



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26565, 26566 & 39518 of 2016,
2306 & 2307 of 2017, 10658 to 10661 & 25326 of 2018
and W.M.P.Nos.22755, 22756 & 33802 of 2016,
2293 & 2294 of 2017, 12604 to 12607 & 29474 of 2018

- 1 M/S.CRITICAM MEDICAL SYSTEMS,
REP. BY ITS MR.ANIL CHHUGANI, NO.15-A
3RD CROSS (MAIN ROAD) ANNA NAGAR PONDICHERRY.
... PETITIONER in WP No.26565 of 2016
- 1 M/S.CRITICAM MEDICAL SYSTEMS
REP. BY ITS MR.ANIL CHHUGANI NO.15-A 3RD
CROSS (MAIN ROAD) ANNA NAGAR PONDICHERRY.
... PETITIONER in WP No.26566 of 2016
- 1 M/S.PONDY HI-TECHS
REP. BY ITS PARTNER MR.RAVEESWARAN
NO.C-30 IV CROSS PIPDC INDUSTRIAL ESTATE
METTUPALAYAM PONDICHERRY-605 009.
... PETITIONER in WP No.39518 of 2016
- 1 M/S.EARNEST LEEMA PLASTIC INDUSTRIES
REP BY ITS PARTNER P. LEO JOHN
GODOWN-B NO.1 ELANGO STREET VADAMANGALAM
VILLANUR COMMUNE PUDUCHERRY
... PETITIONER in WP No.2306 of 2017
- 1 M/S.EARNEST LEEMA PLASTIC INDUSTRIES
REP BY ITS PARTNER P. LEO JOHN
GODOWN-B NO.1 ELANGO STREET VADAMANGALAM
VILLANUR COMMUNE PUDUCHERRY
... PETITIONER in WP No.2307 of 2017
- 1 M/S.J.B.A REROLLING MILLS
REP. BY ITS PARTNER A.MOHAMMED ANSAR
NO.6/1A 1B 2A 2B SEDARAPET MAIN ROAD
(NEAR OWEN BILTS) THONDAMANATHAM PUDUCHERRY-605 502.
... PETITIONER in WP No.10658 of 2018



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1 M/S.J.B.A REROLLING MILLS
REP. BY ITS PARTNER A.MOHAMMED ANSAR
NO.6/1A 1B 2A 2B SEDARAPET MAIN ROAD
(NEAR OWEN BILTS) THONDAMANATHAM PUDUCHERRY-605 502.
... PETITIONER in WP No.10659 of 2018

1 M/S.J.B.A REROLLING MILLS
REP. BY ITS PARTNER A.MOHAMMED ANSAR
NO.6/1A 1B 2A 2B SEDARAPET MAIN ROAD
(NEAR OWEN BILTS) THONDAMANATHAM PUDUCHERRY-605 502.
... PETITIONER in WP No.10660 of 2018

1 M/S.J.B.A REROLLING MILLS
REP. BY ITS PARTNER A.MOHAMMED ANSAR NO.6/1A
1B 2A 2B SEDARAPET MAIN ROAD (NEAR OWEN
BILTS) THONDAMANATHAM PUDUCHERRY-605 502.
... PETITIONER in WP No.10661 of 2018

1 M/S.JBA REROLLING MILLS
REP.BY ITS PARTNER A.MOHMMED ANSAR
NO.6/1A 1B 2A 2B SEDARAPET MAIN ROAD
(NEAR OWNER BILTS) THONDAMANATHAM
... PETITIONER in WP No.25326 of 2018

VS.

1 ADDITIONAL DEPUTY COMMERCIAL
TAX OFFICER-I PONDICHERRY.
... RESPONDENT in WP No.26565 of 2016

1 ADDITIONAL DEPUTY COMMERCIAL
TAX OFFICER-I PONDICHERRY.
... RESPONDENT in WP No.26566 of 2016

1 THE COMMERCIAL TAX OFFICER
IAC-II PONDICHERRY
... RESPONDENT in WP No.39518 of 2016

1 APPELLATE ASSISTANT COMMISSIONER (CT)
PUDUCHERRY AT COMMERCIAL TAX DEPT.
PUDUCHERRY 605 005

2 DEPUTY COMMERCIAL TAX OFFICER-IAC
PUDUCHERRY AT COMMERCIAL TAX DEPT.
PUDUCHERRY 605 005
... RESPONDENTS in WP No.2306 of 2017



1 APPELLATE ASSISTANT COMMISSIONER (CT)
PUDUCHERRY AT COMMERCIAL TAX DEPT.
PUDUCHERRY 605 005

2 DEPUTY COMMERCIAL TAX OFFICER-IAC
PUDUCHERRY AT COMMERCIAL TAX DEPT.
PUDUCHERRY 605 005

... RESPONDENTS in WP No.2307 of 2017

1 ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER - IAC
PUDUCHERRY AT COMMERCIAL TAXES COMPLEX
PUDUPALAYAM PUDUCHERRY-605 005.

... RESPONDENT in WP No.10658 of 2018

1 ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER - IAC
PUDUCHERRY AT COMMERCIAL
TAXES COMPLEX PUDUPALAYAM
PUDUCHERRY-605 005.

... RESPONDENT in WP No.10659 of 2018

1 ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER - IAC
PUDUCHERRY AT COMMERCIAL TAXES COMPLEX
PUDUPALAYAM PUDUCHERRY-605 005.

... RESPONDENT in WP No.10660 of 2018

1 ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER - IAC
PUDUCHERRY AT COMMERCIAL TAXES COMPLEX
PUDUPALAYAM, PUDUCHERRY-605 005.

... RESPONDENT in WP No.10661 of 2018

1 ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER - IAC
PUDUCHERRY AT COMMERCIAL TAXES COMPLEX
PUDUPALAYAM, PUDUCHERRY-605 005.

... RESPONDENT in WP No.25326 of 2018

PRAYER IN W.P.No.26565 OF 2016: -

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent passed in CST 34420012066/2012-13 dated 01.07.2016 and quash the same in so far as it seeks to revoke the reversal of ITC amounting to Rs.62,16,148/- pertaining to non-submission of C declaration forms in respect of interstate sales falling under Section 21 of the PVAT Act 2007 as zero rated sales and further direct the respondent to restore the reversal of Input Tax Credit (ITC) amounting to Rs.62,16,148/- and thereby permit the petitioner to adjust the same under the provisions of the PVAT Act 2007.



WP No.26566 of 2016

To Call for the impugned proceedings of the respondent passed in PVAT 34420012066 / 2012-13 dated 01.07.2016 and quash the same as the impugned proceedings of the respondent is without jurisdiction, as it restricting the claim of carry forward ITC of Rs.3,17,471/- based on the order passed under the CST Act 1956 and further direct the respondent to restore the original carry forward ITC of Rs.4,72,587/-

WP No.39518 of 2016

To issue a writ of certiorari to call for the impugned proceedings of the respondent passed in TIN.34230007951/ 2010-2011 dated 20.10.2016 and quash the same.

WP No.2306 of 2017

To issue a writ of certiorari to call for the impugned proceedings of the 1st respondent passed in Appeal Nos.46 and 47/PVAT 2016-17/AAC dated 19.12.2016 and quash the same impugned proceedings of the 1st respondent is without jurisdiction, as it confirms the order passed by the 2nd respondent in for the year PVAT 2010-2011 dated 05.08.2016 and thereby caused the reversal of ITC amounting to Rs.2,16,872/- in respect of Zero Rated Sales under Section 21 of the PVAT Act 2007 or issue or any other writ

WP No.2307 of 2017

To issue a writ of certiorari to call for the impugned proceedings of the 1st respondent passed in Appeal Nos. 46 and 47/PVAT 2016-17/AAC dated 19.12.2016 and quash the same impugned proceedings of the 1st respondent is without jurisdiction, as it confirms the order passed by the 2nd respondent in for the year PVAT 2011-2012 dated 5.8.2016 and thereby caused the reversal of ITC amounting to Rs.1,31,962/- in respect of Zero Rated Sales under Section 21 of the PVAT Act 2007 or issue or any other writ

WP No.10658 of 2018

To issue a writ of certiorari to call for the impugned proceedings dated 29.03.2018 in VAT. 34700008032 / 2011-12 and quash the same in so far as it seeks to reverse the ITC for a sum of Rs.6,34,128/- in respect of zero-rated sales u/s 21 of the PVAT Act, 2007 as the same is without jurisdiction



WP No.10659 of 2018

To issue a writ of certiorari to call for the impugned proceedings dated 29.03.2018 in VAT. 34700008032 / 2012-13 and quash the same in so far as it seeks to reverse the ITC for a sum of Rs.74,54,765/- in respect of zero-rated sales u/s 21 of the PVAT Act, 2007 as the same is without jurisdiction

WP No.10660 of 2018

To issue a writ of certiorari to call for the impugned proceedings dated 29.03.2018 in VAT. 34700008032 / 2013-14 and quash the same in so far as it seeks to reverse the ITC for a sum of Rs.85,18,191/- in respect of zero-rated sales u/s 21 of the PVAT Act, 2007 as the same is without jurisdiction

WP No.10661 of 2018

To issue a writ of certiorari to call for the impugned proceedings dated 29.03.2018 in VAT. 34700008032 / 2014-15 and quash the same as the respondent has no jurisdiction to reverse the ITC for a sum of Rs.1,50,27,208/- in respect of zero-rated sales u/s 21 of the PVAT Act, 2007 as the same is without jurisdiction

WP No.25326 of 2018

To issue a writ of certiorari to call for impugned proceedings dated 21.08.2018 in VAT 34700008032/ 2015-16 and quash the same as the respondent has no jurisdiction to reverse the ITC for a sum of Rs. 1,00,67,145/- in respect of zero-rated sales u/s 21 of the PVAT Act, 2007

(In W.P.Nos.26565, 26566 & 39518 of 2016,
2306 & 2307 of 2017 & 25326 of 2018)

For Petitioner : Mr.AR.L.Sundaresan, (Senior Counsel)
for M/s.I.Joseph

For Respondent : Mr.T.P.Manoharan, (Senior Counsel)
for Mr.J.Kumaran
(Government Advocate, Puducherry)

(In W.P.Nos.10658 to 10661 of 2018)

For Petitioner : Mr.AR.L.Sundaresan, (Senior Counsel)
for M/s.N.Murali



For Respondent : Mr.T.P.Manoharan, (Senior Counsel)
for Mr.J.Kumaran
(Government Advocate, Puducherry)

C O M M O N O R D E R

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All these Writ Petitions are filed either challenging the original assessment order or the First Appellate order passed by the competent authority under Section 47 of the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as 'the PVAT Act').

2.The learned Senior Counsel appearing on behalf of the writ petitioner in all the petitions contended that the petitioners are entitled for the benefit of Input Tax Credit for the zero rated transactions and the provisions in this regard are unambiguous. The petitioners have enabled the provisions with reference to the zero rated transactions, more specifically, the explanation for zero rated transaction under Section 21 of the PVAT Act, which denotes zero rated transactions and further provisions under the Central Sales Tax Act, 1956. Relying on the provisions under the PVAT Act, 2007 and the Central Sales Tax Act, 1956, the learned Senior Counsel is of the opinion that the petitioners are entitled for the benefit of Input Tax Credit in respect of the transactions made by them.

3.The learned Senior Counsel appearing on behalf of the respondent objected the said contentions by stating that admittedly the writ petitioners have not exhausted the appeal remedies as provided under the provisions of the PVAT Act. Section 47 provides an appeal to the appellate Assistant Commissioner and Section 49 contemplates appeal to the Appellate Tribunal. The two appellate forums are created in the provisions of the PVAT Act, to redress the grievances of the aggrieved persons. Section 51 of the Act provides an appeal to the High Court. Thus, without exhausting the remedies contemplated under the scheme of the Act, the Writ Petitions are not entertainable and liable to be rejected in limine. The learned Senior Counsel for the respondent even opposed the contentions raised on merits by stating that the petitioners are not entitled for any such benefits as claimed and therefore, the Writ Petitions are devoid of merits.

4.This Court is of the considered opinion that exhausting the appeal remedies are imminent for adjudication mixed question of facts and law. Finding of facts are of paramount importance for application of law in force. When the cases are involving mixed question of law and fact, then the aggrieved persons are bound to exhaust the appellate remedy and a rowing enquiry cannot be conducted by the High Court under Article 226 of the Constitution of India. The adjudication of facts are to be done



effectively with reference to the documents and evidences to be produced by the parties to the dispute and finding in this regard alone would be assisting the High Court for exercise of powers in a judicial review in a writ proceedings. The scope of judicial review under Article 226 of the Constitution of India is to scrutinize the processes through which a decision is taken by the competent authority by following the procedures contemplated under the statute or rules, but not the decision itself. Thus, the Appellate remedies are vital for the purpose of fact findings regarding the disputed facts. The High Court based on the affidavits filed by the parties cannot make any finding in respect of the disputed facts as the documents and evidences cannot be examined in a writ proceedings and therefore, this Court is of the opinion that the appellate remedy is to be exhausted by the petitioner in all these Writ Petitions. Some Writ Petitions are filed challenging the original assessment order and the other Writ Petitions are filed challenging the orders passed by the First Appellate Authority. In all such cases, the petitioners are entitled to file an appeal under Section 47 and thereafter, under Section 49 and finally, before the High Court under Section 51 of the PVAT Act. This being the scheme of legislation, dispensing with the provisions contemplated under the statute is not preferable.

5.The practice of filing Writ Petitions without exhausting the statutory appellate remedy is in ascending mode and most of such Writ Petitions are filed with an idea to evade payment of pre-deposit for filing an appeal which is contemplated under the procedures. However, the High Court need not encourage such practise. Respecting the institutions created under the legislations is of paramount importance. The High Court cannot undermine the importance of the appellate forum created under the statute, unless there are compelling reasons. Regarding the appellate remedy to be exhausted, this Court has elaborately considered the principles in judgment dated 15.04.2021 in W.P.Nos.3144 of 2016 & etc. batch and the relevant paragraphs are extracted hereunder:

"7.In order to avoid the Pre-Deposit, which is contemplated under the Statute, the practice of filing writ petitions is prevailing in the High Court and the High Court cannot encourage such practice and the appellate remedy contemplated under the Act is to be exhausted in all circumstances and only under extraordinary circumstances, in order to mitigate injustice, the High Court can intervene and not otherwise. Such power of dispensing with the appeal remedy is to be exercised sparingly and not in a routine manner. The learned Senior Standing Counsels



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reiterated that, in respect of the writ petitions on hand, the original assessment order has been passed either by the Joint Commissioner or by the Commissioner of Customs. Against such original orders passed by the original authorities under the provisions of the Customs Act, an appeal is contemplated under Sections 128 and 129 of the Customs Act, respectively. Without exhausting the appellate remedy, the writ petitioners have filed these writ petitions, and therefore, the writ petitions are liable to be dismissed.

8. With reference to the appellate remedy, the Hon'ble Division Bench of this Court in W.A.No.640 of 2021 [M/s.Fourceess Diamond Pvt. Ltd. and another v. The Joint Commissioner of Customs (Air Cargo), Meenambakkam, Chennai] delivered a judgment on 25.02.2021 and the relevant paragraphs are extracted hereunder :

"8. After elaborately hearing the learned counsel for the appellants and the learned Senior Standing Counsel appearing for the respondent, we are of the view that the issues raised in the writ petition are not purely questions of law, but mixed questions of fact, which would require a process of adjudication. Such matters cannot be decided by a Writ Court based on affidavits. Therefore, we do agree with the ultimate conclusion of the learned Writ Court that the appellant should avail the alternate remedy available under the Act.

