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

CENTRAL EXCISE APPEAL (CEXA) NO.24 OF 2022

The Commissioner of Service Tax-III,
Mumbai ...Appellant

Versus

Vodafone India Ltd. ...Respondent

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Mr. Jitendra B. Mishra a/w. Satyaprakash Sharma for the Appellant.

Mr. Vinay Kumar Jain with Mr. Shanmuga Dev i/b. Mr. Sriram Sridharan for Respondent.

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CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 4th JULY, 2023.

P.C.

1. The revenue is in Appeal in the present proceedings against order dated 16th March 2015, passed by the Central, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai. The Appellant assailing the impugned order has raised the following substantial question of law:-

> "(a) *Whether in the facts and circumstances of the case and in law the CESTAT, Mumbai is correct in holding that **i)** the demand invoking extended period is set aside and **ii)** all penalties are set aside, despite the facts that penalties imposed under Section 76 and 77 of the Finance Act, 1994 are mandatory in nature and there was ample ground to allege suppression of facts with malafide intent, the penalties under 78 of the Finance*

Act, 1994 and Rule 15 of CCR, 2004 also should have been upheld?"

2. Mr. Jain, learned counsel for the Respondents has drawn our attention to the impugned order to submit that by the impugned order appeal filed by not only the Respondents but by the other similar telecom companies, namely, Tata Teleservices, Idea Cellular and Reliance Telecommunication were decided by the Tribunal. He has drawn our attention to a recent order passed by the Co-ordinate Bench of this Court in the case of **The Commissioner of Service Tax, Mumbai-VII Commissionerate Vs. M/s. Tata Teleservices (Maharashtra) Limited** in Central Excise Appeal No.92 of 2019 decided on 15th February 2023, 2023, reported in (2023 (2) TMI 734-Bombay High Court), whereby, on a similar question of law raised by the Revenue, this Court considering an earlier decision in the case of Central Excise Appeal No.6 of 2017 arising from the very same order did not entertain the Revenue's Appeal and which came to be dismissed on the ground that no substantial question of law had arisen for consideration in view of the prior pronouncement. We have perused the decision of the Co-ordinate Bench of this Court in **The Commissioner of Service Tax, Mumbai-VII Commissionerate Vs. M/s. Tata Teleservices (Maharashtra) Limited** (supra). From paragraph 14 of the order passed by this Court, we see that the question of law which is consideration before this Court was identical has raised in the present case.

3. We are of the clear opinion that this Court cannot take a different view from what has been consistently taken not only in the proceedings of Central Excise Appeal No.6 of 2017, but also in Central Excise Appeal No.92 of 2019 in the case of **The Commissioner of Service Tax, Mumbai-VII Commissionerate Vs. M/s. Tata Teleservices (Maharashtra) Limited** (supra).

4. Following the reasons of the decisions in Central Excise Appeal No.6 of 2017 and also in the case of **The Commissioner of Service Tax, Mumbai-VII Commissionerate Vs. M/s. Tata Teleservices (Maharashtra) Limited** (supra), we dismiss the present Appeal. No costs.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**

corrected as per speaking to minutes order dated 04.08.2023.