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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/754 /2007, - CU[DB] Date **20/07/2011**

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

To :
C.S.T. DELHI

17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI Appellant

Vs

M/S COMPETENT AUTOMOBILES CO. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/295/ 2011 CU[DB]** dated 06.07.2011 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 COMPETENT AUTOMOBILES CO. LTD.
COMPETENT HOUSE, F-14,
CONNAUGHT PLACE, NEW DELHI

110001

2. Adv. / Consult

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 110005
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 (Haryana)
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
(Customs Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI
COURT ROOM NO.III

Service Tax Appeal No.754/2007

(Arising out of the Order-in-Original No.33/VKG/2007 dated 29.09.2007 passed by Commissioner of Service Tax, New Delhi.)

For approval and signature of:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE 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 ? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental Authorities ? :

Commissioner of Service Tax, New Delhi

...APPELLANT(S)

VERSUS

M/s.Competent Automobiles Co.Ltd.

...RESPONDENT(S)

APPEARANCE

Shri Amrish Jain, Departmental Representative (SDR)

FOR APPELLANTS

Shri H.K.Gandhi, Advocate

FOR THE RESPONDENTS

CORAM:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE MEMBER (TECHNICAL)

DATE OF HEARING: 06.07.2011

Final **ORDER NO.** ST/295/11..

PER S. S. KANG,

Heard both sides.

2. Revenue filed this Appeal against the impugned order passed by the Commissioner. The Commissioner in the impugned order confirmed the demand of Service Tax of Rs.1,56,48,080.91(Rupees One Crore Fifty Six Lakhs Forty Eight Thousand and Eighty and Ninety One Paisa only) on the ground that the Respondents provided business auxiliary service to M/s.Maruti Finance. However, the Commissioner has not imposed any penalty under Section 76/78 of the Finance Act. Contention of Revenue is that in the impugned order there is a finding that there is a willful suppression of fact with intent to evade payment of Service Tax. In spite of this the adjudicating authority invoked ~~the~~ Section 80 of the Finance Act and held that there is a reasonable cause for the said failure and had not imposed any penalty under Section 76 or 78 of the Finance Act. Submission is that in view of the clear finding that there is a suppression of facts with intent to evade payment of duty the Respondents are liable for penalty.

3. The contention of Respondent is that the Respondents are registered with the Revenue authorities as provider of business auxiliary service and paying service tax. The default was ~~This~~ in respect of the service provided to M/s.Maruti Finance. In ~~the year~~ May 2004 the Maruti Finance informed their dealers that M/s.Maruti Finance is discharging Service Tax hence dealers need not to pay any Service Tax in respect of service of Maruti Finance and M/s.Maruti Finance started paying Service Tax and only after August 2004 M/s.Maruti Finance stopped paying Service Tax on

behalf of their dealers. When this fact was pointed out by the Revenue the Respondents immediately paid the tax along with interest. Hence the provision of Section 80 of the Finance Act is rightly invoked by the adjudicating authority.

4. The very fact that the legislature has included Section 78 within the scope of Section 80 of Finance Act would imply that even in cases where suppression is involved the adjudicating authority can exercise power under Section 80 of the Act. In the present case also the adjudicating authority has done so. Further we find that the Tribunal in the case of CST, New Delhi v. Kuoni Travel (India) Limited vide final order No.ST/44/11 in Appeal No.752/2007 held as under:-

> 6. Upon perusal of the impugned order and hearing the Jt.CDR we find that the authority is duly empowered under section 80 to waive the penalty under Section 78 in case the assessee discloses sufficient cause for exercise of such power. The authority below on analysis of materials on records has held that though there was to some extent suppression of facts, the assessee had immediately cleared the tax liability upon being pointed out. Alongwith the payment of interest and the assessee had also cooperated with the department in the course of investigation. Besides there are various other reasons available on record to justify the view taken by the lower authority. In these circumstances, there was reasonable cause for failure on the part of the assessee to clear the dues in time. We do not find that the said finding can be said to be either perverse or not borne out from the record. In those circumstances, the discretion having been exercised by the Commissioner in favour of the assessee, in the peculiar facts of the case, we do not find a case for interference with the impugned order.

4. In the present case as the Appellant paid the tax and ~~the limit~~ interest immediately when Revenue pointed out that, thereafter also cooperated

with the Revenue authorities and in view of this we find no reason to interfere with the discretion exercised by the adjudicating authority under Section 80 of the Finance Act. The Appeal is dismissed.

(MATHEW JOHN)
MEMBER(TECHNICAL)

(S.S. KANG)
VICE PRESIDENT

sm/-