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

\+ **W.P.(C) 5974/2025**

FUTURE BRANDS LIMITED .....Petitioner

Through: Mr. Kumar Visalaksh, Mr. Udit Jain and Ms. Akanksha Dikshit, Advocates.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE, DELHI SOUTH COMMISSIONERATE, NEW DELHI .....Respondent

Through: Mr. Aditya Singla, SSC CBIC with Mr. Ritwik Saha and Mr. Umang Misra, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

<u>O R D E R</u>

% **06.05.2025**

1. This hearing has been done through hybrid mode.

<u>CM APPL. 27380/2025 (for exemption)</u>

2. Allowed, subject to all just exceptions. Application is disposed of.

<u>W.P.(C) 5974/2025 & CM APPL. 27379/2025 (for stay)</u>

3. The present petition has been filed by the Petitioner – M/s. Future Brands Limited under Article 226 of the Constitution of India challenging the impugned Order-in-Original dated 23rd December, 2024 by the Respondent - Commissioner of Central Good & Service Tax, Delhi South Commissionerate (hereinafter "*the impugned order*").

4. The short question that arises is whether activities *qua* receiving of income for exclusive licensing of a brand would attract payment of Service Tax or Value Added Tax (hereinafter "*VAT*").

5. This is the second round of litigation. The case of the Petitioner is that the said issue has already been decided in the first round by the Customs, Excise And Service Tax Appellate Tribunal (hereinafter *'CESTAT'*) *vide* order dated 8th September, 2022 in ***Service Tax Appeal No. 53304/2015*** titled ***Commissioner of Service Tax, Delhi-II vs. M/s Future Brands***, which has held that *right to use* transactions would not be subject to payment of Service Tax. The initial litigation was in respect of Financial Years 2008-09 to 2013-14.

6. However, *vide* the impugned order relating to subsequent Financial Years 2014-15 and 2015-16 to June 2017, the Department has taken a contrary stand. Hence, ld. Counsel for the Petitioner has been at pains to submit that the Department having accepted the earlier view of CESTAT, cannot be allowed to challenge the same and take a contrary position for the subsequent Financial Years.

7. The Court has heard the ld. Counsels for the parties.

8. Mr. Aditya Singla, ld. Sr. Standing Counsel for the Central Board of Indirect Taxes and Customs, has directed the attention of the Court to paragraph 36.13.1 of the impugned order, where the Adjudicating Authority/ Commissioner has held as under :

> *"36.13.1 The moot question in the instant matter is whether the activities related to receiving income under the head "Right to use" of exclusive brands fall under the category of service or not. In the instant matter, I find that that the right to use in respect of trademark licence agreements has not been transferred to the other entities in absolute and unrestricted terms and the legal right of possession and effective control always remained with the party. Therefore the consideration cannot be treated as received towards sales but should be treated as service Furthermore, the present case is not one of transfer of right to*

use and is more in the nature of permission to use the trademark which continues to be the property of the licensor. The right to use is assigned subject to certain limitations and conditions. On violation of any of the limitations/ conditions the right reverts to the licensor. [...]"

9. In the opinion of this Court, the impugned order would clearly be an appealable order. The question as to the nature of the right which has been transferred by the Petitioner would have to be examined, bearing in mind the clauses in the agreement, as also the definition of 'permitted use' under Section 2(r) of the Trade Marks Act, 1999.

10. In the opinion of this Court, the impugned order being an appealable order, the Petitioner deserves to be relegated to approach the CESTAT for adjudication of the appeal. Needless to add, since limitation for filing the same is over, the Petitioner is given a period of 30 days to approach CESTAT.

11. It is made clear that this Court has not rendered any opinion on the merits of the matter. All rights and remedies are left open.

12. The present petition is disposed of in these terms. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 6, 2025/*nd/msh*