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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 18.09.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**
and
**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.Nos.6153, 6156 and 6157 of 2021
and
W.M.P.Nos.6772, 6774 and 6776 of 2021

M/s.Oliva Care,
Represented by its Sole Proprietor
Thiru S.U.Abu Thahir ... Petitioner in all W.Ps

Vs.

The State Tax Officer,
Podanur Assessment Circle,
Coimbatore. ... Respondent in all W.Ps

Prayer in W.P.No.6153 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN: 33731804375/**2014-2015**, dated 11.01.2021, and quash the same.

Prayer in W.P.No.6156 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN: 33731804375/**2015-2016**, dated 11.01.2021, and quash the same.

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Prayer in W.P.No.6157 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN: 33731804375/**2016-2017**, dated 11.01.2021, and quash the same.

For Petitioner (In all W.P.s) : Ms.S.Vishnu Priya for Mr.N.Inbarajan

For Respondent (In all W.Ps) : Mr.V.Prashanth Kiran Government Advocate

**COMMON ORDER**

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

By this common order, all the writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged the Impugned Assessment Orders dated 11.01.2021 passed by the respondent for the Assessment Years 2014-2015, 2015-2016 and 2016-2017.

3. By the Impugned Assessment Orders, the demand proposed in the notices that preceded the respective Impugned Assessment Orders have been confirmed.

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4. The respective Assessment Orders impugned in these writ petitions have not only redetermined the taxable turn over of the petitioner but have also confirmed the differential tax payable by the petitioner under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act") but had also imposed penalty under Section 22(5) of TNVAT Act, 2006.

5. Extract of the differential tax and penalty confirmed in the respective Writ Petitions are as under:-

W.P.No.6153 of 2021 (Assessment Year 2014-2015)

Abstract:

| | **Tax** | **Penalty** | **Total** |
|---|---|---|---|
| Due | Rs.13,74,947/- | Rs.20,09,429/- | Rs.33,84,376/- |
| Paid | Rs. 35,328/- | Rs. 0/- | Rs. 35,328/- |
| Balance to be paid | Rs.13,39,619/- | Rs.20,09,429/- | Rs.33,49,048/- |

W.P.No.6156 of 2021 (Assessment Year 2015-2016)

Abstract:

| | **Tax** | **Penalty** | **Total** |
|---|---|---|---|
| Due | Rs.2,48,084/- | Rs.3,14,013/- | Rs.5,62,097/- |
| Paid | Rs. 38,742/- | Rs. 0/- | Rs. 38,742/- |
| Balance to be paid | Rs.2,09,342/- | Rs.3,14,013/- | Rs.5,23,355/- |

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W.P.No.6157 of 2021 (Assessment Year 2016-2017)

Abstract:

| | **Tax** | **Penalty** | **Total** |
|---|---|---|---|
| Due | Rs.21,30,317/- | Rs.25,12,113/- | Rs.46,42,430/- |
| Paid | Rs. 4,55,575/- | Rs. 0/- | Rs. 4,55,575/- |
| Balance to be paid | Rs.16,74,742/- | Rs.25,12,113/- | Rs.41,86,855/- |

6. After these writ petitions were listed before the Writ Court on 05.02.2024, the Writ Court felt that there are conflicting views of this Court in the case of **Tvl.Pupa Lineraa** Vs. **The State Tax Officer, Karur** in W.P.(MD)No.14494 of 2021 dated 27.10.2021 and in the case of **KAG India Private Limited** Vs. **Assistant Commissioner (ST), Chennai** [2024] 121 GSTR 151 (Mad) rendered on 27.06.2023. Hence, the matter was placed before the Hon'ble The Chief Justice for appropriate orders.

7. Under these circumstances, the matter was directed to be posted before the Division Bench of this Court. Hence, these writ petitions are before us.

