IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/85281/2017

Arising out of:	Order-in-Appeal No. GOA-EXCUS-000-APP-219-2016-17 dated 11/11/2016
Passed by:	Commissioner of Central Excise & Customs (Appeals), Goa.

	Appellants – Represented by:
Electic Developers Ltd	Mr. Ashish Bajaj, C.A.
versus	
Commissioner of Central Excise Goa	***Respondent – Represented by:*** Mr. M.P. Damle, Asstt. Commissioner (A.R.)

Date of hearing /pronounced 19/02/2018

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Hon'ble Shri Ramesh Nair, Member (Judicial)

ORDER NO:

The appeal is directed against order-in-appeal passed by the Commissioner (Appeals) whereby the learned Commissioner (Appeals) upheld the liability to penalty imposed under Section 77 and 78 and interest under Section 75 of the Finance Act, 1994. The fact of the case are that the appellant did not pay service tax for the period January 2013 to March 2014 and subsequently they filed returns on 14th February 2014 belatedly for the entire period of January 2013 to March 2014. In the said returns the service tax was shown to have debited from CENVAT credit account. Thus seeks only of waiver of penalty imposed under Section 77 and 78 and demand of interest under Section 75 of Finance Act, 1994.

2. Shri Ashish Bajaj, Learned Chartered Accountant appearing on behalf of the appellant submits that there was a delay in filing the return and there is no delay in payment of service tax on the ground that they were having sufficient CENVAT credit balance throughout the period for meeting the service tax liability and therefore it cannot be said that they have evaded payment of service tax. Accordingly, penalty and interest should not have been demanded.

3. Shri M P Damle, Learned Assistant Commissioner (AR) appearing for Revenue reiterates the findings in the impugned order. He submits that whether there was CENVAT credit balance or otherwise, it is a statutory requirement that the assessee must pay the service tax on the due date. Even though the credit balance was there, service tax was not paid and it will amount to non-payment of service tax and as a consequence of such non-payment, penalty and interest is inevitable. There is no provision in the law to circumvent payment of service tax only due to the reason that credit balance is available. He submits that the appellant paid the service tax only after DGCEI

started investigation.

4. I have carefully considered the submissions by both the sides.

5. I find that there is delay in filing the service tax returns for the period covered in the case. Appellant submitted ST-3 returns only on 14/02/2014 covering the period from January 2013 to September 2013. However, for the period October 2013 to Mach 2014 the ST-3 return was filed within time i.e. on 25/04/2014. This appeal is only for wavier of penalty and interest.

6. It is also a fact on record that the appellant had sufficient balance in the CENVAT credit account for payment of service tax during the relevant period. Therefore, it cannot be said that the appellant should have any *mala fide* intention for non-payment of service tax on the due date. The appellant was only supposed to make the debit entry in their CENVAT credit account. Therefore, having sufficient balance of CENVAT credit, non-debiting of the service tax liability cannot be said to be with *mala fide* intention to evade payment of service tax. In this fact, I find that the appellant have made out a case for waiver of penalty imposed under Section 78 invoking the provisions of Section 80 of the Finance Act, 1994. Accordingly, I set aside the penalty of Section 78 imposed by the lower authority.

7. As regard penalty under Section 77 the appellant have paid late fees for delay in filing of the returns. Therefore, in terms of Rule 7(C) of Service Tax Rules, 1994, penalty under Section 77 is also not imposable. Penalty imposed under Section 77 is also set aside.

8. As regard interest, since there is admitted delay in payment of service tax irrespective of whether it is payable from CENVAT credit account or in cash, interest is payable for the reason that interest is a picky bag of the service tax liability. Once the service tax liability is confirmed interest will come into force automatically. Accordingly, I uphold the demand of interest on the service tax amount for the period in dispute.

9. Accordingly, appeal is partly allowed in the above terms.

(Dictated and Pronounced in Court)

(Ramesh Nair)
Member (Judicial)

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