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/50288/2017 [SM]

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-204-16-17 dated 10.11.2016 passed by the Commissioner (Appeals-II), Customs, Central Excise & Service Tax, Raipur, Chattisgarh]

M/s. Housing and Urban Development Corporation Ltd. ...Appellant

Vs.

C.C.E., Raipur … Respondent

Present for the Appellant : Mr.Gagan Kumar, Advocate
Present for the Respondent: Mr.K. Poddar, D.R.

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

Date of Hearing/Decision: 12/09/2017

FINAL ORDER NO. 57090/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 10.11.2016 passed by the Commissioner (Appeals), Central Excise and Customs, Raipur. The appellant in this appeal is not contesting the adjudged service tax demand confirmed against it. However, the appellant submits that the benefit of Section 80 of the Finance Act, 1994 should be extended to it for non-imposition of penalty under Section 78 ibid.

2. The ld. Advocate appearing for the appellant submits that there were confusion with regard to payment of Service Tax on the interest amount and other charges received by the appellant for providing the taxable service. He also referred

to the CBEC Circular, clarifying the position with regard to payment of Service Tax. He further submits that the appellant being a Public Sector Undertaking, there cannot be any motive to suppress the facts in order to evade payment of Service Tax on the taxable services provided by it. To support such stand , the ld. Advocate has relied on the decision of this Tribunal in the case of Commissioner of Central Excise , Bhopal vs. Western Coal Field Ltd. - 2016 (70) Taxman.com 133 (New Delhi-CESTAT).

3. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order and further submits that since the Service Tax in question was not deposited by the appellant and such facts were detected by the Audit Wing, suppression of fact is manifest and accordingly, imposition of penalty under Section 78 ibid is justified.

4. Heard both sides and perused the case records.

5. I find that the issue regarding payment of Service Tax on the interest and other charges was highly contentious and the Board issued the Circular dated 11.06.2008 subsequently, clarifying the position that Service Tax is payable on the charges under Section 65 (105) (zm) of the Finance Act, 1994. Since for removing ambiguity, the circular was subsequently issued by the Ministry, it cannot be said that non-payment of Service Tax at the relevant point of time was due to the fact of suppression mis-statement etc., with intent to evade payment of tax. Further, I also find that the appellant is a Public Sector

Undertaking and on this ground also, malafides cannot be attributable to the appellant for defrauding the Government revenue. Therefore, in the interest of justice, the benefit of Section 80 ibid can be invoked, for non-imposition of penalty under Section 78 ibid. Further, under the facts and in the circumstances of the case, the provisions of sub rule (3) of Rule 15 read with Section 11AC of the Central Excise Act, 1944 cannot be invoked for imposition of penalty in respect of reduction in the amount of Cenvat Credit.

6. In view of above, the impugned order to the extent it imposed penalties on the appellant are set aside and accordingly, the appeal is allowed in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita