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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2020

PRONOUNCED ON : 22.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.12657, 12697, 12699, 12760, 13884, 13887, 13890, 14234, 14335, 14353, 14342, 14345, 14477, 14478, 14659, 14663, 14666, 14669, 14660, 14730, 14882, 14887, 14886, 14890, 14892, 14168, 14884, 15108, 15113, 15114, 15115, 15111, 15110, 15158, 15159, 15165, 15166, 15209, 15210, 15398, 15410, 15465, 15491, 15501, 15504, 15509, 15517, 15514, 15520, 15525, 15780, 16846, 16851, 17206, 18522, 18573 of 2020

and Connected Writ Miscellaneous Petitions

W.M.P.Nos.15636, 15637, 15683, 15686, 15688, 15689, 15758, 15759, 17253, 17257, 23030, 22961, 17640, 17641, 21255 & 21259 of 2020

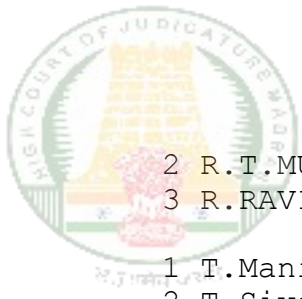
R Sivashanmugam	Petitioner in WP 12657 of 2020
S Jayabalan	Petitioner in WP 12697 of 2020
K Balamurugan	Petitioner in WP 12699 of 2020
A Kolanji	Petitioner in WP 12760 of 2020
L Mathialagan	Petitioner in WP 13884 of 2020
K S.Raja	Petitioner in WP 13887 of 2020
N Balathandayutham	Petitioner in WP 13890 of 2020
R Rajagopal	Petitioner in WP 14234 of 2020

1 P.Ramalingam	
2 G.Kannan	
3 R.Dhanushkumar	
4 E.Karthikeyan	Petitioners 1 to 4 in WP 14335 of 2020

1 G.Baskaran	
2 V.Govindharajan	
3 P.Lakshmanan	
4 K.Prabakaran	
5 N.Selvam	Petitioners 1 to 5 in WP 14353 of 2020

1 K.Ramesh Kumar	
2 R.Saravanan	
3 K.Jayakumar	Petitioners 1 to 3 in WP 14342 of 2020

1 A.Sivanarutchelvan	
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2 R.T.MURUGANATHAM

3 R.RAVICHANDRAN

Petitioners 1 to 3 in WP 14345 of 2020

1 T.Manivasan

2 T.Siva

3 G.Subash

4 V.Packirisamy

Petitioners 1 to 4 in WP 14477 of 2020

N.Punithan

Petitioner in WP 14478 of 2020

M.Murugesan

Petitioner in WP 14659 of 2020

S.Jayaprakash

Petitioner in WP 14663 of 2020

P.SenthilKumar

Petitioner in WP 14666 of 2020

J.Elakkumanan

Petitioner in WP 14168 of 2020

S.Elangovan

Petitioner in WP 14669 of 2020

S.Kandasamy

Petitioner in wp 14660 of 2020

S.Paneerselvam

Petitioner in WP 14730 of 2020

V.Sivasubramaniyan

Petitioner in WP 14882 of 2020

M.Annadurai

Petitioner in WP 14887 of 2020

T.Kaliyamoorthy

Petitioner in WP 14886 of 2020

P.Elangovan

Petitioner in WP 14890 of 2020

M.Ashok Kumar

Petitioner in WP 14892 of 2020

C.Nagarajan

Petitioner in WP 14884 of 2020

G.Palanisamy

Petitioner in WP 15108 of 2020

S.Velmurugan

Petitioner in WP 15113 of 2020

N.Krishnaraj

Petitioner in WP 15114 of 2020

R.Sankar

Petitioner in WP 15115 of 2020

N.Krishnaraj

Petitioner in WP 15111 of 2020

P.M.Sundararaj

Petitioner in WP 15110 of 2020

K.Mylvaganan

Petitioner in Wp 15158 of 2020

S.Velmurugan

Petitioner in WP 15159 of 2020

G.Natarajan

Petitioner in WP 15165 of 2020

Chakkravarthi Kaliyamurthy

Petitioner in WP 15166 of 2020

1 K.Elayarajan

2 S.Rajagopal

3 D.Kannan

Petitioners 1 to 3 in WP 15209 of 2020

1 S.Vijayakumar

2 S.Balamurugan

3 N.Lenin

4 V.Kumaresan

5 D.Kabilan

Petitioners 1 to 5 in WP 15210 of 2020



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1 K.Balasubramaniyan
2 V.Moovendhan
3 M.Nanthkumar
4 S.Rajapakkiyan

Petitioners 1 to 4 in WP 15398 of 2020

1 C.Raguraman
2 T.Tambideventran
3 A.Selvam

Petitioners 1 to 3 in WP 15410 of 2020

N.Sivakumar

Petitioner in WP 15465 of 2020

1 K.R.Selvaganapathy
2 R.KABILAN
3 K.SUBBAIYAN
4 G.RAJADURAI

Petitioners in 1 to 4 in WP 15491 of 2020

1 S.RAJAGOPAL
2 J JOHN PETER SANDHANAM
3 B.PICHAIKANNU
4 G.MURUGADASS
5 S.SENDHIL KUMAR

Petitioners 1 to 5 in WP 15501 of 2020

1 RR MURUGANANTHAM
2 R.PAKKIRISAMY
3 S.MUTHUKUMARAN

Petitioners 1 to 3 in WP 15504 of 2020

1 P.Regunathan
2 R.Sankaraiya
3 V.Radhakrishnan
4 L.Veeramani

Petitioners 1 to 4 in WP 15509 of 2020

1 N.Vengadesan
2 P.Karthikeyan
3 S.Veerasekaran
4 V.Rajmohan

Petitioners 1 to 4 in WP 15517 of 2020

1 R.Muthukumaravel
2 S.Arjunan
3 K.Vijayarajan

Petitioners 1 to 3 in WP 15514 of 2020

1 S.Murugaiyan
2 V.Mathiyazhagan
3 R.Natarajan
4 P.Vijayakumar

Petitioners 1 to 4 in WP 15520 of 2020

1 A.Kalaiyarasan
2 K.R.Murugadass
3 R.Elagovan
4 S.Iyappan
5 N.Mathiyazhagan

Petitioners 1 to 5 in WP 15525 of 2020



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C.Gobu

Petitioner in WP 15780 of 2020

1 A.Rajinikanth

2 V.Murugaiyan

Petitioners 1 to 2 in WP 16846 of 2020

1 G.Rajkumar

2 T.Navaneethakrishnan

3 S.Kannadasan

4 M.Kannan

5 P.Achuthamenon

Petitioners 1 to 5 in WP 16851 of 2020

P.T.Sankar

Petitioner in WP 17206 of 2020

K.Kannadhasan

Petitioner in WP 18522 of 2020

1 V.D.Tamilselvan

2 R.BASKARAN

3 V.Jeevarathinam

Petitioners 1 to 3 in WP 18573 of 2020

The Managing Director, Tamilnadu Marketing Corporation Ltd,
TASMAC, Headoffice, CMDA Tower II, 4th Floor,
Gandhi Irwin Road, Egmore, Chennai 600 008

R1 IN WP 12657,12697,12699,12760,13884,13887,13890,14335,
14353,14342,14345,14477,14478,14168,14730,15158,15159,15166,
15398,15410,15491,15501,15504,15509,15517,15514,15520,15525,
16846,16851,17206,18573 of 2020

R2 in WP 14659, 14663, 14666, 14669, 14660, 14882, 14887,
14886,14890, 14892,14884,18522 of 2020

The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd,
TASMAC, Trichy Region, Trichy

R1 in WP 15209,15210 of 2020

R2 in WP 12657,12697,12699,12760,13884, 13887,13890,14335,
14353,14342,14345,14477,14478,14168,14730,15158,15159,15166,
15398,15410,15491,15501,15504,15509,15517,15514,15520,15525,
16846,16851,17206 of 2020

R3 in WP 14659,14663, 14666,14669, 14660,14882, 14887,
14886, 14890,14892,14884, 18522 of 2020

The District Manager/Deputy Collector,
Tamilnadu State Marketing Corporation Ltd,
TASMAC, Cuddalore, Cuddalore District

R3 in WP 12657,12697,12699, 12760,14730, 15158,15159,
15166,17206 of 2020



The District Manager/Deputy Collector, Tamilnadu State Marketing Corporation Ltd (TASMAC) Thiruvarur District

R3 in WP 13887,13884,13890,14168,15165 of 2020

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R1 in WP 14234, 15465,15780,18573 of 2020

The District Manager, TASMAC-Ltd,
Nagapattinam District, Industrial Estate,
Thirubuvanam, Thiruvidaimarudhur Taluk,
Nagapattinam 612 001

R3 in WP 14335, 14353, 14342, 14345, 14477, 14478,
15398,15410,15491,15501,15504,15509,15517,15514,15520,
15525,16846,16851 of 2020

The District Manager, TASMAC, Nagapattinam District, No.80,
Industrial Estate, Thirubuvanam, Thiruvidaimarudhur Taluk,
Kumbakonam 612 103

R4 in WP 14659,14663,14666, 14669,14660, 14882,14887,
14886,14890,14892,14884,18522 of 2020

The Secretary to Government,
Government of Tamilnadu,
Home Prohibition and Excise Department,
Secretariat, Fort St George,
Chennai 600 009

R1 in WP 14659,14663,14666, 14669,14660,14882, 14887,
14886,14890,14892,14884,18522 of 2020

The Sub Collector/District Manager, TASMAC Ltd, Perambalur,
Perambalur District

R1 in WP 15108,15113,15114,15115,15111,15110 of 2020

The District Manager,
TASMAC Ltd, Tiruvarur District,
R.S.No.461/2 Master Plan Complex,
Mannargudi Road, Vilamal,
Tiruvarur 610 004

R2 in WP 15209,15210 of 2020

PRAYER:

(WP No. 12657 of 2020)

This Writ Petition filed under Article 226 of the Constitution



of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo No. A4/(RV)/531/2020 dated 01.06.2020 and Quash the same and direct the 3rd respondent to the repay a sum of Rs.34,976/- to the petitioner which was paid by him through Bank Chellan.

(WP No. 12697 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo No. Na. Ka. No. A4 (RV)/531/2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay the sum of Rs.44238/- to the petitioner which was paid by him through Demand Draft No. 500083.

(WP No. 12699 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo. No. A4 (RV)/531/2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay said amount of Rs.24594/- to the petitioner.

(WP No. 12760 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo. No. A4 (RV)/531/2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs.39858/- to the petitioner.

(WP No. 14730 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to Call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Na. Ka. No. A4 (RV) / 531 / 2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay sum of Rs 43,432/- to the petitioner which was paid by him through Demand Draft No. 005208 draw on Central Co operative Bank Viruthachalam Branch.

(WP 13884, 13887, 13890, 14234, 15209, 15210, 15780, 15465 of 2020)



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These Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writs of Certiorarified mandamus, to call for the records pertaining to the Impugned proceedings passed by the 2nd, and 3rd, 4th respondent respectively in Na.Ka.No. 51/A1/2020 dated 30.07.2020, and quash the same.

(WP No.14335,14353,14342,14345,14477,14478,15398, 15410, 15491, 15501,15504,15509,15517,15514,15520,15525,16846,16851, of 2020)

These Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writs of Certiorarified mandamus, to call for the records of the proceedings of the 3rd and 4th respondent respectively bearing Na.Ka.No.437/2020/A1, dated 11.09.2020, 30.07.2020 respectively and quash the same.

(WP No.14659,14663,14666,14669,14660,14882,14887,14886, 14890,14892,14884 of 2020)

These Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writs of Certiorarified mandamus, to call for the records of the 4th respondent in Na.Ka.No.437/2020/A1 dated 11/09/2020 pertaining to TASMAL shop Nos. 5782, 5747, 5781, 5611, 5751,5771,5758,5773,5750,5740,5612 respectively and quash the same as illegal, unlawful and against law.

(WP No.14168, 15165, 15780 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.51/A1/2020 dated 30.07.2020 on the file of the respondent No.3 and quash the same.

(WP No. 15108,15113,15114,15115,15111,15110 of 2020)

These Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writs of Certiorarified mandamus, to call for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.7/3585/2020 dated 25.09.2020 and quash the same.

(WP No. 15158 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo. No. A4/(RV)/531/2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to



repay a sum of Rs. 49255/- to the petitioner which was paid by him through Bank Chellan.

(WP No. 15159 of 2020)

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This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Memo. No. A4/(RV)/531/2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs.4,32,863/- to the petitioner which was paid by him through Bank challan.

(WP No. 15166 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Na.Ka.No. A4/(RV)/531/2020 dated 01.06.2020 and quash the same and direct the 3rd respondent to repay a sum of Rs. 29,408/- to the petitioner which was paid by him through Demand Draft No. 779366, drawn on Indian Bank, Cuddalore Branch.

(WP NO.17206 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to call for the records pertaining to the impugned recovery proceedings passed by the 3rd respondent in Na.Ka.No.A4/(RV)/531/2020 dated 01.06.2020 and Quash the same and direct the 3rd Respondent to repay a sum of Rs.1620 to the Petitioner which was paid by him Through Demand Draft No.948601 Drawn of Karur Vysya Bank.

(WP No. 18522 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to Calling for the records of the 4th respondent in Na.Ka.No.437/2020/A1 dated 11.09.2020 pertaining to TASMAL shop No. 5617 and quash the same as illegal, unlawful and against law.

(WP NO. 18573 of 2020)

This Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus, to Call for the records pertaining to the impugned recovery proceedings passed by the 2nd respondent in Na.Ka.No51/A1/2020 dated 30.07.2020 and quash the same and direct the 2nd respondent to repay a sum of Rs.13,477/- to the petitioner.



PETITIONERS COUNSEL

M/S GNANASEKAR IN

WP 14730, 15158, 15159, 15166, 12657, 12697, 12699, 12760, 17206
OF 2020

M/S P.T.RAMADEVI IN

WP 13884, 13887, 13890 OF 2020

MR.M.MURALI IN

WP 18573 OF 2020

M/S P.SURESH BABU IN

WP 14335, 14353, 14342, 14345, 14477, 14478, 15209, 15210, 15398,
15410, 15491, 15504, 15509, 15517, 15501, 15514, 15520, 15525,
16846, 16851 OF 2020

M/S M.R.KUYILAN IN

WP 14659, 14663, 14666, 14669, 14660, 14882, 14887, 14886,
14890, 14892, 14884, 18522 OF 2020

MR.C.PRAKASAM IN

WP 15108, 15113, 15114, 15115, 15111, 15110 OF 2020

MR.K.BHARATHI IN

WP 14234, 15165, 15465, 15780 OF 2020

MR.R.NALLIYAPPAN PETITIONER IN

WP 14168 OF 2020

RESPONDENT'S COUNSEL

MR.SATHISHKUMAR COUNSEL FOR TASMAL IN

WP 12657, 12697, 12699, 12760, 14730, 18522 of 2020

MR.D.VENKATESAN FOR RESPONDENT STATE in WP 18522 OF 2020

MR.N.DAMODARAN STANDING COUNSEL FOR RESPONDENTS (TASMAL)

WP 13884, 13887, 13890, 14234, 14335, 14353, 14342, 14345,
14477, 14478, 15108, 15113, 15115, 15111, 15110, 15114,
15158, 15165, 15166, 15209, 15210, 15398, 15410, 15465,



15491, 15504, 15501, 15780, 16846, 16851, 18573 OF 2020

M/S K.SATHISHKUMAR STANDING COUNSEL FOR RESPONDENT IN 2 TO 4

WP 14659, 14663, 14666, 14669, 14660, 14730, 15509, 15517,
15514, 15520, 15525, 14882, 14887, 14886, 14890, 14892,
14884 OF 2020

MRS.R.JANAKI AGP FOR RESPONDENT STATE

COMMON ORDER

These Writ Petitions have been filed against the respective impugned orders passed by the concerned District Manager, TASMAL in and by which, the respective petitioners have been imposed penalty, interest and GST for the remittance of the shortage value in stock.

2. When these Writ Petitions are taken up for consideration, the learned counsel appearing for the petitioners would submit that a learned single Judge of this Court, in a similar Writ Petition in W.P.No.10355 of 2020, has considered the identical impugned order and set aside the same. The learned Judge has passed a very detailed order after considering various citations placed by both sides. The relevant portion of the order as found in paragraphs 32 to 38, is extracted as under:

"32. The next question that arises for consideration is whether the penalty imposed in a disciplinary proceedings in a service matter is liable for GST, in terms of Section 7(1) (d) or 7(1A) of the GST Act, 2017. Admittedly the said Section 7(1) (d) was not in force as on the date of passing the impugned order in the month of September 2020. The said Section was omitted with effect from 01.02.2019. The respondent, in his counter clearly stated that the notice of collection of GST was issued under Section 7(1) (d) alone. Therefore, without any provision/authority, the third respondent has issued the show cause notice to collect the GST, which is totally illegal.

