

Star Cable Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-25-2007

Reported in : (2007)11STJ164CESTATNew(Delhi)

Judge : R Abichandani

Appellant : Star Cable

Respondent : Commissioner of Central Excise

Judgement :

1. The stay application has challenged the revisional order of the Commissioner, by which he had enhanced the penalty of Rs. 100/- imposed by the Asstt Commissioner under Section 76 of the Finance Act, 1994 to Rs. 100/- per day subject to maximum amount of Rs. 48,010/-, which was the service tax payable.

2. It appears that the Commissioner has over-looked the provisions of Section 80 giving discretion to the adjudicating authority while imposing the penalty. It is also evident from the order of the Assistant Commissioner that he had taken a lenient view against the noticee by exercising discretion given to him under Section 80. In this context, the Hon'ble High Court of Karnataka has held, in CCE, Bangalore v. Sunitha Shetty reported in 2004 (174) ELT 313 (Kar), that the Deputy Commissioner who exercised discretion conferred on him under Section 80 of the Act and not on an interpretation of Section 76 which mandated levy of penalty of Rs. 100/- per day for each day of the delay. The applicant has, therefore, made out a prima facie case for granting interim stay of the impugned order with waiver

of pre-deposit.

Pre-deposit of penalty as ordered under the impugned order is, therefore, waived during the pendency of appeal.

This application is accordingly, allowed. The appeal will come up for final hearing in its due course.

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