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

APPEAL No. ST/255/2012-CU[DB]

(Arising out of Order-in-Appeal No.166/ST/APPL/ALLD/2011 dated 17/11/2011 passed by Commissioner (Appeals), Central Excise & Service Tax, Allahabad)

M/s Shubam Construction **Appellant**

Vs.

Commissioner, Central Excise

& Service Tax, Allahabad **Respondent**

Appearance:

Shri Kartikeya Narain (Advocate) for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 19/11/2018
Date of Decision : 19/11/2018

FINAL ORDER NO. - **72679/2018**

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No.166/ST/APPL/ALLD/2011 dated 17/11/2011 passed by Commissioner (Appeals), Central Excise & Service Tax, Allahabad.

2. After having heard learned counsel Shri Kartikeya Narain on behalf of the appellant and Shri Mohd. Altaf

learned A.R. on behalf of Revenue, we note that through show cause notice dated 08/02/2010 there was proposal in the show cause notice that the total service tax of Rs.7,80,499/- already paid by the appellant to be demanded and recovered and already paid interest to be appropriated alongwith appropriation of the service tax already paid. We note that the service tax and interest were paid before issuance of show cause notice. We find that Sub-section (3) of Section 73 of the Finance Act, 1994 does not allow Revenue to issue show cause notice where entire service tax alongwith due interest is paid. We, therefore do not find the said show cause notice dated 08/02/2010 to be sustainable. In view of the above discussion, we set aside the impugned order and allow the appeal.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks