IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/71209/2018-ST[SM]

(Arising out of Order-in-Appeal No. 222/ST/ALLD/2018 dated 24/04/2018 passed by Commissioner (Appeals) CGST & Central Excise Appeal Commissionerate, Allahabad)

M/s Rajshree Nirman (P) Ltd. **Appellant**

Vs.

Commissioner, Central Excise, Allahabad **Respondent**

<u>Appearance:</u>

Shri Kapil Vaish (CA) for Appellant
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 29/10/2018
Date of Decision : 29/10/2018

FINAL ORDER NO **72556 / 2018**

Per: Anil G. Shakkarwar

Present appeal is directed against impugned Order-in-Appeal No 222/ST/ALLD/2018 dated 24.04.2018 passed by Commissioner (Appeals) CGST & Central Excise Appeal Commissionerate, Allahabad.

2. I have heard both the sides duly represented by learned C.A. Shri Kapil Vaish on behalf of the appellant and Shri Mohd Altaf (Assistant Commissioner) learned AR on behalf of the Revenue. I note that appellant were issued with a show

cause notice dated 17.02.2014 demanding service tax of Rs.17,86,137/- with a proposal to appropriate the same since the same was paid before issue of show cause notice. The said show cause notice also recorded that appellant had paid interest of Rs.1,75,733/- in respect of the said service tax. The only contention of above stated show cause notice that there was short payment of interest to the tune of around Rs.33,000/-. The said show cause notice contended that on the late payment of said service tax interest worked out of Rs.2,09,101/- whereas appellant had paid interest of Rs.1,75,733/- under Section 75 of Finance Act, 1994 before issue of show cause notice. I note that even after payment of entire amount of service tax short paid and on payment of interest under Section 75 ibid the appellant were imposed penalty under Sections 77 and 78 of Finance Act, 1994 through adjudication carried out. I find that sub Section (3) of Section 73 debarred Revenue from issue of show cause notice for demand of service tax if service tax short paid is paid before issue of show cause notice and also interest payable under Section 75 ibid is paid. I find that the said provision of Finance Act, 1994 does not provide for non-application of sub Section (3) of Section 73 ibid if entire interest is not paid. The appellant had paid around Rs.1,75,000/- interest whereas on correct working out the interest payable was around Rs.2,09,000/- which was also paid and therefore, there was no provision for issue of said show cause notice dated 17.02.2014.

3. I, therefore, set aside the impugned order without interfering with the amount of service tax and interest already paid, and allow the appeal.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ankit