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

CENTRAL EXCISE APPEAL NO. 60 OF 2017

The Commissioner of Service Tax,
Mumbai VII, Mumbai .. Appellant

v/s.
M/s. Greenwich Meridian Logistics (I)
Pvt. Ltd. ..Respondent

Mr. Swapnil Bangur a/w Mr. J.B. Mishra for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.
DATED : 6th SEPTEMBER, 2018.

P.C.

1. This appeal under Section 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 (the Act) challenges the order dated 30th September, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2. Mr. Bangur, learned Counsel appearing in support of the appeal urges the following re-framed questions of law for our consideration :-

(a) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee's contract for purported sale / purchase of cargo space or slots in vessels is a distinct business from booking cargo from shipping lines / streamers on commission basis, though consideration received

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from both services is terms as "Freight Charges"?

(b) Whether in the facts and circumstances of the case, the Tribunal was right in holding that bulk booking of Cargo space or slots by the assessee amounts to purchase or sale of such space or slot as defined under the provisions of Sale of Goods Act, 1930?

(c) Whether in the facts and circumstances of the case, the Tribunal erred in not appreciating the fact that the activity of assessee booking cargo on behalf of Shipping Line / Streamers and so called purchase and sale of Cargo spaces are inter related services getting covered as a Commission Agent under Business Auxiliary Service, as defined under Clause 19 of the erstwhile Section 65 of the Finance Act, 1994?

3. The respondent is registered under the Finance Act, 1994 and providing taxable service viz. "Business Auxiliary Service" as defined under Section 65(19) of the Act and are paying service tax thereon. The respondent in the course of its business enters into contracts with Shipping Lines for carriage of Cargo by sea on the aforesaid services tax was being paid under the head "business auxiliary service". Besides the above, the respondent is also booking cargo space on ships and earning income on that count under the head "Ocean Freight".

4. The issue that arose for consideration before the Tribunal was

whether the amounts received on purchase and sale of cargo space on ships is an activity which is a part of booking cargo space on ships for its clients / exporters. The entire issue is whether the consideration received for the aforesaid activity for purchase and sale of cargo space on the ship is a part of the consideration / additional consideration received in relation to the services rendered by the respondent to its clients under the head "Business Auxiliary Services". In the above view, the issue which arise for our consideration is the valuation of the services rendered by the respondent in booking cargo on commission basis under the head "Business Auxiliary Services"

5. Thus, the issue is of valuation and the remedy in terms of Section 83 of the Finance Act, 1994 r/w Section 35G(1) and 35L(1)(b) of the Act would not be maintainable before this Court. The appeal in respect of the same would be to the Hon'ble Supreme Court as it is an issue dealing with the valuation of services.

6. Accordingly, the Appeal is disposed of in the above terms.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**