

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CENTRAL EXCISE APPEAL NO. 187 OF 2014

Jetking Infotrain Limited	}	Appellant
versus		
Commissioner of Service Tax	}	Respondent

Mr. Jitendra Motwani with Mr. C. Nanda
Gopal i/b. M/s. Economic Laws Practice
for the Appellant.

Mr. Pradeep S. Jetly with Mr. Jitendra B.
Mishra for the Respondent.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- JANUARY 4, 2016

P.C. :-

On the earlier two occasions and when this Appeal was listed before us, we sought a clarification from Mr. Motwani appearing for the Assessee that how this Appeal raises substantial questions of law insofar as the merits. This query was raised because the Customs, Excise and Service Tax Appellate Tribunal, in the impugned order, copy of which is at page 73 of the paper book, decided the Assessee's Appeals. It rendered a decision thereon on 26th March, 2014. The two Members who heard the Appeal have throughout in the impugned order clarified that the Assessee/Appellant before it raised a contention

insofar as imposition of penalty under section 78 of the Finance Act, 1994. The demand of Service Tax is confirmed with interest and penalty under sections 76 and 77 of the Finance Act, 1994. However, the adjudicating authority dropped the penalty under section 78 of the Act. Against that order, it is the Revenue who approached the first appellate authority, namely, the Commissioner (Appeals). The adjudicating authority's order was reversed by the Commissioner (Appeals) and the penalty came to be imposed. Though it is stated that the two Appeals were taken up together, the Tribunal does not indicate as to whether the Counsel appearing for the Assessee addressed on merits of the demand of Service Tax. On going through this order, we had raised a query and thereafter the Appellant/Assessee approached the Tribunal to seek a clarification.

2) In the garb of allowing a written application in that behalf, a detailed order has been passed by the Tribunal on 26th October, 2015. However, we do not find that the Tribunal has applied its mind to the query raised. Rather, it has indulged in a guesswork by issuing a clarification in favour of the Appellant/Assessee. Possibly, it did not realise that the initial order must read as a whole. If so read, our query was consistent with the same. Once the Tribunal now clarifies that it has

dismissed the Assessee's Appeal on merits but the initial order not indicating anything to that effect, we are left with no alternative but to entertain this Appeal on the following substantial questions of law:-

(a) Whether in the garb of considering an application for clarification of the initial order, can the Tribunal travel beyond it and deal with something which was not subject matter of the order?

(b) Whether the application for clarification now made should have been dealt with and considered only in a limited sphere, namely, whether the initial order suffers from any ambiguity or clerical error?

(c) Whether the order now passed on 26th October, 2015 falls within the purview of Rule 41 of the procedural rules, namely Rule 'D' of the CENVAT (Procedure) Rules?

3) After admitting the Appeal, with the consent of both sides, we take it up for hearing forthwith.

4) We are not satisfied with the approach of the Tribunal. In revenue matters, the approach as taken would not only entail in loss of revenue but precious judicial time and of the higher Court. The Tribunal ought to avoid it in all circumstances. We, therefore, quash and set aside the order passed on 26th March, 2015.

5) We restore the Appeals to the file of the Tribunal. The Tribunal shall now decide the same on merits and in accordance with law uninfluenced by its earlier order and the order passed on

26th October, 2015. All contentions of the Revenue as also the Assessee are kept open. The Appeal is disposed of accordingly.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)