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

NOTICE OF MOTION NO. 2723 OF 2016
IN
CENTRAL EXCISE APPEAL NO. 213 OF 2016

Vodafone Mobile Services Ltd.	}	**Applicant**
versus		
The Commissioner of Central excise, Pune-III	}	**Respondent**

Mr. Prakash Shah with Mr. Jas Sanghavi i/b M/s. PDS Legal for the applicant.

Mr. M. Dwivedi with Mr. Sham V. Walve for the respondent.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- APRIL 24, 2017

P.C. :-

1. We have heard both sides on the point of stay. Mr. Shah appearing for the applicant would submit that the appeal is admitted on a substantial question of law and this court has granted an unconditional stay of recovery going by the observations of the tribunal in para 8 at page 72 of the impugned order.

2. On the other hand, Mr. Dwivedi, relying upon the affidavit in reply, would submit that as far as the assessee is concerned, it

cannot urge that because the subscriber of another telecom company, who had accessed the appellant's network for transmission of messages, has not paid any charges to that telecom service provider, for the service rendered, the liability to pay service tax does not arise. Merely because a dispute is pending before the Telecom Disputes Settlement and Appellate Tribunal does not mean that the power to levy, assess and recover the service tax on the taxable service is in any way interfered with or restricted. Mr. Dwivedi, therefore, relies upon the affidavit in reply so as to submit that the motion be dismissed.

3. Having heard both sides and finding that *prima facie* there is merit in the contention of the Revenue that so long as the levy, assessment and recovery is not declared as illegal, the Revenue cannot be restrained from recovering the tax. More so, when the dispute is pending before a distinct authority. Hence, with a view to balance the rights and equities, we direct that on deposit of 50% of the adjudicated demand within a period of six weeks from today by the appellant/applicant, there would be a stay of recovery of the balance amount during the pendency of the appeal. In the event this order is not complied with, the Revenue is at liberty to recover the dues in accordance with law.

4. With the aforesaid directions, the notice of motion is disposed of. The appeal be listed for hearing and final disposal on 21st August, 2017.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**