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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/525 /2006,549 /2006 - CU[DB] Date 07/10/2008

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

To :
C.C.E.INDORE
P.B. NO 10, MANIK BAGH PALACE, INDORE(MP)

C.C.E.INDORE Appellant
Vs
M/S NICHOLAS PIRAMAL INDIA LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/265-66/08 **CU[DB]** dated 25.09.08 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
   M/S NICHOLAS PIRAMAL INDIA LTD
   SECTOR 2, PITHAMPUR, DISTT- DHAR, MP
2. Adv. / Consult Sh. A.R.Mahadav Rao, Adv
   C/O Respondent

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 - 3
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,Chenna
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 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

M/S NICHOLAS PIRAMAL INDIA LTD
PLOT NO 67-70, SECTOR II, INDUSTRIAL AREA, PITHAMPUR, DISTT- DHAR.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

ST **Appeal No. 525 & 549/2006**

[Arising out of Order-in-Original No. 25-Commr/ST/IND/2006 dated 20.7.2006 passed by Commissioner, Customs & Central Excise, Indore (MP)]

For approval and signature:

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

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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?	:	Yes
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

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Commissioner of Customs &Central Excise Indore — Appellant

Vs.

M/s. Nicholas Piramal India Ltd. — Respondent

AND

M/s. Nicholas Piramal India Ltd — Appellant

Vs.

Commissioner of Customs & Central Excise Indore — Respondent

Appearance: Mr. Vijay Kumar, DR for the Department
Mr. A.R.Madhav Rao, Advocate for the assessee-respondent

CORAM:

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

DOH: 25.9.08

Final. ~~89~~ **ORDER NO.** /ST/265-266/08

Per M. Veeraiyan (for the Bench):

Appeal No. ST/525/2006 is by the department against the order of the Commissioner No. 25-Commr/ST/IND/2006 dated 20.7.2006. Appeal No. 549/2006 is by the assessee against the very same order against the portion of the order by which a sum of Rs.2,51,223/- was confirmed against them with equal penalty.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:-

(a) The assessee received management consultancy services from eight foreign consultants/firms and two of them had office in India. The service was received during the period prior to 1.1.05.

(b) Commissioner by his order dated 20.7.06 dropped the demand in so far as it related to the services received from three firms who had not authorised the party to pay the service tax in terms of contract; he dropped the demand in respect of the services received from two parties on the ground that they had office in India. In respect of three other parties, in the absence of any agreement produced by the parties, he inferred that party was authorised to pay service tax and accordingly confirmed the demand.

(c) The Department is in appeal in respect of demands dropped and the assessee is in appeal in respect of demand confirmed against them.

4. Learned DR submits that the services received by them were taxable during the relevant period and dropping of the demand was not justified.

5. Learned advocate appearing for the party submits that in all these cases, services have been received from foreign firm /persons

during the period prior to 1.1.05 and in the light of decisions of Larger Bench in the case of Hinustan Zinc Ltd. [2008 (11) STR 328], no service tax can be demanded from the recipient of services for the services received prior to 1.1.2005. As regards demand relating to three parties which has been confirmed against them, he submits that the inference of the Commissioner that, in the absence of agreement, the party was authorised to pay service tax is erroneous. Even otherwise, the tax liability due to the Government cannot be determined by contract "inter ~~intra~~ vivos" between the private parties. In this regard, he relies on the decision of the Tribunal vide Final Order No. ST/208/08 dated 6.8.08 in the case of M/s. JCB India Ltd. He also relies on the decision of the Hon'ble Supreme Court in the case of Deputy Commercial Tax Officer vs. Sha Sukraj Peerajee [1968 (21) STC 5] thereunder it has been held as follows:-

> "....But even on the assumption that the respondent undertook to pay the arrears of sales tax due by the transferor, it does not follow that there is a liability created inter se between the State Government on the one hand and the transferee on the other hand."

6. In the light of the above, following the decision of the Larger Bench in the case of Hindustan Zinc cited supra, we allow the appeal of the party and reject the appeal of the department.

(Dictated & pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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