

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

REGIONAL BENCH – COURT NO.2

**Service Tax Appeal No. 75412 of 2019**

(Arising out of Order-in-Appeal No.247/SLG-ST/2018-19 dated 29.11.2018 passed by Commissioner (Appeals), Siliguri.)

**M/s. National Power Engineering Company**

(National Commerce House, 14 Church Road, P.O. Siliguri, West Bengal-734001)

**Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Siliguri  
Commissionerate**

(C. R. Building, Hakimpara, Haren Mukherjee Road, Siliguri, West Bengal-734001)

**Respondent**

**APPEARANCE :**

Mr. Narayan Kr. Agarwal, CA for the Appellant

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

**CORAM:**

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

**FINAL ORDER NO.76011/2023**

Date of Hearing : 06 July 2023

Date of Decision : 06 July 2023

**PER R. MURALIDHAR**

The Appellant is engaged in the business of providing Works Contract Services and Business Auxiliary Services. During the period April 2008 to March 2012, the Appellant did not pay the Education Cess and SHE Cess. The Department conducted an audit in November 2012 wherein it was detected that the Appellant has not paid the Education Cess of Rs.75,452/- and SHE Cess of Rs.54,228/- totaling Rs. 1,29,680/-. The Audit party demanded this amount to be paid along with interest of Rs.38,531/-. The Appellants have paid this amount vide Challan No. 6004 dated 12/11/2012 immediately after the nonpayment was pointed out by the Audit Department. Subsequently, Show Cause Notice was issued and after due process, the lower authorities confirmed the demand and appropriated the amount paid and imposed a penalty of Rs.1,68,211/- under section 78. Being aggrieved, the Appellant is before the Tribunal.

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2. The Learned Counsel for the Appellant submits that they have paid the Education Cess and SHE Cess immediately on being pointed out by the Audit Department along with interest. This fact has also been noted in the OIO wherein the Adjudicating Authority has appropriated the amounts paid by the Appellant. Therefore, he submits that as per Section 73(3) of Finance Act, 1994, no proceedings should have been taken up against the Appellant, as the payments were made as soon as the payments were pointed out by the officials. He relies on the case law of CCE & ST, LTU, Bangalore Vs. Adecco Flexione Workforce Solutions Ltd 2012 (26) S.T.R. 3 (Kar.) and Sen Brothers Vs. Commr. of Central Excise, Bolpur 2014 (33) S.T.R. 704 (Tri.-Kolkata). In these cases, it has been held that when the entire Service Tax has been discharged along with interest immediately on being pointed out by the Department officials, no penalty is imposable. He prays that the penalty imposed under Section 78 may be set aside.

3. The Learned AR reiterates the findings of the lower Authorities.

4. It is not in dispute that the Education Cess and SHE Cess has been paid along with interest by the Appellant immediately on being pointed out by the Audit Officials much before the Show Cause Notice was issued on 08/10/2015. In terms of Section 73(3) of the Finance Act, in such case, no Show Cause Notice should have been issued.

5. The Hon'ble karnatka High Court in the case of CCE & ST, LTU, Bangalore Vs. Adecco Flexione Workforce Solutions Ltd 2012 (26) S.T.R. 3 (Kar.), has held as under:-

**3.** *Unfortunately the assessing authority as well as the appellate authority seem to think. If an assessee does not pay the tax within the stipulated time and regularly pays tax after the due date with interest. It is something which is not pardonable in law. Though the law does not say so, authorities working under the law seem to think otherwise and thus they are wasting that valuable time in proceeding against persons who are paying service tax with interest promptly. They are paid salary to act in accordance with law and to initiate proceedings against defaulters who have not paid service tax and interest in spite of service of notice calling upon them to make payment and certainly not to harass and initiate proceedings against persons who are paying tax with*

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*interest for delayed payment. It is high time, the authorities will change their attitude towards these tax payers, understanding the object with which this enactment is passed and also keep in mind the express provision as contained in sub-sec. (3) of Sec. 73. The Parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served. If notices are issued contrary to the said Section, the person to be punished is the person who has issued notice and not the person to whom it is issued. We take that, in ignorance of law, the authorities are indulging in the extravaganza and wasting their precious time and also the time of the Tribunal and this Court. It is high time that the authorities shall issue appropriate directions to see that such tax payers are not harassed. If such instances are noticed by this Court hereafter, certainly it will be a case for taking proper action against those law breakers.*

**4.** *In that view of the matter, we do not see any merit in these appeals. The appeals are dismissed. [Emphasis supplied]*

6. This Tribunal in the case of Sen Brothers Vs. Commr. of Central Excise, Bolpur 2014 (33) S.T.R. 704 (Tri.-Kolkata) has held as under:-

**7.** *It is thus evident from the aforesaid provisions that in the cases of non-payment of Service Tax on due dates, once payment along with interest is made before issuance of show cause notice, in such cases no show cause notice could be issued for imposition of penalty. In this regard I also find that Id. Commissioner (Appeals) in his order has made a categorical finding that the elements of fraud, suppression, misstatement, etc. were not present in this case. Revenue has not contested his findings by filing appeal. In view of these facts the appellants' case is fully covered by the provisions of sub-section (3) of Section 73 of the Finance Act, 1994.*

**8.** *It is not in dispute in this case that the appellant had discharged the entire Service Tax liability and interest thereof before the issuance of show cause notice. The issue is regarding the imposition of penalty on the appellant under Section 76 of the Finance Act, 1994. I find that once the appellant has already discharged Service Tax liability and the interest thereon and no additional liability has been adjudged in the adjudication proceedings, provisions of Section 73(3) will be applicable in this case and there was no necessity of issuing any show cause notice to the appellant. In such cases no penalty is imposable by virtue of Explanation 2 to sub-section (3) of Section 73 of the Finance Act, 1994.*

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**11.** *In view of the law being settled as hereinabove stated, I find that the impugned order is liable to be set aside and I do so. Impugned order is set aside and the Appeal is allowed. [Emphasis Supplied]*

7. The facts are identical in the present case. Accordingly, the impugned OIA is set aside and Appeal is allowed.

8. It is seen that inspite of having full knowledge that the Appellant has made the payment of Service Tax along with interest on 12/11/2012, the Department has issued the Show Cause Notice on 08/10/2015 i.e. after about three years from the date of receipt of entire payment. They have invoked the provisions of extended period, which was not at all applicable in this case. Hence, the confirmed penalty under section 78 is required to be set aside, even on this count.

9. The impugned OIA is set aside and the Appeal stands allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

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

Pooja