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

CENTRAL EXCISE APPEAL NO. 154 of 2019

The Commissioner of CGST & C.E.
Mumbai Central Commissionerate .. Appellant

v/s.

Radiowani .. Respondent

Mr. Pradeep S. Jetly i/b J.B. Mishra for the appellant
Mr. Jas Sanghavi a/w Mr. Sanket Ranade i/b PDS Legal for the respondent

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.

DATED : 28th NOVEMBER, 2019

P.C.

1. This appeal under Section 83 of the Finance Act, 1994 r/w Section 35G of the Central Excise Act, 1944 (the Act) challenges order dated 29th May, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The Revenue has urged the following two questions for our consideration :-

(a) Whether in the facts and circumstances of the case and in law, the Tribunal was right in holding that the assessee has

not provided 'sound recording services' as defined under section 65(105)(zj) of the Finance Act, 1994, to M/s. Ogilvy & Mather Pvt. Ltd. (O&M) and therefore, not liable to discharge service tax liability on the said services?

(b) Whether in the facts and circumstances of the case and in law, the Tribunal was right in holding that the service rendered by the assessee is under "advertising Agency Service" but cannot be considered as there is no proposal for alternate classification in the Show-Cause Notice ?

3. At the very outset, looking at the questions framed, we asked Mr. Jetly, learned Counsel appearing in support of the appeal that the questions as framed seem to indicate that the dispute relates to the appropriate classification of services between two entries under the Finance Act, 1994. Therefore, an appeal against such order of the Tribunal would not lie before this Court. However, Mr. Jetly, learned Counsel appearing in support of the appeal, in response submits that this Court alone would have jurisdiction. This for the reason that the issue which has been raised by the Revenue in the show-cause notice was to bring to tax the assessee under the head "sound recording services". There was no competing entry. It was never the case of the Revenue that the services could be taxed under the

head Advertising Agency Services.

4. Mr. Sanghavi, learned Counsel appearing for the respondents points out that the dispute of classification of the services between two competing entries is indicated in the show-cause notice dated 30th March, 2009 itself. It is submitted that the impugned order decides the issue of classification of the two services between two entries.

5. On reading the impugned order dated 29th May, 2018 of the Tribunal and the show-cause notice dated 30th March, 2009, it is a case of classification of services between two entries. In fact, the questions as framed by the Revenue, itself brings out the issue of classification. Therefore, in view of Section 35G this Court has no jurisdiction to entertain this appeal.

6. In the above view, this appeal is dismissed as not maintainable before this Court.

(NITIN JAMDAR, J.) **(M.S. SANKLECHA, J.)**