CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Service Tax Appeal No. ST/59298/2013-ST [DB]

[Arising out of Order-in-Original No. 15/GB/2013 dated 13.02.2013 passed by the Commissioner of Service Tax, New Delhi]

M/s. Austrian Airlines ...Appellant

Vs.

C.S.T.,- Delhi …Respondent

Appearance:
Mr. R.P Puri, (CA) for the Appellant
Mr. Ranjan Khanna, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/ Decision.05.01.2017

Final Order No. 55295 /2017

Per S.K. Mohanty:

Levy of Service tax under the taxable category of “Transport of goods by Air” on excess baggage charges collected by the appellant from its Customers during the period from January’ ‘2007 to January ‘2011 is the subject matter of present dispute.

2. The ld. Consultant appearing for the appellant submits that the adjudicating authority has travelled beyond the scope of show cause notice, inasmuch as, the proposal made therein was to confirm the service tax liability under the taxable category of "Transport of Passenger by Air Service"; whereas, the demand was confirmed under the taxable service i.e. "Transport of Goods by Air". Thus, he submits that demand confirmed under different category of service than as proposed in the show cause notice cannot be sustained. The ld. Consultant further submits that demand of service tax under the category of "Transport of Goods by Air service" is not sustainable in view of the decision of this Tribunal in the case of Kingfisher Air Lines Ltd. -Vs.- Commissioner of Service Tax, reported in 2015-TIOL -2329-CESTAT-MUM.

3. On the other hand, the ld. A.R. appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. On perusal of the case records, we find that the adjudicating authority has confirmed the demand of service tax under the taxable category of "transport of goods by air" service, as against the proposed levy under "transport of passenger by air service" made in the SCN. Thus, it is evident that the impugned order has traversed beyond the scope of SCN and on this ground, the appeal of the appellant should succeed. Further, the issue, whether the demand should be confirmed under transport of goods by air service, is settled by this Tribunal in the case of

Kingfisher Air Lines Ltd. (supra), holding that excess baggage charges collected by the airlines are an integral part of the main service of transport of passenger by air, and accordingly, the demand of service tax cannot be sustained under transport of goods by air service.

6. In view of the above, we do not find any merits in the impugned order in confirming the adjudged demand against the appellant. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi