

**Star Cable Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/46315](http://sooperkanoon.com/46315)

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

**Decided On :** Oct-22-2007

**Reported in :** (2008)9STJ567CESTATNew(Delhi)

**Judge :** R Abichandani

**Appellant :** Star Cable

**Respondent :** Cce

**Judgement :**

1. The appellant challenges the order of the Commissioner enhancing the penalty imposed on the appellant under Section 76 of Chapter V of the Finance Act, 1994 from Rs. 100/- only to Rs. 48,010/- being amount of service tax involved.
2. It has been held that, the appellant was liable to pay appropriate penalty for the delay in payment of service tax for a period of 517 days. Therefore, @ Rs. 100/- per day, the amount would exceed the service tax of Rs. 48,010/-, which was payable. The Commissioner, therefore, revised the order-in-original by enhancing the penalty to Rs. 48,010/-.
3. It appears from the record that, the Commissioner had issued show cause notice dated 20<sup>th</sup> November, 2006 in exercise of its revisional powers under Section 84 of the said Act requiring the appellant to show cause against enhancement of penalty while offering personal hearing on 24.11.2006. It was indicated that if the appellant did not appear on 24.11.2006 at 11.00 AM, the case

will be decided ex-parte. The Commissioner while holding that, the noticee did not adduce any reasonable cause for the failure to pay the tax either before the adjudicating authority or before the Commissioner, came to a finding that the benefit of Section 80 of the Act could not be granted in such a situation.

4. It appears from the record that, the appellant's Sole Proprietor had sent a letter dated 23.11.2006 to the Commissioner, in which it was categorically stated that, the show cause notice was received in the office of the appellant in the evening of 22.11.2006. It was further stated that, the appellant was not well and was undergoing medical treatment. It was also submitted that, the record of the case being 3-4 years old, it was humanly impossible for the appellant to go through the record and file a reply to the show cause notice within a short span of one day. The Commissioner was, therefore, requested to grant sufficient time for filing reply to the show cause notice and have personal hearing. It appears from the impugned order that, the said request for an adjournment, on the ground that reply could not be filed within a short span of one day since the matter was old and the appellant was ailing, has not at all been taken into consideration by the Commissioner. It is evident from the show cause notice that, the appellant was not given sufficient time to reply to the show cause notice and to explain the grounds, if any, which may have been available to the appellant under Section 80 of the Act, for seeking relief against imposition of penalty. The principles of natural justice, requiring adequate opportunity of hearing, are, therefore, violated and the impugned order cannot be sustained. The impugned order is, therefore, set-aside and the matter is remanded to the Commissioner for a fresh decision to be taken in accordance with law and after giving adequate opportunity to the appellant of defending himself by filing a reply to the show cause notice and by being given a personal hearing.

(Dictated and pronounced in the open Court on the 22<sup>nd</sup> day of October, 2007)

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