**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**
**DATED: 05.03.2021**
**CORAM:**
**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P.(MD)No.4566 of 2021**
**and**
**W.M.P.(MD)No.3662 of 2021**

M/s.Global Poly Bags Industries (P) Ltd.,
Represented by its Managing Director,
T.Muralitharan,
500A Perali Road,
Virudhunagar. ... Petitioner

-Vs-

The State Tax Officer-1, Virudhunagar,
Commercial Building,
Madurai Road,
Virudhunagar. ... Respondent

**PRAYER**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the proceedings made in Entry Tax Assessment 5721131/03-04, dated 26.12.2020 passed by the respondent demanding an Entry Tax demand of Rs.96,15,269 for the AY 2003-04 along with consequential interest and penalty and to quash the same as it is illegal and violative of Article 265 of the constitution of India.

For Petitioner : Mr.S.P.Maharajan
For Respondent : Mr.G.Arjunan
Government Advocate

**ORDER**

Heard the learned counsel on either side.

2.The petitioner has been served with the impugned order dated 26.12.2020 whereby the petitioner has been directed to pay tax on import purchase and interstate purchase together with penalty. The said order is questioned on three counts.

3.The petitioner states that the subject matter pertains to the assessment year 2003-04. The Deputy Commissioner Tax Officer-1, Virudhunagar, had issued pre-assessment notice in this regard on 12.05.2006. The petitioner had filed W.P.(MD)Nos.9536 & 9537 of 2006 for prohibiting the authorities from proceeding further pursuant to the pre-assessment notice. The writ petitions were allowed vide order dated 27.06.2007. The said order has not been challenged in the manner known to law and it has become final. The learned counsel for the petitioner would also state that merely because, the validity of the Tamilnadu Tax on Entry of Goods into Local Areas Act, 2001 was upheld in Jindal Stainless Steel case, the same cannot be taken advantage by the respondent. In this regard, the learned counsel would place reliance on the decision reported in ***1969 1 SCC 110 (Tilokchand Motichand Vs. H.B.Munshi***). Her contention is that as per Section 40(2) of the said Act, the assessee is expected to retain the records only for a period of five years. In the case on hand, in respect of the assessment year 2004-05, the notice has been issued after a gap of fifteen years. Therefore, even though the statute may not have prescribed any limitation period for taking action, this Court ought to hold that initiation of action after expiry of the reasonable period is bad in law.

4.Since the petitioner could not trace their returns, vide order dated 21.12.2020, the petitioner requested the respondent to furnish the copies of the Entry Tax returns already submitted by them along with TNGST returns for the said year. Without making available the said documents, the impugned order has been passed. Therefore, the contention of the learned counsel for the petitioner is that the impugned order is violative of the principles of natural justice. On these three counts, the learned counsel for the petitioner wanted this Court to quash the order impugned in this writ petition.

5.I am unable to accept the contentions advanced by the learned counsel appearing for the petitioner. This is for more reasons than one.

6.No doubt, W.P.(MD)Nos.9536 and 9537 of 2006 filed by the petitioner for prohibiting the assessing authority from proceeding further pursuant to the pre-assessment notice was allowed by a learned Judge, vide order dated 27.06.2007. It is also true that this order has not been formally challenged in the manner known to law. But then, the order passed in the aforesaid writ petitions reads as under:-

> "These Writ Petitions have been filed challenging the constitutional validity of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001. In view of the decision passed by this Court reported in (2007 (2) CTC 577) (ITC Limited Vs. The State of Tamil Nadu), these writ petitions are allowed. "

7.A mere reading of the same would indicate that this Court proceeded on the premise that the petitioner was challenging the constitutional validity of the Tamilnadu Tax on Entry of Goods into Local Areas Act, 2001 Act, 2001 and that the writ petitions have to be allowed in view of the decision passed by the Hon'ble Division Bench of this Court reported in *2007 (2) CTC 577*. In other words, the only issue, with which, the learned Judge was concerned with the constitutional validity of the statute. Since by then the Hon'ble

First Bench had pronounced the said statute to be unconstitutional, following the same, the Writ Petitions were allowed. No other aspect was gone into.

8.It is well known that the said decision was reversed in *Jindal Stainless Steel case*, wherein the Hon'ble Supreme Court upheld the validity of the Act. Therefore, the respondent is absolutely justified in initiating the proceedings which were stalled vide order dated 27.06.2007. The petitioner cannot claim that the proceedings are hit by unreasonable delay. It is well known that because of the challenge to the constitutional validity of the Act, the proceedings could not be taken. After the Hon'ble Supreme Court finalised the issue, the authority was at liberty to reopen the proceedings and proceed from the stage where it was left.

9.In the case on hand, the authority chose to issue a fresh notice on 19.08.2019. The petitioner was called upon to give their objections. Personal hearing was also given to the petitioner on 16.10.2010 and 23.10.2020. Thus, all the principles of natural justice were fully and scrupulously complied with by the respondent. After the personal hearing was over, the petitioner has submitted a letter dated 21.12.2020 asking for copies of certain documents. These documents are nothing but the returns filed by the petitioner themselves. It is not as if that the authority was relying on some documents which was not given to the petitioner. The authority was relying on the entry tax returns field by the petitioner themselves.

10.I am of the view that the petitioner cannot say that they were expected to keep the copies only for a period of five years and not beyond. The petitioners are in business and they are not rustic villagers. They knew fully well the issue of constitutional validity had not yet finality. Therefore, they were very much expected to maintain the records. Therefore, the argument predicated on Section 40(2) of the Act also will not come to their rescue. Therefore, I have no hesitation to reject all the contentions putforth by the petitioner. In all fairness to the petitioner's counsel, no argument was advanced on facts. The petitioner is very much having the alternative remedy of appeal. The petitioner has to necessary avail the same and not rush to this Court. All the contentions of the petitioner are left open. If the petitioner files an appeal before the appellate authority within a period of three weeks from the date of receipt of a copy of this order, the appellate authority will entertain the same without reference to limitation but subject to other usual formalities. I reiterate that except these the three contentions which had been rejected by me, all the other contentions available to the petitioner on facts, can very well be canvassed before the appellate authority. Since the original order has been filed along with the writ petition, the petitioner can file an appeal by enclosing the photocopy of the impugned order and the appellate authority will not insist on production of the certified copy of the original order.

The Writ Petition is dismissed with the aforesaid liberty. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

The State Tax Officer-1, Virudhunagar,
Commercial Building,
Madurai Road,
Virudhunagar.

+1 CC to M/s.S.P.MAHARAJAN, Advocate ( SR-9300[F] dated 05/03/2021 )

+1 CC to M/s.SPL GP ( SR-9424[F] dated 08/03/2021 )

W.P.(MD)No.4566 of 2021
and
W.M.P.(MD)No.3662 of 2021
05.03.2021

ES(CO)
KB(31.03.2021) 4P 4C