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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.91 OF 2019 IN
APPEAL NO.31 OF 2017

The Commissioner of GST &
Central Excise ...Applicant
vs.
M/s.Reliance Communications Ltd. ...Respondent

Ms P.S.Cardoz for the applicant
Ms Ginita Bodani I/b Economic Laws Practice for the respondent

CORAM : A.S.OKA, &
M.S.SANKLECHA,JJ.
DATE : APRIL 4, 2019

P.C.:

1 Heard the learned counsel for the applicant and the learned counsel for the respondent. Central Excise Appeal No.31 of 2017 was withdrawn under the order dated 3rd April 2017. This Appeal along with several other Appeals including Central Excise Appeal No.32 of 2017 in which the present respondent is the respondent were withdrawn under the said order, in the light of the circular issued by the Revenue which determines the limit of monetary sums or the sums above which alone the appeals of the Revenue are to be pressed. In affidavit in support of the Notice of Motion, in paragraph 5, it is pointed out that in Appeal No.31 of 2017, the claim of the applicant was more than Rs.8 crores and therefore, the appeal was erroneously withdrawn

under a wrong impression that the claim was below the prescribed monetary limits.

2 The learned counsel for the respondent is not disputing the correctness of the aforesaid contention. Her submission is that there is a delay of 500 days which is not explained.

3 Power invoked by filing Notice of Motion is power to recall an order. Once, it is accepted that the appeal was purportedly withdrawn as per the policy of the Revenue and once it is found that the policy was not applicable to the appeal, the order permitting withdrawal of appeal will have to be recalled. The circular was not applicable to the facts of the case. Accordingly, the Notice of Motion is made absolute in terms of prayer clauses (a) and (b).

4 We make it clear that the order dated 3rd April 2017 is recalled only to the extent of Central Excise Appeal No.31 of 2017 and the said order with regard to other appeals will stand.

5 Place the Central Excise Appeal No.31 of 2017 under the caption of `Fresh Admission' on 30th April 2019.

(M.S.SANKLECHA,J.) (A.S.OKA,J.)