



W.P.Nos.16696 and 16702 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.08.2024
Pronounced On	24.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.16696 and 16702 of 2021

and

W.M.P.Nos.17679 and 17681 of 2021

EID Parry India Limited,
Represented by its Authorised Signatory
L.Jayaprakash (Senior Manager)

... Petitioner in both W.Ps

Vs.

1.The Deputy Commissioner (S.T.)-I,
Large Taxpayers Unit,
Integrated Buildings,
Commercial Taxes and Registration Department,
South Tower, 4th Floor, Block No.19,
Government Farm Village,
Guindy Taluk, Nandanam, Chennai – 600 035.

2.The Commissioner of Commercial Taxes,
Commercial Taxes Ezhilagam,
Chennai – 600 005.

... Respondents in both W.Ps

Prayer in W.P.No.16696 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Order bearing Entry Tax No.100006/2003-2004 dated 14.07.2021 passed by the first respondent and quash the same.



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Prayer in W.P.No.16702 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Order bearing Entry Tax No.100006/2004-2005 dated 14.07.2021 passed by the first respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran
(In both W.Ps) for M/s.Lakshmi Kumaran and
Sridharan Attorneys

For Respondents : Mr.T.N.C.Kaushik
(In both W.Ps) Additional Government Pleader

COMMON ORDER

By this Common Order, the respective Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the Impugned Assessment Orders dated 14.07.2021 passed by the first respondent. The Assessment Orders have been passed for the Assessment Years 2003-2004 and 2004-2005 whereby demand under Entry Tax under the provisions of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 [in short “Entry Tax Act, 2001”] has been confirmed.



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3. The Impugned Assessment Order dated 14.07.2021 passed for the Assessment Year 2004-2005 has assessed the petitioner to entry for the first time based on the first Notice dated 10.09.2020 and the second Notice dated 05.01.2021 in exercise of Rule 4 of the Tamil Nadu Tax on Entry of Goods into Local Area Rules, 2001 [in short “Entry Tax Rules, 2001”] which deals with assessment under the Entry Tax Act, 2001.

4. The details of the Impugned Assessment Orders dated 14.07.2021 and the tax imposed and the penalty levied are as under and Details of Demand confirmed by the respondents for the respective Assessment Years read as under:-

W.P.No.	Date of Notice	Date of Assessment Order	Total Demand (in INR)		Assessment Year
			Tax	Penalty	
16696 of 2021	10.09.2020	14.07.2021	8,28,151	6,21,113	2003-2004
16702 of 2021	10.09.2020	14.07.2021	35,47,490	44,34,362	2004-2005
			43,75,641	50,55,475	

	W.P.No. 16696 of 2021	W.P.No. 16702 of 2021	Total
	Assessment Year 2003-2004	Assessment Year 2004-2005	
Tax due reported as per returns	Rs. 40,85,476/-	Rs. 61,80,239/-	
Taxable Turnover brought into assessment	Rs. 69,01,259/-	Rs. 2,95,62,419/-	



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	W.P.No. 16696 of 2021	W.P.No. 16702 of 2021	Total
due to incorrect returns and omission of payment of tax			
Tax Due (including the Actual Suppression)	Rs. 49,13,627/-	Rs. 97,27,729/-	
Tax paid as per returns	Rs. 40,85,476/-	Rs. 61,80,239/-	
Balance as as per the Assessment order (Tax A)	Rs. 8,28,151/-	Rs. 35,47,490/-	Rs.4,375,641.00
Penalty as per the Assessment order (Tax B)	Rs.621,113.00	Rs.4,434,362.00	Rs.5,055,475.00

The Impugned Assessment Orders preceded two notices dated 10.09.2020.

5. Both the Impugned Assessment Orders almost read identically.

Discussion in the Impugned Assessment Orders reads as under:-

“Discussion and Findings.

*1. With reference to the reply-objections as stated in (A) above, it is to be stated that the procedures for filing returns and for the payment of tax have been laid down under Rule 3 of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001. Further, when the returns filed by the dealers are found to be incorrect or incomplete, then Rule 4 of the Entry Tax-Goods, with the same procedures as laid down under the parent Act TNGST, ibid, is the provision to complete the assessment of the dealers. Section 10 of the Entry Tax-Goods Act clearly stipulates mutatis-mutandis concept. **Based upon the materials gathered during the course of inspection of the place of business of the dealers and on the finding of the fact that the dealer had not paid entry tax for certain goods imported from up countries, proper assessment proceedings have been initiated under Rule 4 of the said Act. The dealers themselves***



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accepted that Rule 4 has not prescribed any time-limit for doing the assessment based on returns filed. Hence, there is no necessity to discuss about any reasonable period for completing the assessment based on the returns filed which are found to be incorrect by not declaring certain imported goods within the tax net under the Entry Tax-Goods Act. Therefore, the proceedings initiated against the dealers are perfectly valid in law."

