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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO.45 OF 2012
IN
CENTRAL EXCISE APPEAL NO.148 OF 2010**

Union of India
The Commissioner of Central
Excise, Thane-II

.....Petitioner.

V/s

M/s Classic Stripes Pvt. Ltd.

..... Respondent.

Mr. Jitendra B. Mishra for the Review Petitioner.

**CORAM: V. M. KANADE &
MRS MRIDULA BHATKAR, JJ.**

**DATE: 25th August, 2016
(In Chamber at 2.35 P.M.)**

P.C.:-

1. Heard the learned Counsel for the Review Petitioner.
2. We have gone through the order under review. The appeal was dismissed on the concession made by the Revenue. In our view, since the submission of the Counsel for Revenue has been recorded by this court in its order under review, stating therein that the revenue has fairly conceded that questions raised in the appeal are covered by the decision of the Apex Court, which led to dismissal of appeal, it will

not be open now for the Review Petitioner to seek review of the said order. The Apex Court in *State of Maharashtra vs. Ramdas Nayak*¹ has observed in para 4 of its judgment as under:-

4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A. K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in *Somasundaran v. Subramanian* AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (Per Lord Buckmaster in *Madhusudan v. Chanderbati* , AIR

1. 1982 AIR 1249

1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

- 3 This Review Petition is therefore dismissed and disposed of.

(MRIDULA BHATKAR, J.)

(V.M. KANADE, J.)