

**The Financers Vs. Cce**

**The Financers Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/45336](http://sooperkanoon.com/45336)

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

**Decided On :** Apr-16-2007

**Reported in :** (2007)10STJ261CESTATNew(Delhi)

**Judge :** R Abichandani

**Appellant :** The Financers

**Respondent :** Cce

**Judgement :**

1. The appellant seeks interim stay of the impugned order and waiver of pre-deposit of the penalty amounts. The Commissioner imposed penalty of Rs. 500/- for failure of registration under Section 75A of the Finance Act, 1994, penalty of Rs. 100/- per day from the date when the service tax became payable till the actual date of payment of the confirmed service tax amount under Section 76 of the Act and a penalty of Rs. 1,15,173/- under Section 78 of the said Act being equal to the demand of service tax confirmed against the assessee under Section 73, as per the order-in-original passed by the Assistant Commissioner.

2. Section 76 of the Act provides that if any person, liable to pay service tax fails to pay it, he will have to pay in addition to the tax and interest thereon, a penalty which shall not be less than Rs. 100/-, but which may extend to Rs. 200/- for every day during which such failure continues subject to the maximum of service tax that he failed to pay. Section 76, therefore, is a provision which does not require a guilty mind and deals with a case where the liability to pay service tax is not

discharged under the provisions of the Act. In contrast, Section 78 of the Act, specifically deals with cases of evasion of payment of service tax with a guilty mind. Under the said provision, if any person has, with intent to evade payment of service tax, suppressed or concealed the value of taxable service or has furnished inaccurate value of taxable service, such person shall pay by way of penalty in addition to service tax and interest thereon, a sum which shall not be less than, but shall not exceed twice the amount of service tax sought to be evaded by reason of suppression or concealment of the value of taxable service or furnishing of inaccurate value of such taxable service. Cases in which penalties are imposed under Section 78 cannot fall in respect of the same service tax evaded for a double penalty under Section 76 also, these two provisions are mutually exclusive and the cases where guilty mind does not exist will fall under Section 76 while those where such mens rea is required, will fall under Section 78. Therefore, there is no scope for imposing double penalty, i.e., both under Sections 78 and Section 76, when a person is found guilty of evasion by reason of suppression or concealment etc. and penalty is imposed under Section 78. In cases where penalty under Section 78 is imposed, therefore, no penalty can be imposed also under Section 76 of the Act. Under the impugned orders penalties are imposed both under Sections 78 and 76.

3. Having regard to the facts and circumstances of the case, it is, therefore, directed that on the applicant's depositing Rs. 40,000/- (Rupees forty thousand only) within six weeks from today, there shall be waiver of the pre-deposit of the remaining amount of penalties payable under the impugned order. If, however, the amount is not so deposited, the appeal shall stand dismissed. This application is disposed of accordingly. Post the matter for compliance report on 7.6.2007.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**