6. The penalty was justified with the following observations:-

Since the balance is 57% of the tax paid as per return, the penalty is determined at 125% of the balance as per Section 10 of the Entry Tax-Goods Act read with Section 12(3)(b)(iv) of the TNGST Act, 1959.

7. The assessments were completed on the ground that the returns filed by the petitioner were incorrect and that the petitioner has not paid entry tax for certain goods imported from up countries.

8. The challenge to the Impugned Assessment Orders are primarily on the ground that confirmation of demand for the respective Assessment Years viz., 2003-2004 and 2004-2005 are long after the period covered by the Impugned Assessment Orders and was therefore contrary to the relevant precedents in terms of the decision of the Hon'ble Supreme Court in **State of Punjab Vs. Bhatinda District Co-operative Milk Producers Union Limited**, 2007 (217)



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E.L.T. 325 (S.C.) / (2007) 11 SCC 363, wherein the Hon'ble Supreme Court

held that when no period of limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period.

9. Under Section 11(3) of the Punjab General Sales Tax Act, 1948, the assessment was to be completed within a period of three years. The case dealt with an assessment under Section 11(6) and Section 21 of the Punjab General Sales Tax Act, 1948 after the assessment was completed.

10. Section 11(3), Section 11(6) and Section 21 of the Punjab General Sales Tax Act, 1948 reads as under:-

Section 11(3)	On the day specified in the notice or as soon as afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, [pass an order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period
Section 11(6)	If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the



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	amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.
Section 21	(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit. (2) The State Government may by notification confer on any Officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification. (3) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1) within ninety days from the date of communication of the order may call for and examine the record of any such case and pass such orders thereon as it thinks just and proper. (4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

11. Under Sub-Section 6 to Section 11 of the Punjab General Sales Tax Act, 1948, the period of limitation for completing the assessment was five years where the Assessing Authority was satisfied that any dealer who was liable to



pay tax under the Act had failed to apply for registration, the Assessing Authority could proceed to assess the tax to the best of his judgment of the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods after giving the dealer a reasonable opportunity of being heard.

12. In Paragraphs 14 and 15 from **Bhatinda District Co-operative Milk Producers Union Limited's case** (referred to supra), dealt with a case for revision under Section 21 of the Punjab General Sales Tax Act, 1948. The Hon'ble Supreme Court concluded as follows:-

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

17. 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.

18. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided



for in sub-section (6) of Section 11 of the Act is five years.

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22. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us hereto before, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4-9-2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a lapse of 5 ½ years.”

13. Thus, orders have been passed within a reasonable period. However, what shall be a reasonable period was held would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. The above conclusion was based on the following decisions of the Hon'ble Supreme Court:-

- i. **The State of Orissa Vs. Debaki Debi & others,**
[AIR 1964 SC 1413]
- ii. **S.B.Gurbaksh Singh Vs. Union of India & others,**
[1976 (37) SC 425]
- iii. **Commissioner of Sales Tax, Orissa & another Vs. M/s.Halari Store etc.,** [(1997) 7 SCC 715].

14. Learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in **Bharat Steel Tubes Limited and another Vs. State of Haryana and another,** (1988) 3 SCC 478 wherein,



Hon'ble Supreme Court once again reiterated the above position with the

following observations:-

“14. The short question that really falls for examination in this case is whether an order of assessment under sub-section (3) of Section 11 of the Punjab Act or Section 28(3) of the Haryana Act can now be completed or would that be barred by limitation. Undoubtedly, the assessment proceedings have been very delayed. As the material placed before us shows, the assessee had gone before different courts from time to time to ask for injunction against the completion of assessment but that trial appears to have started in December 1980 when a suit was filed and injunction was obtained. Though notices were issued under Section 11(2) of the Punjab Act or Section 28(2) of the Haryana Act within a reasonable period from the filing of returns for the further action has not been taken by the assessing officer to complete the assessments. 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 year as the legislature has fixed the limitation of five years for completing assessments in case of escaped turnover. Unless there be an assessment made soon after the period to which such assessment relates, the question of consideration of escapement would indeed become difficult to consider and examine. We are, however, not inclined to extend into a situation like the one before us, a period of limitation for completion of assessments under Section 11(3) or 28(3) of the respective Acts. The assessee has made returns for all the quarters and must have paid its admitted tax. Now that the assessing authority intends to complete assessments under section 11(3) of the Act, we see no prejudice to the assessee if the assessing authority is permitted to complete the assessment now. On the other hand, if no assessment is made an anomalous situation might arise and even though the assessee has collected the sales tax on its sale turnover, it might raise a claim for refund of it in the absence of



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an assessment. We do not propose to create such a situation. It would suffice to say that in the situation which has arisen in the matter before us, it would be appropriate to call upon the assessing authority to complete all these pending assessments within a total period of four months from today on the basis of available material in the record before him and such other material as the authority may obtain. We, however, make it clear that such assessment has to be only under Section 11(3) of the Act.

