IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2121 OF 2022

Mukesh D. Ramani
Indian Inhabitant aged 61 years
Residing at : Flat No.100, Moru Milap,
15th Road, Khar (West),
Mumbai – 400 052. ….Petitioner

V/s.

1. The State of Maharashtra
through the Government Pleader
High Court, Mumbai.

2. The Commissioner of State Tax
having his office at 8th Floor, GST
Bhavan, Mazgaon, Mumbai – 400 010.

3. The State Tax Officer (C-008)
A-Wing, 6th Floor,
Suburban Vikrikar (GST) Bhavan,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. …Respondents

ALONGWITH
WRIT PETITION (L) NO. 2129 OF 2022

Satish D. Sanghavi
Indian Inhabitant aged 78 years
Residing at : 2901, Indiabulls Sky,
Senapati Bapa Marg, Lower Parel,
Mumbai – 400 013. ….Petitioner

V/s.

1. The State of Maharashtra
through the Government Pleader
High Court, Mumbai.

2. The Commissioner of State Tax
having his office at 8th Floor, GST
Bhavan, Mazgaon, Mumbai – 400 010.

3. The State Tax Officer (C-008)
A-Wing, 6th Floor,
Suburban Vikrikar (GST) Bhavan,

Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. …Respondents

ALONGWITH
WRIT PETITION (L) NO. 2133 OF 2022

Prakash D. Sanghavi
Indian Inhabitant aged 75 years
Residing at : C-4201, Lodha Bellissimo,
N.M. Joshi Marg, Apollo Mills Compound,
Mumbai – 400 011. ….Petitioner

V/s.

1. The State of Maharashtra
through the Government Pleader
High Court, Mumbai.

2. The Commissioner of State Tax
having his office at 8th Floor, GST
Bhavan, Mazgaon, Mumbai – 400 010.

3. The State Tax Officer (C-008)
A-Wing, 6th Floor,
Suburban Vikrikar (GST) Bhavan,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. …Respondents

Mr. Sriram Sridharan for Petitioner.
Ms. Jyoti Chavan - AGP with Mr. Himanshu Takke - AGP and Mr. Dushyant Kumar - AGP for Respondents-State.

CORAM : K.R. SHRIRAM &
GAURI GODSE, JJ.
DATED : 22nd AUGUST 2022

ORAL JUDGMENT : (PER : K.R. SHRIRAM, J.)

1. With the consent of the parties taken up for disposal at the admission stage itself since pleadings are completed. Rule. Rule made returnable forth with.

2. Petitioners, long time ago were Directors of a company Twin City Organics Pvt. Ltd. (the company). Respondent No. 1 is the State of Maharashtra and Respondent Nos. 2 and 3 are officers exercising powers under the Maharashtra Goods and Services Tax Act, 2017 (the MGST Act) and the Bombay Sales Tax Act, 1959 (the BST Act) and the Central Sales Tax Act, 1956 (the CST Act).

Facts in all the three petitions are almost identical save and except the dates on which petitioners joined the Board of Directors of the company and their date of resignation differ. The facts mentioned in this judgment are from Writ Petition (L) No. 2121 of 2022.

3. Petitioner is impugning an order dated 27th September 2021 passed by Respondent No.3, the consequential Notice of Demand dated 27th September 2021 issued under Section 38 of the BST Act and Final Notice of Assessment dated 27th September 2021 in Form VIII (B) under the CST Act. According to petitioner, the order, consequential notice of demand and final notice of assessment are illegal, violative of the principles of natural justice and contrary to the provisions of the MGST Act, BST Act and CST Act.

4. The company was incorporated as a private limited company on 25th May 1973 and registered with the Registrar of Companies, Mumbai. The Directors of the Company as on 1st January 1990 were one Harbhajan Singh Dhillon, Rajlaxmi Babu, Prakash D. Sanghavi (Petitioner in Writ

Petition (L) No. 2133 of 2022) and Satish D. Sanghavi (Petitioner in Writ Petition (L) No. 2129 of 2022).

5. On or about 26th September 1990 one Praful N. Vaghani was appointed as Director of the company. Praful N. Vaghani resigned sometime in July 1992 and the resignation was accepted on 29th July 1992. On 29th July 1992 Mukesh D. Ramani (Petitioner in Writ Petition (L) No. 2121 of 2022) was appointed as Director of the company.

Sometime in July 1994 the company closed its manufacturing unit which according to petitioner was due to coercive action by the Excise Department. Petitioner (Mukesh D. Ramani) resigned as a Director of the company sometime in March 1995 .

6. The company thereafter filed a case before the Board for Industrial and Financial Reconstruction (BIFR) constituted under the Sick Industrial Companies Act and at the hearing held on 4th February 1997 the Board noted that the company satisfied all the criteria of sick industrial company and held accordingly.

7. Prior thereto, on or about 14th July 1995, Bank of India filed suit for recovery of about Rs.1.53 Crores and further interest from the company and in April 1996 this court appointed Receiver to take possession of the manufacturing unit. In view of the BIFR accepting reference of the

company as a sick unit Bank of India was appointed as Operative Agency. On 24th October 1997 a joint meeting of all interested parties to discuss proposal of rehabilitation scheme was fixed by Bank of India as Operative Agency. Bank of India, as the operating agency, submitted report dated 13th November 1997 as also Minutes of the joint meeting held on 24th October 1997. At the meeting representatives of Sales Tax Department, Central Excise Department, Income Tax Department and Reserve Bank of India etc. were present. Reasons for sickness also was mentioned. The reasons for sickness is not attributable to petitioner. The reasons are recorded as under :

Reasons for Sickness

> *5.1 Originally, the demand of the country for camphor was substantially met through the single manufacturer (CAMPHOR & ALLIED PRODUCTS LTD.) and imports. As the import duty was to the extent of 190%, TOPL also enjoyed a sheltered market for its products within the country. Consequent upon liberalisation of the economy, the import duty was reduced to 65% in 1995 and to 30% in 1997 making imports cheaper.*
>
> *5.2 Reserve Bank of India (RBI), in view of the then foreign exchange reserve crunch, imposed margin for some time in 1991-92 in respect of foreign Letter of Credit (LC) to the extent of 200%, making it impossible for TOPL to function normally as regards imported raw materials.*
>
> *5.3 Duty on import of raw materials, inter alia, including Turpentine was only 35%, which was subsequently hiked to 85% in 1991-92. This compelled TOPL to go in for backward integration for manufacture of Turpentine from Oleo Pine Resin (OPR). Today the duty on Turpentine has once again come down to 35%. However, since the present duty on OPR (containing Turpentine) is only 12%, the manufacture from imported OPR still works out more remunerative rather than from Turpentine.*

> *5.4 There was a dispute regarding the Excise Duty liabilities arising on account of classification and consequent upon the demands of Excise Authorities, the Bank did not entertain financing of the same.*
>
> *5.5 The ultimate blow to the TOPL's working was received, when the additionally inducted promoter Shri. Mukesh D. Ramani was allowed to acquire 20% of the Company's Equity and also to bring in additional funds of Rs.60 Lakhs by way of unsecured loans for funding of working capital needs related to backward integration undertaken by the company. Ramani Group introduced funds to the tune of Rs. 22 Lakhs only as unsecured loans. Ramani Group failed to bring in the funds as committed by them and on the contrary within a year withdraw their unsecured loans to the tune of Rs.16.35 Lakhs, reducing their exposure to Rs.5.65 Lakhs. This led to serious differences among the original Promoters and Ramani Group, which in turn further aggravated the financial crunch. As a result, the company could not reap the benefits of investment made in backward integration of its production facilities.*

8. Based on the rehabilitation scheme submitted by Bank of India, the scheme was sanctioned by an order dated 19th March 1998. As per the scheme the State Government was to waive of penal charges. The scheme was modified by an order dated 18th September 2000.

9. In April 2003 BIFR passed an order declaring that revival of company has failed and ordered creditors to take all assets of the company and proceed for winding up. On 30th July 2003 the company was ordered to be wound up by BIFR. The said order dated 30th July 2003 was treated by the High Court as a Company Petition and on 13th June 2007 the official liquidator of this court was appointed as liquidator of the company. The official liquidator while adjudicating claims of all creditors, adjudicated the

Sales Tax Department's claim of Rs.26,26,418/- and the said amount was paid over to the Sales Tax Department.

10. In the meanwhile, Union of India seeking to recover the excise dues attached personal property of Satish D. Sanghavi, petitioner in Writ Petition (L) No. 2129 of 2022. Challenging this order said S.D. Sanghavi had filed Writ Petition No. 2087 of 2006 in this court. The said petition came to be admitted by an order dated 28th September 2006. Later, by an order dated 22nd September 2009, this court was pleased to quash and set aside the order of the Excise Department, Union of India attaching personal property of said S.D. Sanghavi.

11. Sometime in 2018 petitioner received notice from Respondent No.3, copy whereof was sent to Co-operative Society of petitioner's residence, seeking recovery of the company's dues for the period 1986 to 1995. Notice was replied to by petitioner as well as the society. Similar notices dated 10th October 2018 and 15th November 2018 were issued to S.D. Sanghavi against which said S.D. Sanghavi filed Writ Petition No.6048 of 2019. By an order dated 16th January 2020 this court was pleased to remand the matters to respondents to determine whether, in law, recovery would lie against petitioner in person.

12. On 15th February 2020 petitioner received Show Cause Notice from Respondent No.3 calling upon petitioner to prove that the non-

recovery of Sales Tax dues from the company was not attributed to gross neglect, misfeasance or breach of duty on petitioner's part in relation to the affairs of the company failing which petitioner will be liable to pay a sum of Rs.3,02,01,888/-. (Similar notice was issued to petitioner in Writ Petition (L) No. 2129 of 2022 – S.D. Sanghavi and Writ Petition (L) No. 2133 of 2022 – P. D. Sanghavi). Petitioner replied through his advocate's letters dated 7th November 2020, 9th December 2020, 8th January 2021 and 18th March 2021. Notwithstanding receiving reply, Respondent No.3 passed impugned order dated 27th September 2021. Respondent No.3 has sought to recover the following amounts :

S. No.	Period	BST Dues (in Rs.)	CST Dues (in Rs.)	Total (in Rs.)
1	1986-87	92,789	5,232	98,021
2	1987-88	12,83,967	9,640	12,93,607
3	1988-89	26,80,487	2,56,690	29,37,177
4	1989-90	53,76,979	31,25,138	85,02,117
5	1990-91	2,65,107		2,65,107
6	1991-92	2,30,545	21,581	2,52,126
7	1992-93	25,80,523	31,234	26,11,757
8	1993-94	1,05,69,282	21,88,934	1,27,58,216
9	1994-95	13,45,178	1,38,582	14,83,760
			Total	**3,02,01,888**

After adjusting amount of Rs.26,26,418/- paid by the official liquidator the impugned order imposes a total demand of Rs.2,75,75,470/- .

13. It is petitioner's case that the company was established in 1973 to manufacture bulk drugs by late Mr. Dhillon and certain other promoters.

Mr. Dhillon was Chairman and Managing Director of the company till its final winding up. Mr. Dhillon was in charge of manufacturing and financing of the company and accordingly was primarily in charge of the company either before the Debt Recovery Tribunal or BIFR or Bank of India. Petitioner in Writ Petition (L) No. 2129 of 2022 and 2133 of 2022 joined company in 1978 by injecting finances which was used to fund the project to manufacture camphor. It is petitioner's case that basic and most important raw material to manufacture camphor is oleo pine resin and turpentine oil which was imported from Indonesia and China.

In 1990 the company required further funds for expansion. One Praful N. Vaghani took 20% of the equity and joined as Additional Nominee Director. Praful N. Vaghani resigned and left company in 1992 and was replaced by petitioner. Petitioner resigned in March 1995 and petitioner himself was an unsecured creditor of the company in a sum in excess of Rs.1 Crore. The Company's sickness resulting in winding up were for reasons reproduced earlier in paragraph 7 above and that cannot be attributed to petitioner. These reasons were given in the report that Bank of India, as operative agency, had submitted to BIFR and while preparing report even respondent's representative participated.

14. In the impugned order, Respondent No.3 has held petitioner liable. According to Respondent No.3 :

(a) It is immaterial whether the Director was active or non-active because the statutory provisions do not

differentiate between active and non-active Directors while fixing liabilities of the Directors.

(b) The reliance on the proceedings before BIFR has no relevance for the issue involved in the show cause notice because no records have been produced to substantiate the contentions. The findings in the proceedings are for different purpose and has no relevance in the present proceeding.

[This, in our view, is rather strange because Respondent Nos. 2 and 3 were participants in BIFR proceedings and their representatives have also attended meetings with the operative agency - Bank of India.]

(c) Conjoint reading of Sections 142(8) and Section 89 of the MGST Act leaves no doubt if recovery cannot be claimed under the earlier law, i.e., BST Act and CST Act, the same can be recovered under the MGST Act and Section 89 will squarely apply.

(d) Section 18 of the CST Act and Section 89 of the MGST Act cast burden on the Directors of the company to prove that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on their part in relation to the affairs of the dealer. The Directors have failed to prove that non-recovery cannot be attributed to

any gross neglect, misfeasance or breach of duty on their part in relation to the affairs of the dealer by producing any material or documents or accounts of the company and dealer and hence petitioners are liable to pay jointly and severally the dues of the company alongwith interest as applicable from the date of Assessment Order till the date of realization. Of course, credit, as noted earlier to the extent of Rs.26,26,418/- has been given.

15. Mr. Sridharan's submissions on behalf of Petitioner :

a. The impugned order is contrary to the provisions of law in as much as Section 142(8) and Section 89 of the MGST Act are not at all applicable to the facts and circumstances of the present case. Section 142(8) of the MGST Act would only be applicable when amount is to be/could be first recovered from the old law, i.e., the existing law. Therefore, whether the amount would be recoverable must first be determined in terms of the previous law and if so recoverable the procedure for recovery provided under the MGST Act is to be adopted. Since the amounts were not recoverable even under the BST Act or CST Act, the question of Section 142(8) of the MGST Act being applicable would not arise.

b. The terms of Section 89 of the MGST Act are completely irrelevant to the facts and circumstances of the case.

c. Amount is not recoverable under the BST Act from petitioner since there exists no provisions in the BST Act which makes the dues of the company recoverable from the Directors. There is no provision in BST Act analogous to Section 18 of the CST Act or Section 89 of the MGST Act. Therefore, what cannot be done directly cannot be done indirectly. This court in ***Satish D. Sanghavi vs. Union of India and Ors.***[1] in paragraph no.3 held as under :

> *3. The settled position in law is that liability for duty of the company cannot be fastened upon the director of a company unless there is a statutory provision to that effect. Such an issue came up for consideration before this court in the matter of of Sunil Parmeshwar Mittal Versus Dy. C.(Recovery Cell), C.EX, Mumbai-I, wherein the court took a view that liability of members is limited to the extent of face value of shares subscribed by each member and amount remaining unpaid on them for time being, former director of the company cannot be held responsible for payment of liabilities of company in the absence of any specific provision. This was reiterated in unreported judgment delivered on 5.5.2009 in the case of Chandrakant Bhalchandra Garware Versus Union of India & Ors. In writ petition no. 4117 of 2009. We are of the opinion that duty demand of the company cannot be recovered from the director in the absence of statutory provisions in the Central Excise Act, 1944.*
>
> (emphasis supplied)

Therefore the dues of the company are not recoverable from petitioner since there is no specific provisions under the BST Act empowering respondents to do so.

d. The amounts are not recoverable under the CST Act since the non-recovery of the dues cannot be attributed to any gross neglect, misfeasance or breach of duty on the part of petitioner in relation to the

1 Writ Petition No. 2087 of 2006 dated 22/09/2009

affairs of the company. Section 18 of the CST Act only empowers respondents to recover the dues of company from the Directors if the non-recovery of the dues from the company is on account of any gross neglect, misfeasance or breach of duty on the directors part in relation to the affairs of the company. This condition is not satisfied because the BIFR, in its sanction of the scheme, has given reasons as to why the company had approached BIFR and subsequently went into liquidation. Business of the company failed on account of various external factors beyond the control of the promoters and therefore there is absolutely no question of alleging that the reasons for the non-recovery is on account of gross neglect, misfeasance or breach of duty on the part of directors. Section 18 of the CST Act is to cover cases where directors alienate property or divert assets in a malafide manner in anticipation of recovery actions and it is not even alleged in the impugned order that petitioner, alienated or diverted assets in a malafide manner.

e. Section 89 of the MGST Act would not cover the facts and circumstances of the case. Section 89(a) of the MGST Act, which is pari-materia with Section 18 of the CST Act, provides that respondents are empowered to recover dues of the company from its Directors, if the non-recovery of the said dues is on account of any gross neglect, misfeasance or breach of duty on the directors' part in relation to the affairs of the company and as noted earlier, non-recovery of the dues from the company was not on

account of any gross neglect, misfeasance or breach of duty on the part of petitioner.

f. Stand of Respondent No.3 is completely contradictory since the impugned order relies upon provisions of MGST Act to recover the dues of the company from petitioner. The consequential notice, however, issued to petitioner has been issued under the BST Act and CST Act, which inherently shows the flaws and fallacies in the actions of Respondent No.3.

The second consequential notice is not even a Notice of Demand issued under the CST Act but rather a Notice of Final Assessment in Form VIII (B), i.e., in assessment order itself. Respondent No.3 in consequence of the impugned order has issued an assessment order under the CST Act as opposed to Notice of Demand which indicates clear non application of mind on the part of Respondent No.3.

g. The CST Act has not been repealed at the present point of time and continues to be in force even after the enactment of the GST regime. If that be the case, reliance of respondents on the provisions of the MGST Act so as to recover dues from petitioner is misplaced and is liable to set aside. [This was not elaborated upon].

h. The BST Act has been repealed by Section 95 of the Maharashtra Value Added Tax Act, 2002 (the MVAT Act). However, vide Section 96 of the MVAT Act, the recovery provisions of the BST Act have

been saved, i.e., Section 96 specifically provides that notwithstanding the repeal of the BST Act, all actions of recovery to be conducted post the said repeal would continue to be in terms of the BST Act. If that be the case, the reliance of respondents on the provisions of the MGST Act so as to recover dues from petitioner is misplaced and is liable to be aside.

i. As is clear from a plain perusal of the documents annexed to the petition, there is a stark difference in the dues claimed by respondents in the BIFR proceedings, the ex-parte assessment/appeal orders and the impugned order. No rationale or explanation has been provided in the impugned order, nor has there been any working/bifurcation of the demand has been provided. The impugned order is clearly non-speaking and is liable to be set aside. In fact, in 1994-95, the factory of the company was shut down and non-operational. The fact that a demand has been proposed even for 1994-95 clearly evidences non-application of mind.

j. Petitioner was only in charge of supply chain management and not in charge of the day to day operations of the company. The overall management of the company was under the control of Mr. Dhillon. Given that petitioner was only involved in supply chain management, the main reasons for the sickness of the company and the subsequent non-recovery of the dues all were not attributable to petitioner. Furthermore, petitioner was part of the company only for a period of three years. Hence, petitioner

cannot be made liable for dues pertaining for periods other than when he was a Director.

k. In any case, the impugned order is liable to be set aside on account of being barred by limitation. It is settled law that when no limitation has been prescribed in a statue for an action, the said action must be conducted within a reasonable period of time. In the present matter, the dues of the Sales Tax Department post the liquidation of the company was quantified by the Official Liquidator vide Report dated 11th February 2008. That being so, the attempt of respondents to recover the dues in and around October 2018 is conducted after a period of over 10 years. Such actions are clearly not executed within a reasonable period of time. Hence, the impugned order is liable to set aside on this premise as well.

16. Submissions of Ms. Chavan, AGP for Respondents :

Relying upon affidavit of one Mr. Rajesh Annasaheb Khambat affirmed on 1st April 2022, Ms. Chavan opposed the petition and made all submissions in line with the stand of Respondent No.3 taken in the impugned order dated 27th September 2021. Ms. Chavan submitted :

a. The High Court in Writ Petition No. 6048 of 2019 had directed that enquiry be conducted in the matter and order be passed in a time bound manner. The impugned order was passed after making enquiry and

after duly giving opportunity of being heard and petitioner failed to prove that non-recovery of outstanding dues cannot be attributed to any gross neglect, misfeasance or breach of duty on their part.

b. Conjoint reading of Section 142(8) and Section 89 of the MGST Act makes it abundantly clear that the dues of a company can be recovered from its Directors and once provisions of the MGST Act was applicable, all Directors are liable for tax dues if conditions of Section 89 are applicable.

c. The contention of non applicability of provisions of the MGST Act cannot be countenanced in view of the provisions of Section 142(8) and Section 89 of the MGST Act and therefore it leaves no doubt that if recovery cannot be made under the earlier law, i.e., the BST Act or the CST Act, the same can be covered under the MGST Act and Section 89 will squarely apply.

d. As per Section 142(8) read with Section 89 of the MGST Act, any dues arising out of existing/earlier law can be recovered as arrears under the MGST Act and under Section 89 of the MGST Act the Directors are jointly and severally liable to pay the dues which could not be recovered from the company.

However, how it could be recovered where the alleged arrears was under the BST Act was not elaborated upon by Ms. Chavan.

As we will see later, BST Act did not have any provision analogous to Section 44(6) of the MVAT Act or Section 89 of the CGST Act. BST Act was repealed and MVAT Act was enacted and brought into force on 1st April 2005. At that time MVAT Act did not contain any provision that empowered the Revenue to claim from Directors.

Discussion and Findings :

17. As held by this court in *Satish D. Sanghvi* (supra) the settled position in law is that liability for duty of the company cannot be fastened upon the Directors of the company unless there is statutory provision to that effect. The liability of members is limited to the extent of face value of shares subscribed by each member and amount remaining unpaid on them for the time being. Former Director of the company cannot be held responsible for payment of liabilities of the company in the absence of any specific provisions.

Now, let us examine whether there are any specific statutory provisions to the effect that liability for duty of the company can be fastened upon the Directors of the company.

It will be seen from the provisions of Section 89 of the MGST Act, Section 18 of the CST Act and Section 44(6) of the MVAT Act that there are specific provisions that fastened upon the Directors of a company liability for duty of the company. We shall now further examine as to, in the facts and circumstances of the present case, whether such liability can be fastened upon petitioners as former Directors of the company.

18. Before we proceed further, it will be necessary to reproduce relevant provisions as under :

The Maharashtra Goods and Services Tax Act, 2017

Section 89(1) : Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

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Section 142 : Miscellaneous transitional provisions :

(8)(a) : where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrears of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act ;

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Section 2(48) : "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by the Legislature or any Authority or person having the power to make such law, notification, order, rule or regulation ;

The Central Sales Tax Act, 1956

Section 18 : Liability of directors of private company in liquidation.—
Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any private company is

wound up after the commencement of this Act, and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then, every person who was a director of the private company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Section 2(d) *:*

(d) "goods" means -

(i) petroleum crude;
(ii) high speed diesel;
(iii) motor spirit (commonly known as petrol);
(iv) natural gas;
(v) aviation turbine fuel; and
(vi) alcoholic liquor for human consumption;

(This is pari-materia to Section 2(12) of MVAT Act.)

The Maharashtra Value Added Tax Act, 2002

Section 44 *:* ***Special provision regarding liability to pay tax in certain cases*** *:*

(6) Subject to the provisions of the Companies Act, 2013, where any tax or other amount recoverable under this Act from a private company, whether existing or wound up or under liquidation, for any period, cannot be recovered, for any reason whatsoever, then, every person who was a director of the private company during such period shall be jointly and severally liable for the payment of such tax or other amount unless, he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the said company.

Section 95. Repeals:-

(1) The following laws are hereby repealed, namely:-

(a) The Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom. LXVI of 1958)

(b) The Bombay Sales Tax Act, 1959 (Bom. LI of 1959)

*[(c) ***]*

(d) The Maharashtra Sales Tax Act, 1979 (Mah. XVII of 1979),

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***96. Savings* :-**

(1) Notwithstanding the repeal by Section 95 of any of the laws referred to therein,-

(a) those laws (including any earlier law continued in force under any provisions thereof), and all rules, regulations, orders, notifications, forms, certificates and notices, appointments and delegation of powers issued under those laws and in force immediately before the appointed day shall, subject to the other provisions of this Act, in so far as they apply, continue to have effect after the appointed day for the purposes of the levy, returns, assessment, reassessment, appeal, determination, revision, rectification, reference, limitation, production and inspection of accounts and documents and search of premises, transfer of proceedings, payment and recovery, calculation of cumulative quantum of benefits, exemption from payment of tax and deferment of due date for payment of tax, cancellation of the certificate of Entitlement, collection, or deduction of tax at source, refund or set off of any tax withholding of any refund, exemption from payment of tax, collection of statistics, the power to make rules, the imposition of any penalty, or of interest or forfeiture of an sum where such levy, returns assessment, re-assessment, appeal, determination, revision, rectification, reference, limitation, payment and recovery, calculation of cumulative quantum of benefits, exemption from payment of tax and deferment of due date for payment of tax, cancellation of the certificate of entitlement, collection, deduction of tax at source, refund, set-off, withholding of any refund exemption, collection of statistics, the power to make rules, limitation, production and inspection of accounts and

> *documents and search of premises, transfer of proceedings, penalty, interest or forfeiture of any sum relates to any period ending before the appointed day, or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid and whether or not the tax, penalty, interest, sum forfeited or tax deducted at source, if any, in relation to such proceedings is paid before or after the appointed day;*

The Bombay Sales Act, 1959 : None

Admittedly there exists no provision in the BST Act under which the liabilities/dues of the company recovered/fastened upon from the Directors.

19. The impugned order seeks to recover dues under the BST Act and CST Act by relying upon the provisions of Section 142(8) and Section 89 of the MGST Act. In our view, it is impermissible. Respondent No.3 has misinterpreted provisions of Section 142(8) of the MGST Act. Section 142(8) of the MGST Act would only be applicable when the amount first becomes recoverable in terms of the "existing law", i.e., the law as it was then existing. In other words "the old law". Whether amount is recoverable under the old law must be first determined and only if so recoverable the procedure prescribed for recovery under the MGST Act is to be adopted. Section 142(8) of the MGST Act is introduced as transitional provision to provide for procedure for recovery of the dues. It provides that the recovery procedure under the MGST Act can be utilized for the recovery of dues under the old or previous or, adopting the words used in the Section,

"existing law". Therefore, to determine whether the amount is recoverable or not we will have to consider the provisions of old law. There is no discussion in the impugned order as to how the amounts could be recovered under the old law. Petitioner has, in his reply to the show cause notice submitted that the amounts were not even recoverable under the BST Act or CST Act but still that has not been dealt with at all in the impugned order. The impugned order simply states that the conjoint reading of Section 142(8) and Section 89 of the MGST Act leaves no doubt that if recovery cannot be made under the earlier law, i.e., the BST Act and CST Act, the same can be recovered under the MGST Act and Section 89 will squarely apply.

20. Under the BST Act there exists no section which provided for dues of the company to be recoverable from its Directors. The BST Act came to be repealed with coming into force of the MVAT Act on 1st April 2005.

The BST Act did not have any provisions analogous to Section 44(6) of the MVAT Act or Section 18 of the CST Act or Section 89 of the CGST Act. The MVAT Act was enacted and brought into force on 1st April 2005. By Section 95 of the MVAT Act, the BST Act was repealed. At that time, the MVAT Act did not contain any provisions that empowered the Revenue to claim from Directors. Section 44(6) was inserted in the MVAT Act only with effect from 15th April 2017. Section 44(6) also provides that *"where any tax or other amount recoverable under* ***this Act*** *from a private*

company ..... cannot be recovered, for any reason whatsoever, then, every person who was director of the private company during such period shall be jointly and severally liable for the payment of such tax ....." Therefore, it is very clear that only where any tax or other amount was recoverable under the MVAT Act (and not in earlier provisions, i.e., the BST Act), was it recoverable from a director unless he proves otherwise.

Moreover, Section 96(1)(a) of the MVAT Act, which is a subsequent provision, provides for saving of recovery under the BST Act to continue past its repeal. It provides that *"notwithstanding the repeal by Section 95 of any of the laws referred to therein, those laws ..... and all rules, regulations, ... issued under those laws and in force immediately before the appointed day shall, subject to other provisions of this Act, in so far as they apply, continue to have effect after the appointed day for the purposes of the levy, ... payment and recovery ..... the imposition of any penalty, or of any interest ....., payment and recovery ....."*.

Ms. Chavan had submitted that this enables the Revenue from recovering amounts due under BST Act. We are afraid this does not permit because it only says "such provisions in force immediately before the appointed day" and the BST Act did not have any such provisions under which amounts recoverable from a private company in the event of non-recovery can be recovered from any Director of the said private company. Therefore, since the BST Act did not have any provisions analogous to Section 44(6) of the MVAT Act or Section 89 of the CGST Act or Section 18

of the CST Act, the question of any such provision being saved under the savings clause, i.e., Section 96(1)(a) of the MVAT Act would not arise.

21. As noted earlier it is settled law that liability for duty of the company cannot be fastened upon the Directors of the company unless there is statutory provision to that effect. Since the BST Act did not contain any provision to the effect making the Directors liable for the dues of the company, no amount is recoverable under the BST Act from the Directors of the company for the dues recoverable from the Company. There were no provisions in the BST analogous to Section 44(6) of the MVAT Act or Section 18 of the CST Act or Section 89 of the MGST Act. Therefore, even for a moment we assume that the BST Act has not been repealed and continues to be in force, even then no recovery would lie in law against the Directors of the company for the company's dues. As correctly submitted by Mr.Sridharan what cannot be done directly cannot be done indirectly. Therefore, no amounts are recoverable from petitioner as Director of the company under the BST Act. Even the Punjab and Haryana High Court in ***Narinder Singh vs. Union of India***[2] in paragraph nos.5 and 7 held [as has been held by this court in *Satish D. Sanghavi (supra)*] as under :

> *5. It is well settled that in the absence of any specific provision in the statute, the duty/penalty liability of the company cannot be recovered from the assets of its director. The Director is not personally liable towards liability of the company. This court while delving into an identical issue in Subhash Goyal vs. State of Haryana and Others, 2014(4) PLR 343 held that in the absence of taking any specific recourse to*

2 (2019 367 ELT 775 (P&H))

> *proceedings under Section 18 of the Central Sales Tax Act, 1956 and any valid order for effecting recovery of arrears of sales tax from the directors of a private limited company in liquidation, the proceedings relating to recovery of arrears of tax from the petitioner being a director were not permissible in law.*
>
> *7. In view of the above, the action of the respondents in compelling the petitioner to clear the dues of the company cannot be sustained. The petition is allowed. However, the respondents shall be at liberty to proceed against the company for clearance of its dues in accordance with law.*
>
> (emphasis supplied)

22. Undoubtedly Section 18 of the CST Act is a statutory provision to the effect that liability for dues of the company can be fastened upon the Directors of the company. Section 18 of the CST Act at the same time provides that when a company has been wound up after the commencement of the Act (which in this case has happened) and any tax assessed on the company under the CST Act for any period, whether before or in the course of or after its liquidation (in this case it is before its liquidation) cannot be recovered, then every person who was the Director of the company, and it should be a private company (which in this case was), at any time during the period for which tax was due shall be jointly and severally liable for the payment of such tax. Section 18 also provides for an escape route for the Director. It says where the Director prove that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, he shall not be liable for the payment of tax dues under the CST Act from the company.

23. This provision, i.e., Section 18 of the CST Act which is analogous to Section 89 of the MGST Act in fact provides for vicarious liability of the Directors of the Company for payment of tax dues which cannot be recovered from the company. Such liability could be avoided if the Director proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of the duty on his part in relation to the affairs of the company. Of course, responsibility of establishing such facts is cast upon the Directors. Once the Director places before the authority his reasons why it should be held that non-recovery cannot be attributed to any of the three factors, the authority would have to examine such grounds and come to a conclusion in this respect. As long as the Director establishes that non-recovery of the tax cannot be attributed to his gross neglect or misfeasance or breach of his duty in addition to the affairs of the company, his liability under Section 18 of the CST Act or Section 89 of the MGST Act would not arise. We have to note that the legislature at the same time used the words gross neglect and not mere neglect on his part. We find support for this view in the judgment of the Gujarat High Court in ***Maganbhai Hansrajbhai Patel vs. Assistant Commissioner of Income Tax & 1***[3], relied upon by Mr. Sridharan, where the High Court has dealt with provisions of Section 179 of the Income Tax Act. Section 179 is pari-materia to Section 18 of the CST Act and Section 89 of the MGST Act. Paragraph Nos.15, 20 and 21 of the said judgment read as under :

3 (2012) 26 taxmann.com 226 (Gujarat)

15. We may add that section 179(1) of the Act permits recovery of tax dues of any private company from its Directors under certain circumstances. Such circumstances being that such tax cannot be recovered from the company and unless the Director proves that the non recovery cannot be attributed to gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company. Section 179(1) of the Act thus statutorily provides for lifting of corporate veil under given set of circumstances. The liability of tax dues which is basically fastened on the company, is permitted to be recovered from its Director in case of private company, provided the conditions set out in said section noted above are fulfilled.

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20. This brings us to the last question namely, whether in facts of the case respondent was justified in ordering recovery against the petitioner. In this respect we have noticed that the petitioner before the authority in response to the notice under section 179 of the Act made a detailed representation and contended that he had taken all the steps within his powers. He had not been negligent in his duties. The GSFC had auctioned the property for realisation of its dues. The tax department had issued attachment order but done nothing thereafter, to prevent the sale by GSFC. The Assistant Commissioner however, in the impugned order rejected all such contentions. He was of the opinion that the petitioner failed to establish that non recovery of arrears cannot be attributed to any gross negligence, misfeasance or breach of duty on part of the petitioner in relation to the affairs of the company.

21. To our mind, the authority completely failed to appreciate in proper perspective the requirement of section 179(1) of the Act. We may recall that said provision provides for a vicarious liability of the director of a public company for payment of tax dues which cannot be recovered from the company. However, such liability could be avoided if the director proves that the non recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company. It is of-course true that the responsibility of establishing such facts is cast upon the director. Therefore, once it is shown that there is a private company whose tax dues have remained outstanding and same cannot be recovered, any person who was a director of such a company at the relevant time would be liable to pay such dues. However, such liability can be avoided if he proves that the non recovery cannot be

> *attributed to the three factors mentioned above. Thus the responsibility to establish such facts are on the director. However, once the director places before the authority his reasons why it should be held that non recovery cannot be attributed to any of the the three factors, the authority would have to examine such grounds and come to a conclusion in this respect. Significantly, the question of lack of gross negligence, misfeasance or breach of duty on part of the director is to be viewed in the context of non recovery of the tax dues of the company. In other words, as long as the director establishes that the non recovery of the tax cannot be attributed to his gross neglect, etc., his liability under section 179(1) of the Act would not arise. Here again the legislature advisedly used the word gross neglect and not a mere neglect on his part. The entire focus and discussion of the Assistant Commissioner in the impugned order is with respect to the petitioner's neglect in functioning of the company when the company was functional. Nothing came to be stated by him regarding the gross negligence on part of the petitioner due to which the tax dues from the company could not be recovered. In absence of any such consideration, the Assistant Commissioner could not have ordered recovery of dues of the company from the director. We would clarify that in the present case the petitioner had put forth a strong representation to the proposal of recovery of tax from him under section 179 of the Act. In such representation, he had detailed the steps taken by him and the circumstances due to which non recovery of tax cannot be attributed to his gross neglect. It was this representation and the factors which the petitioner had put forth before the Assistant Commissioner which had to be taken into account before the order could be passed. It is not even the case of the department that the petitioner paid the dues of other creditors of the company in preference to the tax dues of the department. It is not the case of the department that the petitioner negligently frittered away the assets of the company due to which the dues of the department could not be recovered. To suggest that the petitioner did not oppose the GSFC's auction sale is begging the question. GSFC had sold the property after several attempts through auction. It is not the case of the department that proper price was not fetched.*
>
> (emphasis supplied)

In *Maganbhai Hansrajbhai Patel* (supra) the Gujarat High Court held that gross negligence etc., is to be viewed in context of non-recovery of the tax dues of the company and not with respect to the functioning of the

company when the company was functional. In that case the respondent had placed entire focus and discussion with respect to Directors neglect in functioning of the company. The Gujarat High Court set aside the impugned order. In the case at hand there in no discussion whatsoever by Respondent No.3. All the more, reason for us to interfere.

24. We also find support for our view in another judgment of Gujarat High Court, in ***Ram Prakash Singeshwar Rungta vs. Income Tax Officer***[4] relied upon by Mr. Sridharan, where paragraph no. 14 reads as under :

> *14. On the merits of the impugned order, as noted hereinabove, the sole ground on which the respondent has not accepted the explanation given by the petitioners to the effect that there was no gross negligence, misfeasance or breach of duty on their part is that, the petitioners, as directors, were responsible for the non-filing of return of income and that the demand in question had been raised due to the inaction on the part of the directors. Clearly, therefore, the entire focus and discussion of the respondent in the impugned order is in respect of the petitioners' neglect in the functioning of the company when the company was functional. On a plain reading of the impugned order, it is apparent that nothing has been stated therein regarding any gross negligence, misfeasance or breach of duty on the part of the petitioners due to which the tax dues of the company could not be recovered. The respondent, has, therefore, passed the impugned order under Section 179 (1) of the Act against the directors in respect of alleged neglect on their part in the functioning of the company due to which the demand in question has arisen and not on account of any gross neglect, misfeasance or breach of the duty on their part in the non-recovery of the dues of the company. Thus, the very basis on which the respondent has proceeded, suffers from non-application of mind to the requirements for exercise of powers under section 179(1) of the Act. In the absence of any finding that non-recovery of the tax due from the*

4 (2015) 59 taxmann.com 174 (Gujarat)

> *company can be attributed to any gross negligence, misfeasance or breach of duty on the part of the petitioners, no order could have been made under section 179(1) of the Act for recovering the same from the directors. The upshot of the above discussion is that the impugned order being inconsistent with the provisions of section 179(1) of the Act, cannot be sustained.*
>
> (emphasis supplied)

25. Also, in another judgment, the Gujarat High Court in ***Gul Gopaldas Daryani vs. Income Tax Officer***[5], in paragraph no.14 held as under :

> *14. It can thus be seen that once it is established that the taxes of a private company cannot be recovered from the said company, the directors of the company at the relevant time would be jointly and severally liable for payment of such taxes, unless, it is proved that non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on their part in relation to the affairs of the company. The burden cast by statute is thus in the negative and is on the director concerned as is observed in case of Maganbhai Hansrajbhai Patel (supra). However, once in defence, the director places necessary facts before the Tax Recovery Officer to establish that non-recovery cannot be attributed to gross negligence, misfeasance or breach of duty on his part, the Tax Recovery Officer is required to apply his mind and come to definite findings. In the present case, the directors pointed out to the Tax Recovery Officer that the entire project ran into heavy losses due to devastating earthquake. Before the hotel could be inaugurated, the building was destroyed. The project therefore, never took off. This resulted into heavy losses to the company. The financial institutions restructured the debts and permitted sale of its property. Out of the sale proceeds, the creditors were paid off proportionately. When such payments were made, assessment order was still not passed. The insurance claim is not passed by the insurance company and civil disputes are still pending. In such facts and circumstances, the Tax Recovery Officer committed a serious error in applying section 179 of the Act against the directors.*
>
> (emphasis supplied)

5 (2014) 46 taxmann.com 35 (Gujarat)

26. In the reply to the show cause notice, petitioner has submitted that there was no allegation of any gross neglect or misfeasance or breach of the duty on his part. It was also explained that petitioner was not involved in the day to day affairs of the company. Petitioner in his reply to the show cause notice had submitted as under :

> *a) The company went into B.I.F.R. bearing no.83/96. In the said proceeding before the BIFR, sales tax department was one of the parties. The Ld. BIFR has passed order dated 19.03.1998 sanctioning the rehabilitation scheme. In para 5 (On pg. 7 of the order), reasons for sickness are given. It can be seen that, the company has become sick due to various reasons narrated in the said para. The copy of the order is enclosed for your ready reference. Since all the material is before your goodself, we are not repeating again here, but your goodself can certainly go through the same and will find that, company became sick due to various reasons in the said para. There is not a single word about gross negligence, misfeasance or breach of the duty on part of our client director. The BIFR is central government authority formed under relevant parliament Act. The findings in the said order are final and binding on all authorities, more particularly on sales tax department since it was party to the said proceedings.*
>
> *b) In para 6 of the above BIFR order, there is finding of the BIFR that, the day to day affairs were with Shri. H.S.J. Dhillon as managing director. This clearly proves that other directors including our above client were not in day to day affairs. Therefore, there is no question of gross negligence, misfeasance or breach of duty on part of director in non-payment of tax.*
>
> *c) From para 7 it can be seen that, the company sought revival of the business and accordingly the scheme was approved by the BIFR. This shows that, the company was very much interested in running the business and the directors were also committed for the same. Therefore, the charge of gross negligence, misfeasance or breach of duty on part of director cannot apply to our client.*
>
> *d) Under above circumstances, our client is outside the purview of section 18 of CST Act. In nutshell our client is neither liable under BST Act (because of absence of any*

> *provision to that effect in BST Act) and also under CST Act (Section 18 of CST Act being not applicable to our client as stated above). The show cause notice, therefore, be dropped.*

27. The impugned order, however, completely fails to consider these submissions. Respondent No.3 in paragraph no. 12 of the impugned order simply brushed aside the explanation of petitioner by saying that reliance on the proceedings with BIFR has no relevance in the issue involved in the show cause notice and no records have been produced to substantiate contentions (despite Sales Tax officers attending meetings with the Operative Agency Bank of India during BIFR proceedings) and that findings in BIFR proceedings are for different purpose and has no relevance in the present proceedings. This, in our view is completely perverse.

