CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.

Appeal(s) Involved:

ST/463/2009-DB

[Arising out of Order-in-Appeal No. 45/2009-ST dated 26.3.2009 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin.

Air Travel Enterprises Ltd
5/3423, Noor Complex,
Indira Gandhi Road,
Calicut - 673004
Kerala

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Respondent(s)

Appearance:

Mr. Manoj Pillai, Advocate
TAXAIDE T C
26/1747,KALYAN
U R 72,UPPALAM ROAD, TRIVANDRUM
TRIVANDRUM - 695001
KERALA

For the Appellant

Dr. J. Harish, AR For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20317 / 2019

Date of Hearing: 05/04/2019
Date of Decision: 05/04/2019

Per : V. Padmanabhan,

This appeal is against the Order-in-Appeal No.45/2009-ST dated 26.3.2009. The appellant is rendering services to exporters, in the nature of Air Travel Agents as well as Custom House Agents. Upon scrutiny of the documents of the assessee during the period 1.4.2004 to 31.3.2005, the officers noticed that the appellant had not included certain charges recovered by them for issue of Air way bills. Holding the view that these charges are also to be included in the value of taxable service, show-cause notice was issued and the Order-in-original dated 28.2.2007 was passed ordering the appellant to pay the differential service tax amounting to Rs.30,820/- along with interest. Penalties under Section 76 and 78 were also imposed. The Commissioner (A) upheld the said order but waived the penalty under Section 76 and hence, the present appeal.

2. Arguing the appeal Shri Manoj Pillai, the learned advocate for the appellant, submitted that the appellant is not disputing the demand for service tax. The same has already been paid along with interest. Even though the penalty under Section 78 has been paid by the appellant, he submits that he same may be waived.

3. The learned DR justified the order passed by the lower authority.

4. We note that the liability for differential service tax has not been challenged, hence the differential service tax already paid with interest is not to be interfered with. In the circumstances of the case, in which the entire differential service tax arising on account of inadvertent omission on the part of the appellant, has already been paid, we waive the penalties imposed under Section 80 of the Finance Act, 1994. Order is disposed of in above terms.

(Order was pronounced and dictated
in Open Court on 05/04/2019.)

S.S GARG
JUDICIAL MEMBER

V. PADMANABHAN
TECHNICAL MEMBER

rv