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

CENTRAL EXCISE APPEAL NO.200 OF 2018

The Pr. Commissioner of CGST & C.E.
Mumbai East .. Appellant.
v/s.
DHL Lemuir Logistics Pvt. Ltd., .. Respondent.

Mr. Swapnil Bangur with Mr. V. A. Bajpayee, for the Appellant.
Mr. Prakash Shah with Mr. Jas Sanghavi i/b. PDS Legal, for the Respondent.

**CORAM: A.S.OKA &**
**M.S.SANKLECHA, JJ.**
**DATE : 26th MARCH, 2019.**

**P.C:-**

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 8th June, 2016 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).

2 The following question of law as re-framed are urged for our consideration:-

*"(a) Whether in the facts and circumstances of the case and in law, the Tribunal was justified in holding that receipt of Airlines incentive for booking is not includable in value of services under Business Auxiliary Service?*
*(b) Whether in the facts and circumstances of the case and in law the Tribunal justified in holding that the Respondent is entitled to Service Tax exemption under Notification No.4/2004 S. T. dated 01.03.2004?"*

3 We find that the issue arising in this appeal deal with the entitlement to the exemption as well as valuation of taxable service. We note that the Tribunal in the impugned order records as under:-

> *"The disputes relate to claim for exemption from tax on services rendered to M/s. Nokia India Pvt. Ltd., a unit in a Special Economic Zone, in connection with import and export of goods during the period from December 2005 to July, 2007 and the taxability of surplus generated by advance booking of space for air freight."*

4 Thus, the issue which arise in this appeal as is evident from the question as well as the impugned order are in respect of the exemption from Service Tax in view of exemption to Notification No.4 of 2004 and Service Tax dated 31st March, 2004 and valuation of the services for the purpose of Business Auxiliary Services. Both these issues namely- valuation of services as well as the exemption from Service Tax i.e. rate of duty would be a subject matter of appeal before the Supreme Court in view of Section 83 of the Finance Act, 1994 read with Section 35G(1) and 35L(1)(b) of the Act. Therefore, this appeal in respect of valuation and rate of duty is subject to appeal before the Supreme Court and not this Court.

5 Accordingly, **Appeal** is **disposed of** as not maintainable before this Court.

**(M.S.SANKLECHA,J.)** **(A.S.OKA,J.)**