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

Appeal No. **ST/365 /2011 – SM[BR] ST/ STAY/ 729 /2-11& ST/ COD/ 93/ 2011-SM[BR]** Date **03/08/2011**

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

To :
M/S ASHOK HOTEL DIPLOMATIC ENCALVE,
50-B, CHANAKYAPURI,
NEW DELHI.
110021

M/S ASHOK HOTEL DIPLOMATIC ENCALVE, Appellant
Vs
C.S.T. DELHI Respondent

am directed to transmit herewith a certified copy of **Final order No.443/2011-SM[BR]&S/431/11 &M/99/11** dated 6.6.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult SHRI A.K. JAIN C.A.
M/S APPELLANT:----------

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.3

ST/COD/93/11 in Appeal No.ST/365/11-SM
ST/Stay/729/11 in Appeal No.ST/365/11-SM

(Arsing out of Order-in-Appeal No.406/ST/DLH/2010 dated 16.11.2010 passed by the CCE (A), New Delhi)

For approval and signature:

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?	Yes
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

Ashok Hotel — Appellants

Vs.

CCE, New Delhi — Respondent

Present for the Appellant: Shri A.K.Jain, CA of Co.
Present for the Respondent: Shri R.K.Gupta, SDR

Coram: Hon'ble Mr. M.Veeraiyan, Member (Technical)

Date of Hearing: 06.06.2011
Date of Decision: 06.06.2011

Final **ORDER NO.** 443/2011 SM(BR) &
S-431/2011, M-99/2011 SM(BR)

PER: M.VEERAIYAN

Heard both sides.

2. The delay of one day in filing the appeal is condoned.

3. Considering the nature of dispute and considering the entire amount of service tax alongwith interest stands paid, pre-deposit of penalty is waived and stay petition is disposed of and appeal itself is taken up for final hearing.

4. The appellant is a major tax payer of service tax having paid about Rs.32 lakhs in 2007, Rs.22 lakhs in May, 2007 and Rs.20 lakhs in 2007 etc. However, it is noticed that during Apri, 2007 to March, 2008 totally a sum of Rs.23,056/- was found short paid. A show cause notice dated 16.10.08 was issued proposing recovery of Rs.23,056/- alongwith interest of Rs.25,126/-. The appellant, on receipt of show cause notice paid the entire amount of service tax of Rs.23,056/- alongwith interest amounting to Rs.25,126/-. The original authority without accepting the appellant's request for adjournment of personal hearing passed an ex-parte order and imposed a penalty of Rs.23,056/- under Section 76 of Finance Act, 1994 for the delay in payment of service tax. The Commissioner (Appeals) has upheld the order imposing penalty.

5. Authorized Representative of the appellant company submits that the assessee is a hotel run by the publict sector undertaking. The clerical errors which crept in a few months has resulted in a short payment of Rs.23,056/-. This error was detected by the Central Excise authorities during checking of service tax returns. The appellant promptly paid the service tax involved alongwith interest. Therefore he seeks waiver of penalty invoking the provisions of Section 80 of the Finance Act, 1994.

6. Learned SDR reiterates the findings and reasoning of the Commissioner (Appeals).

7. I have carefully considered the submissions and perused the records. The short payment during April, 2007 to March, 2008 is very insignificant as compared to service tax paid by them which is in crores. The short payment is attributed to clerical mistakes. In the facts and circumstances of case, I hold that sufficient cause has been shown for invoking the provisions of Section 80 of Finance Act, 1994. In view of the above, the order of the Commissioner (Appeals) in so far as the same related to upholding the penalty of Rs.23,056/- under Section 76 is concerned, the same is set aside and the appeal is allowed with consequential relief as per law.

8. The appeal is allowed. The stay petition and application for condonation of delay are also disposed of.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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