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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/140 /2007 - CU[DB] Date 22/09/2008

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

To :
M/S NESTLE INDIA LIMITED
JACARANDA MARG, M-BLOCK, DLF CITY, PHASE-II,
GURGAON, HARYANA

M/S NESTLE INDIA LIMITED Appellant

Vs

C-ST DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/254/08 CU[BR] dated 4/9/08 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-ST DELHI
   IAEA HOUSE, 17-B, M.G. MARG, I.P.ESTATE, NEW DELHI
   110002
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.I
NEW DELHI

Service Tax Appeal No.140/2007-CU(BR)

(Arising out of order in original No. 44-45/RK/2006 dated 19.12.2006 passed by the Commissioner of Service Tax, New Delhi)

Date of Hearing/Decision: 4.9.2008

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?	No
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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Nestle India Limited — Appellant
(Rep. by Shri B.L. Narasimhan, Advocate)

Vs

CST, New Delhi — Respondent
(Rep. by Shri A.K. Madan, DR)

Coram: **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member(Technical)

Final Order No. 57/254/08

Per M. Veeraiyan:

This appeal is against the order in original of the Commissioner, Service Tax No.44-45/RK/2006 dated 19.12.2006. The appellant has been receiving the service of consulting Engineer from their holding company named Societe Des Produits Nestle S.A. The period under dispute is from 6.8.2002 to 9.9.2004.

2. The Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd Vs CCE Jaipur reported in 2008 (87) RLT 317 (CESTAT-LB) has held as under:-

> *"The scheme of the law relating to service tax so far as relevant may briefly be noticed. The provisions are contained in Chapter V of the Finance Act, 1994 as amended from time to time. As the dispute herein pertains to the period from January, 2004 to July, 2005, the provisions as they stood during the relevant period only, need be noticed. Section 65 which is the definition clause, inter alia, defines 'taxable service'. The taxable service with which we are concerned in this appeal is' consulting engineer'* service figuring at sub-clause (g) of clause (48) of Section 65 at the relevant time. Section 66 is the charging provision. At the relevant time it comprised of five sub-sections. Sub-section (3) which dealt with the 'consulting engineer' service laid down:-
>
> "With effect from the date notified under Section 88 of the Finance Act, 1997 (26 of 1997), there shall be levied a service tax at the rate of 5% of the taxable services referred to in sub-clauses (g),(h), (i), (j), (k),(l),(m) and (o) of clause (48) of Section 65 and collected in such manner as may be prescribed"

Section 67 contained provisions regarding valuation of the taxable service, that is, the measure of tax. Section 68 dealt with payment, that is, who shall pay the tax and the manner. Having regard to the significance of the provisions of section 68 in the instant case, it may be quoted verbatim as follows:

"68(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Continuing with the scheme, Section 69 contained provisions regarding registration, section 70 provided for filing returns and section 71 dealt with assessment. Section 94 conferred power on the Central Government to make rules. In exercise of the said ruling power, the Central Government framed Service Tax Rules, 1994 which too was amended from time to time.

Although not relevant for this case, it may be mentioned that with effect from 18.4.2006, section 66-A was inserted in the Act by Finance Act, 2006 incorporating provision regarding charge of service tax on services received from outside India. With the incorporation of section 66-A, the dispute in the matter of levy of service tax on services received from abroad afterwards has generally come to an end."

17. The upshot of the above discussion is that the taxable service provided by a non-resident or from outside India, who does not have any office in India, having been specified as 'taxable service' with effect from 1.1.2005, under Notification No. 36/2004, recipient of such service could not be held liable for paying service tax prior to 1.1.2005 notwithstanding the amendment in Rule 2(1)(d) of the Service Tax Rules under Notification No. 12/2002."

3. Both sides agree that the facts of the present case are substantially the same as those in the case of Hindustan Zinc Ltd cited supra. The same decision has been followed by the Tribunal in other cases also e.g. the case relating to M/s JCB India Ltd vide Final Order No. ST/208.08 dated 6.8.2008.

4. In the light of the above, following the decision of the Larger Bench in the case of Hindustan Zinc Ltd cited supra, we hold that in the present case, the appellant is not liable to pay the service tax prior to

1.1.2005 and accordingly we allow the appeal with consequential relief. We have not gone into other grounds raised by the appellant.

(Order dictated and pronounced in the open Court).

(Justice S.N. JHA)
President

(M. Veeraiyan)
Member(Technical)

MPS*