Sharayu Khot.

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

CENTRAL EXCISE APPEAL NO. 224 OF 2017

The Commissioner of Service Tax-VI, Mumbai ...**Appellant**

Versus

Zapak Digital Entertainment Ltd. ...**Respondent**

Mr. Swapnil Bangur, a/w Mr. Sham Walve, for the Appellant.

Mr. Chirag Shetty, a/w Mr. Parth Parekh, i/by Economic Laws Practice, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 5 September 2018

ORDER :

1. This Appeal under Section 83 of the Finance Act, 1994 ("***the Act***") read with Section 35G of the Central Excise Act, 1944 challenges the order dated 10th July 2015 passed by Customs, Excise and Service Tax Appellate Tribunal (for short "***the Tribunal***").

2. The Revenue urges only the following question of law for consideration :-

> "*Whether in the facts and the circumstances of the case and in law was the Tribunal right in holding that the Respondent is entitled to take the input service credit on Agency Commission as well as the Service Tax charged by the media/broadcasters as shown in the said invoices?*"

3. The Respondent is engaged in rendering services of selling space and time for advertisement. This involves promoting business by placing advertisements on various forms of media through the advertising agency such as M/s. Optimum Media Solutions (Mudra Radar). The advertising agency facilitate the transaction between the broadcaster and advertiser of such Appellant. The broadcaster raises invoices wherein the name of the Appellant as the advertiser or that of the advertising agency is also clearly mentioned. The amount discharged by the broadcaster is paid by the advertising agency and subsequently,

reimbursed by the advertiser. On the basis of the invoices issued by the broadcaster, the Appellant claimed CENVAT credit.

4. The Appellant-Revenue was of the view that the Respondent is not entitled to claim CENVAT credit of service tax paid in respect of the invoices issued by the broadcaster in the name of the agency. The Respondent contested Show Cause Notice and pointed out that the invoices were issued in their name. Therefore, they are entitled to avail of CENVAT credit. This was not accepted by the Authorities under the Act.

5. The Respondent carried the issue to the Tribunal. On examination of the invoices, the Tribunal by the impugned order dated 10th July 2015 held that the invoices clearly shows that the agency has merely acted to as a conduit for transfer of money from the Respondent the broadcaster. Consequently, on the above finding of fact held that the Respondent was entitled to avail CENVAT credit.

6. The grievance of the Appellant-Revenue is that the invoices issued by the broadcaster also shows the name of the advertising agency, therefore, the Respondent could not avail of the CENVAT credit on the basis of the above invoices. We find that the impugned order of the Tribunal has rendered a finding of fact that the invoices as issued by the broadcaster are in the name of the Respondent. It also holds on a finding of fact that the advertising agency is merely shown as an agent of the Respondent. This finding of fact is not shown to be perverse.

7. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. Accordingly, the Appeal is dismissed. No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**