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C.M.A.Nos.1224 to1227 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.04.2026

Pronounced on :29.04.2026

CORAM

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

C.M.A.Nos.1224 to 1227 of 2010

C.M.A.No.1224 of 2010

Commissioner of Customs (Port-Export)
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

.. Appellant/Respondent

/versus/

1.M/s APP Enterprises,
No.WZ-612, A/5, Srinagar,
Shakur Bhasti, Delhi 110 034.

..Respondent/Appellant

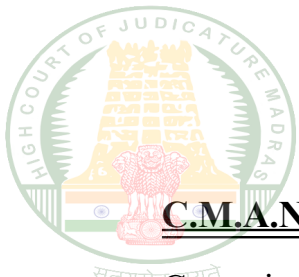
2.Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road,
Chennai 600 006.

.. 2nd Respondent in CMA

Civil Miscellaneous Appeal has been filed under Section 130 of the Customs Act, 1962, to consider the above substantial questions of law raised by the Revenue and point of facts and allow this appeal by setting aside the impugned Final Order No.900 to 903/08, dated 19.08.2008 passed by the Hon'ble CESTAT, Chennai.

For Appellant :M/s Rajnish Pathiyil

For Respondent :Ms.Dhanamadhiri for
M/s T.Shanmugam for R1
Tribunal for R2



C.M.A.No.1225 of 2010

Commissioner of Customs (Port-Export)
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

.. Appellant/Respondent

/versus/

1.M/s Vinod Agarwal,
Partner,
M/s APP Enterprises,
No.WZ-612, A/5, Srinagar,
Shakur Bhasti,
Delhi 110 034.

..Respondent/Appellant

2.Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road,
Chennai 600 006.

.. 2nd Respondent in CMA

Civil Miscellaneous Appeal has been filed under Section 130 of the Customs Act, 1962, to consider the above substantial questions of law raised by the Revenue and point of facts and allow this appeal by setting aside the impugned Final Order No.901/08, dated 19.08.08 passed by the Hon'ble CESTAT, Chennai.

For Appellant :M/s Rajnish Pathiyil

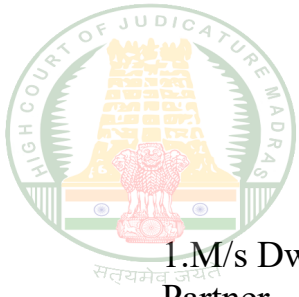
For Respondent :Ms.Dhanamadhiri for
M/s T.Shanmugam for R1
Tribunal for R2

C.M.A.No.1226 of 2010

Commissioner of Customs (Port-Export)
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

.. Appellant/Respondent

/versus/



1.M/s Dwarka Prasad Parekh,
Partner,
M/s APP Enterprises,
No.WZ-612, A/5, Srinagar,
Shakur Bhasti,
Delhi 110 034.

..Respondent/Appellant

2.Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
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1st Floor, 26, Haddows Road,
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.. 2nd Respondent in CMA

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For Appellant :M/s Rajnish Pathiyil

For Respondent :Ms.Dhanamadhiri for
M/s T.Shanmugam for R1
Tribunal for R2

C.M.A.No.1227 of 2010

Commissioner of Customs (Port-Export)
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

.. Appellant/Respondent

/versus/

1.M/s Mathan Traexim Ltd.,
Partner,
M/s APP Enterprises,
No.WZ-612, A/5, Srinagar,
Shakur Bhasti,
Delhi 110 034.

..Respondent/Appellant



2. Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road,
Chennai 600 006.

.. 2nd Respondent in CMA

Civil Miscellaneous Appeal has been filed under Section 130 of the Customs Act, 1962, to consider the above substantial questions of law raised by the Revenue and point of facts and allow this appeal by setting aside the impugned Final Order No.903/08, dated 19.08.08 passed by the Hon'ble CESTAT, Chennai.