9. For the reasons, which we have assigned in the preceding paragraph, the Writ Appeal stands dismissed and the appellants are granted 60 days time from the date of receipt of a copy of this judgment to file an appeal before the Commissioner of Customs (Appeals) and if the same is filed, the Commissioner of Customs (Appeals) shall entertain the appeal, without reference to the limitation as the writ petition was filed before this Court in the year 2016, which is well within the period of limitation, had the appellants filed



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appeals before the Commissioner of Customs (Appeals) at the relevant point of time.

10. Since the learned counsel for the appellants submitted that the certified copy of the impugned order was filed in the writ petition, the Registry is directed to return the impugned original order filed in the writ petition, after retaining a photostat copy. No costs. Consequently, connected miscellaneous petition is closed."

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11. This Court is of the considered opinion that all such grounds raised on merits are to be adjudicated with reference to the documents and evidences to be produced and the scope of the writ petition under Article 226 of the Constitution of India cannot be expanded so as to exercise the powers of the appellate authority in the matter of examination or scrutiny of original documents and evidences produced by the respective parties. The very purpose of the statutory appeal is to scrutinize the orders passed by the original authorities, and therefore, the legislative intention in this regard is to be scrupulously followed in the matter of adjudication of merits with reference to the documents and evidences.

12. In common parlance, Statutes contain appeal provisions. In some of the Statutes, there are two-tier appeal provisions in order to ensure that the facts, grounds, evidences are appreciated and the grievances are redressed in the manner known to law. Such appeal provisions are provided with the legislative intention to provide remedy to the aggrieved persons. The High Court, in normal circumstances, would not interfere nor dispense with the appellate remedy.

13. The High Court cannot adjudicate the facts and merits with reference to documents and evidences. Trial is not entertainable under Article 226 of the Constitution of India. All such procedural aspects are to be followed by complete adjudication/trial by the original authorities as well as by the appellate authorities under the provisions of the Statute and the powers under Article 226 of the



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Constitution of India is limited to find out whether the processes contemplated under the Statutes and the procedural aspects are followed by the competent authorities as well as the appellate authorities or not. The High Court, under Article 226 of the Constitution of India, is not expected to usurp the powers of the appellate authorities by adjudicating the merits of the matter on certain documents and evidences. In the event of adjudication of merits under Article 226 of the Constitution of India in the absence of complete trial with reference to the documents and evidences, there is a possibility of miscarriage of justice, and therefore, the High Court is expected to be cautious, while entering into the venture of adjudication of certain merits with reference to the original documents and evidences produced by the respective parties to the lis. This being the legislative intention, High Court is expected to trust the institutional authorities as well as the hierarchy of institutions contemplated under the Statutes. Institutional respects are of paramount importance for providing complete justice to the parties and the various stages of adjudication are important for the purpose of correcting omissions, commissions, errors in appreciation of evidence, etc. Powers of the High Court under Article 226 of the Constitution of India cannot be extended nor widened so as to allow lay hands on the facts and circumstances by conducting the trial, nor certain facts and circumstances with reference to documents and evidences can be assumed or presumed or inference can be drawn, which is not preferable.

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15. As far as the judgment of the Hon'ble Supreme Court of India in the case of M/s. Canon India Private Limited (supra) is concerned, as rightly pointed out by the learned Senior Standing Counsels appearing on behalf of the respondents that the matter went to the Hon'ble Apex Court by way of regular appeal and the Hon'ble Supreme Court of India, while adjudicating the final orders passed by the Appellate Tribunal, formed an opinion that the issuance of show cause notice itself was by an improper authority. Thus, by citing the said finding, the appellate remedy otherwise provided under the Statute cannot be dispensed with, and in the event of accepting the