33. Secondly, even assuming that Section 7(1A) of the Act r/w Rule 5(e) of the Rules will be applicable and the show cause notice was issued in accordance with the said provision, as contended by the learned counsel for the respondents, nowhere either in the show cause notice or in the impugned order or in the counter affidavit, the respondents never ever stated about the applicability of Section 7(1A) r/w Rule 5(e). It would be apposite to mention Section 7(1A), which reads as follows:-



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-Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.-

34. By referring the above said Section, the respondents submitted that the petitioner refrained from performing to prevent the shortage of supply, so that they have imposed the penalty and as such it would attract the GST. This Court is not in a position to accept the present approach of the respondents due to the reason that the imposition of any GST will arise only when the penalty imposed in the course of trade or commerce. During the course of business, if any agreement was entered, where there is a delay in supply or in payment, if any, penalty imposed as per the agreement, such penalty comes under the purview of Section 7 (1A) for the imposition of GST. However, in the present case, the penalty imposed was in a disciplinary proceedings to an employee which would not attract GST.

35. In any angle, the imposition of the GST by the respondents, to the penalty imposed, under Rule 7(b) (xiv) of the Code, in a disciplinary proceedings initiated against the employees would not attract the GST and the penalty referred therein would only refer the penalty imposed in the course of trade or commerce.

36. As such in the present case the penalty was imposed in a disciplinary proceedings which cannot be construed that the penalty imposed in the course of trade or commerce for the imposition of GST.

37. This Court finds substance in the arguments made by Mr. R.V. Rajkumar, learned counsel appearing for the petitioners in some of the writ petitions in the batch and this Court recorded its appreciation for his assistance in the present writ petition.

38. Therefore, I am of the opinion that the GST imposed by the respondents is illegal on the face of it and the same is liable to be set aside."

3. The fact that the learned Judge has passed the final order in respect of similar issue, has not been disputed by the learned standing counsel appearing for the Corporation.

4. Since the issue has already been dealt with and final order has been passed by the learned single Judge of this Court, whatever conclusion and finding reached by the learned Judge in the above said Writ Petition (MD) No.10355 of 2020 vide order dated 18.12.2020, will also hold good for the present Writ Petitions also.



5. Accordingly, the present Writ Petitions are allowed and all the respective impugned orders passed by the concerned District Manager, TASMAC, are hereby set aside. Since the impugned orders are set aside by this Court, the respondents shall proceed against the petitioners in accordance with law and the procedure as contemplated in the Code of Prevention and detection of Fraudulent acts in Tamil Nadu State Marketing Corporation. 2014. No costs. Consequently, all connected WMPs are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

JP

TO

1.The Managing Director,Tamilnadu Marketing Corporation Ltd,
TASMAC, Headoffice, CMDA Tower II, 4th Floor,
Gandhi Irwin Road, Egmore, Chennai 600 008

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd,
TASMAC, Trichy Region, Trichy

3.The District Manager/Deputy Collector,
Tamilnadu State Marketing Corporation Ltd,
TASMAC, Cuddalore, Cuddalore District

4.The District Manager/Deputy Collector, Tamilnadu State
Marketing Corporation Ltd (TASMAC) Thiruvarur District

5.The District Manager, TASMAC-Ltd,
Nagapattinam District, Industrial Estate,
Thirubuvanam, Thiruvidaimarudhur Taluk,
Nagapattinam 612 001

6.The District Manager, TASMAC, Nagapattinam District, No.80,
Industrial Estate, Thirubuvanam, Thiruvidaimarudhur Taluk,
Kumbakonam 612 103

7.The Secretary to Government,
Governement of Tamilnadu,
Home Prohibition and Excise Department,
Secretariat,Fort St George, Chennai 600 009



8. The Sub Collector/District Manager, Tasmac Ltd,
Perambalur, Perambalur District

9. The District Manager,
TASMAC Ltd, Tiruvarur District,
R.S.No.461/2 Master Plan Complex,
Mannargudi Road, Vilamal,
Tiruvarur 610 004

+3CCs to M/s.P.T.Ramadevi, Advocate S.R.Nos. 10532 to 10534
+7CCs to M/s.M.Gnanasekar, Advocate S.R.Nos. 10457 to 10463

W.P.Nos.12657, 12697, 12699, 12760
13884, 18573 & 18522 of 2020 etc.

JP (CO)
SB (23/08/2021)