

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE**

RESERVED ON: 28.11.2022
DELIVERED ON: 16.12.2022

CORAM:

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

IA NO. GA/02/2021

CEXA NO.22 OF 2021

**COMMISSIONER OF CGST AND CENTRAL EXCISE, HOWRAH
COMMISSIONERATE
VERSUS**

M/S. ASHIRWAD FOUNDRIES PRIVATE LIMITED AND ANOTHERS

Appearance:-

Mr. Uday Sankar Bhattacharyya, Adv.

Ms. Aishwarya Rajshree, Adv.

.....For the Appellant.

Mr. Somak Basu, Adv.

.....For the Respondents.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This appeal filed by the revenue under Section 35G of the Central Excise Act is directed against the final order passed by the Customs, Excise and Services Tax, Appellate Tribunal dated 16.12.2020 by which the appeal filed by the respondent challenging the order passed by the Commissioner of Central Tax, (GST & CEX) Howrah, Commissionerate dated 28.12.2017 was allowed setting aside the service tax demanded and deleting the penalty imposed was deleted in its entirety. The revenue has raised the following substantial questions of law for consideration:-

- (a) Whether the Learned Tribunal is right in allowing CENVAT Credit, so availed by the respondents, as eligible/admissible credit on inputs/raw materials as defined under Rule 9(5) of the CENVAT Credit Rules, 2004 when the respondents could not satisfactorily account for the transportation/receipt of such inputs/raw materials to their premises?*
- (b) If the answer the question (a) hereinabove is yes, then whether the findings of the Learned Tribunal, which is not in consistent with the said statements/admitted facts, is perverse?*
- (c) Whether, being the last fact finding authority, the findings of the Learned Tribunal, as regards to the transportation vehicles, is perverse since the said findings overlooked the fact that some of vehicles are three wheelers, moped etc. which cannot be used for transporting the raw materials which are used by the respondents for manufacturing the final products in their factory?*
- (d) Whether the Learned tribunal is right in not considering that the respondents herein failed to produce any conclusive evidence in relation to inward movement of raw materials?*
- (e) Whether the Learned Tribunal is right in only pointing out the alleged lacunas in investigation*

proceeding of the appellant keeping the moot issue of transportation of raw materials undecided conclusively and thus allowing the entire CENVAT Credit to the respondents?

- (f) Whether the statement recorded of a concerned responsible person of an assessee is to be treated as an admitted position of facts when the said person himself never retracted his own statement at any stage of the proceedings?*
- (g) Whether the Learned Tribunal is justified in not giving due consideration to the two judgments delivered by the Hon'ble Supreme Court as relied upon by the adjudicating authority which lay down the principle that failure to produce best evidence on the part of the assessee implies that the evidence would go against them?*
- (h) Whether the Learned Tribunal is right in deleting the personal penalty imposed upon the respondent No. 2?*

2. We have heard Mr. Uday Sankar Bhattacharyya, assisted by Ms. Aishwarya Rai, learned junior standing counsel for the revenue and Mr. Somak Basu, learned advocate appearing for the respondent.

3. The respondent is a manufacturer of castings falling under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985. A notice to show cause was issued to the respondent alleging that they have contravened the provisions of Rule 4, 6, 8 and 12 of the Central Excise Rules, 2002, read with Rule 3, 4 and 9 of the CENVAT Credit Rules, 2004 in as much as they fraudulently reaped financial gain by availing inadmissible CENVAT Credit of Rs. 5,57,78,466/- on the basis of fake Central Excise invoices issued by fictitious and non-existent manufacturers, during the financial year 2013-2014 and 2014-2015 and utilized the inadmissible CENVAT Credit for payment of central excise duties against clearances of their final products,

hence the said sum has to be recovered from the respondent in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A/Section 11A(4) of the Central Excise Act, 1944 along with appropriate interest.

4. The respondent submitted their reply dated 15.12.2017 and participated in the adjudication proceedings conducted. The Commissioner of Central Tax by order dated 28.12.2017 confirmed the proposal in the show cause notice. Aggrieved by the same, the respondent filed appeal before the learned tribunal which was allowed.

5. On going through the order passed by the learned Tribunal, we find that what weighed in the mind of the tribunal was that during the course of search at the factory premises of the respondent incriminating documents were not recovered nor any shortage/excess of raw materials/finished goods were found by the officers of the anti evasion wing. Further the tribunal held that the statement recorded under Section 14 of the Act cannot be relied upon as the evidence unless the provisions of the Section 9D of the Act had been followed. It referred to a decision of the Tribunal and that of the High Court of Punjab and Haryana in the case of **G-Tech Industries Versus Union of India and Others**¹, and held that the adjudicating authority is required to first conduct examination in chief of the witness whose statement is relied upon by the department and then to form an opinion whether the statements of the witness is admissible in evidence with respect to the facts and circumstances of the case and then only the witness shall be offered for cross examination. Having found that no such examination in chief had been conducted by the adjudicating authority, the statement of

¹ 2016 (339) ELT 209 P&H

the witnesses were held to be inadmissible. With regard to the vehicles which were stated to have transported the goods, the tribunal “picked holes” in the order of adjudication as to the manner in which the Commissioner has proceeded to conclude the case against the respondent. Further the tribunal held that payment of tax during the course of investigation would not amount to acceptance of any allegations as mentioned in the show cause notice.

6. Mr. Uday Sankar Bhattacharyya, learned Senior Standing Council submitted that the order passed by the learned tribunal is perverse, it failed to take into consideration, the voluntary statement given by the Director of the respondent which was recorded in August 2015, and there was no retraction or denial of the statements and even in the reply to the show cause notice which was given after more than two years, no such retraction has been made by the Director and therefore the question of rejection of those statements which are admissible in evidence does not arise. That apart, the ground raised before the tribunal on which the tribunal had granted relief was never the case of the respondent when the reply to the show cause notice was submitted nor when the case was adjudicated. In support of his contention, the learned counsel placed reliance on the decisions in the case of:-

❖ ***Naresh J. Sukhwani Versus Union of India*** ²,

❖ ***Gulam Hussain Shaikh Chougule Versus S. Reynolds, Supd. Of Cus., Mormgoa*** ³,

² 1996 (83) ELT 258 (SC) (Guj)

³ 2001 (134) ELT 3 (SC)

- ❖ ***Percy Rustomji Basta Versus State of Maharashtra*** ⁴,
- ❖ ***Veera Ibrahim Versus State of Maharashtra*** ⁵,
- ❖ ***Surjeet Singh Chhabra Versus Union of India*** ⁶,
- ❖ ***Judgment of the High Court of Telangana in WP No. 18081 of 2020 dated 06.11.2020,***
- ❖ ***Judgment of the High Court of Madras in WA Nos. 360 and 363 of 2021 dated 04.03.2021 in Stalin Joseph Versus Commissioner of Customs (Airport),***
- ❖ ***Manidhari Stainless Wire Private Limited Versus Union of India*** ⁷,
- ❖ ***Kanungo & Company Versus Collector of Customs, Calcutta and Others*** ⁸,
- ❖ ***C. Sampath Kumar Versus Enforcement Officer (Directorate), Madras*** ⁹,
- ❖ ***Assistant Collector of C.EX., Rajamundry Versus Duncan Agro Industries Limited*** ¹⁰,
- ❖ ***A.L. Jalaludeen Versus Dy. Dir. Of Enforcement Directorate, Chennai*** ¹¹,
- ❖ ***Kishanlal Agarwalla Versus Collector of Land Customs*** ¹², ***Patel Engineering Limited Versus Union of India*** ¹³,

⁴ 1983 (13) ELT 1443 (SC)

⁵ 1983 (13) ELT 1590 (SC)

⁶ 1997 (89) ELT 646 (SC)

⁷ 2018 (360) ELT 255 (AP)

⁸ 1983 (13) ELT 1486 (SC)

⁹ 1997 (96) ELT 511 (SC)

¹⁰ 2000 (120) ELT 280 (SC)

¹¹ 2010 (261) ELT 84 (Mad)

¹² AIR 1967 Cal 80

❖ ***Tapan Kumar Biswas Versus Union of India*** ¹⁴.

7. Mr. Somak Basu, after elaborately referring to the findings rendered by the tribunal supported the decision of the learned tribunal by referring to the decisions which were cited by the respondent before the tribunal as to how there has been violation of Section 9D of the Act and to support such contention placed reliance on the decision in ***Hi Tech Abrasives Limtied Versus Commissioner of Central Excise and Customs, Raipur*** ¹⁵. Further it is submitted that denial of cross examination has taken away a valuable right to the respondent which was considered by the tribunal and the relief was granted. In this regard, reliance was placed on the decision in:-

- ***Basudev Garg Versus Commissioner of Customs*** ¹⁶,
- ***Andaman Timber Industries Versus Commissioner of C.Ex, Kolkata -II*** ¹⁷,
- ***Swadeshi Polytex Limited Versus Collector of Central Excise, Meerut*** ¹⁸,
- ***Arya Abhushan Bhandar Versus Union of India*** ¹⁹,
- ***J & K Cigarettes Limited Versus Collector of Central Excise*** ²⁰,
- ***M/s. Fine Aromatics Versus Union of India and another*** ²¹.

¹³ 2014 (307) ELT 862 (Bom)

¹⁴ 1996 (63) ECR 546 Calcutta

¹⁵ 2018 (362) ELT 961 (Chattisgarh)

¹⁶ 2013 (294) ELT 353 (Del)

¹⁷ 2015 (324) ELT 641 (SC)

¹⁸ 2000 (122) ELT 641 (SC)

¹⁹ 2002 (143) ELT 25 (SC)

²⁰ 2009 (242) ELT 189 (Del)

²¹ 2016 SCC Online P&H 4781

8. It is further submitted that the allegation of clandestine removal had been made against the respondent based on surmises and conjectures and there was no material available with the department to support such stand. To support this argument, reliance was placed on the decision in **Commissioner of C.Ex, Coimbatore Versus Sva Steel Re-Rolling Mills Limited** ²². Further it is submitted that all the payments have been made through banking channel and the allegations of clandestine removal is wholly untenable and therefore the learned tribunal rightly granted relief to the respondent. To support such contention, reliance was placed on the decision in **Commissioner Versus Motabhai Iron and Steel Industries** ²³. Further it is contended that the extended period of limitation could not have been invoked more particularly, when two scrutiny were conducted by the department. To support such contention, reliance was placed on the decision of the Hon'ble Supreme Court in **Collector of Central Excise Versus Chemphar Drugs and Liniments** ²⁴ and **Prayagraj Dyeing & Printing Mills Private Limited Versus Union of India** ²⁵.
9. After we have elaborately heard learned counsels for the parties and considered factual position, we wish to point out the legal principle as to whether there is a vested right on the respondent to seek for cross examination of any of the third party witnesses. The issue has been well settled and is no longer *res integra*. The statement recorded from the Director of the respondent is admissible in evidence and the provisions of Section 164 of the Criminal Procedure Code are not applicable. Further it

²² 2018 (362) ELT 411 (Mad)

²³ 2015 (316) ELT 374 (Guj)

²⁴ 1989 (40) ELT 276 (SC)

²⁵ 2013 (290) ELT 61 (Guj)

has been held that a confession statement made before the Customs Officer though retracted within the period of 6 days is an admission and binding since the customs officers are not police officers, and also as could be seen from the language of Section 108 of the Customs Act. Further, under the scheme of the Act the right to cross examination is not absolute and denial of cross examination was held to be valid upon sound logic and if the same had been done such orders of adjudication have been upheld. Further it has been pointed out that natural justice must not be strained to become artificial justice; procedural justice according to statutes or under statutory rules are different from concepts of natural justice and the procedure under the statute or the rule must govern and if the customs officers (or the Central Excise Officers) were to conduct himself to a regular court of law hearing formal cross examination and applying Evidence Act and Civil and Criminal Procedure Code then it will be physically and literally impossible for him to function as an adjudicating authority. Thus, the underlying legal principle is that each case has to be decided on its own facts and we are to consider as to whether the plea raised by the respondent before the Tribunal that cross examination was not permitted could have been raised by the respondent.

