# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI

PRINCIPAL BENCH - COURT NO. III

## SERVICE TAX APPEAL No. 54148 OF 2018

(Arising out of Order–in-Appeal No. 1025-CRM-ST-JDR-2018 dated 17.09.2018 passed by COMMISSIONER OF CENTRAL EXCISE-Jodhpur)

**M/s. Gurunanak Builders** **...Appellant**
Bajrang Nagar, Police Lines,
Kota, Rajasthan

**Versus**

**Commissioner of Customs,**
**Central Excise, Udaipur** **....Respondent**
142-B, Hiran Nagari,
Sector-11, Near Shahi Bagh,
Udaipur

**APPEARANCE:**
Mr. Vijay Kumar, Advocate for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

**CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

Date of Hearing/ Decision: **31.07.2019**

**FINAL ORDER No.: 51144/2019**

**ASHOK JINDAL**

The appellant is in appeal against the impugned order wherein penalty under section 77(2) of the Finance Act 1994 has been imposed on the appellant.

2. The facts of the case are that the appellant is engaged in the activity of construction and did not pay service tax for construction of Residential Complex Service. On pointing out by the Revenue,

the appellant paid the service tax along with interest in October 2012. Thereafter no proceedings were initiated against the appellant till one year and only on 28 August 2015, a show cause notice was issued to impose penalty on the appellant.

3. Considering the fact that the appellant has paid service tax along with interest on pointing out by the Revenue, in that circumstances penalty under section 77(2) of the Finance Act was not warranted against the appellant.

4. In that circumstances, I hold that the service tax paid along with interest is to be apportioned and no penalty is imposable against the appellant. Therefore, penalties imposed on the appellant are set aside. In these circumstances, appeal is allowed.

(order dictated and pronounced in the open court)

**(ASHOK JINDAL)**
**MEMBER (JUDICIAL)**

Bhanu