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/50038/2018 [SM]

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-277-17-18 dated 26.09.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur]

M/s.Evo Tech Pvt. Ltd. …Appellant

Vs.

C.C.E., Raipur … Respondent

Present for the Appellant : Mr.A.K.Batra, CA
Present for the Respondent: Mr.Harish Saini, D.R.

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

Date of Hearing/Decision: 01/03/2018

FINAL ORDER NO. 50900/2018

PER: S.K. MOHANTY

Brief facts of the case are that the appellant herein, is engaged in providing the taxable service namely, consulting engineer and erection commissioning or installation services. On 29.03.2013, the appellant had deposited an amount of Rs.21,00,363/- as service tax voluntarily, considering the same as advance tax. During the course of audit for the disputed period, service tax liability of Rs.11,54,072/- was identified as payable by the appellant. Such liability was accepted by the appellant and it was submitted before the Departmental authorities that such liability can be adjusted against the advance tax deposited by it on 29.03.2013. However, the Audit Officers informed the appellant to take such advance tax as Cenvat credit and to reverse the Service Tax liability from such account. The appellant had complied with such requirement of the Department and made the debit entry in the Cenvat account on 28.09.2013. Thereafter, the Department proceeded against the appellant for confirmation of the Service Tax demand along with interest and for imposition of penalties under the Finance Act, 1994. The show cause notice issued in this regard, was adjudicated vide order dated 31.10.2016, wherein the adjudicating authority has confirmed demand of Service Tax of Rs.11,54,072/- under the proviso to Section 73 (1) ibid alongwith interest and also imposed penalties under Section 76, 77 & 78 of the Act. However, the proposal in the show cause notice with regard to appropriation of the amount of Rs.11,54,072/- was dropped. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 26.09.2017 has upheld the interest and the penalty under Section 78 of the Act. The Service Tax demand was also appropriated from the amount already deposited by the appellant on 29.03.2013.

2. The ld. Consultant appearing for the appellant submits that since the disputed period is from April to August 2013, the service tax, as per the statutory provisions, was required to be deposited on 25.10.2013 and the same having been paid

on 29.03.2013, there was no delay in payment of Service Tax. Thus, he submits that interest cannot be confirmed against the appellant in absence of any delay in payment of Service Tax. He further submits that since for the tax period, there was no tax due against the appellant, there was no question of imposition of penalty under Section 78, in view of the fact that the ingredients mentioned therein have no application to the case of the appellant.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. From the available records, I find that for the period April to August 2013, the appellant had deposited the Service Tax in advance on 29.03.2013. Thus, it is evident that there was no delay in payment of Service Tax by the appellant, as assorted by the Revenue. Since interest is compensatory in character and the same is liable to be paid, only when there is delay in payment of tax, and in this case, admittedly, there is no delay, no interest can be demanded from the appellant.

7. Further, I find that imposition of penalty under Section 78 is subject to fulfilment of the conditions mentioned therein. In this case, since the appellant had deposited the service tax before the due date, the charges of suppression, fraud, collusion etc., cannot be levelled against it for imposition of the penalty.

8. Accordingly, I am of the view that the interest and the penalty confirmed by the authorities below cannot be sustained for judicial scrutiny. Therefore, the impugned order passed by the ld. Commissioner (Appeals) is set aside and the appeal is allowed in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita