IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No.ST/50656/2017 SM]

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-300-16-17 dated 21.12.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur]

M/s.EVO Tech Pvt. Ltd. …Appellant

Vs.

C.C.E & S.T., Raipur … Respondent

Present for the Appellant : Ms. Vibha Narang, Advocate
Present for the Respondent: Ms.Kanu Verma Kumar, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 12/09/2017

FINAL ORDER NO. 57089/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 21.12.2016 passed by the Commissioner (Appeals), Central Excise and Customs, Raipur.

2. The ld. Advocate appearing for the appellant submits that the Service Tax demand of Rs.57,390/- confirmed for the period 2010-11 is barred by limitation of time, inasmuch as, such demand was confirmed by the Department based on the audit report for the year 2014-15. However, she submits that for the disputed period 2010-11, the audit had already been

conducted on 27th, 28th and 29th September, 2013 and thus, audit conducted for the same period subsequently, cannot be the ground for confirmation of the Service Tax demand under the extended period of limitation. She further submits that since there is no *malafide* intention on the part of the appellant in defrauding the Government revenue, the demand, if any, should be confined only to the normal period. With regard to the Service Tax demand of Rs.6,58,650/- for the period April, 2014 to June, 2014, she submits that due to financial difficulty, Service Tax amount in question was not deposited by the appellant, which was subsequently deposited during the course of adjudication proceedings. She further submits that since the relevant particulars were duly reflected in the statutory books of accounts, malafides cannot be attributed for imposition of penalty under Section 78 of the Finance Act, 1994. Thus, she prays that the benefit of Section 80 ibid should be available to the appellant for non-imposition of penalty of Rs.3,29,325/- confirmed in the impugned order. She further submits that for delayed payment of Service Tax during the disputed period, the appellant had already deposited the interest amount of Rs.11,88,794/- and Rs.3,38,794/-, which have not been considered by the authorities below.

3. Ld. D.R. appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that audit of records for the period 2010-11 was conducted by the Service Tax Department on 27-29/09/2013 and no discrepancy was observed during such Audit. However, on subsequent audit for the said period, it was detected by the audit wing that the appellant had short paid Service Tax amount of Rs.57,390/-. Accordingly, by invoking the extended period of limitation, the said amount was confirmed against the appellant. Since the activities of the appellants were already in the knowledge of the Department at the time of conducting the first audit and admittedly no discrepancies were noticed by the Audit Wing, it cannot be said that there is element of suppression, fraud etc., on the part of the appellant in defrauding the Government revenue. Thus, I am of the view that extended period of limitation cannot be invoked for confirmation of the Service Tax demand. Accordingly, the impugned order, so far as it confirms the demand of Rs.57,390/-, penalties and interest are set aside and the appeal is allowed in favour of the appellant.

6. With regard to penalty imposed under Section 78 ibid for the period April 2004 to June, 2004, I find that the Department has not specifically alleged regarding non-maintenance of statutory records by the appellant. Since the appellant complied with the statutory requirement of maintenance of proper books of accounts and did not pay the Service Tax due to the reason of financial difficulties, non-payment of such tax

amount cannot be a defensible ground for imposition of penalty under Section 78 ibid, which specifically provides that in case of fraud, suppression etc. such provisions can only be invoked. Therefore, Section 80 ibid in this case, can be invoked for non-imposition of penalty under Section 78 ibid. Accordingly, the impugned order imposing penalty on the appellant under Section 78 is set aside and the appeal is allowed.

7. Since the appellant submits that the amount towards interest deposited by it had not been considered by the original authority, I am of the view that proper quantification of the interest amount is required in this case. Therefore, the matter is remanded to the original authority for quantification of the actual interest liability. It is made clear that the amount already paid towards the interest liability, as claimed by the appellant, should be adjusted against such liability.

8. The appeal is disposed of in above terms.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita