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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

STAY Application No. : ST/Stay/2281/2008
Appeal No. : ST/753/2008-CU[DB]

Dated: **21/09/2012**

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

ABHISHEK TOURS & TRAVELS,
MAIN DADRI ROAD, ATTA, SECTOR-27, NOIDA, GAUTAM BUDH NAGAR, (U.P.)

ABHISHEK TOURS & TRAVELS, (Appellant)

VS

C.C.E. NOIDA (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/600/2012-CU[DB]** dated **28/08/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

2. Advocate(s) / Consultant(s):
RAJIV SAXENA, RAJAT JOSEPH
318-D, MAYUR VIHAR PHASE-II,
NEW DELHI-110091.

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

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Assistant Registrar
CUSTOMS Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Appeal No.753/2008

(Arising out of order in Revision No.17/Coom/Noida/08 dated 30.4.08 passed by the Commissioner of Customs & Central Excise, Noida)

Date of Hearing: 28.8.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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 would 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 Department Authorities?	Yes

M/s Abhisek Tours & Travels — Appellant

Vs

CCE, Noida — Respondent

Appeared for the Appellant: Shri Rajeev Saxena, Advocate
Shri Rajesgh Chitkara, Advocate
Appeared for the Respondent: Shri Amresh Jain, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. ST/A/600/12-Cus.

Per Archana Wadhwa:

The short issue involved in the present appeal is as to whether the appellant, who was providing services of vehicles under the category of 'Rent a Cab Services" and who has deposited service tax of Rs.7,50,447/- is liable to be imposed with penalties under Sections 76 and 77 of the Finance Act, 1994. It is seen that the original adjudicating authority imposed penalty of Rs. 1,000/- each under Sections 75-A, 77 and 81 of the Finance Act and penalty of Rs.10,000/- under Section 76. The said order of original adjudicating authority was not appealed against by the appellant and as such, attained finality. However, the same was reviewed by Commissioner who vide his impugned order, enhanced the penalties to 100% of duty in terms of Section 76 and imposed penalty of Rs. 150/- per day under Section 78. Hence the present appeal.

2. Learned Advocate appearing for the appellant submits that the appellant is a house wife running the said business and was a small time tax payer. She was dependent on her chartered Accountant to guide her for payment of any taxes. During the relevant period, there was confusion about 'rent a cab' services in respect of persons who had less than 50 vehicles. As such, there was a bonafide belief on the part of the appellant that the said activity is not liable to service tax and as such, benefit of section 80 should be extended to her. For the above proposition, he relied on the Karnataka High Court decision in the case of CST Bangalore Vs. Vinayaka Travels 2011 (1) TMI 721 (HC).

3. We find that the Hon'ble High Court in the above decision dealt with an identical situation where the Commissioner in review proceedings reversed the order of the original adjudicating authority in not imposing any penalty on the service provider. By taking note of the fact that there was no evidence to reflect any malafide motive or intention on the part of the assesse in not paying the tax, the benefit of Section 80 was extended. In the present case also, we find that the law during the relevant period was not very clear and there could be some doubt on the part of the assessee and a reasonable cause for not depositing the service tax. As soon as the appellant was informed about her tax liability, the service tax was

deposited along with interest. In such a scenario, we are of the view that benefit of section 80 needs to be extended to the appellant. We accordingly set aside the impugned order of enhancement of penalty and restore the order of the original adjudicating authority. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)