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said contention, in all such cases, every litigant will approach the High Court by way of writ petition bypassing the appellate remedy, which is not desirable and cannot be accepted. As observed earlier, Institutional respect is of paramount importance. Even the point of jurisdiction, limitation, error apparent on the face of the record, are on merits and all are to be adjudicated before the appellate authority and the appellate authority, more specifically, the Appellate Tribunal or the Commissioner (Appeals), as the case may be, is empowered to adjudicate all such legal grounds raised by the respective parties and make a finding on merits. Thus, usurping the powers of the appellate authorities by the High Court by invoking its powers under Article 226 of the Constitution of India is certainly unwarranted. The parties must be provided an opportunity to approach the appropriate authorities for redressal of their grievances in the manner known to law. In the event of entertaining all such writ petitions, the High Court will not only be over-burdened, but usurping the powers of the appellate authority is certainly not desirable.

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18. Large number of writ petitions are filed without exhausting the statutory appeal remedies and High Court is also entertaining such writ petitions in a routine manner. Keeping such writ petitions pending for long time would cause prejudice to the interest of the assessee also. Thus, such statutory provisions regarding the appeal are to be decided at the first instance, enabling the litigants to avail the remedy by following the procedures as contemplated under law. Such writ petitions are filed may be on the ground of jurisdiction or otherwise. However, the Courts are expected to ensure that all such legal grounds available to the parties are adjudicated before the proper Forum and only after exhausting the statutory remedies, writ petitions are to be entertained. In the absence of exhausting such remedies, High Court is losing the benefit of deciding the matter on merits as the High Court cannot conduct a trial or examine the original records in the writ proceedings under Article 226 of the Constitution of India. Thus, the Courts shall not provide an unnecessary opportunity to the assessee to escape from the liability merely



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on the ground on jurisdictional error, which is rectifiable.

19. This being the facts and circumstances established, this Court has no hesitation in arriving at a conclusion that the petitioners are bound to exhaust the appellate remedy, either under Section 128 or Section 129 of the Customs Act, respectively. Thus, the petitioners are at liberty to approach the appellate authority and file an appeal by following the procedures contemplated and by complying with the conditions to prefer the appeal, within a period of 60 days from the date of receipt of a copy of this order, and in the event of filing of appeal(s) by the writ petitioners within a period of 60 days, all such appeals are directed to be entertained without reference to the period of limitation, and the matters are to be adjudicated on merits and in accordance with law and by affording opportunity to all the parties, and the appeals are to be disposed of as expeditiously as possible."

6. In view of the principles laid down in the aforementioned paragraphs, the petitioner in all the Writ Petitions are at liberty to file respective appeals before the appellate forum concerned under Sections 47, 49 and 51, as the case may be, by following the procedures contemplated and in a prescribed format. In the event of filing any such appeal by the writ petitioners, the appellate forum shall condone the delay in filing the appeal alone and entertain the appeal, object the issues on merits by affording liberty to all the parties and dispose of the same as expeditiously as possible. The writ petitioners are at liberty to file the appeals within a period of four weeks from the date of receipt of a copy of this order by complying with all the pre-conditions contemplated under the statute and the rules in force, except the delay.

7. With these directions, all the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa



To

1. The Additional Deputy Commercial Tax Officer - I,
Pondicherry.

2. The Commercial Tax Officer
IAC-II, Pondicherry.

3. Appellate Assistant Commissioner (CT)
Puducherry at Commercial Tax Department,
Puducherry.

4. Deputy Commercial Tax Officer
IAC, Puducherry at Commercial Tax Department,
Puducherry - 605 005

5. The Additional Deputy Commercial Tax Officer - IAC
Puducherry at Commercial Taxes Complex,
Pudupalayam, Puducherry - 605 005

Copy to:

The Section Officer,
ER Section, High Court,
Madras.

(To return the original copy of the
impugned orders to the respective
counsel on record.)

+1cc to the Government Pleader (P), S.R.No.28618

W.P.Nos.26565, 26566 & 39518 of 2016,
2306 & 2307 of 2017 and
10658 to 10661 & 25326 of 2018

SKY(CO)
SU(16/07/2021)