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

\+ CEAC 5/2024 and CM APPL. 50039/2024

THE COMMISSIONER OF CENTRAL TAX, CGST DELHI EAST .....Petitioner

Through: Mr. Shubham Tyagi (SSC, CBIC), Ms. Navruti Ojha Adv.

versus

SAMIAH INTERNATIONAL BUILDER PVT. LTD .....Respondent

Through: Mr. Prabhat Kumar, Ms. Ekta Kumari, Ms. Ritika Verma, Mr. Samarth, Mr. R P Singh, Mr. Rakesh Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

ORDER

% **28.07.2026**

1. The present Appeal has been filed under Section 35G of the Central Excise Act, 1944, as made applicable to service tax matters under the Finance Act, 1994, read with Section 174 of the Central Goods and Services Tax Act, 2017, *inter alia,* assailing the Final Order No. ST/A/51686-51687/2023-ST{DB} dated 22.12.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi, in Service Tax Appeal No. ST/55788/2014 filed by the Respondent and Service Tax Appeal No. ST/55922/2014 filed by the Revenue, arising out of Order-in-Original No. 20/2016-ST dated 06.12.2016 passed by the Commissioner of Central Excise, Delhi-III, Gurgaon.

2. The maintainability of the present Appeal before this Court is disputed by the learned counsel appearing for the Respondent. It is contended that the expression "determination of any question having a

relation to the rate of duty of excise", occurring in Section 35L of the Central Excise Act, 1944, is wide enough to encompass the question of taxability of a particular service. In support of the said contention, reliance is placed upon the judgment of the Division Bench of this Court in ***Commissioner of Central Tax, CGST Delhi East v. JMD Limited***, 2024 SCC OnLine Del 9141.

3. Learned counsel appearing for the Appellant, on the other hand, submits that the Allahabad High Court, in ***NKG Infrastructure Ltd. v. Commissioner of Customs, Central Excise & Service Tax***, 2017 (47) S.T.R. 113 (All.), has held that an appeal before the High Court is maintainable where the taxability of a particular service is in dispute.

4. This Court has considered the submissions advanced by the learned counsel for the parties.

5. It is evident that the Division Bench of this Court has held that where the CESTAT determines the taxability of a particular service, an appeal against such determination would lie before the Hon'ble Supreme Court under Section 35L of the Central Excise Act, 1944, and not before the High Court. In arriving at the said conclusion, reliance has been placed upon ***Commissioner of CGST and Central Excise, Delhi South v. M/s Spicejet Ltd.,*** SERTA 2/2024.

6. A perusal of the judgment of the Allahabad High Court in ***NKG Infrastructure Ltd (supra)*** shows that only the questions framed therein were adjudicated. The issue of the maintainability of an appeal before the High Court was neither raised nor considered.

7. The learned counsel appearing for the Appellant has also failed to persuade this Court that the aforesaid decision of the Division Bench has overlooked any relevant statutory provision or binding precedent warranting a different view.

8. In view of the aforesaid, the present Appeal is held to be not maintainable before this Court. The Appellant is relegated to avail the appropriate statutory remedy before the Hon'ble Supreme Court under Section 35L of the Central Excise Act, 1944.

9. Accordingly, the present Appeal along with pending application (s) if any, stands disposed of.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

JULY 28, 2026

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