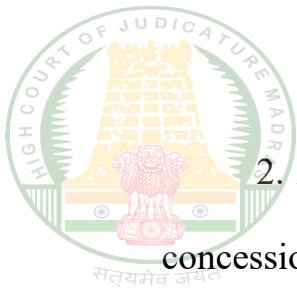
For Appellant :M/s Rajnish Pathiyil

For Respondent :Ms.Dhanamadhiri for
M/s T.Shanmugam for R1
Tribunal for R2

COMMON JUDGMENT

(Judgment was made by Dr.G.JAYACHANDRAN,J.)

M/s APP Enterprises, having its registered office at Delhi is a partnership firm run by Mr.Vinod Agarwal and Mr. Dwarka Parsad Parekh as its partners. At its factory in Haryana for conversion of 'Areca nuts/Betel nuts' into 'Betel nut Tannin' as a job work imported huge quantity of areca nuts/betel nuts from their foreign supplier M/s P.T. Ganpathi Trading Indonesia. It declared that on conversion into 'Betel Nuts Tannin', same will be exported to the supplier at Indonesia and availed the duty free concession under the notification No: 32/97 dated 01/04/1997.



2. As per the Customs Department Notification No: 32/97, to avail the concession, the importer has to ensure the following conditions:-

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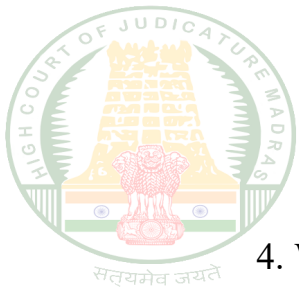
“(i)that the goods are imported for execution of an export order placed on the importer by the supplier of the goods for jobbing.

(ii)that the goods so imported, including resultant products, are re-exported to the supplier of the goods or to any other person which the said supplier may specify within six months, provided that the wastage arising during the process of jobbing, as determined in terms of SION norms published vide P.N.No.2(P.N)/1997-2002 and to where such SION norms for resultant product have not been published, the satisfaction of Assistant Commissioner of Customs or Deputy Commissioner of Customs and Central Excise shall be disposed off in the manner as may be specified by them.

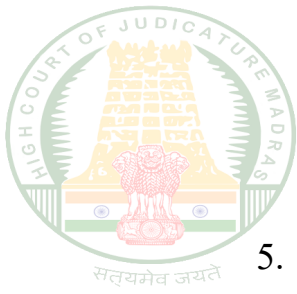
(iii)that the goods are utilized only for the discharge of export obligation and no part there of shall be sold, loaned, transferred or otherwise used or disposed of.

(iv)that the jobbing is undertaken in accordance with the procedure set out in the Customs (Import of goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules 1996.”

3. Based on information and reasonable belief that the areca nut/betel nut imported were diverted for manufacturing Pan Masala/ Gutka for local consumption instead for the job work and export of ‘Betel Nuts Tanning’ in contravention of the notification condition (iii) read above, SIIB Chennai Customs took up the matter for investigation of the past imports.



4. While that investigation was under process fresh consignment of about 1500 MT of betel nuts, arrived at the Chennai Port claiming it as covered under job work order dated 25/10/2005. When the Bills of Entry filed for clearance, the Commissioner of Customs (imports) ordered to release the Cargo provisionally, pending finalisation of investigation on executing 25% Bank Guarantee for the differential duty and P.D.Bond. The importers challenged the said order filing writ petition before the High Court. In respect of the 6 bills of entry as directed by the High Court, show cause notice issued on 12/03/2007 to the importers namely, M/s APP Enterprises and its partners, calling upon them to explain as to why the duty exemption granted under Notification 32/97 not be disallowed and demand and recover duty along with other consequential action under Sections 111(d) , 111(o) and 112(a) of the Customs Act,1962. The importerst replied to the show cause notice on 20/03/2007. The Commissioner of Customs (Seaport–Export) Chennai passed the Order in Original on 05/03/2008 by concluding that the have no doubt that a careful modus-operandi was devised wilfully and intentionally to defraud the Government of its legitimate dues. For the failure to fulfil the export obligation as envisaged under notification 32/1997, the duty foregone at the time of importation is liable to be recovered along with interest. Further, the goods are liable to be confiscated and the importer is also liable for penal action.



