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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.191 OF 2017

The Commissioner of Central Excise, Pune-II ..Appellant.
V/s.
M/s.Rakhoh Enterprises Lrd. ..Respondent.

Mr.M.Dwivedi i/b. Ms.Shalaka Gujar for the appellant.

Mr.Prakash Shah with Mr.Jas Sanghvi i/b. PDS Legal for the respondent.

CORAM: M.S.SANKLECHA AND
RIYAZ I. CHAGLA, JJ.

DATE : AUGUST 29, 2018

P.C.:-

This is an appeal under section 35G of the Central Excise Act, 1944 ('the Act' for short) challenging the order dated September 25, 2014 passed by the Central Excise and Service Tax Tribunal ('CESTAT' for short).

2. This appeal has become infructuous for the reason that the impugned order dated September 25, 2014 was set aside by this Court on August 31, 2015 in a Writ Petition No.7889 of 2015

reported as *Rakhoh Industries Pvt. Ltd. V/s. Union of India*[1] the appeal before the CESTAT was placed before the larger Bench of the CESTAT to be heard along with other appeals pending before it.

3. The larger Bench of the Tribunal by an order dated June 21, 2016 in *Rakhoh Enterprises V/s. Commissioner of Central Excise, Pune*[2] had decided the appeal on merits in favour of the respondent-assessee and subsequent thereto, the regular Bench of the Tribunal passed an order on December 6, 2016 in *Commissioner of Central Excise, Nashik and Pune-1 V/s. Rakhoh Enterprises*[3] allowed the appeal on merits in favour of the respondent-assessee.

4. In the above view, the present appeal filed by the revenue is infructuous and dismissed as such.

5. However, before parting, we would wish to point out that the aforesaid developments, consequent to the impugned

1 **2017 (51) S.T.R. 340 (Bom.)**
2 **2016 (338) E.L.T. 449 (Tri - LB)**
3 **2017 (357) E.L.T. 823 (Tri-Mumbai)**

order dated September 25, 2014 has been brought to our attention by Mr.Shah, the learned counsel for the respondent-assessee. The officers of the revenue have not instructed their counsel about the further developments which had taken place consequent to filing of this appeal in March, 2015. Thus, in the absence of Mr.Shah for the respondent-assessee, it is likely that this infructuous appeal would have been admitted. This is more particularly because the appeals are admitted or dismissed only after hearing the appellant before us as at admission stage, we do not insist upon the respondent being heard.

6. We would direct the Commissioners to ensure that their officers instruct the counsel appearing for revenue with the developments upto date when the appeal comes for hearing.

(RIYAZ I. CHAGLA, J.) ***(M.S.SANKLECHA, J.)***