CORRECTED

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4306/2022

THE ASSISTANT COMMISSIONER(ASSESSMENT) & ORS. APPELLANT(S)

VERSUS

M/S CHOLAYIL PVT. LTD. RESPONDENT(S)

WITH

C.A. No. 4472/2022, C.A. No. 4471/2022, C.A. No. 4333/2022, C.A. No. 4447/2022, C.A. No. 4448/2022, C.A. No. 4330/2022, C.A. No. 4332/2022, C.A. No. 4331/2022, C.A. No. 4316/2022, C.A. No. 4317/2022, C.A. No. 4320/2022, C.A. No. 4318/2022, C.A. No. 4326/2022, C.A. No. 4323/2022, C.A. No. 4475/2022, C.A. No. 4327/2022, C.A. No. 4329/2022, C.A. No. 4335/2022, C.A. No. 4334/2022, C.A. No. 4338/2022, C.A. No. 4456/2022, C.A. No. 4457/2022, C.A. No. 4336/2022, C.A. No. 4337/2022, C.A. No. 4458/2022, C.A. No. 4341/2022, C.A. No. 4340/2022, C.A. No. 4342/2022, C.A. No. 4445/2022, C.A. No. 4430-4434/2022, C.A. No. 4363-4367/2022, C.A. No. 4435-4439/2022, C.A. No. 4353-4357/2022, C.A. No. 4393-4397/2022, C.A. No. 4358-4362/2022, C.A. No. 4378-4382/2022, C.A. No. 4308-4312/2022, C.A. No. 4398-4402/2022, C.A. No. 4465/2022, C.A. No. 4403-4407/2022, C.A. No. 4328/2022, C.A. No. 4449/2022, C.A. No. 4450/2022, C.A. No. 4451/2022, C.A. No. 4452/2022, C.A. No. 4453/2022, C.A. No. 4454/2022, C.A. No. 4455/2022, C.A. No. 4339/2022, Diary No(s). 11977/2022, C.A. No. 4446/2022, C.A. No. 4307/2022, C.A. No. 4459/2022, C.A. No. 4368-4372/2022, C.A. No. 4440-4444/2022, C.A. Nos. 4413-4417/2022, C.A. Nos. 4466-4470/2022, C.A. Nos. 4481-4485/2022, C.A. Nos. 4408-4412/2022, C.A. Nos. 4474/2022, C.A. No. 4473/2022, C.A. No. 4314/2022, C.A. No. 4315/2022, C.A. No. 4476/2022, C.A. No. 4322/2022, C.A. No. 4321/2022, C.A. No. 4319/2022, C.A. No. 4324/2022, Diary No(s). 15704/2022, C.A. No. 173/2023, C.A. Nos. 4343-4347/2022, C.A. Nos. 4423-4429/2022, C.A. Nos. 4388-4392/2022, C.A. Nos. 4418-4422/2022, C.A. Nos. 4460-4464/2022, C.A. Nos. 4383-4387/2022, C.A. Nos. 4348-4352/2022, C.A. Nos. 4477-4480/2022, C.A. Nos. 4373-4377/2022, C.A. No. 4313/2022 & C.A. No. 4325/2022

J U D G M E N T

Delay condoned.

Delay of 98 days in Diary No(s).11977/2022 and 308 days in Diary No(s). 15704/2022 condoned.

Leave granted in Diary No(s).11977/2022 and Diary No(s). 15704/2022.

In this batch of cases, the Assistant Commissioner (Assessment), State of Kerala and the Deputy Commissioner, Commercial Taxes, Thrissur, Kerala have assailed the judgment of the Division Bench of the Kerala High Court dated 05.07.2018. By the said judgment, the Kerala High Court, by following the judgment of the Division Bench in *Tirur Medical Stores vs. State of Kerala* 1978 KLT 415, as reaffirmed by Full Bench in *Cholayil Pvt. Ltd. vs. Assistant Commissioner (Assessment), 2015 (4) KLT 516*, quashed the notices assailed in the Writ Petitions as being beyond the limitation period prescribed under Sub-Section (1) of Section 25 of the Kerala Value Added Tax Act, (hereinafter referred to as "the KVAT Act" for the sake of convenience).

The central issue of controversy between the parties is with regard to the interpretation to be placed to sub-section (1) of Section 25 of KVAT Act as well as the third proviso of the said Section. At this stage itself, it may be stated that initially the third proviso was not part of the Section but was later inserted in the year 2010 by the Finance Act 2010 and every year till Finance Act, 2018 the said proviso has been substituted. As far as these cases are concerned, the proviso was substituted by the Finance Act, 2017 (Act 11 of 2017). However, prior thereto the third proviso of the Finance Act 2015 is relevant.

For the sake of convenience, Section 25 is extracted below:

"25. Assessment of escaped turnover

(1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or return period or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made therefrom, or where any input tax or special rebate credit has been wrongly availed of, the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgment, the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction in respect of which has been wrongly made or input tax or special rebate credit that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax or special rebate credit wrongly availed of, after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

PROVIDED that before making an assessment under this sub-section the dealer shall be given a reasonable opportunity of being heard.

PROVIDED FURTHER that where the escapement is due to the application of incorrect rate of tax, no assessment under this sub-section shall be made where the dealer files revised return and pays the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee.

PROVIDED ALSO that the period for the completion of assessments including those subjected to extension under Section 25B which expires on 31st March, 2015 shall be extended up to 31st March, 2016.

(2) The time limit mentioned in sub-section (1) shall not apply where the turnover which escaped assessment relates to any business done by such dealer as benamidar or through a benami or where it relates to a dealer, who being liable to get himself registered under this Act and the rules made thereunder, has failed to do so or where the escaped turnover is on account of the dealer having claimed any input tax credit on the basis of any bogus or forged documents.

(3) In making an assessment under sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to willful nondisclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under sub-section (1), a penalty as provided in [section 67]:

PROVIDED that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation: For the purposes of this section, the burden of proving that the escape from assessment was not due to willful non-disclosure of assessable turnover by the dealer shall be on the dealer.

(4) The powers under sub-section (1) may be exercised by the assessing authority even though the order of assessment, if any, passed in the matter, has been the subject matter of an appeal or revision.

(5) In computing the period of limitation for the purposes of this section, the time during which the proceedings for assessment remained stayed under the orders of a Civil court or other competent authority shall be excluded."

(Underlining by us)

The third proviso to sub-section (1) of Section 25 of the KVAT Act was amended by way of the Finance Act, 2017 in the following

words:

> **“(3) in section 25, in sub-section (1).-**
>
> **(i) for the words "five years", the words "six years" shall be substituted;**
>
> **(ii) for the third proviso, the following proviso shall be substituted, namely:-**
>
> **"Provided also that the period for proceeding to determine any assessment including those subjected to extension under section 25B which expires on 31st March, 2017, shall be extended up to 31st March, 2018”.”**
>
> **(Underlining by us)**

The bone of contention between the parties herein is with regard to the interpretation to be given to the words “at any time within five years from the last date of the year to which the return relates, proceed to determine” as found in sub-section (1) of Section 25 and the third proviso to the said sub-section as inserted with effect from 01.04.2015 which reads: “provided also that the period for the completion of assessments including those subjected to extension under Section 25B which expires on 31st March, 2015, shall be extended up to 31st March, 2016” in light of the amendment made in the Finance Act, 2017. In the Finance Act of 2017 while amending sub-Section (1) of Section 25 by substituting the words five years for words six years, the third proviso was amended as under:

> **“Provided also that the period for proceeding to**

determine any assessment including those subjected to extension under Section 25B which expires on 31.03.2017 shall be extended up to 31st March, 2018."

(Underlining by us)

The amendment made to the third proviso to sub-section (1) of Section 25, in the Finance Act, 2017 as extracted hereinabove is sought to be relied upon by the appellants in these cases.

We have heard learned Senior Counsel Mr. Rakesh Dwivedi for the appellants and learned Senior Counsel Mr. S. Ganesh and other learned senior counsel and other counsel for the respondents and perused the material on record.

It was contended by Mr. Rakesh Dwivedi that the object and purpose of providing the third proviso to sub-section (1) of Section 25 was in fact to extend the limitation period for "initiation of proceedings" with regard to assessment of escaped turnover even though under the unamended sub-section (1) of Section 25 it was "five years" from the last date of the year to which the return relates and later substituted by the words "six years". The object and purpose of the proviso was to extend the initiation of the proceedings for reassessment as per the dates indicated in the various provisos that were substituted during the successive financial years as per the Finance Acts from 2010 onwards. Such a meaning would emerge on a reading of the amendment made in the Finance Act, 2017. It was submitted that the Full Bench of the Kerala High Court had held that there was no time-frame for completion of assessment but that is not the controversy in these cases. What is of significance is the extension of the time period

for "initiation of proceedings" for reassessment in terms of the proviso to sub-section (1) of Section 25. It was submitted that the Division Bench of the High Court misdirected itself by holding that the said proviso did not relate to the period of initiation of proceedings by ignoring the fact that in sub-section (1) of Section 25 the expression used is "proceed to determine" and the very same expression is used in the proviso also. Therefore, any expression used in the main Section, sub-section as well as the proviso have to be given the same interpretation which would only mean that the period for initiation of reassessment proceeding has been extended by virtue of the third proviso. Therefore, the Division Bench, having failed to notice this aspect of the matter, has erroneously proceeded to quash the notices on the premise that they were issued beyond the limitation period prescribed under sub-section (1) of Section 25. It was contended that the said understanding of the Division Bench being not in accordance with what was intended by the Legislature and on a proper understanding of the legislative intent, these appeals will have to be allowed and directions may be issued for revival of the quashed notices.

Per contra, learned Senior counsel appearing for the respondent(s), Sri S. Ganesh supported the impugned judgment of the Division Bench and brought to the notice of this Court that the intention of the Legislature in adding the third proviso was on a clear understanding of the judgment of the Full Bench of the Kerala High Court which had pointed out a lacuna in the reassessment proceedings inasmuch as there was no time-frame fixed under Section 25 for completion of reassessments and the time period indicated in

the form of a limitation under sub-section (1) of Section 25 of the KVAT is only with regard to the initiation of proceedings. It was submitted that the expression "proceed to determine" in sub-section (1) of Section 25 and in the third proviso has to be contextually interpreted and cannot carry the same meaning or otherwise it may lead to an absurdity. In this context, it was submitted that a proviso cannot mutilate the main sub-section and extend the period of limitation, in contravention of what has been prescribed in sub-section (1) of Section 25 of the Act.

In this regard, reliance was placed on *S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591*, and other connected cases in order to buttress their submissions.

Having heard learned Senior Counsel for the appellants and learned Senior Counsel and other counsel for the respondents, we find that the controversy in these appeals is in a very narrow compass inasmuch as the question that arises is, whether, the third proviso to sub-section (1) of Section 25 extends the period of limitation for the initiation of proceedings for reassessment insofar as escaped turnover is concerned.

In this context, what has to be interpreted is the expression "proceed to determine" as it occurs in sub-Section (1) of Section 25 as well as the third proviso to the said sub-Section as amended in Finance Act, 2017. No doubt, in both the provisions, the expression used is "proceed to determine." The said expression must be considered in light of the words that occur prior to and subsequent to the said expression. Under sub-Section (1) of Section 25, the intention of the use of the expression "proceed to

determine" is in the context of initiation of proceedings at any time within five years (now six years after the 2018 amendment) from the last date of the year to which the return relates. The object and purpose is that there cannot be a belated initiation of proceedings and at the whims and fancies of the Department so as to re-open stale returns, which had already been concluded under the provisions of the said Act. However, the object of the proviso which also uses the words "proceed to determine" must be in the context of completion of the Assessment which had already been initiated in accordance with sub-Section (1) to Section 25 within the time-frame as prescribed therein.

In this regard, it is necessary to refer to the relevant portion of the judgment of Full Bench in the case of *Cholayil (Pvt.) Ltd. vs. Assistant Commissioner (Assessment 2015)* wherein the Full Bench considered the earlier judgment of the Kerala High Court in *Tirur Medical(supra)* and after referring to the judgments of this Court in *Sales Tax Officer, Special Circle, Ernakulam Vs. Sundarsanam Iyyankar* 1977 (25) STC 252 SC and other cases, held that the expressions "proceed to determine" in Section 19 of the erstwhile Act, i.e., Kerala General Sales Tax Act only required that the Assessing Authority has to "commence" such activity of determination by issuance of a notice within the time-frame fixed under Section 19 of the said Act. The said provision is *in pari materia* with sub-Section (1) of Section 25 of the KVAT Act. It was also observed therein that the effect of the third proviso which was initially inserted into the KVAT ACT on 01.04.2010 was to prescribe a time limit for the "completion" of the re-assessment

commenced under sub-Section (1) of Section 25 of the KVAT Act inasmuch as the same had to be concluded within a time frame so that the reassessment proceedings would not endlessly linger on for many years thereafter. It was found that there was no outer limit conceived under sub-Section (1) of Section 25 of the Act and there were unending delays in completion of the proceedings which were not in the interest either of the department or the assessee. In the absence of there being any time-frame prescribed under sub-Section (1) of Section 25 for the completion of proceedings which meant that the Legislature had not fixed any outer limit for the same under sub-section (1) of Section 25 of the Act, and taking note of the said lacuna pointed out by the Full Bench, in the Kerala Finance Act 2010 and later by successive amendments, enlargement of time by only one year at a time for the purpose of completion of proceedings was provided by adopting a legislative device of substitution of the inserted provision w.e.f. the Finance Act, 2010 till 2018 including the period(s) of assessment(s) under consideration. The exact words of the Full Bench are extracted as under:

> **"5. The effect of the aforenoted third proviso introduced with effect from 1.4,2010, which says that the time limit for the completion of assessment under sub~section (1) of S.25 of the K.V.A.T. Act shall be extended upto a particular date given in that proviso, may appear to indicate that the legislature had understood sub-section (1) of S.25 of the K.G.S.T. Act as having provided an outer limit as to time for completion of assessment**

proceedings in terms of S.25(1). We may hasten to add that this is not an issue pointedly covered by the Reference Order of the Division Bench to the Full Bench which is only on the premise that if no outer time limit is conceived for in sub-section (1) of S.25 of the K.V.A.T. Act, there would be unending delay, and proceedings will lie without any conclusion for years to come. While dealing with fiscal matters and judicial review of legislations including by its interpretation, such factors relating to the time frame for disposal of matters by the assessing authorities cannot by themselves be the yardstick to judicially lay down any structured time frame for any particular proceeding. Primarily, that is a matter in the legislative domain including through subordinate legislations, if duly authorised. Though we have noted the third proviso to sub-section (1) of S;25 of the K.V.A.T. Act, the Full Bench is not called upon, through the Reference Order, to consider the impact of that proviso. Similarly, we may also indicate that the introduction of third proviso to sub-section (1) of S.25 of the K.G.S.T. Act was made contemporaneous with similar amendment by including a proviso to S.24 of that Act. Later, S.25 – B was introduced to K.V.A.T. Act giving authority· to the Deputy Commissioner to extend the period of completion of assessment under S.25 or in S.24 notwithstanding anything contained in those sections provided the conditions laid down in S.25 - B are satisfied. All these taken together, the net effect of the introduction of the third proviso to sub-section (1) of S.25 and the inclusion of S.25 within the canopy of S.25 - B is indicative of the fact, that for all intents and purposes, the

legislature fixed an outer time limit for completion of assessment proceedings under sub-section (1) of S.25, at least, in cases to which the provision in S.25(1) as amended by the Kerala Finance Act, 2010 and the later amendments sustaining that provision or conferring power of enlargement of time applies. Obviously, even if S.25 – B is to guide the Deputy Commissioner, the time limit has to be reasonable because, there cannot be an indefinite proceeding under S.25(1) in view of the third proviso to that section."

