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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 16.02.2024

+ **W.P.(C) 2357/2024 & CM. APPL. 9757-58/2024**

TRANS BHARAT AVIATION PRIVATE LIMITED..... Petitioner

versus

UNION OF INDIA THROUGH SECRETARY, DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, & ORS. Respondents**Advocates who appeared in this case:**

For the Petitioner:

Mr. Anil Kathuria and Ms. Reena Grover Advocates.

For the Respondents:

Mr. Kamal Kant Jha, Senior Panel Counsel.

Mr. Aakarsh Srivastava, Standing Counsel with Mr.
Vaibha Gupta, Advocate for respondents No.2 and 3.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J (ORAL)**

1. Petitioner impugns final order dated 03.05.2023, whereby appeal of the petitioner has been dismissed.
2. Learned counsel for the petitioner submitted that neither petitioner nor an authorized representative or counsel could appear on behalf of the petitioner on 03.05.2023, when the appeal was taken up for hearing, by the Custom Excise and Service Tax Appellate Tribunal (Tribunal) and the Tribunal in absence of the petitioner decided the



appeal on merits without taking into account any of the grounds raised by the appellant in the appeal.

3. Learned counsel for the respondent, who appears on advance notice raises a preliminary objection with regard to maintainability of the present petition before this Court.

4. He submits that the Tribunal has decided the appeal on merits and the issue was with regard to the classification of the services provided by the petitioner.

5. He further submitted that the Tribunal relied upon *M/s Chimes Aviation Pvt. Ltd. Vs. Commissioner Service Tax, New Delhi-II*, 2022 (1) TMI 1016 CESTAT, New Delhi, passed by Division Bench of this Tribunal, wherein same issue has already been decided.

6. Learned counsel further submits that the only remedy of the petitioner, if any, is before the Supreme Court in an appeal under Section 35L of the Central Excise Act, 1944.

7. Faced with the said objection, learned counsel for petitioner seeks leave to withdraw the petition, reserving the right of the petitioner to avail of appropriate remedies in law.

8. Petition is dismissed as withdrawn. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 16, 2024/NA