Original No. 26/RK/2006 dated 02.06.2006 passed by the Commissioner of service Tax, Delhi]

Date of Hearing/ decision: 06.08.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s JCB India Limited — Appellant

Vs.

Commissioner of Service Tax, Delhi — Respondent

Appearance:

Ms. Amita Rastogi & Mr. Dheeraj Srivastava, Advocates for the Appellant
Mr. Amit Jain, Authhorized Representative (DR) for the Respondent

CORAM: Mr. Justice S.N. Jha, President
Mr. M. Veeraiyan, Member (Technical)

Final ORDER No S7/208/08

Per Justice S.N. Jha:

This appeal by the assessee is directed against the order-in-original of the Commissioner, Sales Tax Delhi dated 02.06.2006. The dispute relates to service tax. The appellant is recipient of consulting engineer service from abroad. The period under dispute is March 2004 to July 2004.

2. A Larger Bench of the Tribunal has held in the case of Hindustan Zinc Limited vs. CCE, Jaipur (Service Tax Appeal No. 523 of 2006) decided on 27.06.2008 that recipient of consulting engineer service from outside India is not liable to pay service tax prior to 01.01.2005. It would, thus, appear that dispute which relates to the period prior to 01.01.2005 is covered by the said decision of the Larger Bench.

3. Shri Amit Jain, learned DR appearing for the Revenue, however, submitted that by reason of the agreement entered into with the service providers the appellant has committed to bear the tax liability of the service provider and, therefore, irrespective of the period, the appellant would be liable to pay service tax for the period in question. Shri Jain placed heavy reliance on CCE Thiruvananthapuram vs. Kerala State Electricity Board - 2006 (3) STR 625 (Ker.) and submitted that the Kerala High Court has ruled that the service receiver is liable to pay service tax from to 16.8.2002. It was stated that decision of the Kerala High Court was upheld by the Hon'ble Supreme Court vide -2008 (9) STR 3 (SC).

4. We have perused the judgements of the Kerala High Court and the Supreme Court. It is true that in the question of law framed by the High Court, reference was made to the period both prior to 16.08.2002 and subsequent, but on perusal entire judgement it is clear that the sum and substance of the dispute was the liability of the service recipient. The point

canvassed was whether in view of the specific terms of the agreement the service recipient was liable to pay service tax or not. The point was answered against the service recipient. With due respect, we are not able to appreciate as to how tax liability which is creature of statute and governed by statutory provisions can be determined or apportioned on the basis of terms of the agreement between two private parties. Be that as it may, the point for consideration in the Supreme Court was whether the service recipient was also liable to pay interest on the service tax. There is nothing in the judgement to suggest that the question as to whether service recipient was liable to pay service tax prior to 01.01.2005, was gone into.

5. We are satisfied that this appeal is squarely covered by the decision of the Larger Bench (supra). We, accordingly, set-aside the impugned order of the Commissioner (Appeals) and allow the appeal with consequential relief, if any.

[Dictated and pronounced in the open Court on 06.08.2008]

(Justice S.N. Jha)
President

[M. Veeraiyan]
Member [Technical]

[Pant]