IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL (CEXA) NO.42 OF 2021

The Commissioner of CGST & Central Excise ...Appellant

Versus

BG Exploration and Production India Ltd. ...Respondent

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Mr. Vijay Kantharia a/w. Mr. Ram Ochani for the Appellant.

Mr. Jitendra Motwani a/w. Ms. Alifya Vora and Ms. Rinkey Jassuja i/by M/s. For Economic Laws Practice for the Respondent.

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CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 4th JULY, 2023.

P.C.

1. We have heard Mr. Kantharia on the present proceedings alongwith Mr. Ochani. We have also heard Mr. Motwani, learned counsel for the Respondent.

2. Mr. Motwani has raised a preliminary objection to the maintainability of this appeal contending that the issue which arises in the present proceedings pertains to the issue of taxability. He submits that considering the provisions of Section 35L (2) of the Central Excise Act, 1944, the Appeal would be maintainable before the Supreme Court. After perusing the record and the impugned order, we are in agreement with Mr. Motwani that the issue which arises in the present proceedings pertains to taxability and hence, the appropriate remedy for the Appellants to file an appeal before the Supreme Court as per the mandate of Section 35L of the Central Excise Act, 1944. We accordingly dispose of this appeal with liberty to the Appellant to approach the Supreme Court.

3. All contentions of the parties are expressly kept open.

4. Disposed of. No costs.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**