5. On considering the materials collected during investigation, the response of the importers to the show cause notice and the fact that the partners of M/s APP Enterprises, the import have substantial interest in the supplier firm at Indonesia as its partners. Coupled with the conduct of the importer diverting its mode of importation from Advance License Scheme (in short “DEEC”) to jobbing route to import betel nuts under the cover of notification 32/97 on being fallen under the scanner of DRI, led to issuance of Order-in-Original No:7268/2008, dated 05/03/2008 by the Commissioner of Customs (Seaports – Export) Chennai.

6. The operative portion of the order in original No:7268/2008 reads as under:-

ORDER

“(i)I disallow the benefit under Customs Notification 32/97 for the goods cleared under the Bills of Entry No.916612, 916613, 916614 all dt.25/11/2005, 916856 dt.26/11/2005, 918359 dt.29/11/2005 and 920620 dt.02/12/2005;

(ii)I order for recovery of the duty saved amount of Rs.71,72,187/- (as detailed in Annexure II to the Show Cause Notice) under Section 28(2) of the Customs Act, 1962;

(iii)I order for enforcement of the Bank Guarantees (1) JKB/G-141 dated 29.12.2005 for Rs.5,61,000/- (2)JKB/139/05 dated 28.12.2005 for Rs.3,07,500/- (3)JKB/138/05 dated 27.12.2005 for Rs.11,43,000/- (4)JKB/G-140/05 dated 28.12.2005 for Rs.8,52,000/- and (5)JKB/G-137/05 dated 27.12.2005 for Rs.17,94,000/- executed by the Importers towards duty and other adjudication liabilities.

(iv)I confiscate the betel nuts imported vide Bs/E.No.916612, 916613, 916614 all dated 25.11.2005, 916856 dated 26.11.2005, 918359 dt.29/11/2005 and 920620 dt.02/12/2005 totally valued Rs.70,31,556/- already cleared against Customs Notification 32/97 under Section 111(d) and



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111(o) of the Customs Act, 1962 read with Rule 11 of Foreign Trade (Regulation Rules, 1992); However, I impose a redemption fine of Rs.10,00,000/-(Rupees Ten Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962;

(v)I impose a penalty of Rs.5,00,000/-(Rupees Five Lakhs only) on M/s APP Enterprises under Section 112(a) of Customs Act, 1962, for there act of omission/commission made the imported betel nuts liable for confiscation.

(vi)I impose a penalty of Rs.3,00,000/- (Rupees Three lakhs only)each on Shri Dwarka Prasad Parekh & Shri.Vinod Agarwal Partners of M/s APP Enterprises under Section 112(a) of Customs Acts, 1962.

(vii)I do not impose any penalty on M/s Mathan Traexim Ltd.”

7. As against the above order-in-original, the importer firm and its partners filed separate appeal as Appeal Nos.C/150/2008, C/151/2008 & C/152/08. The Department filed Applications No:C/MISC/236/08 & Appeal No:C/200/08 before the CESTAT, Chennai.

8. Pending consideration of the above appeals and applications, the importer firm and its partners sought for waiver of pre-deposit and stay of recovery in respect of duty and penalties. Considering the reason stated, waived pre-deposit and also stayed the recovery of duty and penalties and posted the matter for final hearing on 19/08/2008.

