BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.11686 of 2009

M/s.Madras Cements Ltd.,
Rep. by its Sr. General Manager,
(Accounts & Audit),
S.Vaithiyanathan. ... Petitioner

-Vs-

1.The Commercial Tax Officer - III,
Now re-designated as Assistant Commissioner (CT),
C.T.Building,
Madurai Road, Virudhunagar.

2.The Appellate Assistant Commissioner (CT),
Now re-designated as Appellate Deputy Commissioner (CT),
C.T.Building,
Madurai Road, Virudhunagar. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in TNGST.5760453/2001-02 DATED 24.12.2007 and connected proceedings of the second respondent in A.P.7/2008 dated 10.06.2008 and quash the same.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.R.Sureshkumar
Government Advocate

ORDER

The prayer sought for herein is the Writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in TNGST.5760453/2001-02 dated 24.12.2007 and connected proceedings of the second respondent in A.P.7/2008 dated 10.06.2008 and quash the same.

2.The petitioner seeks for quashment of the order passed by the first respondent in TNGST.5760453/2001-02 dated 24.12.2007 and connected proceedings on the ground that the said order is contrary to the law laid down by this Court in **ITC Ltd Vs State of Tamil Nadu and another** reported in **2007(2) CTC 577.**

3.Though an appeal was filed against the said decision before the Hon'ble Supreme Court, when the same was pending in a related case in **Jindal Stainless Ltd., & another Vs. State of Haryana & Others** reported in **2017 (12) SCC 1**, the Hon'ble Supreme Court has ordered that tax on entry of goods into a local area for use or sale is permissible, merely because all those similar goods are not produced within the taxing State.

4.Therefore, in view of the law laid down by the Hon'ble Supreme Court, the plea raised by the petitioner to get back the alleged excess entry tax paid by the petitioner cannot be countenanced.

5.In this regard, Mr.R.Senniappan, learned counsel appearing for the petitioner though reiterated the aforesaid, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondents has submitted that this issue had been raised in number of writ petitions, which were considered and decided by following the dictum of the Hon'ble Supreme Court in **Jindal** case cited supra and one such order he has produced has been made in WP(MD)Nos.29131 to 29134 of 2016 in the matter of **M/s.Pon Pure Chemical India Private Ltd., Vs the Commissioner of Commercial Taxes, Chennai and others** dated **07.08.2020**, where the learned writ Court has passed the following order:

> *"2.When the petitioners herein had claimed refund of excess entry tax paid under Section 11 of Tamil Nadu Act 20 of 2001, on the ground that the Hon'ble Division Bench of this Court in the case of* ***ITC Ltd Vs State of Tamil Nadu and another*** *reported in* ***2007(2) CTC 577*** *had declared Tamil nadu Tax on Entry of goods into Local Areas Act, 2001 as unconstitutional, the respondent herein had intimated to them that the issue related to Entry Tax on Goods and Entry Tax on Vehicles is pending before the Hon'ble Apex Court.*
>
> *3.Pending the Writ Petition, the Hon'ble Apex Court in the cases of* ***Jindal Stainless Ltd., & another Vs. State of Haryana & Others*** *reported in* ***2017 (12) SCC 1*** *had ordered that a tax on entry of goods into a local area for use, sale or consumption therein is permissible, although similar goods are not produced within the taxing State.*
>
> *4.In view of the aforesaid decision of the Hon'ble Apex Court, the petitioners may not be entitled for refund of the excess entry tax paid. In view of the order of the Hon'ble Apex*

Court, no effective orders can be passed in these Writ Petitions. Accordingly, all the Writ Petitions stand closed. No costs."

6.In view of the said orders having been passed in a number of writ petitions similar to that of present one, of course following the dictum laid down by the Hon'ble Supreme Court in **Jindal** case cited supra, I am also inclined to dispose this writ petition.

7.In view of the same line, this Writ Petition is liable to be dismissed. Hence, this writ petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PNM/SM

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Order may be utilized for official purposes, but, ensuring that the copy of the Order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commercial Tax Officer - III,
Now re-designated as Assistant Commissioner (CT),
C.T.Building,
Madurai Road,
Virudhunagar.

2.The Appellate Assistant Commissioner (CT),
Now re-designated as Appellate Deputy Commissioner (CT),
C.T.Building,
Madurai Road,
Virudhunagar.

+1 CC to M/s.SPL. GP (SR-29790[F] dated 21/09/2021)

W.P.(MD)No.11686 of 20090
20.09.2021

_RD(27.10.2021) 3P 4C