

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
EAST REGIONAL BENCH : KOLKATA**

**S. Tax Appeal No.77240 of 2018**

Arising out of O/A No.155/ST-I/KOL/2018 dated 08.03.2018 passed by  
Commr. of CGST & Central Excise (Appeals I), Kolkata North

**M/s Naffar Chandra Jute Mills Ltd.**

33, C.R. Avenue,  
8<sup>th</sup> Floor,  
Kolkata-700012

**APPELLANT**

*VERSUS*

**Commr. of CGST & Central Excise, Kolkata North**

180, Shantipally,  
Rajdanga Main Road,  
Kolkata-700107.

**RESPONDENT**

**APPEARANCE**

Shri N. K. Chowdhury, Advocate for the Appellant  
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 27.12.2018  
DATE OF DECISION : 27. 12. 2018

**FINAL ORDER NO.77338/2018**

**Per Shri P. K. Choudhary :**

Briefly stated the facts of the case are that the appellants are engaged in the manufacture of jute products. They are availing the service of transporter classifiable under the category of "Transport of Goods by Road Services" for the period from October, 2007 to March, 2008, 2009-10, 2010-11 and 2011-12. They have paid the freight charges for the transportation of the said goods. Show-cause notice dated 16.04.2013 was issued demanding service tax of Rs.8,67,903/-. Since they have already paid the service tax amounting to

Rs.8,61,949/-, show-cause notice proposed to appropriate the same and directed to pay the balance amount of Rs.5,960/-. The Adjudicating Authority confirmed the demand of Rs.3,64,375/- along with interest and appropriated the same as deposited by the appellant and penalty of an equal amount of demand was imposed under Section 78 of the Finance Act, 1994. He also imposed a penalty of Rs.10,000/- under Section 77 (2) of the Finance Act, 1994. On Appeal, the lower appellate authority rejected the appeal and upheld the adjudication order. Hence the present appeal before the Tribunal.

2. The Id.Advocate appearing on behalf of the appellant, submits that the lower appellate authority has failed to appreciate that invocation of Sub-section (4A) of Section 73 has no manner of application in the facts and circumstances of the case since the said provision came into operation wholly with effect from 08.04.2011, whereas period of dispute in the present case is from October, 2007. Therefore, the entire period is beyond the scope of the provisions of Section 74 (4A) of the Finance Act, 1994. He also argued that the extended period cannot be invoked in this case since the case emanated from the scrutiny of the audit. It is the submission of the Id.Advocate that they are not disputing the demand and have, in fact, paid the entire demand, which has been appropriated by the adjudicating authority and in fact, the entire demand was paid even before issuance of the show-cause notice and the amount of Rs.5,960/- has been paid along with interest of Rs.1073/- on 15.05.2013 vide GR-7 Challan deposited to the State Bank of India. A copy of the Challan/Computerized receipt and forwarding letter dated

27.05.2013, have been filed along with the Appeal Paper Book at Pages 14,15 & 16.

3. The Id.D.R. for the Revenue justified the orders of the lower authorities.

4. Heard both sides and perused the appeal records.

5. I find that the appellants have paid the entire demand before issuance of show-cause notice and the same has been appropriated in the adjudication order. Even balance amount of Rs.5,960/- has also been paid by the appellant immediately on receipt of the show-cause notice. On perusal of the case records, I do not find any ingredient of mis-statement, suppression of facts etc. on the part of the appellant with intent to evade payment of service tax. It is not the case of the Revenue that the appellants have recovered the service tax and retained the same. No specific fact has been disclosed in the show-cause notice issued to the appellant as to how there was willful mis-statement/suppression on the part of the appellant with intent to evade payment of service tax.

6. In view of the above discussions, I deem it a fit case for invoking Section 80 of the Finance Act, 1994. Accordingly, penalties under Sections 78 and 77 (2) of the Act, are set aside.

7. In the result, the appeal filed by the appellant is disposed of in the above terms.

(Operative part of the order was pronounced in the open Court)

Sd/

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

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