However, it is now contended on behalf of the appellants by learned Senior Counsel, Shri Dwivedi, that the object of the proviso was in fact to extend the time period of one year to "initiate" the proceedings and hence, the expression 'proceed to determine' in sub-section (1) of Section 25 of KVAT Act as well as the subsequent third proviso of the said section must be given the same meaning which would according to learned Senior Counsel mean that the proviso also extends the period of limitation by one year at a time by way of substitution of the earlier period being made at every Financial Year under the respective Finance Acts for the initiation of proceedings of reassessment under Section 25 of the Act. We do not think that such a meaning could be given to the expression 'proceed to determine' as submitted by learned senior counsel insofar as the third proviso to sub-section (1) of Section 25 is concerned. Firstly, the said expression is only w.e.f. the Finance Act, 2017 and not for the earlier period as the words used in the third proviso for the earlier period is "completion of assessments" Thus, the period for completion of assessments cannot

mean “initiation of proceedings.” Although the Legislature may use the very same expression in different parts of a section or different parts of an Act it is ultimately to be seen whether the interpretation so placed on the very same expression would lead to a logical understanding in line with the object and the intention of the Legislature or lead to an absurdity or anomaly. If the same expression used in different parts of a Section or an Act if given the same meaning leads to an anomaly or absurdity then the only option the Court would have is to give a contextual meaning to the said expression.

Applying the aforesaid principle to the present case, when the expression “proceed to determine” is given a contextual meaning in the instant case it would mean that under sub-section (1) of Section 25 of the Act, the couching of the said expression in the context of the limitation period would only indicate that it is for “initiation” of the proceeding for reassessment by issuance of a notice. But the expression “proceed to determine” in the third proviso to sub-section (1) of Section 25 by amendment made to the Finance Act is to “complete” the proceedings initiated under sub-Section (1) of Section 25 within the time-frame indicated in the said proviso which, as already noted, must be within one year at a time and the entire third proviso being substituted every successive year under the respective Finance Acts is with a view to mandate the Department to complete the re-opened assessment in a timely manner and within the period stipulated under the said proviso to sub-Section (1) of the Section 25 of the KVAT Act.

Therefore, the department is not right in contending that the

expression "proceed to determine" in the third proviso gives a lease of life or an extension of the period of limitation by one year at a time for "initiation" of the reassessment proceeding under sub-section (1) of Section 25 of the Act. Such an interpretation would lead to absurdity as a proviso cannot militate against the intention of the main provision in sub-section (1) of Section 25 and thus a proviso cannot extend the limitation period which is fixed under the main provision. The normal function of a proviso is to exempt something out of the provision or to qualify something enacted therein which, but for the proviso, would be within the purview of the provision. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. In other words, a proviso qualifies the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment, a portion which, but for the proviso, would fall within the main provision. Further, a proviso cannot be construed as nullifying the provision or as taking away completely a right conferred by the enactment.

The following para from the decision in Sundaram Pillai (supra) is extracted as under:

> **36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.**
> **37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a**

substantive provision itself.

39. In the case of STO, Circle-I, Jabalpur v. Hanuman Prasad [(1967) 1 SCR 831 : AIR 1967 SC 565 : (1967) 19 STC 87] Bhargava, J. observed thus:

"It is well-recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded."

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

We deem it fit to reiterate *Tirur Medical Stores vs. State of Kerala, 1978 KLT 415,* regarding the interpretation of the expression "proceed to determine." The Kerala High Court had clarified that the expression "proceed to determine" was sufficiently comprehensive to denote the entirety of the proceeding undertaken by Revenue authorities. Thus, the proceedings for the determination of the escaped turnover must necessarily commence and conclude by way of an appropriate order within the period stipulated in sub-section (1) of Section 25 and the third proviso thereto.

It may be clarified that the expression "proceed to determine" is found in the amendment made to the KVAT Act with effect from

2017 Finance Act, whereas in the earlier amendment, the expression clearly was to "complete the assessment" in the third proviso of sub-section (1) of Section 25 which is also a clear indication of the intention of the Legislature to give a command to the concerned assessing officers seized of the proceedings which had been initiated under sub-section (1) of Section 25 to complete within the time-frame as stipulated in the said proviso. The amendment to the Kerala Finance Act, 2017 is with effect from 01.04.2017 and does not have any retrospective effect.

In view of the aforesaid discussion, we do not find any merit in these appeals. The appeals are hence dismissed.

No costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

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For the sake of convenience, Section 25 is extracted below:

"25. Assessment of escaped turnover

(1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or return period or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made therefrom, or where any input tax or special rebate credit has been wrongly availed of, the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgment, the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction in respect of which has been wrongly made or input tax or special rebate credit that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax or special rebate credit wrongly availed of, after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

PROVIDED that before making an assessment under this sub-section the dealer shall be given a reasonable opportunity of being heard.

PROVIDED FURTHER that where the escapement is due to the application of incorrect rate of tax, no assessment under this sub-section shall be made where the dealer files revised return and pays the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee.

PROVIDED ALSO that the period for the completion of assessments including those subjected to extension under Section 25B which expires on 31st March, 2015 shall be extended up to 31st March, 2016.

(2) The time limit mentioned in sub-section (1) shall not apply where the turnover which escaped assessment relates to any business done by such dealer as benamidar or through a benami or where it relates to a dealer, who being liable to get himself registered under this Act and the rules made thereunder, has failed to do so or where the escaped turnover is on account of the dealer having claimed any input tax credit on the basis of any bogus or forged documents.

(3) In making an assessment under sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to willful nondisclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under sub-section (1), a penalty as provided in [section 67]:

PROVIDED that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation: For the purposes of this section, the burden of proving that the escape from assessment was not due to willful non-disclosure of assessable turnover by the dealer shall be on the dealer.

(4) The powers under sub-section (1) may be exercised by the assessing authority even though the order of assessment, if any, passed in the matter, has been the subject matter of an appeal or revision.

(5) In computing the period of limitation for the purposes of this section, the time during which the proceedings for assessment remained stayed under the orders of a Civil court or other competent authority shall be excluded."

(Underlining by us)

The third proviso to sub-section (1) of Section 25 of the KVAT Act was amended by way of the Finance Act, 2017 in the following

words:

> **“(3) in section 25, in sub-section (1).-**
>
> **(i) for the words "five years", the words "six years" shall be substituted;**
>
> **(ii) for the third proviso, the following proviso shall be substituted, namely:-**
>
> **"Provided also that the period for proceeding to determine any assessment including those subjected to extension under section 25B which expires on 31st March, 2017, shall be extended up to 31st March, 2018”.”**
>
> **(Underlining by us)**

The bone of contention between the parties herein is with regard to the interpretation to be given to the words “at any time within five years from the last date of the year to which the return relates, proceed to determine” as found in sub-section (1) of Section 25 and the third proviso to the said sub-section as inserted with effect from 01.04.2015 which reads: “provided also that the period for the completion of assessments including those subjected to extension under Section 25B which expires on 31st March, 2015, shall be extended up to 31st March, 2016” in light of the amendment made in the Finance Act, 2017. In the Finance Act of 2017 while amending sub-Section (1) of Section 25 by substituting the words five years for words six years, the third proviso was amended as under:

> **“Provided also that the period for proceeding to**

determine any assessment including those subjected to extension under Section 25B which expires on 31.03.2017 shall be extended up to 31st March, 2018."

(Underlining by us)

The amendment made to the third proviso to sub-section (1) of Section 25, in the Finance Act, 2017 as extracted hereinabove is sought to be relied upon by the appellants in these cases.

We have heard learned Senior Counsel Mr. Rakesh Dwivedi for the appellants and learned Senior Counsel Mr. S. Ganesh and other learned senior counsel and other counsel for the respondents and perused the material on record.

It was contended by Mr. Rakesh Dwivedi that the object and purpose of providing the third proviso to sub-section (1) of Section 25 was in fact to extend the limitation period for "initiation of proceedings" with regard to assessment of escaped turnover even though under the unamended sub-section (1) of Section 25 it was "five years" from the last date of the year to which the return relates and later substituted by the words "six years". The object and purpose of the proviso was to extend the initiation of the proceedings for reassessment as per the dates indicated in the various provisos that were substituted during the successive financial years as per the Finance Acts from 2010 onwards. Such a meaning would emerge on a reading of the amendment made in the Finance Act, 2017. It was submitted that the Full Bench of the Kerala High Court had held that there was no time-frame for completion of assessment but that is not the controversy in these cases. What is of significance is the extension of the time period

for “initiation of proceedings” for reassessment in terms of the proviso to sub-section (1) of Section 25. It was submitted that the Division Bench of the High Court misdirected itself by holding that the said proviso did not relate to the period of initiation of proceedings by ignoring the fact that in sub-section (1) of Section 25 the expression used is “proceed to determine” and the very same expression is used in the proviso also. Therefore, any expression used in the main Section, sub-section as well as the proviso have to be given the same interpretation which would only mean that the period for initiation of reassessment proceeding has been extended by virtue of the third proviso. Therefore, the Division Bench, having failed to notice this aspect of the matter, has erroneously proceeded to quash the notices on the premise that they were issued beyond the limitation period prescribed under sub-section (1) of Section 25. It was contended that the said understanding of the Division Bench being not in accordance with what was intended by the Legislature and on a proper understanding of the legislative intent, these appeals will have to be allowed and directions may be issued for revival of the quashed notices.

Per contra, learned Senior counsel appearing for the respondent(s), Sri S. Ganesh supported the impugned judgment of the Division Bench and brought to the notice of this Court that the intention of the Legislature in adding the third proviso was on a clear understanding of the judgment of the Full Bench of the Kerala High Court which had pointed out a lacuna in the reassessment proceedings inasmuch as there was no time-frame fixed under Section 25 for completion of reassessments and the time period indicated in

the form of a limitation under sub-section (1) of Section 25 of the KVAT is only with regard to the initiation of proceedings. It was submitted that the expression "proceed to determine" in sub-section (1) of Section 25 and in the third proviso has to be contextually interpreted and cannot carry the same meaning or otherwise it may lead to an absurdity. In this context, it was submitted that a proviso cannot mutilate the main sub-section and extend the period of limitation, in contravention of what has been prescribed in sub-section (1) of Section 25 of the Act.

In this regard, reliance was placed on *S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591*, and other connected cases in order to buttress their submissions.

Having heard learned Senior Counsel for the appellants and learned Senior Counsel and other counsel for the respondents, we find that the controversy in these appeals is in a very narrow compass inasmuch as the question that arises is, whether, the third proviso to sub-section (1) of Section 25 extends the period of limitation for the initiation of proceedings for reassessment insofar as escaped turnover is concerned.

In this context, what has to be interpreted is the expression "proceed to determine" as it occurs in sub-Section (1) of Section 25 as well as the third proviso to the said sub-Section as amended in Finance Act, 2017. No doubt, in both the provisions, the expression used is "proceed to determine." The said expression must be considered in light of the words that occur prior to and subsequent to the said expression. Under sub-Section (1) of Section 25, the intention of the use of the expression "proceed to

determine" is in the context of initiation of proceedings at any time within five years (now six years after the 2018 amendment) from the last date of the year to which the return relates. The object and purpose is that there cannot be a belated initiation of proceedings and at the whims and fancies of the Department so as to re-open stale returns, which had already been concluded under the provisions of the said Act. However, the object of the proviso which also uses the words "proceed to determine" must be in the context of completion of the Assessment which had already been initiated in accordance with sub-Section (1) to Section 25 within the time-frame as prescribed therein.

In this regard, it is necessary to refer to the relevant portion of the judgment of Full Bench in the case of *Cholayil (Pvt.) Ltd. vs. Assistant Commissioner (Assessment 2015)* wherein the Full Bench considered the earlier judgment of the Kerala High Court in *Tirur Medical(supra)* and after referring to the judgments of this Court in *Sales Tax Officer, Special Circle, Ernakulam Vs. Sundarsanam Iyyankar* 1977 (25) STC 252 SC and other cases, held that the expressions "proceed to determine" in Section 19 of the erstwhile Act, i.e., Kerala General Sales Tax Act only required that the Assessing Authority has to "commence" such activity of determination by issuance of a notice within the time-frame fixed under Section 19 of the said Act. The said provision is *in pari materia* with sub-Section (1) of Section 25 of the KVAT Act. It was also observed therein that the effect of the third proviso which was initially inserted into the KVAT ACT on 01.04.2010 was to prescribe a time limit for the "completion" of the re-assessment

commenced under sub-Section (1) of Section 25 of the KVAT Act inasmuch as the same had to be concluded within a time frame so that the reassessment proceedings would not endlessly linger on for many years thereafter. It was found that there was no outer limit conceived under sub-Section (1) of Section 25 of the Act and there were unending delays in completion of the proceedings which were not in the interest either of the department or the assessee. In the absence of there being any time-frame prescribed under sub-Section (1) of Section 25 for the completion of proceedings which meant that the Legislature had not fixed any outer limit for the same under sub-section (1) of Section 25 of the Act, and taking note of the said lacuna pointed out by the Full Bench, in the Kerala Finance Act 2010 and later by successive amendments, enlargement of time by only one year at a time for the purpose of completion of proceedings was provided by adopting a legislative device of substitution of the inserted provision w.e.f. the Finance Act, 2010 till 2018 including the period(s) of assessment(s) under consideration. The exact words of the Full Bench are extracted as under:

> **"5. The effect of the aforenoted third proviso introduced with effect from 1.4,2010, which says that the time limit for the completion of assessment under sub~section (1) of S.25 of the K.V.A.T. Act shall be extended upto a particular date given in that proviso, may appear to indicate that the legislature had understood sub-section (1) of S.25 of the K.G.S.T. Act as having provided an outer limit as to time for completion of assessment**

proceedings in terms of S.25(1). We may hasten to add that this is not an issue pointedly covered by the Reference Order of the Division Bench to the Full Bench which is only on the premise that if no outer time limit is conceived for in sub-section (1) of S.25 of the K.V.A.T. Act, there would be unending delay, and proceedings will lie without any conclusion for years to come. While dealing with fiscal matters and judicial review of legislations including by its interpretation, such factors relating to the time frame for disposal of matters by the assessing authorities cannot by themselves be the yardstick to judicially lay down any structured time frame for any particular proceeding. Primarily, that is a matter in the legislative domain including through subordinate legislations, if duly authorised. Though we have noted the third proviso to sub-section (1) of S;25 of the K.V.A.T. Act, the Full Bench is not called upon, through the Reference Order, to consider the impact of that proviso. Similarly, we may also indicate that the introduction of third proviso to sub-section (1) of S.25 of the K.G.S.T. Act was made contemporaneous with similar amendment by including a proviso to S.24 of that Act. Later, S.25 – B was introduced to K.V.A.T. Act giving authority· to the Deputy Commissioner to extend the period of completion of assessment under S.25 or in S.24 notwithstanding anything contained in those sections provided the conditions laid down in S.25 - B are satisfied. All these taken together, the net effect of the introduction of the third proviso to sub-section (1) of S.25 and the inclusion of S.25 within the canopy of S.25 - B is indicative of the fact, that for all intents and purposes, the

legislature fixed an outer time limit for completion of assessment proceedings under sub-section (1) of S.25, at least, in cases to which the provision in S.25(1) as amended by the Kerala Finance Act, 2010 and the later amendments sustaining that provision or conferring power of enlargement of time applies. Obviously, even if S.25 – B is to guide the Deputy Commissioner, the time limit has to be reasonable because, there cannot be an indefinite proceeding under S.25(1) in view of the third proviso to that section."

However, it is now contended on behalf of the appellants by learned Senior Counsel, Shri Dwivedi, that the object of the proviso was in fact to extend the time period of one year to "initiate" the proceedings and hence, the expression 'proceed to determine' in sub-section (1) of Section 25 of KVAT Act as well as the subsequent third proviso of the said section must be given the same meaning which would according to learned Senior Counsel mean that the proviso also extends the period of limitation by one year at a time by way of substitution of the earlier period being made at every Financial Year under the respective Finance Acts for the initiation of proceedings of reassessment under Section 25 of the Act. We do not think that such a meaning could be given to the expression 'proceed to determine' as submitted by learned senior counsel insofar as the third proviso to sub-section (1) of Section 25 is concerned. Firstly, the said expression is only w.e.f. the Finance Act, 2017 and not for the earlier period as the words used in the third proviso for the earlier period is "completion of assessments" Thus, the period for completion of assessments cannot

mean “initiation of proceedings.” Although the Legislature may use the very same expression in different parts of a section or different parts of an Act it is ultimately to be seen whether the interpretation so placed on the very same expression would lead to a logical understanding in line with the object and the intention of the Legislature or lead to an absurdity or anomaly. If the same expression used in different parts of a Section or an Act if given the same meaning leads to an anomaly or absurdity then the only option the Court would have is to give a contextual meaning to the said expression.

Applying the aforesaid principle to the present case, when the expression “proceed to determine” is given a contextual meaning in the instant case it would mean that under sub-section (1) of Section 25 of the Act, the couching of the said expression in the context of the limitation period would only indicate that it is for “initiation” of the proceeding for reassessment by issuance of a notice. But the expression “proceed to determine” in the third proviso to sub-section (1) of Section 25 by amendment made to the Finance Act is to “complete” the proceedings initiated under sub-Section (1) of Section 25 within the time-frame indicated in the said proviso which, as already noted, must be within one year at a time and the entire third proviso being substituted every successive year under the respective Finance Acts is with a view to mandate the Department to complete the re-opened assessment in a timely manner and within the period stipulated under the said proviso to sub-Section (1) of the Section 25 of the KVAT Act.

Therefore, the department is not right in contending that the

expression “proceed to determine” in the third proviso gives a lease of life or an extension of the period of limitation by one year at a time for “initiation” of the reassessment proceeding under sub-section (1) of Section 25 of the Act. Such an interpretation would lead to absurdity as a proviso cannot militate against the intention of the main provision in sub-section (1) of Section 25 and thus a proviso cannot extend the limitation period which is fixed under the main provision. The normal function of a proviso is to exempt something out of the provision or to qualify something enacted therein which, but for the proviso, would be within the purview of the provision. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. In other words, a proviso qualifies the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment, a portion which, but for the proviso, would fall within the main provision. Further, a proviso cannot be construed as nullifying the provision or as taking away completely a right conferred by the enactment.

The following para from the decision in Sundaram Pillai (supra) is extracted as under:

> **36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.**
> **37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a**

substantive provision itself.

39. In the case of STO, Circle-I, Jabalpur v. Hanuman Prasad [(1967) 1 SCR 831 : AIR 1967 SC 565 : (1967) 19 STC 87] Bhargava, J. observed thus:

"It is well-recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded."

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

We deem it fit to reiterate *Tirur Medical Stores vs. State of Kerala, 1978 KLT 415,* regarding the interpretation of the expression "proceed to determine." The Kerala High Court had clarified that the expression "proceed to determine" was sufficiently comprehensive to denote the entirety of the proceeding undertaken by Revenue authorities. Thus, the proceedings for the determination of the escaped turnover must necessarily commence and conclude by way of an appropriate order within the period stipulated in sub-section (1) of Section 25 and the third proviso thereto.

It may be clarified that the expression "proceed to determine" is found in the amendment made to the KVAT Act with effect from

2017 Finance Act, whereas in the earlier amendment, the expression clearly was to "complete the assessment" in the third proviso of sub-section (1) of Section 25 which is also a clear indication of the intention of the Legislature to give a command to the concerned assessing officers seized of the proceedings which had been initiated under sub-section (1) of Section 25 to complete within the time-frame as stipulated in the said proviso. The amendment to the Kerala Finance Act, 2017 is with effect from 01.04.2017 and does not have any retrospective effect.

In view of the aforesaid discussion, we do not find any merit in these appeals. The appeals are hence dismissed.

No costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
AUGUST 2, 2023

ITEM NO.103 COURT NO.12 SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S).4306/2022

THE ASSISTANT COMMISSIONER(ASSESSMENT) & ORS. Appellant(s)

VERSUS

M/S CHOLAYIL PVT. LTD. Respondent(s)

([GROUP MATTER])

WITH
C.A. No. 4472/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 194034/2019)

C.A. No. 4471/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 7892/2020)

C.A. No. 4333/2022 (XI-A)

C.A. No. 4447/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 33618/2020
FOR CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS ON IA 33619/2020)

C.A. No. 4448/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 32272/2020)

C.A. No. 4330/2022 (XI-A)

C.A. No. 4332/2022 (XI-A)

C.A. No. 4331/2022 (XI-A)

C.A. No. 4316/2022 (XI-A)

C.A. No. 4317/2022 (XI-A)

C.A. No. 4320/2022 (XI-A)

C.A. No. 4318/2022 (XI-A)

C.A. No. 4326/2022 (XI-A)

C.A. No. 4323/2022 (XI-A)

C.A. No. 4475/2022 (XI-A)

(FOR CONDONATION OF DELAY IN FILING ON IA 195738/2019)

C.A. No. 4327/2022 (XI-A)

C.A. No. 4329/2022 (XI-A)

C.A. No. 4335/2022 (XI-A)

C.A. No. 4334/2022 (XI-A)

C.A. No. 4338/2022 (XI-A)
(FOR ADMISSION and I.R..)

C.A. No. 4456/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 86089/2020)

C.A. No. 4457/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.88509/2020-CONDONATION OF DELAY IN FILING)

C.A. No. 4336/2022 (XI-A)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 105649/2020
IA No. 105649/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4337/2022 (XI-A)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 106666/2020
IA No. 106666/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4458/2022 (XI-A)
(IA FOR CONDONATION OF DELAY IN FILING ON IA 121615/2020
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 121616/2020)

C.A. No. 4341/2022 (XI-A)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 81860/2021
IA No. 81860/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4340/2022 (XI-A)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 73431/2021
IA No. 73431/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4342/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.91586/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4486/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.88073/2021-CONDONATION OF DELAY IN FILING and IA No.88074/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 121219/2021 - APPLICATION FOR TAGGING/DETAGGING)

C.A. No. 4445/2022 (XI-A)

C.A. No. 4430-4434/2022 (XI-A)

C.A. No. 4363-4367/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 34880/2019
FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 49103/2021)
C.A. No. 4435-4439/2022 (XI-A)

C.A. No. 4353-4357/2022 (XI-A)

C.A. No. 4393-4397/2022 (XI-A)

C.A. No. 4358-4362/2022 (XI-A)

C.A. No. 4378-4382/2022 (XI-A)
(The sc Nos.13123 and 13126 of 2021 arising ourt of wp(c) nos. 38711/2016 and WP no. 39776/2016 have been disposed of as per order dated 17.08.2021)

C.A. No. 4308-4312/2022 (XI-A)

C.A. No. 4398-4402/2022 (XI-A)

C.A. No. 4465/2022 (XI-A)

C.A. No. 4403-4407/2022 (XI-A)
(IA No. 191549/2019 - INTERVENTION APPLICATION)

C.A. No. 4328/2022 (XI-A)

C.A. No. 4449/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 82599/2020)

C.A. No. 4450/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 110955/2020)

C.A. No. 4451/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 84825/2020)

C.A. No. 4452/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 83194/2020)

C.A. No. 4453/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 83402/2020)

C.A. No. 4454/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 88591/2020)

C.A. No. 4455/2022 (XI-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 132594/2020
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 132597/2020)

C.A. No. 4339/2022 (XI-A)
(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 120277/2020
IA No. 120277/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 11977/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.105127/2022-CONDONATION OF DELAY IN FILING and IA No.105128/2022-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

C.A. No. 4446/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.60534/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4307/2022 (XI-A)

C.A. No. 4459/2022 (XI-A)

C.A. No. 4368-4372/2022 (XI-A)

C.A. No. 4440-4444/2022 (XI-A)

C.A. No. 4413-4417/2022 (XI-A)

C.A. No. 4466-4470/2022 (XI-A)

C.A. No. 4481-4485/2022 (XI-A)

C.A. No. 4408-4412/2022 (XI-A)

C.A. No. 4474/2022 (XI-A)

C.A. No. 4473/2022 (XI-A)

C.A. No. 4314/2022 (XI-A)

C.A. No. 4315/2022 (XI-A)

C.A. No. 4476/2022 (XI-A)

C.A. No. 4322/2022 (XI-A)

C.A. No. 4321/2022 (XI-A)

C.A. No. 4319/2022 (XI-A)

C.A. No. 4324/2022 (XI-A)

Diary No(s). 15704/2022 (XI-A)
(FOR ADMISSION and I.R. and IA No.101629/2022-CONDONATION OF DELAY IN FILING and IA No.101630/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.101628/2022-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

C.A. No. 173/2023 (XI-A)
(FOR ADMISSION and I.R. and IA No.198255/2022-CONDONATION OF DELAY IN FILING and IA No.198257/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4343-4347/2022 (XI-A)

C.A. No. 4423-4429/2022 (XI-A)

C.A. No. 4388-4392/2022 (XI-A)

C.A. No. 4418-4422/2022 (XI-A)

C.A. No. 4460-4464/2022 (XI-A)

C.A. No. 4383-4387/2022 (XI-A)

C.A. No. 4348-4352/2022 (XI-A)

C.A. No. 4477-4480/2022 (XI-A)

C.A. No. 4373-4377/2022 (XI-A)

C.A. No. 4313/2022 (XI-A)

C.A. No. 4325/2022 (XI-A)

Date : 02-08-2023 These appeals were called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN

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Mr. Pallav Shishodia, Sr. Adv.
Mr. C. K. Sasi, AOR
Ms. Meena K Pouiose, Adv.

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Mr. S Sukumaran, Adv.
Mr. Anand Sukumar, AOR
Mr. Bhupesh Kr. Pathak, Adv.
Mrs. Ruche Anand, Adv.

Mr. Haris Beeran, Adv.
Mr. Azhar Alsees, Adv.
Ms. Pallavi Pratap, AOR

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UPON hearing the counsel the Court made the following

O R D E R

C.A. No. 4486/2022:

Learned counsel for the respondent(s) submitted that this appeal may be de-linked as the issues raised in the said appeal is not identical with the issues raised in the other connected appeals.

In view of the aforesaid submission, this appeal is de-linked with the other appeals.

List on 03.08.2023.

Rest of the Matters:

Delay of 98 days in Diary No(s).11977/2022 and 308 days in Diary No(s). 15704/2022 condoned.

Leave granted in Diary No(s).11977/2022 and Diary No(s). 15704/2022.

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA) **(MALEKAR NAGARAJ)**
COURT MASTER (SH) **COURT MASTER (NSH)**

(Signed order is placed on the file)