



W.P.Nos.15215 & 15222 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.08.2025
Pronounced on	28.11.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.15215 & 15222 of 2022
& W.M.P.Noss.14392, 14393 & 14399 of 2022

MRF Ltd
Ichiputhur, Tiruttani Road,
Arakkonam, Tamil Nadu-631 003,
Rep. by its Authorised Representative
Madhu P.Nainan

... Petitioner in WP.No.15215 of 2022

Madhu P.Nainan

...Petitioner in WP.No.15222 of 2022

Vs.

1. Additional Director DGGI
Delhi Zonal Unit,
Directorate General of GST Intelligence,
West Block 8, Wing 3, 1st Floor,
Sec-1, RK Puram, New Delhi-110 066.

2. Additional / Joint Commissioner of Central Tax,
Chennai South Commissionerate,
CGST Commissionerate Chennai South,
692, MHU Complex, Anna Salai,
Nandanam, Chennai-35.

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... Respondents in both petitions

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Prayer:

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus,

to call for the records of the impugned SCN bearing DIN No.
202204DNN00000111CA7 and dated 07.04.2022 issued by the 1st
respondent, and to quash the same

to call for the records of the impugned SCN No.F.No. DZU/ INV/
H/ 23/ 2019/ 9952 dated 07.04.2022 bearing DIN No. 202204DNN
00000111CA7 issued by the 1st respondent, and to quash the same to the
extent it seeks to impose penalty on the petitioner under section 122(3) of
the CGST Act / State GST Act.

For Petitioner : Mr.V.Lakshmikumaran,
Asst. by Ms.R.Charulatha
Mr.Raghav Rajeev
Mr.Nirmal Ali for M/s.Preeti Mohan
Mr.Sagarika Shankar

For Respondent : Mr.AR.L.Sundaresan, ASG,
Asst. by Mr.Rajinish Pathiyil, SPC
for R1



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Mr.K.Mohanamurali, SPC for R2

COMMON ORDER

These writ petitions have been filed against the impugned show cause notice dated 07.04.2022 issued by the 1st respondent.

2. Petitioner's submission:

2.1 The learned Senior counsel appearing for the petitioner would submit that in this case, the challenge was made with regard to the issuance of show cause notice under Section 74 of the Goods and Services Tax Act, 2017 (hereinafter called as “the Act”).

2.2 The petitioner is a limited company, incorporated under the Companies Act, 1956, and it is a listed company in India as well as



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abroad. The impugned show cause notice was issued by the 1st

respondent against the petitioner with regard to the wrongful availment of ITC and for calling upon the petitioner to payback a sum of Rs.78 Crores. The issuance of said notice, had caused adverse impact on the stock values of the petitioner-Company.

2.3 He would submit that in this case, the petitioner made a supply of tyres, tubes and flaps (TTF) in a carry strapping form. As on the date of introduction of GST, i.e., with effect from 01.07.2017, all the three items are chargeable to GST at the rate of 28%. Therefore, whenever they effected the supply, they had raised separate invoices for each items and send it to the manufacturers.

2.4 He would also submit that for the purpose of convenience, the tyres, tubes and flaps are sent together by rising separate invoices.



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Therefore, at no point of time, the aforesaid items were supplied under a

single invoice treating it as a “composite supply”. Under these

circumstances, with effect from 15.11.2017, the rate of duty against the

tube was reduced from 28% to 18%. Likewise, from 01.01.2019, the duty

liability of the flaps was reduced from 28% to 18%. Accordingly, the

invoices were raised and supplies have been effected by the petitioner.

However, there was a confusion among the industries as to whether

effecting the supply of TTF in a carry strapping form is a “composite

supply” or “individual supply”. Therefore, on 07.01.2019, the petitioners

had sent a communication that they are going to treat the supply of TTF

in carry strapping as a “composite supply” and pay the short payment of

additional 10%, along with the interest, for the tubes for the period

between 15.11.2017 and 05.01.2019 and for the flaps for the period

between 01.01.2019 and 05.01.2019. Accordingly, the entire tax amount,

along with the interest, has been paid on 21.02.2019, which is the



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subsequent due date for filing the monthly returns in GSTR-3B.

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2.5 In the meantime, the Director General of GST Intelligence (DGGI) had initiated investigation against the petitioner on the supply of TTF and took a view that in this case, the supply was effected as a “composite supply”, for which, the petitioner should have paid the tax dues at the rate of 28%.

2.6 According to the respondents, though the petitioner's communication, for payment of the tax amount at the rate of 28%, was effected on 07.01.2019, the actual duty was paid only on 21.02.2019, i.e., subsequent to the investigation conducted by the DGGI dated 21.01.2019. Therefore, the respondents had arrived at a decision that the payment mechanism used by the petitioner is not valid in terms of Section 39(9) and hence, the petitioner is not entitled for avail ITC.



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Hence, the impugned show cause notice was issued on the aspect of wrongful availment of ITC.

2.7 However, he would submit that the petitioner's inclination with regard to the payment of tax has been communicated to the respondents well in advance i.e., on 07.01.2019 itself. Subsequent to the receipt of the said information only, the respondents had initiated the investigation. In such case, the provisions of Section 39(9) would not apply in the present case.

2.8 Further, the petitioner had started the process of paying the amount from 05.01.2019 itself and thus, at any cost, the respondents cannot take a stand that the show cause notice under Section 74 of GST was issued against the petitioner by application of provision of Section 39(9) of the Act.



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2.9 That apart, as on the date of issuance of show cause notice under Section 74, there was no tax dues on the part of the petitioner, in such case, once the entire tax amount is paid, no notice, under Section 74 of the Act, can be issued in terms of Section 74(5) & 74(6) of the Act. Hence, he would contend that the proceedings were initiated by the respondents by wrongly invoking the provisions of Section 74 of the GST Act, 2017 and subsequently, the impugned show cause notice was issued without satisfying the ingredients stated in the said provisions. When such being the case the issuance of the said show cause notice itself is illegal and the same is liable to be set aside.

2.10 Further, he would submit that Directorate of Revenue Intelligence (DRI) will have so many works to be looked into. Therefore, even in the worst situation, the confusion, which was prevailed on the



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aspect of application of tax rates for the goods, was cleared among the

industries, i.e., not only with the petitioner but also the other industries,

and accordingly, to avoid any further legal action and to buy peace, the

TTF supply was construed as a “composite supply”, for which the tax

amount was calculated at the rate of 28% and the same was paid to the

Department. Though the entire tax dues, along with the interest, has

already been paid, the supply was not a “composite supply”, but it is an

individual supply, i.e., each and every item was supplied individually.

However, without considering all the aforesaid aspects and even without

fulfilling the ingredients of Section 74, the impugned notice came to be

issued by the 1st respondent. Therefore, he requests this Court to set aside

the said impugned show cause notice.

2.11 In support of his contention, he referred to the judgement of

the Hon'ble Telangana High Court rendered in *Rays Power Infra*



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Private Limited vs. Superintendent of Central Tax reported in **2024 (84)**

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3.Respondents' submission:

3.1 Mr.AR.L.Sundaresan, learned Additional Solicitor General, appearing for the respondents would submit that in this case, the petitioner had inserted tubes and flaps inside the tyre and wrapped it together and supply it to the manufacturers. While effecting supply, a common invoice was sent by the petitioner by mentioning different duties for each goods. Subsequently, they had treated the supply of TTF in a carrying strap as “composite supply” vide communication dated 07.01.2019. Therefore, it is clear that the previous actions of the petitioner in payment of the duties by reducing the tax rate from 28% to 18% for tubes and flaps, without treating the supply as “composite supply”, is deliberated and motivated.

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3.2 Further, though the intimation was provided with regard to the

payment of tax dues on 07.01.2019, the entire tax amount was paid by the petitioner only after the investigation of DGGI. In other words, the shortage amount was remitted by the petitioner only on 21.02.2019, which is subsequent to the investigation of DGGI conducted on 21.01.2019. Therefore, the petitioner's case would certainly attract the provisions of Section 74 of the Act.

3.3 He would also submit that in terms of the provisions of Section 39(9), if any registered person, after furnishing a return, discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify the same. In this case, as stated above, the shortage amount was remitted by the petitioner subsequent to the investigation of DGGI. When such being the case, certainly, bar under the provisions of Section 39(9)



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would come into picture and accordingly, the impugned show cause

notice was issued against the petitioner for wrongful availment of ITC.

3.4 Further, he would contend that when a similar issue arises, the Apollo Tyres had filed their reply before the Assessing Officer and after the passing of original order, they had also preferred an appeal against the same. However, the said appeal was also rejected. Under these circumstances, only after exhausting the alternate remedy, they are finally landing before this Court vide WP.No.20449 of 2024. In such case, the petitioner shall also file their reply to the impugned show cause notice before the concerned Authority. However, without doing so, the petitioner had directly approached this Court at the show cause notice stage itself. Hence, he requests this Court to dismiss the present petition.



4. Petitioner's reply:

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4.1 In reply, the learned Senior counsel appearing for the petitioner would submit that in this case, the petitioner's inclination with regard to the payment of tax has been communicated to the respondents well in advance i.e., on 05.01.2019 itself. The said amount was remitted during the course of subsequent due date for the filing of monthly returns, i.e., on 21.02.2019. In such case, no action can be initiated against the petitioner under Section 74 of the Act.

4.2 Further, he would submit that the applicability of Section 74 would come into picture only if there is any short payment of tax due to fraud or wilful misstatement or suppression of material facts to evade tax. In this case, the petitioner had no intention to play any fraud to evade tax. Only due to the confusion with regard to the supply of goods and in application of rate of tax, they had paid reduced tax rate for the period from 15.11.2017 to 05.01.2019 for tubes and 01.01.2019 to 05.01.2019



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for flaps. Subsequently, the said confusion was clarified, not only by the

petitioner but also other manufacturers, whereby they arrived at a

conclusion that the supply has to be treated as “composite supply”.

Pursuant to the same, the petitioner had expressed their intention to pay

the tax at the rate of 28%. In such case, no criminal motive, viz., fraud,

wilful misstatement or suppression of material facts, can be attributed

against the petitioner, so as to invoke Section 74 of the Act.

Consequently, the view taken by the respondents that the petitioner is not

permitted to rectify the mistake or make payment due to bar under

Section 39(9) will also not come into picture. Hence, he requests this

Court to quash the impugned show cause notice issued by the

respondents.

4.3 As far as the reference of Apollo tyres case made by the

respondents is concerned, he would submit that the reply filed by the

Apollo tyres was not considered by the concerned Authority while



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passing both the original order and appeal order. In such case, it is clear

that no useful purpose will be served in filing the reply before the respondents herein. That apart, as stated above, in this case, the respondents had not duly complied with the ingredients of Section 74 and hence, the said aspect can be challenged before this Court, sitting under Article 226 of the Constitution of India at the show cause notice stage itself. Hence, he requests this Court to pass appropriate orders.

5. I have given due considerations to the submissions made by the learned Senior counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused the entire materials available on record.

6. Now, the issue that has to be decided in this case is as to whether the issuance of the impugned show cause notice dated 07.04.2022, have



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fulfilled the ingredients of Section 74 of the Act?

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7. In this case, initially, the petitioner-company have been supplying the goods, viz., tyres, tubes and flaps (TTF) directly to the manufacturers. As on the date of introduction of GST, i.e., with effect from 01.07.2017, all the three items are chargeable to tax at the rate of 28%. Subsequently, with effect from 15.11.2017, the rate of duty against the tube was reduced from 28% to 18%, likewise, from 01.01.2019, the duty liability of the flaps was reduced from 28% to 18%.

8. In the subject supply, the tubes and flaps were kept inside the tyres and wrapped together. Thereafter, supply was effected. According to the petitioner, a mere wrapping up would not amount to natural bundling of the goods, so as to consider it as a “composite supply”. However, to avoid further confusion, the petitioner had treated that the supply of TTF in a carry strapping form is a “composite supply” and offered to pay the



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tax at the rate of 28%. The inclination of the petitioner was

communicated to the respondents vide communication dated 07.01.2019.

Accordingly, the arrears of tax amount, along with interest, was remitted to the respondents at the time of filing of subsequent monthly returns, i.e., on 21.02.2019.

9. However, the acceptance of the petitioner that the subject supply is a “composite supply” with the intention to buy peace, will not exclude the jurisdiction of this Court to decide the issue as to whether the subject supply is “composite supply” or “individual supply”. Further, such a mere admission would not disentitle the petitioner to raise the said issue before the Court of law. However, in this case, though elaborate arguments were made on the above aspect, since the subject supply was treated as a “composite supply” vide communication dated 07.01.2019 and also since the present petition has been filed only challenging the issuance of show cause notice under Section 74, this Court is not inclined



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to deal with the said aspect. On the other hand, since the petitioner had

raised the issue that the respondents had not duly complied the ingredients of Section 74, the issue with regard to the jurisdiction of the respondents to issue the show cause notice, in such circumstances, can be very well be decided by this Court, sitting under Article 226 of the Constitution of India.

10. Under these circumstances, the investigation was conducted by the DGGI on 21.01.2019. Consequently, the notice under Section 74 came to be issued on 07.04.2022, i.e., subsequent to the payment of entire tax dues.

11. At this juncture, it would be apposite to extract the relevant provisions of Section 74 of the Act, which reads as follows:

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or



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utilised by reason of fraud or any willful misstatement or suppression of facts.—

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

12. A reading of the above provision would show that this provision would apply only in the event of payment of tax, which is not paid or short paid or erroneously refunded or ITC wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. When such being the case, the Authorities are supposed to have traced out as to whether there is any evasion of tax in the course of



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payment of tax dues, the intention of fraud or provision of wilful

misstatement or suppression of facts. If the aspects of fraud,

misstatement or suppression of facts were not established while issuing

the show cause notice, the same would be considered as issued without

fulfilling the ingredients of Section 74 of the Act and such notice is liable

to be set aside as the same was issued without jurisdiction.

13. Now, let this Court examine the issue as to whether there is any fraud, wilful misstatement or suppression of materials facts involved in the petitioner's case, so as to attract the provisions of Section 74 of the Act.

14. In this case, as stated above, the petitioner had voluntarily come forward and stated that the supply of TTF effected by them is a “composite supply” and accordingly, paid the entire tax dues along with



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interest. In such case, the respondents cannot attribute any bad intention,

such as, fraud, wilful misstatement or suppression of material facts, against the petitioner. At the worst, same could be considered as tax not paid or short paid due to confusion in the entire industry and that the petitioner deferred the payment of tax and paid the same, once the doubts had been cleared. The same would attract proceedings under Section 73 of the Act. However, in the present case, the short payment of tax was remitted along with interest before the issuance of notice and hence no such action can be taken. Thus, the respondents should have considered the aspects of confusion among the industries about viewing the subject supply as “composite supply”.

15. Further, the respondents cannot invoke the provisions of Section 74 merely on the ground that the tax amount was remitted by the petitioner subsequent to the investigation of DGGI. In this case, the



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petitioner had expressed their intention to pay the tax dues, vide

communication dated 07.01.2019, which is much prior to the date of

investigation. When such being the case, it is clear that the impugned

notice was issued without satisfying the ingredients of the provisions of

Section 74 of the Act.

16. It was submitted by the respondents that as per the provisions of Section 39(9), no rectification can be made, after the initiation of the investigation. In such case, payment mechanism used by the petitioner is not valid in terms of Section 39(9) of the Act and accordingly, the petitioner is not entitled to utilise the ITC.

17. At this juncture, it would be apposite to extract the provisions of Section 39(9), which reads as follows:

“39. *Furnishing of returns:-*
(1) to (8).....



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(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:”

18. A perusal of the above would makes it clear that an assessee can be permitted to rectify the returns in the events other than scrutiny, audit, inspection or enforcement activity by the tax authorities and avail ITC. According to the respondents, the petitioner made payment of tax dues on 21.02.2019, which is subsequent to the enforcement activity, i.e., DGGI investigation dated 21.01.2019 and thus, it would clearly attract the provisions of Section 74 of the Act and disentitle the petitioner to avail ITC.



