

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

**Service Tax Appeal No. 79794 of 2018**

(Arising out of Order-in-Appeal No.344/S.Tax-I/Kol/2018 dated 02-05-2018 passed by  
Commissioner of CGST & CX (Appeal-I), Kolkata )

**M/s. Shreyashi Tradecom Pvt. Ltd.**

(1 & 3, Brabourne Road, Illaco House,  
3<sup>rd</sup> Floor, Kolkata-700001)

**Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Kolkata North  
Commissionerate**

(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

**Respondent**

**APPEARANCE :**

None for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**

**FINAL ORDER NO.75688/2023**

Date of Hearing : 15 June 2023

Date of Decision : 15 June 2023

**PER R. MURALIDHAR**

No one appeared on behalf of the Appellant.

2. It is seen from the records that they have been regularly absenting themselves whenever Hearings are posted.
3. Perused the Appeal Papers with the help of Learned AR.
4. He submits that the Appellant is before the Tribunal being agitated by the penalty of Rs.6,44,397/- under Section 78 and Rs.10,000/- under Section 77 (1)(a) and Rs.10,000/- under Section 77(2) of the Finance Act, 1944. From the records, it is seen that the Appellant is a small scale assessee and after the Show Cause Notice was issued, he has paid the entire tax amount of Rs.6,44,397/- along with interest of Rs.58,155/-. Considering these facts and finding that there was no intent on his part to evade Service Tax, the Adjudicating Authority has dropped the proposed penalties.

**Service Tax Appeal No. 79794 of 2018**

5. On Appeal by the Department, the Commissioner has imposed penalty under Section 78 for Rs. 6,44,397/- along with penalty of Rs.10,000/- each under Section 77(1) & 77(2).
6. It is seen that taking into consideration the factual details, the Adjudicating Authority has not found the case to be that of evasion of Service Tax intentionally. Hence, he has viewed the payment of Service tax with interest in terms of Section 73(3) of the Finance Act to set aside the penalties. The Commissioner (Appeals) has not brought in specific fact to the contrary to impose the penalty under Section 78. At that particular point of time, Tribunals have been consistently holding that small scale assessee should not be burdened with penalties under Section 78, if the entire demanded amount along with interest is paid.
7. Taking into consideration these facts, I set aside the penalty of Rs.6,44,397/- imposed under Section 78. However, the penalty under Section 77(1) and 77(2) are required to be paid by the Appellant.
8. Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

**(R. Muralidhar)**  
**Member (Judicial)**

Pooja