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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/773 /2008, - CU[DB] Date **25/04/2012**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S HOTEL PRESIDENT PLANET, Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/346/ 2012 CU[DB]** dated 20.04.12 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 HOTEL PRESIDENT PLANET,
3, R.N.T. MARG, INDORE.

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-3
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)

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

Service Tax Appeal No. 773 of 2008

Date of Hearing/decision : 20.4.2012

[Arising out of Order-in- Appeal No. IND-I/135/2008 dated 20.8.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Indore]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:	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

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Commissioner of Customs
Central Excise, Indore — Appellants

Vs.

M/s. Hotel President Planet — Respondent

Appearance:
Shri Amrish Jain, AR for the Appellants
None for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final **ORAL ORDER NO** ST/A/346/12-Cus

Per Archana Wadhwa (for the Bench):

Being aggrieved with that part of the order in Commissioner (Appeals) vide which while confirming the demand against the respondents denying them the benefit of exemption Notification No. 12/03 dated 12.6.03 in respect of food items sold by them. he has set aside the penalty imposed upon them.

2. After hearing learned AR, we find that the penalties set aside by the appellate authority on the following grounds:

"Any order for imposing penalty specially the heavy once qas provided under Section 76 and 77 of the Act should show the reason justifying the imposition of penalty and thus following the principles of justice done. It is a fact on record that the Appellants had asked for clarification regarding availability of benefit of exemption Notification No. 12/2003 dated 20.6.03 from the department time and time again but as no response was made to their request under a bonafide belief of availability of said exemption notification had availed the benefit of said exemption notification. Even at the time of submission of quarterly returns no query was raised with the Appellants regarding amount shown

as "Amount billed for Exempted services". Which gives sufficient reasons in favour of the Appellants to waive the penalty imposed and accordingly the penalty imposed under Section 76 is waived off in terms of Section 80 of the Finance Act, 1994.

For imposition of the penalty under Section 78 of the Act suppression of the fact is must. Whereas in the case the department has no where established suppression by the Appellants and on the contrary the records available before me like copy of Service Tax-3 return the Appellants request to the department asking for benefit of exemption Notification and it subsequent reminders, the amount in their ST 3 returns filed from time to time before the authority. "As amount billed for exempted services" other than export are sufficient enough to prove that the Appellants had neither suppressed the facts nor had any intention to suppress the material facts from the department and as such there was no suppression on the Appellants part. Further, the most important thing in the case is that there was no proposal in the show cause notice for imposition of penalty under Section 78 of the Act and as there was no proposal to penalise the Appellants under Section 78 of the Act the impugned Order-in-original has gone beyond its limit by imposing penalty under Section 78. I also fully agree with the decisions cited by the Appellants wherein different Appellate Authority as well as the

Hon'ble Apex Court has decided that penalty will not be ordinarily imposed unless the party either acted deliberately and defiance and the law or was guilty of conduct contentious or dishonest or acted in conscious disregard of the obligation. As all these factors are absent in the instant case I find no reason to penalise the Appellants under Section 78 of the Act and accordingly, the penalty imposed under Section 78 vide the impugned order is waived of in terms of Section 80 of the Act."

3. As is seen from the above paragraph of Commissioner (Appeals)'s order, he has extended the benefit of Section 80 by observing that they were seeking clarification from the Revenue which was not responded. He also recorded that there ~~they~~ was no suppression on the part of the respondents. The Revenue in their memo of appeal have no where challenged, that the appellant was not seeking clarifications from the Revenue.

4. Apart from the above, we note that there are many decisions holding to the effect that food items sold by an assessee are exempted from payment of Service Tax. However, as the respondents have not come in appeal, the benefit of said decision cannot be extended to them for holding that no Service Tax is required to be paid. However, the said fact can be taken into consideration for arriving at a finding of non-imposition of penalty upon them .

5. In view of the foregoing discussion, we find no infirmity in the impugned order of Commissioner (Appeals) and accordingly, the appeal filed by the Revenue is rejected.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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