IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.118 OF 2015

M/s.In House Productions Ltd. ... **Appellant**
V/s.
The Commissioner of Service Tax, Mumbai ... **Respondent**

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Mr.Bharat Raichandani and Mr.Mahesh Raichandani i/by Mr.Ranjan Mishra, Advocate for the Appellant.

Mr.Swapnil Bangur, Advocate for the Respondent.

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CORAM : S.V.GANGAPURWALA & A.M.BADAR JJ.

DATED : 27th June 2017.

P.C. :

1 The appellant assails the order passed by the Tribunal dismissing the appeal.

2 The refund claimed of Rs.14,97,334/- is made on 6th July 2014 in respect of service tax paid during the period between October 2001 to February 2003. Another refund of Rs.5,31,607/- is made for the period between June 2003 and February 2004. Both these claims are rejected. Claim of Rs.14,97,334/- is rejected

on the count of limitation, whereas the another claim is rejected on the count of unjust enrichment.

3 The learned counsel for the appellant strenuously contends that the rejection of the claim on the ground of limitation is totally unjustifiable. The appellant had paid the service tax under mistaken belief that the service tax is payable. Subsequently, in view of the Service Tax Circular dated 23rd March 2004, issued by the Deputy Secretary to the Government of India, it became clear that the appellant is not liable to pay the service tax and immediately in July 2004 filed application for refund. From the date of knowledge of the fact that service tax is not payable, the claim is well within limitation. The learned counsel submits that rejection of another claim of Rs.5,31,607/- on the ground of unjust enrichment is also erroneous. No reasons are given while rejecting the said claim. Only relying upon the agreement wherein it is stated that the said consideration is inclusive of all taxes and duties is improper. The taxes as suggested is the taxes as payable. The appellant has not passed on this burden of payment of service tax to M/s.Zee Telefilms Limited i.e. party of the First Part in the said agreement. There is no evidence to that effect also.

4 The learned counsel for the respondent submits that for the service tax paid for the year 2002, the claim for refund was

patently barred by the limitation. The Circular relied by the appellant does not state that it has an retrospective operation. The rejection of claim of refund on the ground of limitation is appropriate. The learned counsel further submits that as far as other claim is concerned, the agreement is abundantly clear. The consideration amount is inclusive of all taxes. The presumption would be that the service tax has been passed on to the other party and in such a case, the refund is not permissible on the principle of unjust enrichment.

5 We have considered the submissions canvassed by the learned counsel for the respective parties.

6 As far as the rejection of the claim of Rs.14 lakh and odd on the ground of limitation is concerned, the same appears to be only on the ground that claim of refund was made after lapse of one year after payment of the service tax. No other aspect appears to have been considered by the Authority and the Tribunal. The appellant is relying upon the Circular dated 23rd March 2004 to suggest that pursuant to the said Circular, he got the knowledge that the appellant is no liable to pay service tax and still that service tax was being paid by the appellant. We have perused the Judgment delivered in the case of ***Hindustan Cocoa Products v. Union of India***, delivered by the Division Bench of this Court and reported in **1994 (74) E.L.T. 525 (Bom.)**, so also the another

Judgment of the Division Bench of this Court in **Central Excise Appeal No. 26 of 2014 dated 28/10/2015**. The said Judgments are squarely applicable to the facts of the present case. We would have considered the case of the revenue, in case the claim for refund would have been filed after lapse of one year of the issuance of the Circular. The Circular is only clarificatory in nature. As such, there is no question of its prospective or retrospective operation.

7 It is clear that for the transaction in question, the appellant was not liable to pay service tax.

8 In light of the above, the rejection of the claim on the ground of limitation is unjustifiable.

9 As far as the rejection of claim of Rs.5 lakh and odd on the ground of unjust enrichment is concerned, we do not find any apt reason for the same. The rejection of the claim on the ground of unjust enrichment is without reason. It is expected of the Authority to probe into the matter and give reasons. The order rejecting the claim on the ground of unjust enrichment is bereft of any reason, only on the ground that there is an agreement wherein it is contended that consideration is inclusive of all taxes, the said presumption is drawn. In that light of the matter, further probe would be necessary, we think it appropriate to given appellant an

opportunity to put forth his case on the said aspect. In the light of the above, we pass the following order :

ORDER

(i) The impugned orders are quashed and set aside.

(ii) Both the claims made by the appellant shall be deemed to be within limitation.

(iii) The original Authority - The Deputy C commissioner of Service Tax, Division Court, Mumbai shall reconsider the refund claims of the appellants holding those within limitation and decide the same on its own merit expeditiously preferably within a period of six months from the date of appearance.

(iv) The appellant shall appear before the Deputy Commissioner on 10th July 2017. It is made clear that we have not given any finding on the aspect of unjust enrichment and the Officers concerned, shall on its own merit decide the same.

(v) Appeal, accordingly, is allowed.

(vi) No costs.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**