9. Accordingly, final order Nos:900 to 903/2008 passed on 19/08/2008 by CESTAT and communicated on 21/08/2008 by allowing the appeals of the importer firm and its partners. Also, the appeal of the revenue was dismissed for the following reason:-



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“The jurisdictional Asst. Commissioner granted permission for destruction of the waste raw material. There is no finding in the impugned order that this permission was not acted upon by M/s.APP Enterprises. Therefore, the allegation of waste material having been diverted to the local market without being destroyed in terms of condition No. (ii) of the Notification cannot be held to have been established against M/s.APP Enterprises. The impugned demand of duty is entirely based on the alleged breach of condition No.(ii). Rule 8 of the 1996 Rules authorised the jurisdictional Asst. Commissioner / Deputy Commissioner of Central Excise to ensure that the goods imported were used for the intended purpose and, in the event of default to take action to recover the amount of Customs duty forgone under the Notification. In the present case, it has not been established by the Revenue that the goods imported by M/s.APP Enterprises were not used for the intended purpose of manufacturing Tannin for export. On the other hand, there is documentary evidence, on record, of Tannin having been manufactured and cleared for export.”

10. For further clarity, the operative portion of the final order passed in F.O.Nos.900 to 903/2008, dated 21/08/2008 is reproduced below:-

“For the reasons stated above, the demand of duty or penalty cannot be sustained against M/s.APP Enterprises and consequently the penalties imposed on the two partners of the firm have also to be vacated. It goes without saying that the prayer in the Revenue’s appeal for imposing penalty on another partner of the firm cannot be acceded to. In the result appeal Nos.C/150-152/08 are allowed and appeal No.C/200/08 is dismissed.”

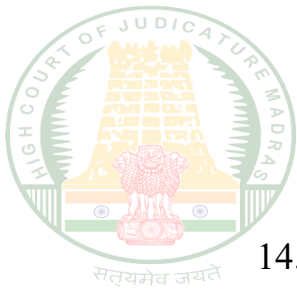


11. C.M.A.No.1224/2010 to C.M.A.No.1227/2010 are the appeals by the Commissioner of Customs (Port-Export) in respect of relief granted by the CESTAT in favour of the importer firm and its partners by allowing their appeals and against the dismissal of its revenue appeal.

12. The following common Question of Law framed for consideration of the appeals:

“Whether the onus was on the department to show that the permission for destruction was not acted upon by the dealer in respect of 80% of raw material out of 10,000 metric tons as wastage?”

13. The learned Counsel for the Department/appellant contended that, to avail custom free import under Notification No.32/97 the importer has certain obligations and conditions to comply. It is supposed to have exported “Betel Nuts Tannin” manufactured by processing the imported “Betel Nuts”. On perusal of exports made by M/s APP Enterprises, Delhi, it is seen that the importers while filing the Shipping Bill for export has mentioned export Scheme Code of 99 (meant for NFEI – No Foreign Exchange Involved Bill) instead of Scheme Code 20 (for job work exports). The export of “Tannin” made under free shipping cannot be taken towards fulfilment of export obligation in respect of Customs Notification No.32/97.



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14. The Order-in-Original has clearly dwelt on the motive behind the importer's act of filing Shipping Bill under Scheme Code 99 (Free Shipping). Had the Shipping Bills been filed under Code 20 (job work exports), the Shipping Bills would have been subjected to usual scrutiny under Electronic Data Interchange Scheme. It is evident that the exporter had deliberately not declared the correct code number in the Shipping Bills which are very material particulars, so as not to subject the Shipping Bills to in-built system intervention by the Electronic Data Interchange System.

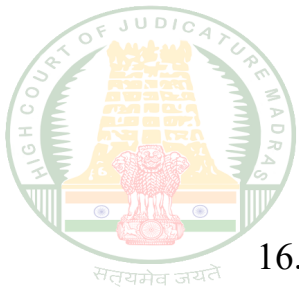
15. The importer grossly violated the following conditions mandated in the Notification No:32/97:-

“1.The goods are imported for execution of an export order placed on the importer by the supplier of the goods for jobbing

2.The goods so imported including the resultant products are re-exported to the supplier of the goods within 6 months from the date of clearances (or) such extended period. The wastage arising in the process of jobbing shall be disposed off in the manner as prescribed by the Asst. Commissioner /Dy. Commissioner of Customs.

