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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/752 /2007 - CU[DB] Date **23/02/2011**

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 KUONI TRAVEL (INDIA) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/44/ **201 CU[DB]** dated 13.01.11

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 KUONI TRAVEL (INDIA) LTD.
SITA INBOUND DIVISION,
PRESINDENTIAL BUSSINESS
PARK, C-9, VASANT KUNJ, NEW
DELHI
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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Date of Hearing/Decision: 13.01.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, 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?	Y

Service Tax Appeal No. 752 of 2007
[Arising out of order in original No.32/Vkg/2007 dated 27.09.2007 passed by the Commissioner, Service Tax, New Delhi].

CST, New Delhi — Appellants
[Rep. by Shri B.K. Soni, DR]

Vs.

M/s Kuoni Travel (India) Limited — Respondent
[None]

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Mathew John, Member (Technical)

Final ORAL ORDER NO. ST/44/11

Per: Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellants. None present for the respondent though served.

2. This is an appeal against the order dated 25.09.2007 passed by the Commissioner, Service Tax, New Delhi. The challenge to the impugned order is confined to the issue of penalty under Section 78 of the Finance Act, 1994.

3. By the impugned order, the Commissioner confirmed demand to the tune of Rs. 1,08,54,872/- for the period from 1st July 2003 to June 2005 and also ordered payment of interest and penalty under Sections 76 & 77 of the said Act. However, refrained from imposing penalty under Section 78 while holding that the assessee had made out reasonable cause for non imposition of penalty under the said section.

4. While assailing the impugned order, it was submitted on behalf of the department that the Commissioner erred in giving benefit of Section 80 of the said Act to the assessee while refraining from imposing penalty under Section 78.

5. The Commissioner while dealing with the aspect of the penalty under Section 78 has clearly held that the assessee had co-operated with the department in the course of investigation and has discharged the service tax liability immediately upon being informed about the same by the department, though there was some delay in clearing the said dues. In those circumstances it has been observed that there was reasonable cause for failure to pay the tax and no penalty was imposable under Section 78, taking into consideration the provisions of Section 80 of the said Act.

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.

Per: Hon'ble Shri Mathew John:

7. I fully endorse the views taken by the Hon'ble President and wants to add that the appeal by the Revenue is on the ground that the reasons given by the Adjudicating Authority for invoking provisions of Section 80 of the Finance Act, 1994 is not proper. Section 80 of the Finance Act reads as under:-

> "Section 80 Penalty not to be imposed in certain cases- Notwithstanding anything contained in provisos to Section 76, Section 77, Section 78 or Section 79 no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure".

8. The main reason given by the Adjudicating Authority for invoking Section 80 of the Finance Act, 1994 is that the assessee cooperated fully during the investigation and also paid up the tax to be paid immediately, once their failure was pointed out. We are in agreement with the argument of the revenue that cooperation after commencement of enquiry cannot be a sufficient reason to invoke section 80 because if this argument is accepted many ~~assessee~~ assessees may await initiation of an enquiry for payment of tax. This is not what the law intends. Neither is it a desirable situation. However, we find that assessee had pleaded before the adjudicating authority many reasons for ~~his~~ their non-compliance. This tax liability arose due to the new entry at Section 65(105)(zzb) introduced with effect from 20.6.2003. Thus the tax liability arose under the category of "Business Auxiliary Service" for the period 1.7.2003 to June, 2005. The assessee was a tour operator who was also providing marketing services to different establishments like Bhandar Jewelers, Jaipur, Cottage Industries Exposition Ltd. New Delhi etc. in marketing the products of these establishments to the tourists serviced by the assessee. The assessee was getting some payments from these establishments.

9. The very nature of the entry relating to Business Auxiliary Service and the large number of disputes that arose regarding the scope of entry clearly show that there was some confusion in the minds of prospective assesses about the scope of this entry. This assessee has raised two other issues also. The assessee says that they were under the bonafide impression that they were eligible for the exemption under Notification No. 12/2003-ST dated 20.6.2003 for business auxiliary services provided by commission

agents. They also submitted that they were actually providing assistance to foreign tourists and was in no way promoting the business of the various establishments from which tourists were making purchases. While these arguments have been properly negatived in the adjudication order, we are of the view that there were sufficient reasons for failure on the part of the assessee to pay tax, to get relief under Section 80 of the Finance Act, 1994.

10. In the facts and circumstances of the case, we do not find this to be a fit case to interfere with the order of the adjudicating authority waiving penalty invoking provision of Section 80 of the Finance Act, 1994.

11. In view of what is stated above, the appeals fail and is hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant