



W.P.Nos.18187 of 2021 and etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2023

PRONOUNCED ON : 11.12.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.18187,18189,18191 and 18192 of 2021 and
W.M.P.Nos.19414, 19416, 19418 and 19419 of 2021

M/s.IFB Industries Ltd,
Rep. By its Authroised Signatory
Mr. Yaganti Venkata Narayana,
No.1/1, Kanniamman Nagar,
Vanagaram, Chennai 600 095.

... Petitioner in all W.Ps.

Vs.

1.The Assistant Commissioner (ST)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai 600 031.

2.The State of Tamil Nadu,
Rep. By its Secretary to Government,
State Goods and Service Tax Department,
Fort St. George, Chennai 600 009.

... Respondents in all W.Ps.

PRAYER in W.P.No.18187 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the first respondent in TNGST No.0460994/2003-04 dated 12/07/2021 and quash the same.

PRAYER in W.P.No.18189 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the first respondent in TNGST No.0460994/2004-05 dated



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12/07/2021 and quash the same.

PRAYER in W.P.No.18191 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the first respondent in TNGST No.0460994/2005-06 dated 12/07/2021 and quash the same.

PRAYER in W.P.No.18192 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the first respondent in TNGST No.0460994/2006-07 dated 12/07/2021 and quash the same.

For Petitioner : Mr.V.Sundareswaran
in all W.P.'s Standing Counsel

For Respondents : Ms.Amrita Dinakaran
in all W.P.'s Government Advocate

COMMON ORDER

These four writ petitions are filed challenging the impugned orders of assessment dated 12.07.2021 under the "Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001", (hereinafter referred to as "Entry Tax Act"), relating to the assessment years 2003-04, 2004-05, 2005-06 and 2006-07.

2. Brief Facts:

2.1. The petitioner was a dealer registered under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act") and under the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act"). During the relevant period, petitioner was engaged in the manufacture



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and sales of home appliances including washing machines. The manufacturing unit was situated in Goa. The goods so manufactured were transferred to other States including Tamil Nadu for sale of such home appliances. The petitioner's branch at Tamil Nadu received the goods so stock transferred and effected sale of such goods. A portion of such sales was made to "Canteen Stores Department" (hereinafter referred to as "CSD") during the relevant period viz., 2003-04 to 2006-07. Sale of goods by any dealer in the State of Tamil Nadu to CSD was exempted vide G.O.P.No.3125 dated 30.12.1964.

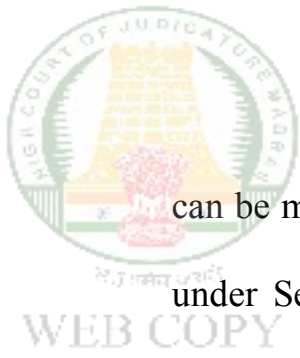
2.2. The Entry Tax Act came into force on 01.12.2001 vide notification No.II(2)CT/892(a-2)/2001 dated 30.11.2001. Washing machine was one of the item which was liable to Entry Tax Act, pursuant to its insertion as Item No.25 of the Schedule to the Entry Tax Act. The above Entry/Item was added with effect from 21.03.2003 vide Section 2 of Amendment Act No.22 of 2003. The rate of Entry Tax on washing machines was fixed at 12.5%, while the rate of tax on the sale of such washing machines was fixed at 12% under the TNGST Act. In respect of the sales made to CSD, exemption was claimed by the petitioner under the TNGST Act.

2.3. The petitioner had filed Form I monthly returns for the relevant assessment years viz., 2003-04 to 2006-07 under the Entry Tax Act. The petitioner's place of business was inspected by the officials of the Enforcement



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Wing on 22.08.2006 and 23.08.2006. During the course of such inspection it was found that the petitioner had not reported the interstate transfer / entry of washing machines into Tamil Nadu meant for sales to CSD nor was Entry Tax paid on such goods. The above import of washing machines was proposed to be treated as wilful suppression under the Entry Tax Act vide notice dated 02.12.2016 and 23.11.2016 for the assessment years 2003-04 and 2004-05 and 2005-06 respectively. The petitioner responded to the above notice vide letter dated 21.02.2017 and 22.02.2017 respectively for the assessment years 2003-04, 2004-05 and 2005-06 *inter-alia* highlighting that the impugned notice under the Entry Tax Act is barred by limitation. While for the assessment year 2006-07, a notice dated 12.10.2020 was issued and the petitioner submitted a common reply on 25.10.2020. It was submitted therein that the provisions relating to assessment, reassessment, enforcement, collection of tax etc., under the General Sales Tax Act stands incorporated by reference under the Entry Tax Act by placing emphasis / reliance upon Section 10 of the Entry Tax Act. It was thus submitted that Section 12C of the TNGST Act, would apply to Entry Tax and in view thereof Entry Tax assessments ought to be deemed to have been completed based on the returns filed for the period prior to 31.03.2006 in terms of Section 12C of the TNGST Act for the period in issue. It was submitted that resultantly any revision of assessment



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can be made within 6 years from the date of such order of deemed assessment under Section 12C of the TNGST Act, 1959, by virtue of Section 10 of the Entry Tax Act which is a piece of referential legislation which incorporates the provisions of the TNGST Act relating to assessment, reassessment, etc., as mentioned / set out in Section 10 of the Entry Tax Act.

2.4. Thereafter another notice dated 12.03.2020 was issued by the 1st respondent for the above assessment years viz., 2003-04, 2004-05 and 2005-06 wherein it was stated that the Commissioner had issued Circular dated 24.02.2020 withdrawing the earlier Circular dated 03.10.2007 wherein the assessing officer's were instructed not to enforce collection of pending demands relating to Entry Tax until the Apex Court decides the issue of validity of Entry Tax Act. It was stated that the petitioner's plea of the proceeding being barred by limitation overlooks the fact that the levy of Entry Tax was challenged in writ petition in W.P.No.12553 of 2002 and this Court had held the same to be invalid vide its judgment dated 22.03.2007. The above order of this Court was challenged before the Hon'ble Supreme Court wherein the validity of levy of Entry Tax was upheld vide order dated 23.08.2017. In view thereof, the period during which the proceeding relating to the validity of Tamil Nadu Entry Tax Act was pending before the High Court and the Hon'ble Supreme Court must be excluded while reckoning limitation for revision of assessment.



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2.5. A common reply was filed by the petitioner vide letter dated 25.10.2020 *inter alia* highlighting the following:

a. The tax paid under the Tamil Nadu Entry Tax Act by a dealer on Scheduled goods results in reducing its liability on the sale of Schedule goods under the TNGST Act to the extent of the Entry Tax paid, in terms of Section 4 of the Tamil Nadu Entry Tax Act.

b. That the entire exercise is in any view Revenue Neutral inasmuch as even if the Entry Tax were payable it is entitled to be set off against the liability under the TNGST Act.

c. That the time spent before this Court and the Hon'ble Supreme Court in litigation with regard to the validity of Entry Tax cannot be excluded while reckoning limitation for making assessments under Entry Tax Act.

d. That the exemption under the TNGST Act must be understood as also extended to Entry Tax Act even in the absence of express / specific exemption under the Entry Tax law.

2.6. On considering the above objections, the impugned order of assessment for the assessment years 2003-04 to 2006-07 came to be passed vide order dated 12.07.2021 rejecting the objections filed by the dealer stating that the Commissioner of Commercial Taxes had vide Circular dated 03.10.2007 directed the authorities to keep the issue pending in view of the



fact that the State had preferred an SLP before the Hon'ble Supreme Court and the respondent had thus kept the assessments pending. If the time spent before the High Court and the Hon'ble Supreme Court is excluded the challenge by the petitioner that the proceedings are barred by limitation is liable to be rejected. Further, the exemption under the TNGST Act on sales of goods to CSD would not apply / extend automatically to Entry Tax, in the absence of a specific exemption under the Entry Tax Act.

3. The present writ petitions are filed challenging the above order of assessment *inter alia* on the following grounds:

a. Rule 3 of the Tamil Nadu Tax on Entry of Goods into Local Areas Rules, 2001 (hereinafter referred to as "Rules") mandates returns to be filed every month on or before 20th of the succeeding month in Form I along with remittance of appropriate Entry Tax. Sub-rule (3) to Rule 3 provides for provisional acceptance of such returns subject to Sub-rules (4) and (5). Sub Rule (4) to Rule 3 provides that, if the importer fails to submit the return on or before the specified date or if the return appears to be incorrect or incomplete, the assessing authority shall determine the value of the Schedule goods to the best of its judgment and provisionally assess the tax payable for the month. Sub Rule (5) to Rule 3 provides that if the importer submits a return without



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receipt from the Government Treasury or crossed demand draft for the tax paid the assessing authority shall issue a notice in Form II directing the importer to pay a sum within the time specified. In the case on hand there is no assessment under Sub-rule (4) and (5) to Rule 3 for the Assessment Years 2004-2005 to 2006-2007 and thus the returns must be deemed to be accepted provisionally.

b. With the introduction of Section 12C of TNGST Act, which stands incorporated by virtue of Section 10 of Entry Tax Act, assessments must be deemed to have been made on the basis of the return. The assessment under Section 12C of the TNGST Act is to be treated as having concluded on 20.12.2006. Thus, any assessment / reassessment under Entry Tax Act in terms of Section 16 of TNGST Act, which by virtue of Section 10 of Entry Tax Act stands incorporated in the Entry Tax Act, ought to be initiated within 6 years from the date of the assessment / deemed assessment i.e., 20.12.2006 for the assessment years 2003-04 to 2006-07. In other words, any notice for the assessment years 2003-04 to 2006-07 ought to have been issued on or before 20.12.2012. The notice under Entry Tax Act having been issued only on 23.11.2016, 02.12.2016 and 12.10.2020 for the assessment years 2003-04, 2004-05 and 2005-06 and 2006-07 respectively, the same is barred by limitation.



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c. That once the Schedule goods are exempt when sold to CSD under TNGST Act, the levy of Entry Tax is impermissible inasmuch as the exemption under the TNGST Act must be understood to also cover/extend to Entry Tax Act.

d. In any view, the 1st respondent ought to have seen that the entire exercise is Revenue Neutral inasmuch as any levy of Entry Tax is available as a set off against the liability under the TNGST Act.

4. To the contrary, learned counsel for the respondents submitted as under:

a) The exemption under the TNGST Act in respect of sales to CSD cannot be extended under the Entry Tax Act in the absence of specific exemption under the latter Act.

b) Reliance was placed on Section 10 of the Entry Tax Act to submit that it provides for assessment, reassessment, collection and enforcement of payment of tax under the Entry Tax Act, as if, such tax, penalty is payable under the General Sales Tax Act. In other words, for all ends and purposes the mode of assessment, reassessment, collection and enforcement of payment of tax mechanism provided under the General Sales Tax would apply to Entry Tax Act. That being the case the provisions of Section 16 (5) of the TNGST



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Act, would apply while computing the period of limitation for assessment or re-assessment, resultantly the time during which any appeal or other proceeding in respect of any other assessment or re-assessment is pending before the High Court or the Hon'ble Supreme Court, involving a question of law having a direct bearing on the assessment or re-assessment in question shall have to be excluded. It was submitted that inasmuch as the question relating to the validity of the Tamil Nadu Entry Tax Act was the subject matter of litigation before the High Court as well as the Supreme Court, which was ultimately resolved by the Hon'ble Supreme Court in the case of *ITC Limited* vide order dated 23.08.2017 upholding the validity of levy of Entry Tax the period spent in the above litigation ought to be excluded. This is in view of the fact that the question of validity of the levy of Entry Tax has a direct bearing on the assessments made on the petitioner.

5. Heard both sides. Perused the material on record.

6. On considering the arguments advanced by both sides it appears that the impugned order of assessment insofar as it proceeds on the premise that the exemption on the sales to CSD under the TNGST Act must be confined to that particular enactment is unexceptionable. However, it fails to see that Entry



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Tax paid on goods is available as set-off even in respect of goods exempt under General Sales Act as held by the Hon'ble Supreme Court in *Associated Cement Companies* reported in 137 STC 389. Before proceeding to examine the above judgment it may be relevant to refer to Section 4 of Tamil Nadu Entry Tax Act which reads as under:

"4. Reduction in tax liability - (1) Where an importer of any scheduled goods liable to pay tax under this Act, being a dealer in scheduled goods becomes liable to pay tax under the General Sales Tax Act and additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970), by virtue of the sale of such scheduled goods, then his liability under those Acts shall be reduced to the extent of tax paid under this Act. "

6.1. A reading of sub-Section (1) to Section 4 of the Entry Tax Act would show that an importer of Scheduled goods liable to pay tax under the Entry Tax Act and being a dealer in Scheduled goods on becoming liable to pay tax by virtue of sale of such Schedule goods under the General Sales Tax Act, such liability under the General Sales Tax Act shall be reduced to the extent of the tax paid under the Entry Tax Act. The entitlement to set off the Entry Tax paid under the General Sales Tax Act is only dependent on "liability" under the TNGST Act and not on "actual payment of tax" under TNGST Act. The fact that exemption is granted to sale of Schedule goods



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under the TNGST Act does not take away/wipeout the liability under the General Sales Tax Act. This is in view of the settled principle that exemption pre-supposes liability. Liability to pay tax and actual payment are conceptually different. To repeat, the condition for availing the benefit of set-off under Section 4 of the Entry Tax Act is only "liability" to pay tax under the General Sales Tax Act and not "actual payment of taxes" under the General Sales Tax Act. In this regard it may be relevant to refer to the Judgment of the Hon'ble Supreme Court in the case of *Associated Cement Companies* wherein a similar provisions under the Bihar Entry Tax Act and the entitlement of the dealer therein for a set-off of the entry tax paid in respect of a portion of the sales which was exempt from General Sales Tax in terms of the Industrial policy was examined. The Apex Court held that the entitlement to set-off under the Entry Tax Act only looks to liability under the General Sales Tax Act and does not look to actual payment of taxes under the General Sales Tax Act. It was held that the assessee therein was entitled to reduction to the extent of tax paid under the Entry Tax Act while working out the tax payable by it under the General Sales Tax Act. The provisions which was considered by the Hon'ble Supreme Court as extracted in the said judgment reads as under:

"11... Section 3 of the Entry Tax Act is the charging section under the



said Act. Same reads as follows:

“3. Charge of tax.—(1) There shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 5 per centum of the import value of such goods as may be specified by the State Government in a notification published in the Official Gazette subject to such conditions as may be prescribed:

Provided different rates for different scheduled goods and different local areas may be specified by the State Government.

(2) The tax leviable under this Act shall be paid by every dealer liable to pay tax under the Bihar Finance Act, 1981 or any other person who brings or causes to be brought into the local areas such scheduled goods whether on his own account or on account of his principal or takes delivery or is entitled to take delivery of such goods on such entry:

Provided no tax shall be leviable in respect of entry of such scheduled goods effected by a person other than the dealer if, the value of such goods does not exceed 25 thousand in a year:

Provided further that where an importer of scheduled goods liable to pay tax under the Act, becomes liable to pay tax under the Bihar Finance Act, 1981 (Bihar Act 5 of 1981) by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act, 1981 shall stand reduced to the extent of tax paid under the Act.

(3) The liability to pay tax on scheduled goods shall only be at the point of first entry into a local area and any subsequent entry or entries into any other local area or areas of the said scheduled goods shall not be subject to tax provided the subsequent importing dealer produces before the assessing officer the original copy of the cash memo, invoice, bill or challan issued to him by the dealer from whom he purchased or received the said scheduled goods, and files a true and complete declaration in the form and manner prescribed.”

6.2. On considering the above provisions the Hon'ble Supreme Court

held as under :

"15. A bare reading of clause (2) of the notification makes the position clear that liability of importer of cement under the Act shall be reduced to the extent of tax paid under the Entry Tax Act where such importer becomes liable to pay tax under the Act by virtue of sale of the scheduled goods.

16. Stand of the respondents appears to be that since there was no liability in respect of portion of sales because of notification of the State



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Government SO No. 479 dated 22-12-1995 as part of the Industrial Policy, 1995 granting exemption from payment of sales tax on production of extended industrial unit which undertakes expansion of their capacity, no question of adjustment arises. To put differently, stand of the respondent is that when there was no tax liability on such sales, there was no liability to pay any tax and, therefore, the benefit of adjustment available under clause (2) of Notification SO No. 37 dated 25-2-1993 does not arise. The interpretation put forward by the respondents found acceptance by the High Court.

17. Crucial question, therefore, is whether the appellant had any "liability" under the Act. The answer to this lies in Section 3 of the Act which is extracted above and is the charging section. In sub-section (1), subject to the provisions of the part (i.e. Part I), sales tax or purchase tax, as the case may be, shall be paid by every dealer as provided in the section itself. Section 7 speaks of exemption. Sub-section (3) of Section 7 stipulates that the State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from sales tax or purchase tax certain sales or purchases as the case may be. The question of exemption arises only when there is a liability. Exigibility to tax is not the same as liability to pay tax. The former depends on charge created by the statute and the latter on computation in accordance with the provisions of the statute and rules framed thereunder if any. It is to be noted that liability to pay tax chargeable under Section 3 of the Act is different from quantification of tax payable on assessment. Liability to pay tax and actual payment of tax are conceptually different. But for the exemption the dealer would be required to pay tax in terms of Section 3. In other words, exemption presupposes a liability. Unless there is liability, question of exemption does not arise. Liability arises in terms of Section 3 and tax becomes payable at the rate as provided in Section 12. Section 11 deals with the point of levy and rate and concessional rate.

20. Therefore, it cannot be said that as tax was not paid on portion of the turnover of the scheduled goods i.e. cement, the appellant assessee had no liability under the Act. It was definitely liable to pay tax under the Act, but for the exemption. There is no dispute that the appellant assessee was liable to pay tax under sub-section (3) of Section 3 of the Entry Tax Act. Therefore, it was entitled to reduction to the extent of tax paid under the Entry Tax Act while working out tax payable by it under the Act."

6.3. Viewed from the above perspective it would be evident that the



impugned orders of assessment has not dealt with the said aspect and thus stands vitiated for failing to examine/take into account the above factors which has a material bearing on the issue under consideration. The impugned orders of assessment insofar as it fails to examine the above aspect stands vitiated.

6.4. Yet another aspect which is relevant and requires consideration but not examined is the relevance/applicability of the principle of Revenue Neutrality to the facts of the case. The petitioner may not be entitled to exemption under the Entry Tax Act on the basis of G.O.P.No.3125 dated 03.12.1964. However, in the light of the judgment of the Hon'ble Supreme Court in the case of *Associated Cement Companies*, the petitioner may still be entitled to claim set off of the Entry Tax paid while working out the tax payable under TNGST Act. It thus appears that the contention of the petitioner that the entire exercise may be revenue neutral if one takes into account the entitlement to set-off the Entry Tax payable while working out the tax payable under the TNGST Act is relevant. Revenue Neutral is an aspect which Courts have found to be relevant while enforcing demands. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

i) *Nirlon Ltd. v. CCE*, (2015) 14 SCC 798 : 2015 SCC OnLine SC 410 at page 801

"7. We have ourselves indicated that the two types of goods were different in nature. The question is about the intention, namely, whether it was done with bona fide belief or there was some mala fide intentions in doing so. It is here we agree with the contention of the learned Senior



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Counsel for the appellant, in the circumstances which are explained by him and recorded above. It is stated at the cost of repetition that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty."

(emphasis supplied)

ii) CCE v. Narmada Chematur Pharmaceuticals Ltd., (2005) 10 SCC 123 : 2004 SCC OnLine SC 1529 at page 123

"1. The facts in this case are similar to those dealt with by this Court in CCE v. Narayan Polyplast [(2005) 10 SCC 121] except that the period in question is August 1997 to September 1997. The grievance of the appellant is that the appellant had wrongly availed of the MODVAT credit and was liable to pay the sum amounting to Rs 6,10,580. It is stated by the learned counsel appearing on behalf of the assessee that the excise duty paid and MODVAT credit availed of were identical. Therefore the consequences of payment of excise duty after availing of MODVAT credit was revenue neutral. The appeals are accordingly dismissed. If upon verification, the submission of the respondent is found to be incorrect, liberty is granted to the appellant to mention these matters before this Court."

6.5. The impugned orders of assessment having not considered the petitioner's entitlement to set off / reduction to the extent of tax paid under the Entry Tax Act while working out the tax payable by it under the General Sales Tax Act and the relevance / applicability of the principle of Revenue Neutrality stands vitiated for failing to take into account relevant aspect/factors thereby warranting reconsideration of the issue.

7. Now coming to the issue of limitation, both the Petitioner and the Respondents have placed reliance on Section 10 of the Entry Tax Act, though they take positions which are diametrically opposite viz., that the order is



barred by limitation by the Petitioner and that it is not so by the Respondent. It may thus be necessary to take a closer look at Section 10 of the Entry Tax Act which reads as under:

"10. Tax authorities, returns, assessments, payments and recovery.- (1) *Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, inspect, search, seize, confiscate, collect and enforce payment of any tax under the General Sales Tax Act shall assess, reassess, inspect, search, seize, confiscate, collect and enforce payment of tax, including any interest or penalty, payable by a dealer, an importer under this Act as if the tax or interest or penalty by such importer under this Act is a tax or interest or penalty payable under the General Sales Tax Act, and for this purpose they may exercise all or any of the powers they have under the General Sales Tax Act; and the provisions of the General Sales Tax Act, including provisions relating to returns, provisional assessment, advance payment of tax, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, reviews, references, refunds, rebates, penalties, charging or payment of interest, inspection of the premises of transporters, goods/vehicles, business premises, search of the residential accommodation, seizure and confiscation of unaccounted for scheduled goods, seizure of documents, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly.*

(2) *All the provisions relating to offences, interest and penalties including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence of the General Sales Tax Act shall, with necessary modifications, apply in relation to the assessment, re-assessment determination of the value or the fair market price of goods, collection and enforcement of payment of any tax required to be collected under this Act, or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under the General Sales Tax Act."*

7.1. A reading of the above provisions would show that the provisions of



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the TNGST Act relating to assessment, reassessment, inspection, search, seizure, payment of taxes etc., is incorporated by reference to the Entry Tax Act. The above position is not disputed rather conceded to by both sides. Importantly, Section 10 of the Entry Tax Act opens with the following set of expressions viz., "*subject to the other provisions of this Act and the rules made thereunder*". The above set of expressions would mean that in the event of any irreconcilable conflict between the provisions or rules under the Entry Tax Act/Rules occupying a particular field and the TNGST Act / Rules, the former i.e., Entry Tax Act/ Rules would prevail. That being the case one may have to enquire as to whether there are any provisions governing assessment/ assessment of escaped turnover / reassessment under the Entry Tax Act. On gleaning through the provisions/ Rules of the Entry Tax Rules, I find that Rule 4 of the Entry Tax Rules provides for assessment of Tax on the basis of the return if on enquiry it is found to be correct and complete, it also provides that if the return appears to be incorrect or incomplete, an assessment including best judgment shall be made after giving the importer an opportunity. Thus original assessment would be governed by Rule 4 of Entry Tax Rules.

7.2. Importantly, there is no provision enabling the assessment of escaped value of scheduled goods or reassessment under the Entry Tax Act. In the absence of any provision or rule under the Entry Tax Act/Rules to assess



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escaped value of scheduled goods, the same would be governed by the provisions of the TNGST Act which stands incorporated by reference to the Entry Tax Act by virtue of Section 10 of the Entry Tax Act.

8. That leads one to the question as to the nature of the impugned order. It is undisputed that there has been no assessment made under the Entry Tax Act, prior to the impugned order. There are possibly two views as to the nature of the impugned orders viz.,

- a) That the assessments are in the nature of the original assessment (or)
- b) The impugned orders relates to the assessment of value of scheduled goods which has escaped assessment.

9. I shall now proceed to examine the consequences that would follow in both the scenarios.

A. Impugned Orders Assumed to be Original Assessment:

Now assuming that the impugned assessment is original assessment and thus governed by Rule 4 of Entry Tax Rules. Rule 4 of Entry Tax Rules does not prescribe any limitation. It is trite law that if the statute does not prescribe any limitation for initiating a particular action or passing an order, the same must be done/performed within a reasonable period. What would constitute reasonable period is for the courts to decide depending on the scheme and



nature of the Act, right and liabilities thereunder. In this regard it may be relevant to refer to the following judgments:

i) State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., reported in (2007) 11 SCC 363:

“17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefore, the same would not mean that the suo motu power can be exercised at any time.

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.”

(ii) S.B. Gurbaksh Singh v. Union of India, reported in (1976) 2 SCC 181:

“15....It may well be that for an exercise of the suo moto power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case.”

9.1. That leads one to the question as to what would constitute reasonable period for the purpose of making assessment under Rule 4 of Entry Tax Rules. While on the issue of whether the impugned orders were made within a reasonable period, it may be necessary to note that the vires of the Entry Tax Act, was challenged before this Court and *vide* judgment dated 22.03.2007 it was held to be ultra vires. The State carried the matter in appeal to the Supreme Court. The SLP came up for hearing on 05.09.2007 as would be evident from the Circular dated 03.10.2007 and the validity was upheld



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vide order dated 23.08.2017.

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9.2. Against this background the question is whether the above period spent before the Supreme Court in deciding the vires of Entry Tax Act, ought to be excluded while determining what would constitute reasonable period for the purpose of assessment under Rule 4 of the Entry Tax Rules.

If the above period is not excluded then the time taken for initiation of impugned assessments would be as under:

S.No.	A.Y.	Last date of Return	Date of Notice	Time between notice and Return
1.	2003-2004	01.04.2004	02.12.2016	12 Y 08 M 1 D
2.	2004 -2005	01.04.2005	23.11.2016	11 Y 7 M 22 D
3.	2005-2006	01.04.2006	23.11.2016	10 Y 7 M 22 D
4.	2006-2007	01.04.2007	12.10.2020	13 Y 6 M 11 D

9.3. On the other hand if the above period is excluded the Table below would reveal the time taken for initiating the impugned assessments under the Entry Tax Act :

S.No.	A.Y.	Last date of Return	Date of Notice	Time between notice and Return	Time spent in Supreme Court i.e. 03.10.2007 to 23.08.2017	Period exhausted in limitation
1.	2003-2004	01.04.2004	02.12.2016	12 Y 08 M 1 D	9 Y 10 M 20 D	2Y 09M 12 D



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2.	2004-2005	01.04.2005	23.11.2016	11 Y 7 M 22 D	9 Y 10 M 20 D	1Y 09M 02 D
3.	2005-2006	01.04.2006	23.11.2016	10 Y 7 M 22 D	9 Y 10 M 20 D	09M 02 D
4.	2006-2007	01.04.2007	12.10.2020	13 Y 6 M 11 D	9 Y 10 M 20 D	3Y 07M 22 D

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9.4. If the time spent before the Supreme Court in resolving the issue of validity/vires of the Entry Tax is excluded the impugned proceedings are initiated within a reasonable peirod. On the other hand, if it is not so excluded, the initiation of impugned proceedings appears to suffer from the vice of unreasonable delay and thus arbitrary thereby falling foul of Article 14 of the Constitution.

"Section 16(5) In computing the period of limitation for assessment or reassessment under this section, the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the [Special Tribunal]or the Supreme Court involving a question of law having a direct bearing on the assessment or reassessment in question, shall be excluded."

9.5. It is not in dispute that the provisions of Section 16 of the TNGST Act, would apply to assessment of escaped value of goods imported as well as reassessment of Entry Tax Act, by virtue of Section 10 of the Entry Tax Act. It is submitted by the learned counsel for the respondent by placing reliance on Section 16(5) of the TNGST Act, the time spent before the Supreme Court ought to be excluded even while determining whether the assessments are made within a reasonable period in terms of Rule 4 of the Entry Tax Rules. Two questions would follow viz., whether Section 16 (5) of the TNGST Act,



would have relevance in determining what would constitute reasonable period for the purposes of making an assessment under Rule 4 of Entry Tax Rules.

Secondly, whether time spent in challenging validity of a levy would be excluded under Section 16 (5) of the TNGST Act. It may be relevant to extract Section 16(5) of the TNGST Act which reads as under:

"Section 16(5): In computing the period of limitation for asesment or reassessment under this section, the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the (Special Tribunal) or the Supreme Court involving a question of law having a direc bearing on the assessment or reassessment in question, shall be excluded."

9.6. I shall proceed to deal with the second question first viz., whether time spent in challenging validity of a levy would be excluded under Section 16 (5) of the TNGST Act. A reading of the above provision would show that in computing the limitation for the purpose of assessment / reassessment under Section 16 of the Act, the time during which any appeal or other proceeding in respect of "any other assessment or reassessment", was pending before the Hon'ble Supreme Court, involving a question of law having a direct bearing on the assessment ought to be excluded. The following expressions viz., "assessment" and "in respect of" employed in Section 16(5) of the TNGST Act are relevant and requires closer scrutiny. The question that arises is whether a question relating to validity of the levy can be understood as relating to an "assessment" or "in respect of" an assessment. The above issue becomes



relevant for the revenue would have the benefit of exclusion of time provided under Section 10 of Entry Tax Act read with Section 16(5) of the TNGST Act, while computing the period of limitation for assessment / reassessment under Section 10 of Entry Tax Act read with Section 16 of the TNGST Act, only if it shown that the question in any appeal or other proceeding in respect of any other assessment or reassessment involves a question that would have a direct bearing on the assessment or reassessment. The expression "assessment" while being employed under Section 16(5) of the TNGST Act, must be understood as having been used in a comprehensive sense which would also include issues relating to the validity of the levy. The above expressions "*in respect of*", has come up for consideration on more than one occasion and it has been held it is used in an expansive sense and equivalent of "being connected with". In this regard, it may be relevant to refer to the following judgments :

a) C.A. Abraham v. ITO, (1961) 2 SCR 765:

"5...The expression "assessment" used in these sections is not used merely in the sense of computation of income and there is in our judgment no ground for holding that when by Section 44, it is declared that the partners or members of the association shall be jointly and severally liable to assessment, it is only intended to declare the liability to computation of income under Section 23 and not to the application of the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof....

6...In interpreting a fiscal statute, the court cannot proceed to make good deficiencies if there be any : the court must interpret the statute as it stands and in case of doubt in a manner favourable to the taxpayer. But where as in the present case, by the use of words capable of comprehensive



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import, provision is made for imposing liability for penalty upon taxpayers guilty of fraud, gross negligence or contumacious conduct, an assumption that the words were used in a restricted sense so as to defeat the avowed object of the Legislature qua a certain class will not be lightly made."

b) Union of India v. Vijay Chand Jain, AIR 1977 SC 1302:

"3.....The words "in respect of" admit of a wide connotation; In the context of Section 23 (1-B), the expression means "being connected with". Therefore, the currency in respect of which there has been a contravention covers the sales proceeds of the foreign currency. The intention of the legislature is clear from the explanation to sub-section (1-B) of Section 23."

9.7. If we apply the above construction placed on the expressions "assessments" and "in respect of", while interpreting section 16 (5) of the TNGST Act, it is clear that any proceeding connected with the assessment would be covered by Section 16(5) of the TNGST Act. To my mind, there is no doubt in the light of the above discussion that the validity of the levy is certainly connected with the assessment and thus the time spent challenging the validity of the levy ought to be excluded while reckoning the limitation, for assessment of escaped turnover or value of Schedule goods or reassessment ought to be excluded in terms of Section 10 of Entry Tax Act read with Section 16(5) of TNGST Act.

9.8. I shall now examine the first question as to whether the exclusion provided under Section 16(5) of the TNGST Act ought to be read into Rule 4 of the Entry Tax Rules (or) relevant while determining as to what would



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constitute reasonable period for initiation of assessments under Rule 4 of the Entry Tax Rules. Though Section 16 of the TNGST Act does not deal with original assessment but with assessment of escaped value of goods imported and reassessments the same may have relevance in determining what would constitute reasonable period even for original assessment under Rule 4 of Entry Tax Rules inasmuch as to what would constitute reasonable period must be determined keeping in view the scheme of the Act. If one bears in mind that the Entry Tax Act provides for incorporation of the provisions of the TNGST Act in relation to assessment / reassessment, the exclusion in terms of Section 16(5) under the TNGST Act would have a bearing in determining what would constitute reasonable period even for making assessments under Rule 4 of Entry Tax Rules. It appears to me that the reasonable period for assessment may be understood as co-terminus with that of reassessment / assessment of escaped turn over under Section 16 of the TNGST Act read with Section 10 of the Entry Tax Act. I say this for the reason that one plausible view is that in the absence of a specific period for making an assessment the limitation for assessment of escaped turnover could be adopted as a reasonable period. In this regard, it may be useful to refer to the decision in *Bharat Steel Tubes Ltd. v. State of Haryana*, (1988) 3 SCC 478 : 1988 SCC (Tax) 409 at page 486.



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"14. But as we have said above, in the absence of any prescribed period of limitation, the assessment has to be completed within a reasonable period. What such reasonable period would be, would depend upon facts of each case. One view can be that it should be a period not exceeding five years as the legislature has fixed the limitation of five years for completing assessments in case of escaped turnover. "

(emphasis supplied)

9.9. Applying the above judgment of the Hon'ble Supreme Court to the provisions of the Entry Tax Act, it appears to me that the limitation provided under Section 16 of the Act is indicative of what would constitute reasonable period for the purpose of assessment under Rule 4 of the Entry Tax Rules. If the impugned orders of assessments are treated as original assessment under Rule 4 of Entry Tax Rules, which does not prescribe any limitation and thus ought to be made within a reasonable period. If one bears in mind the scheme of the Act and the judgments referred to supra and the facts of the case there is no doubt in my mind that the impugned orders of assessment are made within a reasonable period.

9.10. B. Impugned assessments – Reassessment / Assessments of escaped turnover:

I shall now proceed to deal with the contentions advanced by the learned



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counsel for the Petitioner/assessee that the provisions of Section 12C of the TNGST Act, would apply to Entry Tax. It was submitted that the assessments under Entry Tax Act, must be deemed to have been completed on 20.12.2006. In view thereof, any assessment of escaped value of Scheduled Goods or reassessment, must be made within the limitation of six years thereon i.e., 20.12.2006 as stipulated in Section 16 of the TNGST Act, which stands incorporated by reference to the Entry Tax Act. I am unable to agree with the contention that the impugned assessments are traceable to Section 12C of the Act, for the following reasons;

a) Section 12C of the TNGST Act is made with a view to enable smooth transition from General Sales Tax, which was primarily a single point levy to VAT regime. It may not have any applicability to the Entry Tax Act for the introduction of VAT regime did not have any impact on the Entry Tax Act.

b) In any event one of the conditions for the deeming under Section 12C of the TNGST Act, to operate is that the dealer should not have attempted to conceal or suppress tax liability in excess of twenty five thousand rupees in terms of Rule 15(5-E) (3) of the TNGST Act. However, the impugned orders finds there is suppression of liability in excess of Twenty Five thousand rupees and thus the above provision is inapplicable.

c) As discussed supra Section 10 of the Entry Tax Act, while providing



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that the provisions of the TNGST Act would stand incorporated by reference to the Entry Tax Act, however, has made it subject to the provisions under the Entry Tax Act/Rules. Rule 4 of the Entry Tax Rules governs assessment and thus the original assessment under the Entry Tax Act, ought to be made in accordance thereof. In other words the provisions of Section 12C of TNGST Act insofar as it relates to original assessment would not have any bearing while making original assessment under the Entry Tax Act.

9.11. In view of the above reasons it appears to me that Section 12C of the TNGST Act, may not have any relevance in determining whether the impugned orders of assessment are barred by limitation or otherwise for the above reasons.

9.12. I shall now examine the legality of the impugned orders assuming that the authority to make order under Rule 4 of the Entry Tax Rules stands exhausted having not been initiated/ exercised within a reasonable period. In that event, the impugned orders would be an assessment of escaped value of scheduled goods and governed by Section 10 of the Entry Tax Act read with Section 16 of the TNGST Act. Section 16(1) of the TNGST Act reads as under :



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"16. Assessment of escaped turnover. – (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the date of order of the final assessment by the assessing authority, determine to the best of its judgement the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of order of the final assessment by the assessing authority, reassess the tax due after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such re-assessment. "

9.13. The crucial expression is "escaped assessment", which had come up for consideration on numerous occasions and it was held that it would include cases where no assessment has been made within the prescribed period. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Ghanshyam Das reported in AIR 1964 SC 766* wherein while construing Section 11-A of the Central Provinces & Berar Sales Tax Act, 1947 it was held as under :

"8. The main question in the appeals is the true construction of the provisions of s. 11-A of the Act. The material provisions thereof may be set



out. They read:

Section 11-A (1): *If in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover of a dealer during any period..... has escaped assessment..... the Commissioner may, at any time within three calendar years from the expiry of such period proceed in such manner as may be prescribed to tax payable on any such turnover assess..... the tax payable on any such turnover*"

9. Under this section if the turnover of a dealer during any period has escaped assessment, the Commissioner may at any time within three calendar years from the expiry of such period proceed in the manner prescribed to assess the tax payable on the said turnover. The crucial expression for the present purpose is "escaped assessment". What does it mean? Does it include, as learned counsel for the appellant contends, a case where no assessment has been made at all or, as learned counsel for the respondent contends, take in only the post-assessment detection of evasion of tax? This problem has received the attention of Courts in different contexts.

10. In *Commissioner of Income-tax, Bombay v. Pirojbai N. Contractor* (1937) 5 I.T.R. 338 the words "escaped assessment" in the Indian Income-tax Act were defined. It was held therein that the said words were wide enough to include cases where no notice under section 22(2) of the Income-tax Act had been issued to the assessee and therefore his income had not been assessed at all under section 23 thereof. The said view, has been assumed to be correct by this Court in *Maharaj Kumar Kamal Singh v. Commissioner of Income-tax, Bihar & Orissa* [1959] Su. 1 S.C.R. 10. and *Maharajadhiraj Sir Kameshwar Singh v. State of Bihar* MANU/SC/0103/1959: [1959]371TR388(SC) and extended to cover a case where the first assessment was made in the course but a part of the income escaped therefrom. This Court, in *Commissioner of Income-tax, Bombay v. Narsee Nagsee & Co.* MANU/SC/0093/1960: [1960]401TR307(SC), construing the provisions of section 14 of the Business Profits Tax Act, 1947, reviewed the law on the subject and came to the following conclusion: "All these cases show that the words "escaping assessment" apply equally to cases where a notice was received by the assessee but resulted in no assessment at all and to cases where due to any reason no notice was issued to the assessee, and, therefore, there was no assessment of his income."

11. It is true that the said decisions were given with reference to either s. 34(1) of the Income-tax Act or s. 14 of the Business Profits Tax Act,



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but so far as the present enquiry is concerned the said sections are *pari materia* with section 11-A of the Act. In construing the meaning of the expression "escaped assessment" in s. 11-A of the Act there is no reason why the said expression should bear a more limited meaning than what it bears under the said two Acts. All the three Acts are taxing statutes and the three relevant sections therein are intended to gather the revenue which has improperly escaped. A division Bench of the Madras High Court in *The State of Madras v. Balu Chettiar* [1956] 7 S.T.C. 519, following the decision of a Full Bench of that Court, held that where an assessee did not file at any time a return of his turnover for a year and, therefore, there was no assessment made, the turnover escaped assessment. It was observed therein:

"Whether it was a case of omission or of deliberate concealment on the part of the assessee, he did not submit any return. It was his default that led to the escape of the turnover for 1951-52 from assessment to the tax lawfully due. It was the whole of the turnover for that year that escaped assessment."

12. It is not necessary to multiply citations. We, therefore, hold that the expression "escaped assessment" in s. 11-A of the Act includes that of a turnover which has not been assessed at all, because for one reason or other no assessment proceedings were initiated and therefore, no assessment was made in respect thereof."

9.14. Assuming that the impugned proceedings qualify as assessments of escaped value of scheduled good in which event it would be governed by Section 10 of the Entry Tax Act read with Section 16 of the TNGST Act. Then applying the exclusion provided under Section 16 (5) of the TNGST Act, the impugned orders of assessment are within period stipulated under Section 10 of the Entry Tax Act read with Section 16 of the TNGST Act and thus the plea of the impugned orders being barred by limitation is liable to be rejected.



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9.15. Before I close it may be necessary to deal with the following judgments relied upon by the petitioner in support of his contention that the time spent before the Supreme Court in resolving the vires of the Entry Tax Act cannot be excluded.

a) Supdt. of Taxes v. Onkarmal Nathmal Trust, (1976) 1 SCC 766 :

This was a case where the Assam Taxation (on Goods carried by Road or on Inland Water- ways) Act, 1954 was declared ultra vires by the Hon'ble Supreme Court. A new Act was passed by the same name in 1961 and published in the Gazette on 14.04.1961. The vires of the new Act was challenged in the High Court. The High Court passed an order staying all proceedings, which stay continued till 01.08.1963 when the new Act was also held ultra vires. The matter was carried in appeal before the Hon'ble Supreme Court and an interim stay of operation of judgment of High Court dated 01.08.1963 was granted thereafter stay was made absolute on 29.01.1965 subject to the condition that the assessment proceedings in respect of respondents would continue but no recovery would be made, and the respondents could initiate assessment proceedings in respect of those assesseees. Notices were issued by the State after the interim order was made absolute on 29.01.1965. But by then notices were barred by limitation. Question arose as to whether in view of the interim order, the period during



such interim order must be excluded in reckoning limitation, the above contention was rejected holding as follows:

"17. The first contention on behalf of the State that it became impossible for the State to issue notice under Section 7(2) of the new Act within two years of the expiry of the period of return is unsound on principle and facts. The maxim lex non cogit ad impossibilia means that the law does not compel a man to do that which he cannot possibly perform. In the present appeals, the applications were moved in the High Court for stay of proceedings. The respondents challenged the validity of the Act, and, therefore, asked for an injunction restraining the State from taking proceedings under the Act. At no stage, did the State ask for variation or modification of the order of injunction. It is well known that if it is brought to the notice of a court that proceedings are likely to be barred by time by reason of any order of injunction or stay the court passes such suitable or appropriate orders as will protect the interest of the parties and will not prejudice either party. Even when certificate to appeal to this Court was granted on August 1, 1963, the State did not ask for any order for stay of operation of the judgment. That is quite often done. For the first time, on August 10, 1964 the State filed an application for stay of operation of the judgment of the High Court. The State did not take steps at the appropriate time. This Court on October 28, 1964 granted an interim order staying the operation of the High Court judgment. The interim order was made absolute on January 28, 1965 with certain conditions. The State cannot take advantage of its own wrong and lack of diligence. The State cannot contend that it was impossible to issue any notice within the period mentioned in Section 7(2) of the new Act. The State did not endeavour to obtain appropriate orders to surmount the difficulties by reason of the injunction against taking steps within the time contemplated in Section 7(2) of the new Act. The State is guilty of default. The State had remedies open to take steps by asking for modification of the order. The State had to assert the right that the State was entitled to demand taxes and the respondent was liable to pay the same. The State followed the policy of inactivity. Inactivity is not impossibility. The order of injunction is not to be equated with an act of God or an action of the enemy of the State or a general strike."

(emphasis supplied)

b) Gokak Patel Volkart Ltd. v. CCE, (1987) 2 SCC 93

This was a case where the High Court granted an interim order only



with regard to a stay of collection of duty but not against the issuance of notice. It was thus held that while calculating limitation, the period during which interim stay was in force cannot be excluded.

c) Metal Forgings Vs Union of India reported in 2002 (146) E.L.T. 241(S.C.)

wherein it was held as under:

" It is a settled position in law that unless and until there is a specific injunction/stay granted by a competent court which restrains an authority, from issuing the required notice, merely because some interim order is made, the authorities empowered to issue such notice cannot refrain from issuing the required notice within the period of limitation nor can they plead the existence of such interim order as a defence against the plea of limitation".

d) Commissioner of Central Excise, Calcutta Vs. Hindustan National Glass & Indus Limited reported in 2005 (182) E.L.T. 12(S.C.):

Interim orders issued by High Court related to realization and not levy. While holding that the issuance of levy and collection are two distinct and separate concepts. It was found that when High Court stayed only recovery/collection, it was open to issue show cause notice and thus it was not open to the revenue to claim exclusion of the period of above interim order in reckoning limitation.



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9.16. The above judgments may not have any relevance to the present facts inasmuch as this Court had declared the levy to be ultra vires and thus unless it was set-aside/ overturned in appeal the question of issuing notice initiating assessments may not arise. In any event when there is express provision under Section 16 (5) of the TNGST Act providing for exclusion of time during which any appeal or proceedings in respect of any other assessment or re-assessment is pending before the Supreme Court involving a question of law having a directed bearing on the assessment or re-assessment in question, the reliance on the above judgments is misplaced/misconceived. In none of the cases, relied upon by the Petitioner was there a provision akin to Section 16 (5) of the TNGST Act.

10. In the light of the above discussion, it is open to the Assessing Authority to proceed to make the assessment / reassessment and while doing so, it would also bear in mind the principles laid down by the Hon'ble Supreme Court in the case of *Associated Cement Companies* reported in 137 STC 389 with regard to the set off of the entry tax paid while working out the tax payable under the TNGST Act and also the principles of Revenue Neutrality, insofar as they may be applicable to the present case.



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11. With the above observation, the matters are remitted back for reconsideration in the light of the observations made herein above. The Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11.12.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:

1. The Assistant Commissioner (ST)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai 600 031.
2. The State of Tamil Nadu,
Rep. By its Secretary to Government,
State Goods and Service Tax Department,
Fort St. George, Chennai 600 009.



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MOHAMMED SHAFFIQ, J.

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W.P. Nos.18187, 18189, 18191 and 18192 of 2021 and
W.M.P. Nos.19414, 19416, 19418 and 19419 of 2021

11.12.2023