3.That the goods are utilized only for the discharge of export obligation and no part thereof shall be sold, loaned, transferred or otherwise used or disposal of;

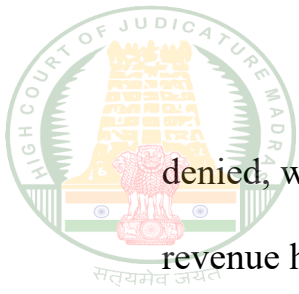
4.That the FOB value of the resultant products exported is at least 10% more than the CIF value of all goods imported in relation to the said resultant products.”



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16. There is clear evidence collected during investigation that a) the betel nut tannin with low efficacy level been overpriced; b) False claim of waste and over projection of tannin content; c) Wilful suppression of fact and wrongfully raising two export invoices with different data but of even number; and d) Discrepancies in the job work orders at the time of import vis-a-vis the import and export invoices and declaration. Despite overwhelming material to show the importer is liable to be penalised for violation of customs Act, the final order passed by the Tribunal without application of mind has to be reversed.

17. Per contra, the Learned Counsel for the Importer Firm and its partner referring the reasoning given by the Tribunal in the impugned order, contended that the tribunal has rightly held that there is no finding in the order-in-original to show, the importers did not follow the procedure laid down under Rule 3. On obtaining permission from the jurisdictional Assistant Commissioner, the waste raw materials were destructed. The allegation of diversion to local market not proved. The revenue has not established that the goods imported not used for the intended purpose of manufacturing Tannin for export. The importer firm has followed the procedure prescribed. The stuffing and sealing of goods was done at the factory premises of the importers under the supervision of the officials of Central Excise Department and in fact the investigation by the DRI had come out with no incriminating material. Benefit of the Notification should not be



denied, when there is proof of actual export of Tannin. Therefore, the appeal by revenue has to be dismissed.

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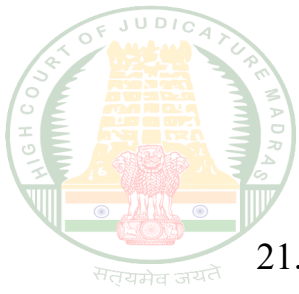
18. While the contention of the appellant/revenue is that the consignment imported declaring that it is meant for job work contract never been utilised, for the said purpose, the Tribunal has omitted to look into the wilful suppression of fact and wrongful raising to export bills with different data, but of even number and the discrepancy noticed in the job work order, at the time of import and export, and the invoices totally ignored by the Tribunal being superficially satisfied with the explanation given by exporter and the factory permission granted by the custom while the order-in-original was passed after proper examination of the stock ledger warehousing certificate wastage disposal records and other relevant documents, the imaginative explanation given by the importers regarding the recovery of percentage of tanning from inferior quality of betel nuts is far-fetched.

19. The manner in which waste disposal was taken into consideration by the tribunal to offset impeccable material incriminating the importers for wilful suppression of facts and acts of fraud to evade custom duty is particularly questionable as submitted by the learned counsel appearing for the appellant / revenue. It is further submitted that the Tribunal carefully erred in exonerating the importers for their wilful and intentional filing of Shipping Bills under
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Scheme Code 99, instead of 20. Whereas, the contention of the importer is that the records maintained by them satisfactorily prove compliance with the prescribed procedure and insofar as the different code is concerned, it has been demonstrated that it was only a bonafide and inadvertent mistake made by the Customs Clearance Agent which cannot prejudice the exporters. The prime contention of the appellant/revenue is that then it has been demonstrated without any iota of doubt, that the respondents are not a genuine importers, had not utilised the duty free imports for the purpose for which they were imported and had diverted them to the local market for the manufacture of pan masala and gutka. The tribunal had overlooked all those incriminating materials and erred in reversing the order-in-original by stating that the order-in-original was not in tune with the show cause notice and providing a wrong scheme code is only a bona fide mistake.

