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

Date of decision: 26th February, 2026

+ **SERTA 3/2026**

**PRINCIPAL COMMISSIONER CGST DELHI,
SOUTH COMMISSIONERATE
2ND & 3RD FLOOR, EIL ANNEXE BUILDING,
BHIKAJI CAMA PLACE, NEW DELHI-110066.**

.....APPELLANT

Through: Mr. Atul Tripathi, Senior
Standing Counsel with
Mr. Akshay Sagar, Mr. Gaurav
Mani Tripathi, Mr. Shubham
Mishra & Mr. Madhav Anand,
Advocates.

versus

**M/S BUREAU OF ENERGY EFFICIENCY
4TH FLOOR, SEWA BHAWAN, R.K. PURAM,
NEW DELHI-110066.**

.....RESPONDENT

Through: Mr. Preetam Singh, Advocate.

CORAM:

**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL**

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

CM APPL. 4853/2026 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.



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3. This appeal is filed under Section 35G of the Central Excise Act, 1944. read with Section 83 of the Finance Act, 1994, by the Revenue. The challenge in the appeal is to the order dated 16th September, 2025, passed in Final Order No.51323/2025 in Service Tax Appeal no. 50359/2025, passed by the CESTAT.

4. By the impugned order, the CESTAT has recorded the findings that the respondent is not liable to pay service tax on fee charged under the heads “*Standard & Labelling (Registration and Labelling Fee)*” and “*Processing Fee,*” as such services were sought to be categorised under “*Technical Inspection and Certification Service*”.

5. The Tribunal was of the view that the issues raised before it are covered by the findings recorded by the Tribunal for an earlier period involved in 2008-09 to 2012-13 and 2013-14, vide final orders dated 27th February, 2018 and 24th November, 2022. The Tribunal has observed as under:

“It is not in dispute that the Tribunal in the case of the respondent itself, for the earlier period, allowed the appeal filed by the respondent in a matter where the same issue was involved. The relevant portion of the decision is as follows:-

5. We have heard both sides and perused the material available on record. In the present case, the crucial point involved is that, whether or not the assessee-Appellants have discharged the statutory obligation in pursuance to the Act of Parliament and the Regulations framed thereunder. On perusal of the Act and the Regulations, we have no doubt that the assessee-Appellants did discharge the statutory obligations mandated under the law. The fee collected in various



forms is also pre-notified and fixed by the authority as per law. The mention of the original authority that the Regulation is optional for the manufacturers is erroneous. Regulation makes it mandatory for such labeling. Even otherwise, the fee collected from such manufacturers who approached the assessee-Appellants for labeling is for statutory performance as per law. We note that the same cannot be subjected to Service Tax liability as per the provision of taxable service. Regarding further disposal of the fee collected, the learned Chartered Accountant submitted that, as per law the assessee-Appellants are required to deposit in a designated fund which will be used for organizational expansion of the assessee-Appellants, their expansion and further requirements are mandated by the Government Regulations and they are under the direct control of the Ministry of Power supported by budgetary framework. In case of winding up of the assessee-Appellants organization, the whole of the assets and finance will lie with the Central Government under whose authority they are created.

6. In view of the above facts and discussions, we find that the impugned order is not legally sustainable. The assessee-Appellants, acting in pursuance to the statutory regulations, collected statutorily fixed fee for such performance, cannot be subjected to Service Tax. Accordingly, the impugned order is set aside and the appeal is allowed.

7. In the result, the appeal filed by the assessee-Appellants is allowed."

6. In view of the provision of Section 35G of the Central Excise Act, 1944, the counsel for the respondent has raised a preliminary



objection to the maintainability of the appeal. According to him, since the issue of taxability has been decided, the appeal lies to the Supreme Court, and an appeal under Section 35G of the said Act is not maintainable before the High Court for want of an express statutory remedy. He would claim that the issue is no longer *res integra* and has been decided by the Division Bench of this Court, by relying on the judgments in the matter of *Commissioner of Service Tax Delhi v. M/S Konark Exim Pvt. Ltd. and connected matters*”: (2025:DHC:7829:DB); and *Commissioner of CGST and Central Excise Delhi South v. Spicejet Ltd.* (SERTA 2/2024).

7. As against the above, the counsel for the appellant states that the order impugned passed by the CESTAT is in ignorance of the statutory provisions, as the respondent cannot be said to be the State or Central Government, and the protection order in favour of the respondent was taken away by virtue of the amended Section 65B (26A) of the Finance Act, 1994.

8. In such an eventuality, he would claim that the order of the CESTAT is without considering the statutory provision, and as such, the appeal is very much maintainable.

9. Having considered the rival claims, we have gone through the judgments cited by the counsel for the respondent in the matter of *M/S Konark Exim Pvt. Ltd (referred supra)*. In the said matter, by relying on the judgment of this Court in the matter of *Spicejet Ltd. (referred supra)*, it has been held that the issue in relation to taxability, an appeal before the High Court under Section 35G is not maintainable, and the only remedy available is an appeal to the Apex Court under Section 35L of the Central Excise Act, 1944.



10. Since the objection raised by the counsel for the respondent is squarely substantiated by the aforesaid authoritative judicial pronouncements, we upheld the preliminary objection raised by the respondent. That being so, we deem it appropriate to hold that the appeal is not maintainable and is, accordingly, disposed of.

11. However, we deem it appropriate to grant liberty to the appellant to prefer an appeal under Section 35L before the Apex Court. We hereby clarify that we have not gone into the merits of the matter, and it is open for the appellant to canvass its case before the Apex Court, in case, if the issue of limitation crops up.

12. It is also open for the appellant to canvass its case before the Apex Court for condonation of delay, having regard to the time spent by it in prosecuting the present appeal.

13. In view of the above, the present appeal stands disposed of.

14. Copy of the Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**AJAY DIGPAUL
(JUDGE)**

FEBRUARY 26, 2026/ab/st