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19. However, upon perusal of records, it is clear that the

petitioner's inclination to make the payment of tax dues was communicated to the respondents as early as on 07.01.2019, which is much prior to the date of DGGI investigation. When such being the case, as stated above, no criminal motive, viz., fraud, wilful misstatement or suppression of material facts, can be attributed against the petitioner, since the petitioner had voluntarily disclosed the short payment vide the aforesaid communication.

20. That apart, the short payment on the part of the petitioner had occurred only due to the confusion among the industries, to treat the subject supply as “composite supply”, due to the reduction of tax rate for the tubes with effect from 15.11.2019 and for the flaps with effect from 01.01.2019. The said confusion prevailed till 05.01.2019 and thereafter, a clear decision was taken by the petitioner and other industries that the



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supply of TTF effected by them is a “composite supply”. Pursuant to the

same, a communication was sent by the petitioner on 07.01.2019,

whereby they expressed their intention to pay the short payment of tax dues along with interest. In such view of the matter, no ingredients of Section 74 of the Act was satisfied while issuing the impugned show cause notice, and hence, the question of application of Section 39(9), so as to deprive the petitioner from availing ITC, would not at all arise. The said provision would attract only in the event, if the enforcement action was initiated, much prior to the intimation of the petitioner to pay the short payment of tax.

21. Further, at the time of issuance of impugned show cause notice, there was no liability of tax to be paid by the petitioner. When such being the case, it is clear that the impugned notice was issued by the respondents by wrongly invoking the provisions of Section 74 of the Act



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without fulfilling the ingredients of the said Section, and hence, the same

is liable to be quashed. Accordingly, the impugned show cause notice dated 07.04.2022 is quashed.

22. As the arguments were advanced by the petitioner that the supply, of TTF in the form of carry strapping, effected by them is not a “composite supply” but it is an “individual supply” is concerned, since the petitioner had treated it as a “composite supply” and paid the tax accordingly to buy the peace, vide communication dated 05.01.2019, this Court feels that it is not a fit case to decide the issue as to whether it is a “composite supply” or “individual supply”. As discussed above, mere payment of tax, which is applicable for “composite supply”, by the petitioner, will not disentitle the petitioner to raise the said issue separately before the Authorities concerned. In such case, the Authorities are bound to decide the matter and they cannot cite the communication dated 07.01.2025 and reject the contention by stating that in a previous



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occasion, the petitioner had admitted the subject supply as “composite supply”. The ultimate aspect that has to be considered by the respondents

is as to whether the present supply would fall within the definition of “composite supply” as defined in the Act. Therefore, the said issue is left open to be decided in any appropriate case.

23. As far as the contention made by the respondents on the aspect of filing reply to the show cause notice is concerned, the challenge before this Court is only with regard to the failure on the part of the respondents in fulfilling the minimum requirement of the ingredients of Section 74 of the Act. As discussed above, no criminal motive can be attributed against the petitioner. However, without considering the said aspect, and without fulfilling the ingredients of Section 74 of the Act, the respondents had blindfoldedly issued the impugned show cause notice under Section 74



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of the Act. The issue of non-compliance of the ingredients of Section 74

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can be tested and decided by this Court sitting under Article 226 of the

Constitution of India. When such being the case, certainly this Court can

entertain the present petition and decide with regard to the jurisdiction of

respondents in issuance of impugned show cause notice.

24. Accordingly, the impugned show cause notice dated 07.04.2022 issued by the 1st respondent is hereby quashed.

25. In the result, these writ petitions are allowed. No cost. Consequently, the connected miscellaneous petitions are also closed.

28.11.2025

Speaking/Non-speaking order

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Index : Yes / No

Neutral Citation : Yes / No

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To

1. Additional Director DGGI
Delhi Zonal Unit,
Directorate General of GST Intelligence,
West Block 8, Wing 3, 1st Floor,
Sec-1, RK Puram, New Delhi-110 066.

2. Additional / Joint Commissioner of Central Tax,
Chennai South Commissionerate,
CGST Commissionerate Chennai South,
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KRISHNAN RAMASAMY.J.,

nsa

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and W.M.P.Nos.14392, 14393 & 14399 of 2022

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