10. The most important and crucial fact which is undisputed and not denied is that the conclusion of the adjudicating authority is not based only on third parties statements to fix the respondent of the charge of fraudulent transactions. In the year 2015, statements had been recorded from none other than the directors and the office staff of the respondents. The director in clear terms has accepted that the suppliers are non-existent, they were all

fraudulent entities and other statements which clearly go to show that the transactions were fully fictitious. This statement given by the director has been extensively relied on by the adjudicating authority. At no point of time, the director has retracted the statement. We have gone through the reply dated 15.12.2017 submitted to the show cause notice even in the said reply there is no denial nor any other allegations made against the department while recording the statements. Therefore, it is not clear as to how the learned tribunal embarked upon the exercise to consider as to whether Section 9D of the Act was violated or not. In fact, that was never the case of the respondent either at the time of investigation or when reply to show cause was submitted nor when the show cause notice was adjudicated. Such a plea was never canvassed. Assuming the respondent was entitled to canvass such an issue stating that it is a legal issue, it has to be seen whether at all such legal issue arises in the case on hand. We say so, because it is the statement of the director which had been reckoned apart from other documents. The respondent has not pointed out as to which other statements the adjudicating authority had relied upon in contravention to Section 9D. That apart nowhere it has been stated as to whom the respondent proposes to cross examine. Nor it has been stated that chief examination ought to have been done on certain other witnesses who appear to be non-existent. Therefore, in our view the question of examining as to whether Section 9D was attracted in the case on hand does not arise in the given facts. There have been statements of other entities as well. The respondent has not sought for cross examination of any of them. In paragraph 4.26 of the order of adjudication dated 28.12.2017, the

adjudicating authority clearly records that certain technical points were submitted during the course of hearing but the respondent has not touched upon the factual position. They never argued authenticating the availment and utilization of CENVAT Credit by them. They never disputed the non-existing status of noticee No. 2 to Noticee No. 7. The adjudicating authority reiterates that the submissions of the respondent was by using technical words and relying upon certain decisions which do not have any bearing on the facts of the case. Based on documents, the adjudicating authority concluded that noticees no. 2 to 7 obtained Central Excise Registration for manufacture of mainly iron and steel items but issue cenvatable invoices without manufacturing anything and passed a considerable large amount of CENVAT Credit to various dealers and manufacturers. Furthermore, the respondent could not establish by any record to show that the noticees 2 to 7 were existing and carrying on operations. Furthermore, the respondent has accepted the fraudulent nature of the invoices. In the course of adjudication of the show cause notice a faint plea has been raised stating that the vehicles owners have to be cross examined. We find from the order of adjudication details of approximately 300 vehicles have been taken up for scrutiny and upon verification of the registration details through the web portal "VAHAN" it had been found that the vehicles are not trucks but are different vehicles, they are non-transport vehicles, three wheelers, mopeds etc. Undoubtedly, the adjudicating authority is not conducting a criminal trial. The decree of proof required in such matters is preponderance of probabilities and not proof beyond the reasonable doubt. Therefore, while examining the correctness of the order of adjudication, the tribunal or the

court should not apply the yardstick which a court would apply to a subordinate court which has arrived at a conclusion after a full-fledged trial. The facts of the case clearly shows that sufficient material was available with the adjudicating authority which came to the notice of the authority much later upon such operations being conducted and therefore the invocation of the extended period of limitation for initiating proceedings was fully justified.

11. Mr. Basu contended that all payments were made through banking channels and service tax has also been remitted for the transport services availed. Payment through the banking channel and voluntary payment of service tax by the service recipient will not make the transactions genuine. The department had sufficient material to establish the case of fraudulent availment of credit. Thus, the department has discharged the burden of proof cast upon them and thereafter the burden shifts on the respondent to show that the transactions were genuine. The facts of the case clearly demonstrate that the respondent miserably failed to discharge the burden cast upon them. Therefore, we are of the considered view that the learned tribunal has misconstrued the factual position and applied Section 9D though such was never the plea of the respondent ever since the issuance of the show cause notice and consequently the conclusion arrived at by the tribunal was erroneous.

12. As mentioned earlier, the tribunal had “picked holes” in the adjudication process forgetting that the Commissioner of Central Excise is not a court but an adjudicating authority. On going through the order and also the materials which were placed on record, we are fully convinced to

hold that there was sufficient material available with the adjudicating authority to make out a case of fraudulent avilment of credit and consequently, the tribunal erred in reversing the order passed by the adjudicating authority.

13. Mr. Basu placed reliance on the decision of the Hon'ble Supreme Court in ***Nirmal Singh Pehlwan Versus Inspector, Customs, Customs House Punjab*** ²⁶ and contended that the statements recorded from his client under Section 108 of the Customs Act is not admissible in evidence and the same could not have been used. For the same proposition, reliance was also placed on the decision of the High Court of Andhra Pradesh in the case of ***The Assistant Collector of Central Excise, Rajahmundry Division Versus Duncan Agro Industries Limited*** ²⁷. Mr. Bhattacharya, learned standing counsel appearing for the respondent had referred to various paragraphs of both the above mentioned judgments and submitted that both the judgments the case was relating to criminal prosecution and in the decision in the case of ***Nirmal Singh Pehlwan***, it was the prosecution initiated under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 and those decisions will not have any application to the facts of the case. The learned senior standing counsel referred to the decision in the case of ***Sandeep Mahendrakumar Sanghavi Versus Union of India*** ²⁸ for the proposition that the Customs/DRI officers conducting an enquiry under Section 107 or 108 of the Customs Act is not a police officer and the person against whom such enquiry is made is not an

²⁶ 2011 12 SCC 298

²⁷ 1991 SCC Online AP 161

²⁸ 2021 376 ELT A18 (Guj)

accused and therefore statements made before them is not inadmissible in terms of Section 25 of the Evidence Act.

14. As rightly pointed out by Mr. Bhattacharyya, the decision in the case of **Nirmal Singh Pehlwan** was an appeal challenging the concurrent judgments of the courts sentencing the appellants therein to undergo 10 years rigorous imprisonment for having violated the provisions of Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985. During the course of investigation, the appellant therein had made a confession under Section 108 of the Customs Act admitting his guilt. The matter was ultimately taken up for trial and the case ended in conviction and while doing so, the trial court held that the case against the appellant therein had been proved beyond doubt more particularly as he had made a confession under Section 108 of the Customs Act which was admissible in evidence as the Customs Officer was not a police officer and that the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act had been complied with as a consent memo was drawn. The decision of the trial court was affirmed on appeal and the matter was carried on appeal to the Hon'ble Supreme Court. Considering the facts and circumstances of the case, the issue which was framed for consideration was whether the consent memo had conveyed the information to the appellant therein that he had a right to be searched in the presence of a Magistrate or the Gazetted Officer and whether the consent memo amounted to full compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act. Reliance was placed on

the decision in the case of **Noor Aga Versus State of Punjab** ²⁹. To support the arguments that the confession made to the customs officer was hit by Section 25 of the Evidence Act and was therefore not admissible in evidence. The Hon'ble Supreme Court had noted the earlier decisions in the case of **Kanhaiyalal Versus Union of India** ³⁰ and **Raj Kumar Karwal Versus Union of India** ³¹ wherein it was held that the officers of the Revenue Intelligence and the officers of the Customs Department could not be said to be police officers and a confession before them would not be hit by Section 25 of the Evidence Act. The Hon'ble Supreme Court concluded by holding that in the decision in **Kanhaiyalal**, the Court had not examined the principles and the concept underlining Section 25 of the Evidence Act vis-à-vis Section 108 of the Customs Act and the power of Customs Officer who could investigate and bring for trial an accused in a narcotic matter. The decision in **Noor Aga** which was a later judgment was held to be more elaborate on that issue. Therefore, it was held that the provision of Section 850 of the Narcotic Drugs and Psychotropic Substances Act has to be mandatorily complied with. Thus, the facts clearly show that the Hon'ble Supreme Court was considering a case as to whether, a person could be bound over by his statement recorded by the Customs Officer under Section 108 of the Customs Act while he is being charged of an offence under the provisions of Narcotic Drugs and Psychotropic Substances Act. The other question which was the crux of the issue before the Hon'ble Supreme Court was whether the mandate under Section 50 of the Narcotic Drugs and

