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

Date of decision: 22nd May, 2025

+ **SERTA 7/2025 & CM APPL. 31776/2025**

COMMISSIONER OF SERVICE TAX, DELHI III.....Appellant

Through: Mr. Atul Tripathi, SSC.
(M:9560018960)

versus

M/S GLOBE CIVIL PROJECTS PVT LTDRespondent

Through: None.

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.31776/2025 (for exemption)

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

SERTA 7/2025

3. The present appeal has been filed by the Appellant- Commissioner of Service Tax, Delhi III under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, *inter alia*, assailing Final Order No. 50356/2025 dated 3rd March, 2025 (hereinafter, '*impugned order*') passed by Customs Excise and Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') in *Service Tax Appeal No. 54328 of 2015*.

4. The question that arises in the present appeal is whether the construction of institutions engaged in education is liable for service tax or



not. The Order-in-Original dated 21st July, 2015 (*hereinafter, 'the O-I-O'*) held that the said service would not be taxable and only confirmed the demand of Rs.22,661/- out of the total demand of Rs.15,90,60,547/- raised in show cause notice dated 22nd April, 2014. While passing the said O-I-O, the Adjudicating Authority imposed Service Tax only on Goods Transport Agency Services and further demanded appropriate interest of Rs.15,909/-.

5. Being aggrieved by the Order-in-Original dated 21st July, 2015, the Appellant Department filed an appeal before the CESTAT in Service Tax Appeal No. 54328 of 2015. However, the CESTAT vide the Impugned Order confirmed the decision of the Adjudicating Authority. Hence, the present appeal.

6. Ld. Counsel for the Respondent raises a question relating to the 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.

7. 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

8. 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.”



9. 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.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 22, 2025

dj/ss