IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 1 OF 2013

Commissioner of Central Excise &
Customs, Town Centre, N-5,
CIDCO, Aurangabad. ... **Appellant**

VERSUS

M/s. Chate Coaching Classes Pvt. Ltd.,
'Chate House' Plot No. 4,
Near Cricket Stadium,
CIDCO, Aurangabad. ... **Respondent**

...

Advocate for Appellant : Mr. Ladda Dwarkadas S.
Advocate for Respondent : Mr. Aditya Nawandar h/f Mr. V.M. Chate

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 23.08.2024

PER COURT :

This appeal under Section 35(G) of the Central Excise Act, 1944, as amended by Finance Act, 2003, was admitted by the order dated 26.08.2014 on following substantial question of law:

> " *Whether study material supplied by respondent-Assessee did not come under the ambit of standard text books which are priced, but is specifically desinged according to the method of coaching and hence was subject to Service Tax ?"*

2. The learned advocate for the appellant Mr. Ladda, would submit that though the substantial question was formulated while admitting the appeal it transpires that the decision under challenge, of the Appellate Tribunal, was based on decision of a Tribunal in the case of **Pinnacle v. Commissioner**

of C. Ex., Chandigarh; (2011) 024 STR 453. He submits that the decision in the matter of **Pinnacle (supra)** was a subject matter before the **Punjab and Haryana High Court,** which dismissed the appeal of the department in **Commissioner of Central Excise, Chandigarh-I Vs. Pinnacle; (2017) 49 STR 277**. He would submit that he had sought instructions from the office of the appellant and has received a communication dated 23.08.2023 that the department has accepted the decision of the Punjab and Haryana High Court. He would, therefore, submit that in view of such state of affairs, the appeal may be disposed of.

3. Since the decision of the appellate tribunal on the basis of which the substantial question was formulated while admitting the appeal, is clearly based on the decision of the tribunal in the matter of **Pinnacle (supra)** which was sustained by dismissal of the department's appeal by the Punjab and Haryana High Court and it has expressly accepted by the department, the substantial question would not survive.

4. The appeal is dismissed.

(SHAILESH P. BRAHME, J.) **(MANGESH S. PATIL, J.)**

mkd/-