

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**  
**West Zonal Bench AHMEDABAD**

**COURT NO. I**

**Appeal No. ST/12329-12338/2018 -SM**

[Arising out of Order-in-Appeal No. OIA-RAJ-EXCUS-000-APP-089-100-2018-19 dated 22.05.2018 passed by Commissioner (Appeal) of Central Excise & ST, Rajkot]

M/s. Shanti Structure Pvt. Limited : **Appellant**

**vs.**

Commissioner of Central Excise & ST, Rajkot : **Respondent**

Appearance:

Shri S.J. Vyas, Advocate for the Appellant

Ms. Nitina Nagori, Deputy Commissioner (AR) for the Respondent

**CORAM:**

**Hon'ble Mr. Ramesh Nair, Member (Judicial)**

**Date of Hearing/ Decision : 14.12.2018**

**Final Order No. A/12894-12903 / 2018**

**Per : Ramesh Nair**

The appellant have paid service tax on the construction services provided to Government organization during the period 01.04.2015 to 29.02.2016. As per the Section 102 of Finance Bill, 2016, the services provided during the period 01.04.2015 to 29.02.2016 to the government departments were retrospectively exempted. Accordingly, the appellant filed refund claim for the service tax and interest, for whatever service tax was paid by them. The sanctioning authority sanctioned the refund of

service tax however, refund in respect of interest was rejected on the ground that Section 102 does not provide for refund of interest. The said order was appealed against before the Commissioner (Appeals), who rejected the appeal, therefore the present appeals.

2. Shri S.J. Vyas, Ld. Advocate appearing on behalf of the appellants submits that when the service tax itself was not payable, there is no question of payment of interest and therefore, whatever interest was paid the same should have been refunded along with service tax. He placed reliance on the decision in the similar issue in the case of *Sify Technologies Limited vs. CCE & ST, LTU, Chennai – 2011 (21) STR 252 (Tri. Chennai)*.

3. Ms. Nitina Nagori, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterated the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of the record, I find that as per Section 102 of Finance Act, 2016, the service tax is not leviable on the construction services provided to the government departments during the period 01.04.2015 to 29.02.2016. Accordingly, during the said period, the service tax itself was not leviable. Admittedly, the appellant paid the service tax during the said period and wherever there was delay, they had paid interest also. Since, the interest is

a piggy-back of service tax and when service tax itself was not payable, the interest was also not payable. Since it was charged and paid by the appellant, it is refundable. Accordingly I do not find any reason why the interest could not be refunded to the appellant when refund of service tax was sanctioned by the department.

Accordingly, the impugned orders with regard to rejection of interest are set-aside. Appeals are allowed.

*(Order dictated and pronounced in the open court)*

**Ramesh Nair**  
**Member (Judicial)**

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