# Customs, Excise & Service Tax Appellate Tribunal
# West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No. 458 of 2011**

(Arising out of OIO-04/MP/DAMAN/2010 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

**C.C.E. & S.T., Daman** **........Appellant**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

*VERSUS*

**M/s. Toyota Construction Pvt Ltd** **.......Respondent**
Dharti Chamber,
Cm-8/13, Nh-8, Gidc,
Vapi, Gujarat.

**APPEARANCE:**
Sh. K. J. Kinariwala, Assistant Commissioner (AR) for the Appellant
None appeared for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
**HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 12011 /2019**

DATE OF HEARING: 16.10.2019
DATE OF DECISION:16.10.2019

**RAMESH NAIR**

The Revenue appeal filed the present appeal seeking imposition of penalty under Section 76 in the case of non-payment of Service Tax, however, the penalty under Section 78 was imposed.

2. None appeared on behalf of the Respondent. Heard the Ld. AR.

3. On careful consideration of the submission made by the Ld. AR and perusal of the records. we find that the limited issue to be decided that whether the penalty under Section 76 can be imposed when penalty under Section 78 has been imposed. This issue is no longer *res-Integra* as Hon'ble Gujarat High Court in the case of Raval Trading Company-2016 (42) STR 210 (Guj.) held that the penalty under Section 76 cannot be imposed simultaneously when the penalty under Section 78 has been imposed. Following the ratio of aforesaid judgment, we are of the view that the lower

authority has rightly not imposed the penalty under Section 76, hence, the Revenue appeal is not maintainable, accordingly dismissed.

(Dictated & Pronounced in the open court)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

Prachi