

The Assistant Commissioner of Central Excise .....,  
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Sub : Show Cause Notice C No. CE-ST/DL-1/R-VI/CA/SCN/...../.../.... DT .....

Respected Sir/Madam,

Please refer to your above show cause Notice C No. CE-ST/DL-1/R-VI/CA/SCN/...../  
.../..... DT ..... (Copy enclosed for ready reference at **Flag A**) asking me to  
explain why a penalty of Rs.....should not be imposed upon me. In this regard my  
humble submission is as under:

**Admission of Slight Delay**

I admit there has been a slight delay in depositing service tax/interest for the quarter  
ended 31<sup>st</sup> ..... and quarter ended .....Full Facts of the case have been  
given in Excel sheet attached at Flag B.)

**No Pecuniary Advantage**

From the Calculation sheet attached at **Flag B** this is amply evident that the implication  
of short deposit of service tax is Rs.....only resulting from delayed deposit of  
Service tax for the quarters ended 31<sup>st</sup> ..... and 31<sup>st</sup> .....As such no pecuniary  
advantage has been taken by me due to late deposit of service tax. Reliance is placed on  
the facts in the case of AR.ashish V.Patil v.CCE [2006] 5STT 325(MUM-CESTAT),  
wherein it was held that in case interest paid by the assessee neutralizes the pecuniary  
advantage gained by him, no penalty can be levied.

**Reasonable Cause**

Under Section 80 of the Act, no penalty is imposable under Section 76,if the assessee  
proves that there was reasonable cause for the failure.

In this regard I would like to submit that I could not deposit the Service Tax Amount on  
or before the due date of deposit of service tax because

- I was out of Station for a professional assignment
- I was not keeping well
- I gave the cash/cheque to my assistant who forgot to deposit the same in time.

(Note: Depending upon actual circumstances and the period of delay,one may take plea  
accordingly.)

As soon as I ....., I deposited the amount of Service Tax  
/Interest.

Regarding this reliance is placed on the facts mentioned in the case of -CCE v.Shri Sainath communication[2007] 11 STT 150(New Delhi-CESTAT)

**Tax paid before issue of show cause notice**

In the show cause notice dated ..... received by me on ..... there is a mention of an earlier show cause notice SCN C No. CE/ST/DL-1/CA/SCN/...../.... DT....., this was never received by me. Nevertheless, the payment of interest was made by me in .....(Mention date of payment) itself. I would like to draw attention to the case of Bhoruka Aluminium Ltd. v. CCE, Mysore 2008 (11) S.T.R. 163 (Tri. - Bang.), wherein it was held:

*“In this case, it is not in dispute that the Service Tax along with interest had been paid on 30-8-2006 and 12-9-2006 but the show cause notice itself had been issued much latter only 9-10-2006, hence, the issue is squarely covered by Section 73(3) of the Finance Act and therefore, there would not have been any necessity even to issue the show cause notice. This is also in consonance with the Board’s Circular Lr., dated 3-10-2006 cited supra by the learned Advocate. In any case, the appellant was also having a bona fide doubt in the activity being subject to levy of Service Tax. In our opinion, this is a reasonable cause for not imposing penalty under Section 78 of the Finance Act. In these circumstances, the impugned order has no merit and therefore, we set aside the same and allow the appeal with consequential relief.”*

In support of the aforesaid, reliance is also placed on the case of Mass Marketing & Advertising Services (P.)Ltd.v.CCE[2006] 5 STT (Bang.-CESTAT) and Rohan Builders Ltd. v. CST, Bangalore 2009 (13) S.T.R. 56 (Tri. – Bang) wherein it has been settled that no penalty is leviable if tax is paid before issue of show cause notice .

**Prayer:**

**In view of the above,I humbly submit and pray your honour for condonation of penalty proceedings.I shall feel highly obliged.**

Thanking You,  
For .....,  
Chartered Accountants,

.....  
Partner/Proprietor

