

**Garg and Associates Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/38783](http://sooperkanoon.com/38783)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-19-2005

**Reported in :** (2005)(102)ECC80

**Judge :** A T V.K.

**Appellant :** Garg and Associates

**Respondent :** Cce

**Judgement :**

1. M/s Garg & Associates have filed this appeal challenging imposition of penalty under Section 76 of the Finance Act, 1994 and demand of interest on the Service Tax paid delayed.

2. I heard Shri K.K. Anand, learned Advocate for the Appellants, and Shri S. Bhatnagar, learned DR for the Revenue. The Appellants are practising Chartered Accountant. When the service tax was imposed on the services rendered by the practising Chartered Accountant the Hon'ble High Court granted Stay of the operation and implementation of Notification No. 53/98-ST dated 17.10.98; that the High Court subsequently has upheld the validity of the service tax on the services rendered by the practising Chartered Accountant. The High Court in its clarificatory Order dated 16.8.2002 left the matter regarding interest to be considered by the Department. The High Court, however, gave two months' time to the practising Chartered Accountant to comply with the formalities prescribed under the Service Tax Law and to pay service tax. On complying with that no penalty would be

imposed. The learned Advocate has fairly mentioned that the Appellants could not deposit the entire amount of service tax within the period of 2 months allowed by the Hon'ble High Court. In view of this the direction of the Hon'ble High Court that the department would not take any penal action against the practising Chartered Accountant is no more applicable as the entire service tax was not paid by them within the time limit specified by the High Court. It has also been contended by the learned Advocate that the penalty of Rs. 100 per day is not imposable under Section 76 of the Finance Act, 1994. This matter stands decided by the Larger Bench of the Tribunal in the case of ETA Engg. Ltd. v. CCE, Chennai, 2004 (174) ELT 90 (T-LB) wherein it has been held that the intention of the Legislature is quite clear that the penalty of Rs. 100 per day is required to be imposed in case of failure to pay the tax for every day after due date. The interest is also payable by the Appellants under Section 75 of the Finance Act, 1994 which clearly mandates that every person liable to pay tax shall pay interest, if he fails to credit the tax within the prescribed period. Accordingly I find no merit in the appeal which is rejected.

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