

**Galaxy Data Processing Centre Vs. Commissioner of C. Ex.**

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**SooperKanoon Citation :** [sooperkanoon.com/46635](http://sooperkanoon.com/46635)

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

**Decided On :** Dec-12-2007

**Reported in :** (2008)10STR407

**Judge :** P Das

**Appellant :** Galaxy Data Processing Centre

**Respondent :** Commissioner of C. Ex.

**Judgement :**

1. Applicant filed this application for waiver of pre-deposit of penalty under Section 76 of the Finance Act, 1994. Learned Advocate on behalf of the applicant submits that the original authority imposed penalty under Section 78 and confirmed the demand of tax. Applicant preferred an appeal against the adjudication order before the Commissioner (Appeals), and the appeal of the applicant was allowed with consequential reliefs. Thereafter, the Commissioner of Central Excise by the impugned order revised the adjudication order and imposed penalty under Section 76, which is not permissible under the law. He cited several case laws on this issue.

2. Learned DR on behalf of the Revenue submits that under Sub-section (5) of Section 84 of Finance Act the Commissioner of Central Excise may revise the order of the adjudicating authority on the basis of the issue. She submits that in this case the Commissioner (Appeals) has not decided the imposition of penalty under Section 76 and therefore, the Commissioner of Central Excise rightly

imposed penalty under Section 76 of the Act.

3. After hearing both the sides and on perusal of the record, I find that the Commissioner (Appeals) held that tax is not leviable during the material period and therefore pre-deposit of penalty under Section 76 of the Act on the basis of the revised order of the Commissioner of Central Excise is waived till disposal of the appeal. Accordingly, the stay application is allowed.

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