*15. Before we part with this case, we would like to indicate that assessment of tax should be completed with expedition. It involves the revenue to the State. In the case of a registered dealer who collects sales tax on behalf of the State, there is no justification for him to withhold the payment of the tax so collected. **If a timely assessment is completed, the dues of the State can be conveniently ascertained and collected. Delay in completion of assessment often creates problems. The assessee would be required to keep up all the evidence in support of his transactions.** Where evidence is necessary, with the lapse of time, there is scope for its being lost. Oral evidence as and when required to be produced by the assessing authority may not be available if a long period intervenes between the transactions and the consideration of the matter by the assessing authority. Long delay thus is not in the interest of either the assessee or the State. In view of the fact that a period of limitation has been prescribed for bringing the escaped turnover into the net of taxation, such an eventuality cannot be grappled with appropriately unless timely assessment is completed. In several taxing statutes, even in a situation like this, where assessment under Section 11(3) of 28(3) of the respective Acts is contemplated, a period of limitation is provided. Until by statute, such a limitation is provided, it is proper for the State Governments to require, by statutory rules or appropriate instructions to ensure completion of assessments with expedition and reasonable haste but subject to rules of natural justice.”*



15. It is submitted without prejudice that Section 10 of the Entry Tax Act, 2001 borrows the machinery provision pertaining to assessment from the Tamil Nadu General Sales Tax (TNGST) Act, 1959. Therefore, the powers of the first respondent to assess the petitioner is restricted in scope by provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959. In this light, it is relevant to note that, as per Section 40(2)(b) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959, a registered dealer is statutorily required to maintain books of accounts only for a period of five years. In this regard, reliance is placed on the decision of the Kerala High Court in **Merchem India (P) Ltd., Vs. CTO**, 2020 (11) TMI 25 wherein the Hon'ble Court held that the period of five years for which Rule 58(20) of the Kerala Value Added Tax Rules casts an obligation on a registered dealer to maintain books of accounts may be taken as a safeguarding factor to limit the power of reassessment under Section 42 of the Kerala Value Added Tax Act, 2003. Based on the aforesaid decision, it is submitted that the Impugned Assessment Orders suffers from lack of jurisdiction.

16. It is submitted that, the objection that the Impugned Assessment Orders have been passed beyond reasonable period was raised before the first respondent. However, the Impugned Assessment Orders grossly disregards the



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submissions without any reason or justification. Further, the Impugned Assessment Orders also fails to appreciate the binding precedents laid down by the Hon'ble Supreme Court. Thus, it is submitted that the Impugned Assessment Orders ought to be quashed for pre-judging the issue in support of the revenue.

17. It is submitted that the Impugned Assessment Orders seek to justify assessment on the premise that the instant proceeding is one of original assessment and not that of reassessment. Further, it proceeds on the premise that no outer time limit has been prescribed for conducting original assessment under Rule 4 of the Entry Tax Rules, 2001. In this regard, it is submitted that the petitioner only stresses on the reasonable period for assessment purpose and not merely on invocation of wrong provision. To this extent, it is submitted that the Impugned Assessment Orders, in not addressing the petitioner's submissions, is arbitrary and completely revenue biased.

18. It is submitted that the Impugned Assessment Orders record that the assessment proceedings were kept pending in view of the fact that validity of the Entry Tax Act and Entry Tax Rules remained pending before higher judicial fora. Such an act does not have any statutory backing and an inordinate delay



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in adjudication has consistently been struck down by Courts. With regard to

this proposition, reliance is placed on the decision of the Gujarat High Court in

Shiv Kripa Processors P. Ltd. Vs. Union of India, 2018 (362) [E.L.T.](#) 773

(Guj) and **Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India**, 2018 (12)

G.S.T.L. 200 (Bom.) wherein the Hon'ble High Courts have deprecated the

practice of keeping disputes pending for reason that the *lis* is pending before a

higher forum. Thus, it is submitted that the Impugned Assessment Orders are

violative of principles of natural justice as the petitioner would have no

opportunity, much less a reasonable and fair one to defend the proceedings.

19. It is submitted without prejudice that the entire assessment proceedings initiated is premature. In **Jindal Stainless Limited and another**

Vs. State of Haryana and others, 2016 (11) TMI 545 SC (LB), the Hon'ble

Supreme Court only laid down the principles for determining whether entry tax is discriminatory or not and did not decide validity of any Enactment as such.

It was held that the factum of whether or not State Entry Tax enactments are discriminatory has to be examined only by the respective State High Courts.

Subsequent to the decision in **Jindal Stainless Limited case** (referred to supra), the constitutionality of the Entry Tax Act is yet to be determined by this

Hon'ble Court in W.P.No.8109 of 2005, and therefore, it is submitted that the



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Impugned Assessment Orders are *ipso facto* premature and ought to be quashed.

20. Learned counsel for the petitioner has placed reliance on the decision of the Division Bench of this Court in **M/s.J.M.Baxi & Co., Vs. The Government of India, Represented by the Joint Secretary, Ministry of Finance, New Delhi and others**, 2016 SCC Online Mad 3176.

21. The learned Additional Government Pleader for the respondents submitted that based upon the materials gathered during the course of inspection of the place of business of the dealers and on the finding of the fact that the dealer has not paid entry tax for certain goods imported from countries, proper assessment proceedings have been initiated under Rule 4 of the Entry Tax Rules, 2001. The dealers themselves accepted that Rule 4 of the Entry Tax Rules, 2001, has not prescribed any time-limit for doing the assessment based on returns filed. Hence, there is no necessity to discuss about any reasonable period for completing the assessment based on the returns filed which are found to be incorrect by not declaring certain imported goods within the tax net under the Entry Tax Act, 2001. Therefore, the proceedings initiated against the dealers are perfectly valid in law.



22. It is submitted that the petitioner/dealer had been informed that nowhere in the notices issued to the dealers for the assessment proceedings under the Entry Tax Act, 2001, it was stated that it is the re-assessment after the original assessment has already been made. It was again reiterated that it is the proceedings for the original assessments based on the returns filed, which are found to be incorrect, and this is contemplated under Rule 4 of the Entry Tax Rules 2001 read with Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959, after a prolonged battle before the Higher-Judicial Forums in India and finality reached in the year 2016-2017 only. Further, it is to be pointed out that while issuing notices for the assessment and proposing penalty, an inadvertent mistake has crept in, which is, instead of mentioning the Section 12(3) on the Tamil Nadu General Sales Tax (TNGST) Act, 1959, it has been wrongly mentioned as Section 16(2) or 16(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959. However, it is a settled position of law that mere wrong quoting of the section or provisions will not vitiate any proceedings in the tax assessments which otherwise fit in the relevant laws.

23. It is submitted that the case laws cited by the dealers are related to the re-assessments or escaped assessments (107 STC 210 and 68 STC 25) and the case law 14 STC 976 refers to the limitation for invoking the assessments.

These case laws cited by the dealers would not come into their rescue because



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the assessment now being carried out is not a re-assessment or escaped assessment. It is the original assessment based upon the incorrect returns filed.

From the co-joint reading of Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 and Section 10 of the Entry Tax Act, 2001 and Rule 4 of the Entry Tax Rules 2001, one can understand the legislative intention that such assessment is not time bounded.

24. It is submitted that the proposed levy of penalty under Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 read with Section 10 of the Entry Tax Act, 2001, it has no time limit when it is taken along with the original assessment proceedings. The time limit has been stipulated in Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959, only when a separate proceeding has been initiated for levy of penalty on the assessment under Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

25. It is submitted that the petitioner/dealer in their reply/objections had not filed any materials or documents that the assessments should not be carried out. Even though they accepted that it is settled by the Hon'ble Supreme Court in **M/s.Jindal Stainless Limited and another Vs. State of Haryana and others**, 2016 (11) TMI 545 SC (LB), they had not produced any documents or



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order from this Court to stay or otherwise stall assessment proceedings.

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26. It is respectfully submitted that the petitioner/dealer had imported sanitary wares such as triangles dual flush, ivory, basin, clean pedestal white, etc., from China during the years 2003-2004 and 2004-2005 but not paid entry tax as per the provisions of the Entry Tax Act, 2001. Hence, notices were issued to the petitioner/dealer on 10.09.2020 and 05.01.2021 for above said years proposing entry tax on the import of goods from other countries and penalty was also proposed as per Section 4 of the Entry Tax Act, 2001 read with Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959, for which, the petitioner/dealer had filed their objections vide their letters dated 06.11.2020 and 22.03.2021. Objections filed by the dealers were examined and overruled and accordingly, the proposal for levy of tax and penalty has been confirmed by the first respondent *vide* impugned proceedings dated 14.07.2021. Hence, the order passed by the first respondent is as per the law.

27. It is respectfully submitted that the procedures for filing returns and for the payment of tax have been laid down under Rule 3 of the Entry Tax Rules, 2001. Further, when the returns filed by the dealers are found to be



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incorrect or incomplete, then Rule 4 of the Entry Tax Rules, 2001, with the same procedures as laid down under the parent Act TNGST, *ibid*, is the provision to complete the assessment of the dealers. Section 10 of the Entry Tax Act, 2001 clearly stipulates the concept *mutatis-mutandis*.

28. It is respectfully submitted that according to Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959, which is relevant for making assessment of a dealer for the years 2003-2004 and 2004-2005, no limitation period within which the assessment has to be completed is prescribed. It is relevant to point out that by Act 60/97 (Gazette dated 31.03.2000 - effective from 01.04.1996), Sub-Section (2-A)(a), which mandates the completion of assessment within a period of three years from the expiry of the year to which the assessment relates, was omitted. Therefore, it is very clear that the legislators thought it fit to remove the period of limitation prescribed for making assessment and consequently passed Act 60/97 (Gazette dated 31.03.2000 - effective from 01.04.1996). Therefore, the contention of the petitioner that the issue under notice is barred by delay is not tenable.

29. It is respectfully submitted that the levy of Tax on Entry of Goods into Local Areas and the levy of Tax on entry of Motor vehicles into Local



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Areas were agitated before the High Courts of various States by the dealers in the respective States. In turn, the State Governments also took the cases to appeal to sustain the levy of Entry Tax whenever the High Court decided against the State Revenue on this count. The issue was settled in November 2016 by the Hon'ble Supreme Court in **M/s.Jindal Stainless Limited and another Vs. State of Haryana and others**, 2016 (11) TMI 545 SC (LB), wherein the Hon'ble Supreme Court has answered several questions pertaining to entry tax legislations of different states including Tamil Nadu and settled various issues related to Entry Tax-Goods.

30. It is submitted that the Act was in scrutiny for long period and the Final Judgment for legality of the Entry Tax Act, 2001 came only in the end of 2017. Since the matter was pending before the Higher Judicial Forums, the original assessment, based upon the returns filed under the Entry Tax Act, 2001, in respect of the petitioner/dealer for the above said years have been kept pending. Barring the period that the Act was in scrutiny in the High Courts and Supreme Court, it is only three years from the judgment, the initiation of assessment was done, which is within the reasonable period for maintenance of records by the petitioner/dealer.



31. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. I have also perused the Impugned Assessment Orders passed by the first respondent.

32. The Impugned Assessment Orders have been passed for the first time based on the first Notice dated 10.09.2020 and the second Notice dated 05.01.2021 for the Assessment Years 2003-2004 & 2004-2005. These notices were issued in the exercise of Rule 4 of the Entry Tax Rules, 2001.

33. The Impugned Assessment Orders dated 14.07.2021 proceed to finalize the assessments, under Rule 4 of the Entry Tax Rules, 2001 framed under the provisions of the Entry Tax Act, 2001 after more than 15 years of filing of returns by the petitioner for these Assessment Years.

34. In this connection, it will be useful to refer to Section 10 of the Entry Tax Act, 2001. As per Section 10 of the said Act, the Assessing Authority is empowered to assess, re-assess, inspect, search, seize, confiscate, collect and enforce payment of tax, including any interest or penalty, payable by a dealer or an importer under this Act, as if, the tax or interest or penalty payable by such



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importer this Act is a tax or interest or penalty payable under the General Sales Tax Act.

35. For this purpose, the Assessing Authority can exercise all or any of the powers they have under the General Sales Tax including provisions relating to returns, provisional assessment, advance payment of tax, imposition of the tax penalty 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 form 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.

36. For the sake of clarity, Section 10 of the Entry Tax Act, 2001, is reproduced below:-

Section 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*



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being empowered to assess, re-assess, 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 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 penalty 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*



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enforcement of payment as if the tax under this Act were a tax under the General Sales Tax Act.”

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37. Therefore, in a limited sense, for the aforesaid purpose, the Entry Tax Act, 2001 is not a self contained enactment. It is dependent on the provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 and later under the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 after the Tamil Nadu General Sales Tax (TNGST) Act, 1959 was repealed and stood substituted with the Tamil Nadu Value Added Tax (TNVAT) Act, 2006.

38. Assessment under the provisions of the Entry Tax Act, 2001 and under the provision of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 have to be made coterminously as the basic documents required for assessment are one and the same. These documents have to be maintained for a period of five years though separate returns have been filed under these enactments.

39. This is evident from a reading of Section 40(2)(b) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 when read in conjunction with Section 10 of the Entry Tax Act, 2001.



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40. Under Section 40(2)(b) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959, every registered dealer/assessee or an importer under the Entry Tax Act, shall ordinarily keep the books of account for the previous five years at such place or places as he may notify to the Registering Authority. Section 40(2)(b) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 reads as under:-

Section 40: Maintenance of up-to-date, true and correct accounts and records by dealers.-

(1)

(2)(a)

(2)(b) *Every registered dealer shall also ordinarily keep the books of account for the previous five years at such place or places as he may notify to the registering authority. If the registered dealer decides to change the place or places so notified, he shall before effecting such change, notify the same to the registering authority.*

(3)

41. Thus, a registered dealer is ordinarily not required to maintain records, documents and accounts for a period beyond five years for assessment under the provision of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.



42. By implication, such a dealer will also not be required to keep such books of account and documents for a period beyond five years under the provisions of the Entry Tax Act, 2001.

43. Therefore, assessment under the provisions of the Entry Tax Act, 2001, also ought to have been completed within reasonable period of time. Certainly, there is no justification in finalizing the assessment after a lapse of considerable period of time.

44. Further, a dealer who is also a dealer under the provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959, is entitled to set-off tax the paid under the provisions of the Entry Tax Act, 2001 towards the tax liability under the provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

45. In this connection, it will be also useful to refer to Section 4 of the Entry Tax Act, 2001. Section 4 of the Entry Tax Act, 2001 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 No.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.

(2)Where an importer who, not being a dealer in scheduled goods, had purchased the scheduled goods for his own use or consumption in any Union Territory, or any other State, then his liability under this Act, shall, subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, in any, under the law relating to General Sales Tax as may be in force in that Union Territory or State.”

46. Thus, the issue is revenue neutral. What is paid/payable under the provisions of the Entry Tax Act, 2001 can be reduced from the tax payable under the provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

47. At best, the petitioner could have been fastened with interest liability, if the assessments were completed under Rule 4 of the Entry Tax Rules, 2001, within a reasonable period of time after the returns were filed by the petitioner.

48. However, there is an enormous delay in finalizing the assessment vide Impugned Assessment Orders. Therefore, it would also be unfair to fasten the burden the petitioner at this distant point of time with interest liability.



49. That apart, impugned assessment has also not been made strictly in accordance with the provisions of the Entry Tax Rules, 2001. Assessment under the Entry Tax Act, 2001 is to be made in two stages. Assessments are governed by Rule 4 of the Entry Tax Rules, 2001. Rule 4 of the Entry Tax Rules, 2001 cannot be read in isolation.

50. Rule 4 of the Entry Tax Rules, 2001 has to be read along with Rule 3 of the Entry Tax Rules, 2001. Rule 3 and Rule 4 of the Entry Tax Rules, 2001 are reproduced below:-

<i>Rule 3 : Filing of returns and payment of tax</i>	<i>Rule 4 : Assessment of tax</i>
1) An importer being a dealer in scheduled goods, who is liable to pay tax under Section 3 of the Act shall submit to the assessing authority on or before the 20 th day of every month, a return in Form I in duplicate showing the total and net value of the scheduled goods for the preceding month, along with the remittance receipt from the Government Treasury or a crossed demand draft drawn in favour of the assessing authority for the whole of the amount of tax payable	1) After the close of the year for which the returns have been submitted by an importer referred to in sub-rule (1) of Rule 3 or in the course of the year, where such importer had discontinued business, the assessing authority, shall, if he is satisfied, after such scrutiny of the accounts and making such enquiry as he considered necessary that the returns filed are correct and complete finally assess in single order on the basis of the return, the tax payable for the year to which the return



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for the month, to which the return relates.

Provided that the method of payment by means of cheque shall not be applicable to the importers referred to in this sub-rule whose cheques got dishonoured for want of funds on more than one occasion.

- 2) In the case of an importer referred to in sub-rule (1) having more than one place of business in the local areas, all returns prescribed by these rules shall be submitted by the principal place of business and such returns shall show the total value of the scheduled goods of all the places of his business in all the local areas.
- 3) The returns so filed shall provisionally be accepted subject to the provisions of sub-rules (4) and (5).
- 4) Where the importer referred to in sub-rule (1) fails to submit the return on or before the date specified in the said sub-rule (1) or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after following the procedure prescribed in the

relates.

- 2) Where any such importer fails to submit the return or returns before the date specified in sub-rule (1) of Rule 3 or if any return or returns submitted by him appears to be incorrect or incomplete the assessing authority shall after giving the importer an opportunity, determine the value of the scheduled goods to the best of his judgment and finally assess in a single order, the tax payable thereon.
- 3) If on final assessment under sub-rule (1) or sub-rule (2), any tax is found to be due from the importer after deducting the tax or taxes paid by him towards the provisional assessment made under sub-rule (4) of rule 3, the assessing authority shall serve on the importer a notice in Form VI and the importer shall pay the sum demanded in the notice therein. If any refund of tax is found to be due to the importer the assessing authority shall serve on him a notice in Form VII.



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General Sales Tax Rules, determine the value of the scheduled goods to the best of the judgment and provisionally assess the tax payable for the month and shall serve upon the importer a notice in Form II and the importer shall pay the sum demanded within the time and in the manner specified in the notice.

- 5) *Where the importer referred to in sub-rule (1) submits a return without receipt from the Government Treasury or crossed demand draft for the whole of the amount of the tax payable, the assessing authority shall serve upon the importer a notice in Form II for the tax due and the importer shall pay the sum demanded within the time specified in the notice.*
- 6) (a) *An importer not being a dealer in scheduled goods shall file a return in Form III along with the proof of payment of tax due thereon before the assessing authority, specified in sub-clause (ii) of clause (b) of Section 2 of the Act within fifteen*



days from the date of entry of such scheduled goods into local area, where at the scheduled goods are brought into the State other than through a check-post; and immediately, where the scheduled goods are brought through a check-post;

Explanations.- *Where an importer brings the scheduled goods in a goods vehicle, the return in Form III shall be filed by such importer or the person in-charge of the goods vehicle before the officer in-charge of the first check-post in the State through which the scheduled goods are brought and where the scheduled goods are brought into the local area either in a goods vehicle or otherwise without touching any check-post in the State, such importer shall file the return in Form III before the Commercial Tax Officer, having jurisdiction over the area in which such importer ordinarily resides;*

- (b) Tax due thereon shall be paid by tendering a challan or a demand draft or by cash;*
- (c) If such authority is satisfied that the return filed is correct*



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and complete, he shall pass an order in Form IV and a copy thereof shall be communicated to the importer;

(d) If the return filed in Form III does not appear to be correct and complete, the authority concerned shall determine the value of the scheduled goods and the tax payable thereon and serve on the importer a notice in Form V and the importer shall pay the sum demanded within the time and in the manner prescribed in the notice.

51. These provisions are inspired from the provisions of the Tamil Nadu General Sales Tax (TNGST) Act, 1959. Rule 3(4) of the Entry Tax Rules, 2001 is *pari materia* with Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959. They read as under:-



Rule 3(4) of the Tamil Nadu Tax on Entry of Goods into Local Area Rules, 2001	Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959
3(4) Where the importer referred to in sub-rule (1) fails to submit the return on or before the date specified in the said sub-rule (1) or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after following the procedure prescribed in the General Sales Tax Rules, determine the value of the scheduled goods to the best of the judgment and provisionally assess the tax payable for the month and shall serve upon the importer a notice in Form II and the importer shall pay the sum demanded within the time and in the manner specified in the notice.	12(2) If no return is submitted by the dealer under sub-section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incomplete or incorrect the assessing authority shall, after making such enquiry as it may consider necessary, asses the dealer to the best of its judgment. Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of providing the correctness or completeness of any return submitted by him.

52. Returns filed under Rule 3(1) of the Entry Tax Rules, 2001 has to be provisionally accepted subject to Sub-Rule (4) and (5) of Rule 3 of the Entry Tax Rules, 2001. In this case, there is no dispute that the returns were filed by the petitioner under Rule 3(1) of the Entry Tax Rules, 2001.

53. As per Sub-Rule 4 to Rule 3 of the Entry Tax Rules, 2001, the Assessing Authority has to provisionally assesses the tax payable by a dealer



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for the month to the best of his or her Judgment, where the importer referred to

in Sub-Rule (1) either

- i. fails to file the returns on or before the due date; or
- ii. if the return submitted appears to be incorrect and complete.

54. For this purpose, the Assessing Authority has to determine the value of the scheduled goods to the best of the Judgment and shall thereafter serve upon the importer a notice in Form II.

55. The importer has to pay the amount within such time as may be specified in the notice in Form II. For the aforesaid purpose, the Assessing Authority has to follow the procedure prescribed under the General Sales Tax and the Rules made thereunder.

56. Both Rule 4(1) and Rule 4(2) of the Entry Tax Rules, 2001, contemplate final assessment. Former, deals with final assessment under the following two circumstances namely:-

- i. Return submitted by an importer referred to in sub-rule (1) of Rule 3; or
- ii. where importer had discontinued business in the course of the year.

Latter applies to the following two circumstances namely:-



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- i. when filed returns are either incorrect and/or incomplete; or
- ii. when no monthly returns are filed by an importer.

57. Under Rule 4(2) of the Entry Tax Rules, 2001, the assessment has to be made on Best Judgment Method. Thus, in case of incorrect or incomplete returns, a provisional assessment has to be made in terms of Rule 3(4) of the Entry Tax Rules, 2001 under Best Judgment Method and thereafter a Final Assessment under Sub-Rule (2) to Rule 4 of the Entry Tax Rules, 2001. This procedure has been given a go by in the impugned proceeding.

58. A reading of Rule 4(1) of the Entry Tax Rules, 2001, also makes it clear that, after the close of the year, for which the returns referred to in Sub-Rule (1) of Rule 3 of the Entry Tax Rules, 2001 have been filed or where an importer has discontinued the business the course of the year, the Assessing Authority has to finally assess the tax payable in a single order on the basis of the return for the year to which the return relates.

59. Such assessment has to be completed after scrutiny of the accounts and making such enquiry as may be considered necessary to complete and



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finalize the assessment on the basis of a single order. Thus, the scheme of the Entry Tax Act is to finalize the assessment as expeditiously as possible although no time limit is prescribed.

60. As the returns that were filed by the petitioner were incorrect, it was incumbent on the part of the respondents to have first exercised the power under Sub-Rule(4) to Rule 3 of the Entry Tax Rules, 2001 and pass a Provisional Assessment Order after the end of the year to which the returns relates to or within a reasonable time after the close of the year for which the returns were filed and thereafter, Final Assessment Orders on the returns filed in terms of Sub-Rule 2 to Rule 4 of the Entry Tax Rules, 2001 within a reasonable period of time.

61. Although, it was canvassed by the learned counsel for both sides that there is no period of limitation prescribed for completing the Assessment under the provisions of the Entry Tax, it has to be construed that there is a limitation prescribed under the Act for completing the Assessment in terms of Rule 4 of the Entry Tax Rules, 2001.



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62. Assessments cannot be kept open ended for over a decade particularly when a dealer is not required to maintain records for a period beyond five years.

63. Thus, not only a provisional assessment but also the final assessment is required to be made by the Assessing Authority where no returns were filed and/or where returns filed were either incorrect or incomplete as per the above Rules.

64. Even if such assessment made Rule 4 of the Entry Tax Rules, 2001 resulted in escaped turnover, the Assessing Authority was empowered to invoke the powers under Section 16 of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 in view of Section 10 of the Entry Tax Act, 2001.

65. Again here also the assessment has to be made to the Best Judgment Method after notice to the dealer. However, this power is available in the hands of the Assessing Authority for a period of 5 years from the date of final assessment. Section 16(1)(a) and (b) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 reads as under:-

“Section 16. Assessment of escaped turnover. –



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- (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.*
- (1)(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.”*

66. Thus, it would imply that, since no time limit has been prescribed for completing the assessment under Rule 3(4), Rule 4(3) of the Entry Tax Rules, 2001, assessment has to be completed within a reasonable period of time and thereafter assessment for escaped turnover under Section 16 of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 within a period of 5 years.

67. It is quite possible that assessments were not completed under the provisions of the Entry Tax Act, 2001 as levy of entry tax on both goods and the



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motor vehicles were subject matter of challenge before various High Courts.

These cases ultimately reached the portals of the Hon'ble Supreme Court. The Hon'ble Supreme Court answered the challenge in its verdict in **Jindal Stainless Limited and another Vs. State of Haryana and others**, 2016 (11) TMI 545 SC (LB). The said decision was rendered on 11.11.2016.

68. Subsequently, the Hon'ble Supreme Court in **The State of Tamil Nadu and others Vs. ITC Limited**, 2017 (8) TMI1648, following its decision in **Jindal Stainless Limited and another Vs. State of Haryana and others**, 2016 (11) TMI 545 SC (LB) answered the case against the dealers.

69. As far as challenge to levy of entry tax on motor vehicles are concerned, the issue was answered by the Hon'ble Supreme Court in **State of Kerala and others Vs. Fr.William Fernandez etc.**, 2017 SCC Online SC 1291 by holding State had powers to levy entry tax on entry of motor vehicles as well.



70. Thus, the respondents could argue that in view of the pendency of the cases before various High Courts and the Hon'ble Supreme Court, the assessment was not made earlier.

71. However, the respondents have not produced any order of the Court which had put an embargo on them from passing Assessments Orders earlier. That apart, the orders of the Hon'ble supreme Court were passed in 2016 and 2017. However, the Impugned Assessment Orders have been passed long after the Hon'ble Supreme Court upheld the validity of the levy of entry tax under various legislations.

72. Thus, there was no justification in passing the Impugned Assessment Orders belated in the year 2021 in respect of the Assessment Year 2003-2004 and the Assessment Year 2004-2005. It has to be assumed that the Department has accepted the returns filed by the petitioner for the respective Assessment Years and the assessment was completed under Rule 4(1) of the Entry Tax Rules, 2001.

73. If at all, the respondents should have invoked the machinery under Section 16 of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 read with



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Section 10 of the Entry Tax Act, 2001 within a reasonable period prescribed for finalizing the assessment. In other words, the powers could have been invoked within 5 years after deemed assessment under Rule 4(1) of the Entry Tax Rules, 2001 and after the date of filing of returns.

74. The period for finalizing the assessment under the Entry Tax Act, 2001 and Entry Tax Rules, 2001 cannot be left open ended for a over a decade. If the respondents were diligent, they could have passed the Impugned Assessment Order. The respondents could have postponed the recovery, pending decision of the Hon'ble Supreme Court.

75. The ratio of the Hon'ble Supreme Court in **State of Punjab and another Vs. Bhatinda District Co-operative Milk Producers Union Ltd.**, 2007 (217) E.L.T.325 (S.C.)/(2007) 11 SCC 363 and **J.Sheik Parith Vs. Commissioner of Customs**, 2020 (374) E.L.T.15 (Mad.) will also apply to the facts of the case.

76. Therefore, these Writ Petitions deserve to be allowed and are accordingly allowed. No costs. Connected Writ Miscellaneous Petitions are closed.



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24.01.2025

Neutral Citation: Yes/No

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C.SARAVANAN, J.

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Pre-delivery Common Order in
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