20. We examining the show cause notice dated 12.03.2007 find that, after providing the reasons, the explanations were sought for over pricing of export products, false claim of waste, and over projections of tannin content, wilful suppression of facts, wrongful raising to export invoice with different data but of even number, and discrepancy in the job work order, at the time of import vis-à-vis the import and export transactions in respect of all these queries, the importers were subjected to give reply by relying the certificates issued by the authorities regarding stuffing and stock ledger verified by the Exchange Officer.



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21. The order-in-original No.7268 of 2008, dated 05.03.2008, on considering the explanation sought under the show cause notice, the explanations given by the importer and the materials collected during the investigation, the Tribunal had concluded that the importer has not fulfilled the post-import conditions as stipulated in the Notification, it has given a conclusive finding that the defence raised by the importer lacked credence and support. The contention of the importer that areca nuts/betel nuts were unfit for human consumption, in the said process of manufacturing, 80% of the betel nuts were rendered waste and burned in fire and only lower percentage tanning was extracted, was found to be contradictory and baseless. It was further observed in the order-in-original that no specific defence or explanation has been given for the allegation of non-compliance with the notification conditions. The importer had failed to mention proper export scheme code at the time of filing the shipping bills in order to show that, the material exported is of no foreign exchange involved category, thereby taking advantage of export under a different scheme.

22. It has been specifically observed by the Commissioner of Customs that the importer failed to show, even a single shipping bill reflecting the correct scheme code. By providing wrong code to deceive the EDI system, which has an inbuilt system of intervention, it has been categorically held that the wilful

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suppression of material information by the importer is attributable to an attempt to prevent the department from exercising the legitimate checks and scrutiny.

This was done to defeat the system's intervention and facilitate malpractice. It is unfortunate that the Tribunal, despite a clear findings and reasoning given by the Commissioner of Customs in the order-in-original, by superficial examination of records and by being carried away by the submissions made by the importer, had arrived at the erroneous conclusion that order-in-original is different from the contention in the show cause notice which is totally unsustainable finding without proper examination of the order-in-original vis-à-vis the show cause notice. Both documents together runs to more than 30 pages. On such tenuous reason, the appeals of the importer been allowed without assigning proper reasons.

23. We are surprised to note that when there is a categorical finding that the scheme code is wrongly given with an oblique motive and when it had been demonstrated in the order-in-original, how such wrong declaration enabled the importer to evade duty and deceive the Government, the tribunal had very casually treated it as an inadvertent mistake committed by the Customs House Agent. It has failed to note that the Commissioner had made a specific observation that the importers had not produced even one transaction with the correct Scheme Code. Any prudent person would conclude that if it is an inadvertent mistake, it could be in one incident and not a perpetual mistake.



Therefore, we hold the order of the Tribunal is perverse and liable to set aside.

Accordingly, it is set aside. The order-in-original passed by the Commissioner is

restored. The question of law framed is answer accordingly

24. In the result, these Civil Miscellaneous Appeals by the Custom Department stand allowed.

(G.JAYACHANDRAN, J.)

(R.SAKTHIVEL, J.)

29.04.2026

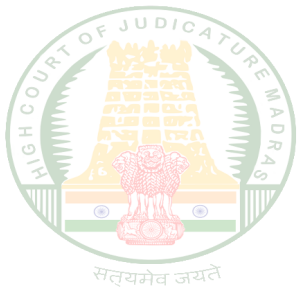
Neutral Citation:yes

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The Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
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1st Floor, 26, Haddows Road,
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C.M.A.Nos.1224 to1227 of 20



Dr.G.JAYACHANDRAN, J.
and
R.SAKTHIVEL,J.

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Common Judgment made in
C.M.A.Nos.1224 to 1227 of 2010

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