8. In **Tvl.Pupa Lineraa case** (cited supra), Writ Court presided over by a learned Single Judge of this Court has passed the following order:-

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***"38. Once a deeming provision comes into effect, for every assessment year, 31st October of the succeeding year is to be taken as a date where deeming provision comes into effect and every such return filed by the assessee within the time should be treated as a deemed assessment.***

***39. But, before the expiry of the deeming assessment period, the revenue wanted to invoke the best judgment theory by invoking Section 22(4) of the TNVAT Act that would be possible for the revenue. However, once the deeming assessment is completed at the end of 31st October of the succeeding year, then that date shall be construed as an assessment date for the purpose of taking the limitation of six years for invoking the proceedings of revised assessment under Section 27 (1) (a) of the TNVAT Act.***

***40. In that view of the matter, this Court feels that there is every force in the said contention raised by the learned counsel appearing for the petitioner. However, the submission made by the learned Government Advocate may not hold good because of the reasons stated hereinabove. Hence, this Court is of the considered view that the impugned assessment order, which in fact started with a show-cause notice, dated 22.02.2021, since was issued beyond the six years limitation period as prescribed under Section 27 (1) (a) of the TNVAT Act, is unsustainable.***

***41. In these circumstances, this Court has no hesitation to hold that the impugned assessment order is unsustainable and accordingly it is liable to be interfered with. Hence, the impugned order is set aside and the Writ Petition is allowed. However, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed."***

9. In **KAG India Private Limited's case** (cited supra), the Writ Court presided over by another learned Single Judge of this Court has taken a view

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that assessment under Section 22(4) of TNVAT Act, 2006 can be availed at any time within the limitation period prescribed under Section 27 of TNVAT Act, 2006 i.e., six years. Relevant observation of the Writ Court in **KAG India Private Limited's case** (cited supra) reads as under:-

> ***"48. Thus, at the first instance, an order of deemed assessment under section 22(2) can be a point of initiation for revision of assessment under section 27 of the Act. If a written, speaking order is passed under section 22(2), such order of assessment under section 22(2) can also be a point of initiation for revision of assessment under section 27 of the Act. If no return is submitted by the dealer for any period of the year or if the return filed is in complete or incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of his judgment, after hearing the dealer. Such an order under section 22(4) shall be passed after the end of the year in question. This shall also constitute a valid point of initiation for initiation of revision under section 27 of the Act.***
>
> ***49. Such order under section 22(4) can be passed at any time for a period of six years which is the time already provided for passing of an order of revision of assessment under section 27 of the Act. The periods of limitation for passing of an order under sections 22(4) and 27, thus, in my view, co-exist and no order under section 22(4) can be passed beyond the period of limitation as set out for initiation of proceedings under section 27 of the Act. Needless to say, this emanates from a comprehensive reading of the statutory provisions at play."***

10. Since the dispute pertains to the Assessment Years 2014-2015, 2015-

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2016, 2016-2017, the assessment is deemed to have been completed in terms of Section 22(2) of TNVAT Act, 2006 on 31st day of October of the succeeding year in these cases, if the returns were in the prescribed form and accompanied prescribed documents with proof of payment of tax. Thus, the assessment would have deemed to have been completed on 31.10.2015, 31.10.2016 and 31.10.2017.

11. These Writ Petitions are opposed by the learned Government Advocate for the respondents on the ground that an Assessing Authority after making such enquiry as it may consider necessary, assess a dealer to best of his judgment under Section 22(4) of TNVAT Act, 2006, if no returns were submitted by the dealer for any period of the year or if the returns filed were incomplete or incorrect or if they did not accompany with any of the documents prescribed or proof of payments of tax.

12. It is submitted that the question of deemed assessment under Section 22(2) of TNVAT Act, 2006 would not enure to a dealer if the returns filed were either incomplete or incorrect. That apart, it is submitted that there is no limitation for passing order under Section 22(4) of TNVAT Act, 2006.

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13. It is submitted that Section 27 of TNVAT Act, 2006 deals with "Assessment of escaped turnover and wrong availment of input-tax credit". It is submitted that as per Section 27(1)(a) of TNVAT Act, 2006, where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the Assessing Authroity may at any time within a period of six years from the date of Assessment and subject to the provisions of sub-section (3), redetermine to the best of its judgment the turnover which had escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

14. It is further submitted that under Section 27(1)(b) of TNVAT Act, 2006 also where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the Assessing Authority may, at any time within a period of six years from the date of assessment, reassess the tax due after making such enquiry as it may consider necessary.

15. In these cases, we are not concerned with the situations covered under Section 27 of TNVAT Act, 2006. The decision of this Court in **Tvl.Pupa**

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**Lineraa** (cited supra) holds the reassessment under Section 27 of TNVAT Act, 2006 is different from the proceedings under Section 22(4) of TNVAT Act, 2006. It was however held that proceedings under Section 22(4) of TNVAT Act, 2006 can be made only within limitation i.e., within the period before deeming clause came into effect i.e., on 31st of October of the suceeding year and once there is a deemed assessment, it is open for the Assessing Officer to invoke Section 22(4) of TNVAT Act, 2006.

16. On the other hand, a slightly different view was taken in **KAG India Private Limited's case** (cited supra) wherein it was held that once deeming assessment is completed at the end of the 31st of October of the suceeding year, then that date shall be construed as an asessment date for the purpose of calculating the limitation of six years for invoking the proceedings of revised assessment under Section 27(1)(a) of TNVAT Act, 2006.

17. We have considered the two decisions of this Court. We have also perused the Impugned Assessment Orders.

18. There are two parts to Section 22 of TNVAT Act, 2006. They are under Sub-Section (4) and Sub-Section (5) to Section 22 of TNVAT Act, 2006.

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In Sub-Section (4) to Section 22, no limitation has been prescribed. On the other hand, for the purpose of imposing penalty under Sub-Section (5) to Section 22, a period of six years has been prescribed. It will be useful to refer to these provisions.

19. Sub-Section (2) to Section 22 of TNVAT Act, 2006 as amended by the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2012, reads as under:-

> "*22.* ***Deemed assessment and procedure to be followed by the Assessing Authority***.-
>
> *(1) .....*
>
> *(2) The Assessing Authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year.*
>
> *Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011, on which assessment orders are not passed shall be deemed to have been assessed on the 30th July day of June 2012.*"

20. The above Sub-Section (2) to Section 22 of TNVAT Act, 2006, extracted above was amended by the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2012 (Tamil Nadu Act 23 of 2012) with effect from

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19.06.2012. The amendment was notified by G.O.Ms.No.82, Commercial Taxes and Registration (B1) Department dated 18.06.2012. Prior to the aforesaid amendment, Sub-Section (2) to Section 22 of TNVAT Act, 2006 read as under:-

> "*22.* ***Procedure to be followed by assessing authority****.-*
>
> *(1) .....*
>
> *(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order.*"

21. Sub-Section (4) and Sub-Section (5) to Section 22 of TNVAT Act, 2006 which are relevant for the purpose of the present cases read differently before the amendment in 2012 vide Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2012 (Tamil Nadu Act 23 of 2012).

22. Under Sub-Section (4) to Section 22 of TNVAT Act, 2006, an Assessing Authority shall, after making such inquiry as it may consider necessary, assess a dealer to the best of its judgment, subject to such conditions as may be prescribed. Sub-Section (4) to Section 22 was also amended by the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2012 (Tamil Nadu Act 23 of 2012). For the sake of clarity, these provisions are reproduced below:-

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| 22(4) of TNVAT Act, 2006 (before 5th Amendment Act, 2012) | 22(4) of TNVAT Act, 2006 (after 5th Amendment Act, 2012) |
|---|---|
| "22. **Deemed assessment and procedure to be followed by the Assessing Authority**.-<br>(1) .....<br>(2) .....<br>(3) .....<br>(4) **If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed**:<br><br>Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard. | "22. **Deemed assessment and procedure to be followed by the Assessing Authority**.-<br>(1) .....<br>(2) .....<br>(3) .....<br>(4) **If no return was submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the Assessing Authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year**.<br>Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard. |

| 22(5) of TNVAT Act, 2006 (before 5th Amendment Act, 2012) | 22(5) of TNVAT Act, 2006 (after 5th Amendment Act, 2012) |
|---|---|
| "22. **Deemed assessment and** | "22. **Deemed assessment and** |

