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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
DB-6
+ **W.P.(C) 756/2016**

EBIZ. COM. PVT. LTD. ... Petitioner
Through: Mr. Rajveer Singh, Advocate for Applicant in CM No. 34408/2016.

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Ms. Astha Sharma for Mr. Jasmeet Singh, CGSC.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **07.10.2016**

CM APPL. No. 34408/2016 (for correction of order dated 1st September, 2016)

1. For the reasons stated therein, this application is allowed.

2. Paragraphs 19, 79 (ii) and 79 (ix) of the judgment dated 1st September 2016 of this Court in W.P. (C) 756 of 2016 shall be corrected to read as under:

> "19. Three separate counter affidavits have been filed. The counter affidavits filed by Respondent No.l/Union of India and Respondent No.2/DGCEI are word to word identical. A separate counter affidavit has been filed by the ST Department/Respondent No.3, which was impleaded by the order dated 28th January 2016. Interestingly, Mr. Satish Aggarwala, learned counsel appearing for Respondents 2 and 3 stated that the stand of the ST Department was different from that of

the Union of India and the DGCEI."

"79 (ii) Where an assessee has been regularly filing service tax returns which have been accepted by the ST Department or which in any event have been examined by it, as in the case of the Petitioner, without commencement of the process of adjudication of penalty under Section 83 A of the FA, another agency like the DGCEI cannot without an SCN or enquiry straightway go ahead to make an arrest merely on the suspicion of evasion of service tax or failure to deposit service tax that has been collected. Section 83 A of the FA which provides for adjudication of penalty provision mandates that there must be in the first place a determination that a person is "liable to a penalty", which cannot happen till there is in the first place a determination in terms of Section 72 or 73 or 73 A of the FA."

"79 (ix) The Court is unable to accept that payment by the Petitioner of alleged service tax arrears was voluntary. Consequently, the amount that was paid by the Petitioner as a result of the search of its premises by the DGCEI, without an adjudication much less an SCN, is required to be returned to it forthwith."

3. The application is disposed of.

S. MURALIDHAR, J.

VIBHU BAKHRU, J.

OCTOBER 07, 2016/dn