IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.61 OF 2015

Inox Air Products Ltd. .... Appellant
Vs.
The Commissioner of Service Tax,
Mumbai .... Respondent

Mr. Prakash Shah with Mr. Jas Sanghavi i/by M/s. PDS Legal for the Appellant.
Mr. M. Dwivedi with Ms Shalaka Gujar-Karande for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : SEPTEMBER 19, 2016

P.C:

1. We have heard both sides and perused the impugned Order.

2. The appeal is admitted on the following substantial question of law:-

> *Q. Whether the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) was justified in*

> *dismissing the appeal of the assessee challenging the Orders passed in Original dated 3-1-2012 and 31-10-2013?*

3. These Orders-in-Original were passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad. By the impugned Orders, the Adjudicating Authority confirmed the service tax demand for the period June, 2007 to March, 2011 and April, 2011 to March, 2012 on the 'renting of immovable property service'. The demand was confirmed with interest and penalty.

4. It is common ground that there is a writ petition pending in this Court at the instance of the present appellant/assessee. That questions the legality of the levy. In other words, this Court is deciding the issue as to whether such a transaction would attract service tax or would it be liable and exigible to tax under the Maharashtra Value Added Tax Act, 2002.

5. This Court did not restrain the respondent/Revenue in that writ petition from adjudicating this matter and passing

an adjudication Order. That is how even during the pendency of the writ petition the Order of adjudication has been passed.

6. The Orders noted above were challenged in the statutory appeal before the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai. Having perused the impugned Order and the statutory provisions in the field, we are of the view that the Tribunal erred in law in dismissing the appeal as not maintainable. A statutory appeal or a statutory right to appeal was availed of by the appellant/assessee to challenge the Orders-in-Original. Such an appeal was maintainable in law. Once it was so maintainable under the scheme of the Central Excise Act, 1944, which also applies to the levy, imposition and assessment of service tax so also its recovery, then, the Tribunal was bound to decide the appeal on merits. It could not have been dismissed as not maintainable only because the petitioner in the writ petition and the appellant before the Tribunal were pursuing both remedies. The statutory appeal of the assessee, in the absence of any restraint order by the High Court, was maintainable and could

have been decided on merits and in accordance with law. If there was no restraint against passing of an adjudication Order, surely, against such an adjudication Order all statutory remedies, including an appeal are available. That is precisely what the appellant/assessee has done and the appeal could not have been dismissed as not maintainable.

7. We, therefore, allow this appeal. We quash and set aside the impugned Order. We direct the Tribunal to decide the appeal on merits and in accordance with law.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)