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

## CENTRAL EXCISE APPEAL NO. 152 OF 2017

**The Commissioner, Service Tax – V Mumbai.**
4th Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector – E, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051. **…Appellant**

***Versus***

**M/s. Crisil Ltd.,**
Plot No. 121/122, Andheri Kurla Road, Andheri E), Mumbai – 400 093. **…Respondent**

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Mr. M. Dwivedi, with Mr. Sham Walve for the Appellant.
Mr. R.G. Sheth, with Ms. Pinky Dayal Chainani, i/b. R.G. Sheth, for the Respondent.

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**CORAM: A.S. OKA AND RIYAZ I. CHAGLA, JJ.**

**DATED: 13th September 2017**

**O R A L J U D G M E N T :- (Per Riyaz I. Chagla J.)**

1. The Appellant by the present Appeal is challenging order dated 18th May 2016 passed by the Customs, Excise

and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (for short "**Appellate Tribunal**").

2. The Respondent undertakes "Financial Advisory Services" in respect of energy, banking, development, finance, transport and urban infrastructure, disinvestment and risk management. The Appellant was paying service tax on the aforementioned services under the head of "Banking and other Financial Services" with effect from 16th August 2002. A show cause notice dated 20th February 2003 was issued for the period 1999-2000 to 2001-2002 demanding service tax of Rs.1,50,42,302/- by classifying the Financial Advisory Services rendered by the Respondent under the category of "Management Consultancy Service". By an Order-in-Original dated 31st October 2011, the Adjudicating Authority viz. Commissioner of Central Excise, Thane – I confirmed the demand of Rs.1,50,42,302/- along with interest thereon and imposed penalties under the provisions of Finance Act, 1994. The Respondent being aggrieved by the Order-in-Original dated 31st October 2011 preferred an Appeal before the Appellate Tribunal. The Appellate Tribunal allowed the Appeal

of the Appellant and set aside the order of the Adjudicating Authority dated 31st October 2011. The Appellant has challenged the impugned order in the present Appeal.

3. Mr. Dwivedi the learned counsel for the Appellant has submitted that the Financial Advisory Services provided by the Respondent falls under "Management Consultancy Services" and would be liable to service tax prior to 16th August 2002 when the Advisory and Financial Services were included in "Banking and other Financial Services". He has contended that the Financial Advisory Services would fall within the definition of "Management Consultant" under Section 65 (37) of the Finance Act, which reads thus:-

> ***"Management Consultant" Under Section 65 (37) means, 'any person who is engaged in providing any service, either directly or indirectly in connection with the management of any organisation in any manner and includes nay person who renders any advice, consultancy or technical assistance relating to conceptualising devising, development, modification, rectification or up-gradatggion of any working system of any organisation.***

He contends that from a plain reading of the definition of "Management Consultant" it would be clear that the Financial Advisory Services were a part of the service carried out by a "Management Consultant". He has contended that the Appellate Tribunal has erroneously arrived at a finding that the said services were not a part of Management Consultancy Services prior 16th August 2002 and therefore, not taxable prior to the said date.

4. The learned counsel appearing for the Appellant has supported the impugned order.

5. We have carefully considered the arguments. We observe that the Financial Advisory Services undertaken by the Respondent have been introduced for the first time in "Banking and other Financial Services" with effect from 16th August 2002. The definition of Banking and other Financial Services reads thus:-

> "***Banking and other Financial Services" means, 'the following services provided by a banking company or a financial institution***

***including a non-banking financial company, namely –***

***(a) financial leasing services including equipment leasing and hire-purchase by a body corporate;***

***(b) credit card services;***

***(c) merchant banking services;***

***(d) securities and foreign exchange (forex) broking***

***(e) Asset management including portfolio management, all forms of fund management pension fund management, custodial depository and trust services, but does not include cash,***

***(f) Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; and***

***(g) Provision and transfer of information and data processing".***

6. From the definition of Banking and other Financial Services, it is clear that Financial Advisory Services were included as a part of the said services. Insofar as "Management Consultancy Services" are concerned these

have at all times been under the Finance Act and chargeable to service tax. This would be the case even after the inclusion of Advisory and Auxiliary Financial Services under "Banking and other Financial Services" on 16th August 2002. The definition of "Management Consultant" has also remained unchanged. The department has also not raised any objection to classifying the Financial Advisory Services under "Banking and other Financial Services". We are, therefore, of the view that it is not open for the Appellant to take a contrary stand viz. that the Financial Advisory Services were falling under "Management Consultancy Services" prior to 16th August 2002. The Appellate Tribunal have also observed that the Board Circular dated 7th October 1998 categorically clarified that information and advisory services, if any, rendered by credit rating agency would not attract service tax. We accordingly are of the view that the Appellate Tribunal has arrived at correct finding that the advisory services provided by the Respondent does not fall under category of "Management Consultancy Services" and is correctly classified under the "Banking and other Financial

Services”, and hence the same was not taxable prior to 16th August 2002.

7. In the circumstances, we dismiss the present Appeal. There shall be no order as to costs.

**( RIYAZ I. CHAGLA J. )** **( A.S. OKA, J. )**