**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Caveat Petition No. 2758-2019 in/and**
**STA-26-2019 (O&M)**
**Date of decision:15.02.2023**

**Commissioner of CGST, Panchkula ....Appellant**

**V/s.**

**Nestle India Limited ....Respondent**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**
**HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Anshuman Chopra,
Senior Standing Counsel-CBIC with
Mr. Deepesh Kakkar, Advocate
for the appellant.

Mr. Amrinder Singh, Advocate for the caveator/respondent.

**Ritu Bahri, J. (Oral).**

**CM-23558-CII-2019**

For the reasons mentioned in the application, the same is allowed and the delay of 48 days in refiling the appeal is condoned.

**STA-26-2019 (O&M)**

This order shall dispose of four STAs having nos. STA-26-2019, STA-27-2019, STA-2-2020, and STA-12-2021 having identical issue. However, for the sake of brevity, facts are being extracted from STA-26-2019.

The revenue has come up in appeal against the order dated 28.08.2018 (Annexure P-1) passed by the Customs Excise and Service Tax Appellate Tribunal, Chandigarh whereby the appeal filed by the respondent Nestle India Limited against the various notices was allowed by setting aside the demand in the separate categories with observation that the service tax could not be levied upon the respondent.

At the outset, learned counsel for the respondent states that question of determination of the imposition of taxability is a question which can only be considered by the Supreme Court and he has referred to the judgment passed by the Division Bench of this Court in ***Commissioner of Service Tax vs. DLF Golf Resorts Ltd, 2017 (7) G.S.T.L. 202 (P&H)*** and another judgment passed in ***STA-23-2019 titled The Principal Commissioner vs. M/s. Raj Kishan and Co., decided on 12.03.2020*** wherein it has been consistently held that appeal to High Court is not maintainable in a matter relating to taxability.

Learned counsel for the appellant has not been able to dispute the proposition of law as laid down by the above said judgments.

Keeping in view this fact, this appeal is dismissed with liberty to the revenue to take appropriate steps in accordance with law, if so advised.

Caveat Petition and pending application (if any) also stand dismissed.

**(RITU BAHRI)**
**JUDGE**

**(MANISHA BATRA)**
**JUDGE**

**15.02.2023**
Divyanshi

**Whether speaking/reasoned: Yes/No**
**Whether reportable: Yes/No**