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

NOTICE OF MOTION NO. 377 OF 2015
IN
INCOME TAX APPEAL (ST) NO. 426 OF 2012

The Director of Income Tax (Exemption) ..Appellant

Vs.

M/s Gem & Jewellery Export Promotion Council ..Respondent

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Mr. Ashok Kotangale a/w Padma Divakar a/w A.D. Nagarjun, Advocates for Appellant.
Mr. Kunal Vaishnav a/w Ms. Madhupretha Elan, Advocates I/b M/s Wadia Ghandy & Co. for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 21 AUGUST 2015

P.C.:

This notice of motion seeks recall of the order dated 25 October 2012 dismissed by the Prothonotary and Senior Master on the appellant failing to remove office objections under Rule 986 of the Bombay High Court (Original Side) Rules.

2. Mr. Kotangale, the learned Counsel for revenue very fairly states that the issue arising in the present appeal stands concluded

against the revenue by order of this Court in appeal filed by revenue in respondent/assessee's own case being Income Tax Appeal (L) No. 1113/2010 decided on 15 February 2011.

3. We find that the impugned order dated 26 August 2011 of the Tribunal has dismissed the revenue's appeal before it by following the order of this Court dated 15 February 2011 in Income Tax Appeal (L) No. 1113/2010 in the respondent/assessee's own case. From the record it appears that the revenue had preferred a Special Leave Petition to the Supreme Court from the order of this Court dated 15 February 2011 in Income Tax Appeal (L) No. 1113/2010. The Special Leave Petition came to be dismissed by the Supreme Court on 9 September 2011.

4. The present appeal has been verified and filed on 25 February 2012. It is further clear that at the time when the present appeal was filed, the Supreme Court had already concluded the issue arising in the present appeal against the revenue. No distinguishing feature in the present case are mentioned in the memo of appeal warranting the filing of this appeal.

5. At this stage, Mr. Kotangale, interjects to state that he would withdraw the notice of motion as well as the appeal. We permit to withdrawal the notice of motion as well as the appeal. Thus refrain from imposing any costs.

6. However the facts recorded hereinabove reveal the manner in which this appeal was filed by the revenue i.e. after the Apex Court had dismissed the revenue's appeal from order of this Court which has been followed in impugned order of the Tribunal. Normally we would have not recorded these facts when the Counsel for the revenue seeks to withdraw the notice of motion as well as the appeal and would have allowed the same simplicitor. However it is necessary that the above facts remain on record so as to ensure that the revenue takes appropriate steps to see such futile appeals are not filed by them which leads to unnecessary harassment of the assessee.

7. We direct the learned Counsel appearing for the revenue to communicate a copy of this order to the Principal Commissioner of Income Tax for appropriate action at his end.

8. The notice of motion as well as the appeal are dismissed as withdrawn.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**