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

CENTRAL EXCISE APPEAL NO.295 OF 2016

M/s. ITL Tours & Travels Pvt. Ltd. .... Appellants
Vs.
Commissioner of Service Tax, Mumbai .... Respondent

Mr. B.J. Raichandani for the Appellants.
Ms P.S. Cardozo with Ms Ruju R. Thakker for the Respondent.

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

DATE **:** FEBRUARY 27, 2017

P.C:

1. After the appeal was heard for some time and it was brought to the notice of Mr. Raichandani that the appellants are raising contentions essentially about the approach of the Tribunal in not dealing with two propositions and stated to have been canvassed. It is stated that both propositions were indeed canvassed and of law.

2. We informed Mr. Raichandani that it is well-settled

that it is not for this Court to guess as to how the assessee proceeded, what points the assessee's representative pressed and what was given up and whether at all the Tribunal failed to take any of them into consideration or omitted to make a reference to them. The remedy of the aggrieved litigants and by the above approach is to initially move the Tribunal and seek a rectification of the alleged mistake occurring in the order of the Tribunal.

3. On our expressing this view, Mr. Raichandani fairly states that he would not press the appeal but move an application seeking rectification of the mistakes in the order of the Tribunal. Needless to clarify that if such an application is made, it shall be disposed of on its own merits and in accordance with law. We have not expressed any opinion either on its maintainability or on its merits.

4. At this stage, Mr. Raichandani submits that, to enable the assessee to move such an application and for a period of two weeks the Revenue should not initiate any coercive

measures. This request is opposed by the Revenue's counsel by pointing out that the impugned order is dated 20-10-2015. Therefore, the appellants/assessee had ample time to make any application and of the nature above-said.

5. Having heard both sides on this point, we direct that with a view to enable the appellants/assessee to move the Tribunal, the Revenue should not initiate any steps to recover the taxes by coercive means. This direction is also without prejudice to the rights and contentions of both sides.

6. The appeal accordingly stands disposed of.

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