²⁹ (2008) 16 SCC 417

³⁰ (2008) 4 SCC 668

³¹ (1990) 2 SCC 409

Psychotropic Substances Act was complied with as it was held that the procedure therein is mandatory. Ultimately, the Hon'ble Supreme Court held that a consent memo which was drawn and exhibited as Exhibit PA will not confirm to the provisions of the Section 50 of the Narcotic Drugs and Psychotropic Substances Act. Thus, the decision in **Nirmal Singh Pehlwan** is wholly distinguishable on facts and cannot be applied to the case on hand. Likewise, the decision in the case of **Duncan Agro Industries** is also is a case of criminal prosecution under the provisions of the Central Excise Act and the department filed an appeal before the High Court contending that the trial court committed an error in discarding the statements recorded by the Central Excise Officers under Section 15 of the Central Excise Act from the witnesses and also from the person who subsequently became accused. While considering the said contention, the court had taken note of Section 145 of the Evidence Act and Section 9D of the Central Excise Act and it was held that the statement of the witnesses recorded by Central Excise Officers under Section 14 of the Central Excise Act and who are alive cannot be treated as substantial evidence in the criminal prosecution in view of Section 9D of the Act. Further we note that in the said case the accused had retracted those confessional statements. Thus, the decision in **Duncan Agro** is also distinguishable on facts and cannot be applied to the case on hand. In **Sandeep Mahendrakumar Sanghavi** it had been pointed out that the officers of Customs and Revenue Intelligence conducting an enquiry under Section 107 or Section 108 of the Customs Act are not police officers and the statements made before them is not inadmissible in terms of Section 25 of the Evidence Act.

15. In the preceding paragraphs, we have elaborately discussed the facts of the case and we have pointed out that at no point of time there has been any retraction of the statements recorded under Section 108 of the Customs Act. Therefore, we are of the view that those statements could be relied upon and for the other reasons we have given above, we are inclined to interfere with the order passed by the learned tribunal.

16. Thus, for all the above reasons the appeal is allowed. The order passed by the learned tribunal is set aside and the order passed by the adjudicating authority is restored in so far as the first respondent is concerned and the substantial questions of law [a] to [g] are answered in favour of the revenue. Substantial questions of law [h] is rejected as the second respondent was deleted from the array of parties by order dated 30.06.2022. No Costs.

(T.S. SIVAGNANAM, J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- SACHIN)

OD-1 [SUPPL.]

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/22/2021
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COMMISSIONER OF CGST AND CENTRAL EXCISE, HOWRAH
COMMISSIONERATE
VS.
M/S. ASHIRWAD FOUNDRIES PRIVATE LIMITED AND ANOTHERS

BEFORE:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 21st December, 2022

Appearance:
Mr. Somak Basu, Adv.

The Court :- This matter has been listed under the caption "To Be Mentioned". It is pointed out by the learned advocate appearing for the respondent/assessee that by an order dated 30.06.2022 the second respondent, the Director of the first respondent was deleted from the array of parties and this should be appropriately reflected in paragraph 16 of the judgment.

We have heard learned counsel on the above submission. Accordingly, the following paragraph shall be substituted instead of the existing paragraph 16.

"16. Thus, for all the above reasons the appeal is allowed. The order passed by the learned tribunal is set aside and the order passed by the adjudicating authority is restored in so far as the first respondent is

concerned and the substantial questions of law [a] to [g] are answered in favour of the revenue. Substantial question of law [h] is rejected as the second respondent was deleted from the array of parties by order dated 30.06.2022. No cost.”

This order shall form part of the judgment dated 16.12.2022.

The department is directed to make the necessary correction in the judgment.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.