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

\+ **CEAC 10/2025 & CM APPLs. 33837-39/2025**

ADDITIONAL DIRECTOR GENERAL

(ADJUDICATION) .....Petitioner

Through: Mr. Gibran Naushad, Senior Standing Counsel with Mr. Harsh Singhal, Mr. Suraj Shekhar Singh, Advs. (M: 9560430864)

versus

M/S ACTIVE GENERICS PRIVATE LIMITED .....Respondent

Through: Mr. Yogendra Aldak, Mr. Kunal Kapoor & Mr. Abhishek Chhabra, Advs. (M: 8010333998)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 28.05.2025

1. This hearing has been done through hybrid mode.

CM APPL. 33838-39/2025 (for exemption)

2. Allowed, subject to all just exceptions. Applications are disposed of.

CEAC 10/2025 & CM APPL. 33837/2025 (for stay)

3. The present petition has been filed by the Petitioner -Additional Director General Adjudication under Section 35G of the Central Excise Act, 1944 (hereinafter, '*the Act*'), *inter alia*, assailing the final order bearing no. 58648-58651/2024 dated 25th September, 2024 in ***Service Tax Appeal No. 52629/2016*** (hereinafter, '*impugned order*') passed by the Customs Excise and Service Tax Appellate Tribunal (hereinafter, '*CESTAT*'). *Vide* the impugned order, the Order-in-Original bearing no. 12/2016-ST dated 20th

June, 2016 was set aside.

4. The short question that arises in the present petition is whether service tax is payable as held in the Order-in-Original dated 20th June 2016 or whether in view of the termination of lease, there is no provision of service and hence, the demand is unsustainable.

5. Ld. Counsel for the Respondent further raises the issue of maintainability of the present petition before this Court under Section 35G of the Act. It is his submission that under Section 35L of the Act since the question of taxability has been raised, the appeal would lie before the Supreme Court.

6. Issue notice. Mr. Yogendra Aldak, ld. Counsel for the Respondent accepts notice.

7. Let the written submissions be filed by both the parties on the question of maintainability along with the judgments, parties wish to rely upon.

8. List on 18th August, 2025.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 28, 2025
dj/ck