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<table>
<tr><th>22(5) of TNVAT Act, 2006<br>(before 5th Amendment Act, 2012)</th><th>22(5) of TNVAT Act, 2006<br>(after 5th Amendment Act, 2012)</th></tr>
<tr><td>procedure to be followed by the Assessing Authority.-<br>(1) .....<br>(2) .....<br>(3) .....<br>(4) .....<br>(5) In addition to the tax assessed under sub-section (4), the Assessing Authority shall, in the same order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, in the case of failure to submit return, one hundred and fifty per cent of the tax assessed:<br><br>Provided that no penalty under this sub-section shall be imposed after the period of five years from the date of Assessment Order under this section unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.</td><td>procedure to be followed by the Assessing Authority.-<br>(1) .....<br>(2) .....<br>(3) .....<br>(4) .....<br>(5) In addition to the tax assessed under sub-section (4), the Assessing Authority shall, in the order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, one hundred and fifty percent of the difference of the tax assessed and the tax already paid as per the returns:<br>Provided that no penalty under this sub-section shall be imposed after the period of six years from the date of Assessment Order unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.<br>Explanation:- For the purpose of levy of penalty under this sub-section, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed under sub-section (4):-<br>(i) Any turnover representing</td></tr>
</table>

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| 22(5) of TNVAT Act, 2006 (before 5th Amendment Act, 2012) | 22(5) of TNVAT Act, 2006 (after 5th Amendment Act, 2012) |
|---|---|
| | additions to the turnover as per the returns made by the Assessing Authority without reference to any specific concealment of turnover;<br>(ii) Any turnover estimated by the Assessing Authority with reference to any specific concealment of turnover as per the returns;<br>(iii) Any turnover on which tax is paid at the concessional rate subject to the condition of furnishing any declaration but where such declaration could not be furnished at the time of assessment. |

23. For the sake of clarity, date of notice under Section 22(4) of TNVAT Act, 2006 and re-assessment under Section 22(4) of TNVAT Act, 2006 are tabulated in the following table:-

| Sl. No. | W.P.No. | Assessment Year | Date of Deemed Assessment | Last date for Reassessment under Section 27(1)(a) of TNVAT Act, 2006 | Date of Notice under Section 22(4) of TNVAT Act, 2006 | Date of Impugned Assessment under Section 22(4) of TNVAT Act, 2006 |
|---|---|---|---|---|---|---|
| 1. | W.P.No.6153 of 2021 | 2014-2015 | 31.10.2015 | 30.10.2021 | 23.12.2020 | 11.01.2021 |

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| Sl. No. | W.P.No. | Assessment Year | Date of Deemed Assessment | Last date for Reassessment under Section 27(1)(a) of TNVAT Act, 2006 | Date of Notice under Section 22(4) of TNVAT Act, 2006 | Date of Impugned Assessment under Section 22(4) of TNVAT Act, 2006 |
|---|---|---|---|---|---|---|
| 2. | W.P.No.6156 of 2021 | 2015-2016 | 31.10.2016 | 30.10.2022 | 21.12.2020 | 11.01.2021 |
| 3. | W.P.No.6157 of 2021 | 2016-2017 | 31.10.2017 | 30.10.2023 | 23.12.2020 | 11.01.2021 |

24. Section 22(4) of TNVAT Act, 2006 applies to a case where

(1) there is an omission on the part of the dealer to file return; or

(2) the return submitted by a dealer for the year is either incomplete or incorrect; or

(3) the return filed is not accompanied with any of the document prescribed or proof of payment of tax.

25. In this case, admittedly, the case of the respondent Department would fall under the second situation enumerated in Section 22(4) of TNVAT Act, 2006 namely "**where the return submitted by a dealer for the year is incomplete or incorrect**".

26. The Tables in Paragraph 5 indicates that the petitioner has paid tax by

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giving incorrect details in the returns resulting in short fall of payment of tax.

27. Section 22(4) of TNVAT Act, 2006 is a stand-alone provision which is applicable in the above three circumstances. The limitation under Section 27(1)(a) of TNVAT Act, 2006 or under Section 22(5) of TNVAT Act, 2006 cannot be read into Section 22(4) of TNVAT Act, 2006.

28. Under Section 22(4) of TNVAT Act, 2006, there is no period of limitation prescribed for either initiating or passing an order. However, it should be within reasonable period. In case where any of the above three circumstances in Section 22(4) of TNVAT Act, 2006 are attracted, the Assessing Authority can also impose penalty equal to One Hundred and Fifty Percent (150%) of the difference of the tax assessed and the tax already paid as per the returns, with a caveat that such penalty cannot be imposed after a period of six years from the date of the Assessment Order and after reasonable opportunity of showing cause against such imposition.

29. As mentioned above, in these cases, the deemed assessment had taken place on 31.10.2015, 31.10.2016 and 31.10.2017. Therefore, invocation of jurisdiction under Section 22(4) of TNVAT Act, 2006 for the purpose of making best judgment method cannot be said to be beyond the period of limitation as

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there is no limitation prescribed under the said provision.

30. The limitation under Section 22(5) of TNVAT Act, 2006 for imposing penalty also cannot be said to have expired for any of Assessment Years as the last date would have expired only on 30.10.2021, 30.10.2022 and 30.10.2023, whereas notices for reassessment under Section 22(4) of TNVAT Act, 2006 were issued well before the time limit under Section 22(5) of TNVAT Act, 2006 during the period when the Country was still under intermittent lockdown due to outbreak of Covid-19 pandemic.

31. The date of assessment for all the Assessment Years is 11.01.2021. Therefore, penalty imposed under Section 22(5) of TNVAT Act, 2006 for all the three years were well within the period of limitation.

32. Therefore, we find no merits in these writ petitions. Accordingly, we hold as follows:-

(1) There is no period of limitation under Section 22(4) of TNVAT Act, 2006 for passing an order, if any of the three circumstances stipulated in Paragraph 24 are attracted.

(2) Though no period of limitation has been prescribed under Section 22(4)

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of TNVAT Act, 2006, such period has to be exercised within a reasonable period. The powers that have been exercised under Section 22(4) and Section 22(5) of TNVAT Act, 2006 are within reasonable period.

(3) The limitation for imposing penalty is 6 years in terms of Section 22(5) of TNVAT Act, 2006.

(4) The challenge to the Impugned Assessment Orders has to therefore fail.

33. These Writ Petitions are disposed of with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

**[R.S.K., J.]** **[C.S.N., J.]**

**18.09.2024**

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The State Tax Officer,
Podanur Assessment Circle,
Coimbatore.

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**R.SURESH KUMAR, J.**
and
**C.SARAVANAN, J.**

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W.P.Nos.6153, 6156 and 6157 of 2021
and
W.M.P.Nos.6772, 6774 and 6776 of 2021

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**W.P.Nos.6153, 6156 and 6157 of 2021**
**and**
**W.M.P.Nos.6772, 6774 and 6776 of 2021**

**R.SURESH KUMAR, J.**
**AND**
**C.SARAVANAN J.**

[Order of the Court was made by **C.SARAVANAN, J.**]

This matter is listed today under the caption "being mentioned" at the instance of the learned counsel for the petitioner.

2. The learned counsel for the petitioner submits that, a liberty has not been granted to the petitioner to file statutory appeal against the impugned assessment orders.

3. We are of the view that such a prayer can be entertained. Accordingly, in Paragraph No.32, sub-paragraph No.(5) can be added as follows:

'Liberty is given to the petitioner to file statutory appeal within a period of thirty days from the date of receipt of a copy of this order'

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**R.SURESH KUMAR, J.**
**AND**
**C.SARAVANAN J.**

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4. The other portions of the order, dated 18.09.2024 shall remain unaltered.

**[R.S.K., J.]** **[C.S.N., J.]**
**06.01.2025**

vji

**Note to office:** Registry is directed to issue the corrected order copy immediately to the parties.

**W.P.Nos.6153, 6156 and 6157 of 2021**
**and**
**W.M.P.Nos.6772, 6774 and 6776 of 2021**