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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 5th May, 2025

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SERTA 4/2025

THE COMMISSIONER CGST DELHI SOUTH
COMMISSIONERATE

.....Appellant

Through: Mr. Atul Tripathi, SSC, CBIC with
Mr. Gaurav Mani Tripathi and Mr.
Shubham Mishra, Advs. (M:
9891608960)

versus

M/S HAAMID REAL ESTATE PVT LTD.Respondent

Through: Mr. Puneet Agrawal, Ms. Mansi
Khurana, Ms. Shruti Garg & Mr.
Chetan Kumar Shukla, Advs. (M:
9999624628)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.23786/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

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3. The present appeal has been filed by the Appellant- The Commissioner of Central Tax, Delhi South under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, *inter alia*, assailing final order no. 59411/2024 dated 4th November 2024 (hereinafter, '*impugned order*') passed by Customs Excise and Service Tax Appellate Tribunal



(hereinafter, ‘CESTAT’) in *Service Tax Appeal No. 52273 of 2018* with *Service Tax Cross No. 51100 of 2018*.

4. The question that arises in the present appeal is whether the transfer of development rights is liable for service tax. The Order-in-Original bearing no. 27/PP/COMMR./CGST/AUDIT-II/2017-18 dated 28th March 2018 had held that the said service would not be taxable. The Revenue Department had challenged the same by way of an appeal, which has been rejected on the ground of limitation.

5. Ld. Counsel for the Respondent raises the question of maintainability of the present appeal in view of Section 35G and 35L of the Central Excise Act, 1944, which applies in respect of service tax cases as well.

6. This Court had an occasion to consider a similar matter in *SERTA 2/2024* titled ‘*Commissioner of CGST and Central Excise Delhi South v. M/s Spicejet Ltd.*’ wherein this Court considered the following past decisions:

- *Commissioner of Service Tax v. Ernst & Young Pvt. Ltd. and Ors.*, [2014 (2) TMI 1133-Del]
- *Commissioner of Service Tax v. Delhi Gymkhana Club Ltd.* [2009 (16) STR 129 (Del)]
- *Commissioner of Service Tax, Delhi v. Bharti Airtel Ltd.* [2013(30) S.T.R. 451 (Del.)]
- *ST Appl. No. 73/2012* titled as ‘*Commissioner of Service Tax v. Intertoll ICS CE Cons O & M Pvt. Ltd.*’, decided *vide* order dated 16th December, 2022



7. In the said decision, the Court had observed as under:

“15. Even in the present case, though CESTAT has only considered the issue of limitation and the said issue was framed for consideration vide order dated 23rd January, 2024, the nature of the order, which is appealed, has to be considered. The original order passed by the Commissioner considered the question as to whether CENVAT credit was allowable or not, and whether penalty was imposable or not in terms of the applicable law. It also considered the leviability of service tax on excess baggage charges. Merely because CESTAT has only considered the issue of limitation, the present appeal cannot be filed in the High Court.

16. In view of the above decisions and considering the nature of issues that have been decided vide the order dated 31st March, 2016, passed by the Commissioner of Service Tax as also the impugned order of the CESTAT dated 3rd July, 2023, this Court is of the opinion that an appeal against the said impugned order would lie, in terms of Section 35L of the Central Excise Act, 1944, to the Hon’ble Supreme Court.

17. Therefore, the present appeal is dismissed as not maintainable.

18. Needless to state that the dismissal of the present appeal would not preclude the Appellant from availing such remedies as may be available in accordance with law and seeking benefit under Section 14 of the Limitation Act, 1963, for the period during which the present appeal was pending before this Court.

19. The present appeal is disposed of in the aforesaid terms.”



8. In view of the above, the present appeal would not be maintainable before this Court. Accordingly, the appeal is dismissed with liberty to the Appellant to approach the Hon'ble Supreme Court.

9. In the facts and circumstances of this case, time to file the appeal is extended till 15th July, 2025 at the request of Mr. Tripathi, Id. Counsel for the Revenue.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 5, 2025/dk/ck