28. In paragraph no. 21 of the impugned order also, Respondent No.3, without any basis, simply says that the Director has failed to prove that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of the duty on his part, when dealing with submissions of petitioner. In our view, it is grossly illegal because Respondent No.3 had an obligation to explain how, despite submissions of petitioner, petitioner failed to discharge the onus of proof placed on him under Section 18 of the CST Act.

29. As regards, reliance on Section 89 of the MGST Act by Respondent No. 3 in our view the same would also not be applicable to the facts and circumstances of the present case. Even for a moment we say that

Section 89 of the MGST Act would be applicable to the facts and circumstances of the case, Section 89 is pari-materia with Section 18 of the CST Act and our observations and findings with regard to Section 18 of the CST Act recorded above will squarely apply.

30. We also find total non application of mind by Respondent No.3 in as much as consequential notice issued to petitioner is issued under BST and CST, Act whereas the impugned order relies upon provisions of the MGST Act, to recover the dues of the company from petitioner. We say this because the primary contention in the impugned order is that Section 142(8) of the MGST Act empowers respondents to recover dues arising under the earlier law as arrears of tax under the MGST Act. This means the provisions of recovery under the MGST Act may be utilized by respondents to recover dues arising under the earlier laws. Strangely, the impugned order is accompanied with the Notice of Demand issued under Section 38 of the BST Act. The second consequential notice is, we find, not even a Notice of Demand issued under the CST Act, but rather Notice of Final Assessment in Form VIII(B), i.e., the Assessment Order itself. Respondent No.3 in consequence of the impugned order, has issued Assessment Order under the CST Act as opposed to a Notice of Demand. This indicates non application of mind.

31. Moreover, the CST Act is also yet not repealed. When the MGST Act came into force, the CST Act also under went amendment with

effect from 1st July 2017 by Act 18 of 2017, Section 13(B). Prior to its substitution, Clause (d) of Section 2 reads as under :

> *(d) "goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include [newspapers] actionable claims, stocks, shares and securities".*

After substitution Clause (d) of Section 2 reads as under :

> *(d) "goods" means -*
> *(i) petroleum crude;*
> *(ii) high speed diesel;*
> *(iii) motor spirit (commonly known as petrol);*
> *(iv) natural gas;*
> *(v) aviation turbine fuel; and*
> *(vi) alcoholic liquor for human consumption;*

Then how Respondent No.3 proposes to recover the amounts payable under the CST Act, under the provisions of MGST Act is not discussed.

32. We have to also note that even where no limitation has been prescribed in statue, for any action, courts have repeatedly held that action must be conducted within a reasonable period of time. In the present matter, the dues of the Sales Tax Department post liquidation of the company was quantified by the Official Liquidator vide Report dated 11th December 2008. That being so, the attempt of respondents to recover the dues in and around October 2018 is conducted after a period of over ten years. In our view, such actions are clearly not executed within a reasonable period of time. The Division Bench of this court in ***Parle International***

Limited vs. Union of India And Others[6] has held that delay in adjudicating (in that case also it was more than a decade) defeats the very purpose of legal process and assessee as the taxable person must know where it stands and if for more than ten years there is no action from the departmental authorities such delayed action would be in contravention of procedural fairness and thus violative of the principles of natural justice. The action which is unfair and in violation of the principles of natural justice cannot be sustained. Paragraph no. 22 and 23 of *Parle International Ltd.* (supra) reads as under :

> *22. This position has been reiterated by this Court in Raymond Limited Vs. Union of India, 2019 (368) ELT 481 (Bombay). …….. This Court after referring to various judicial pronouncements took the view that the weight of judicial pronouncements leaned in favour of quashing the proceedings if there had been an undue delay in deciding the same. In the absence of any period of limitation it is incumbent upon every authority to exercise the power of adjudication post issuance of show-cause notice within a reasonable period.*
>
> *23. In the present case, it is evident that the delay in adjudication of the show-cause notices could not be attributed to the petitioner. The delay occurred at the hands of the respondents. …….. Upon thorough consideration of the matter, we are of the view that such delayed adjudication after more than a decade, defeats the very purpose of issuing show-cause notice. …….. As has been rightly held by this Court in Raymond Limited (supra), such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. An action which is unfair and in violation of the principles of natural justice cannot be sustained. Sudden resurrection of the show-cause notices after 13 years, therefore, cannot be justified.*
>
> (emphasis supplied)

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33. We would also place reliance on paragraph no. 14 and 16 of the judgment of this court in ***Sushitex Exports India Ltd. And Ors. vs The Union of India and Another***[7] which reads as under :

> *14. It is not in dispute that after the show-cause notice was issued on 30th April 1997, the petitioners were called upon for a hearing in the year 2006. At least, till 2006, it can be inferred that the issue was live. However, why no final order was passed immediately after the hearing was granted to the petitioners is not disclosed in the affidavit-in-reply. The respondents seem to have slipped into deep slumber thereafter. While the respondents' right in law to initiate proceedings for violation of the provisions of the Act can never be disputed, at the same time they do not have the unfettered right to choose a time for its termination and conclude proceedings as per their convenience. Indeed, the words 'reasonable period' call for a flexible rather than a rigid construction having regard to the facts of each case, but the period in excess of two decades without the respondents sufficiently explaining as to what prevented them to conclude the proceedings has to be seen as unreasonable and the reasons assigned in the affidavit-in-reply as mere excuses for not adjudicating the show-cause notice according to law. Law is well-settled that when a power is conferred to achieve a particular object, such power has to be exercised reasonably, rationally and with objectivity with the object in view. It would amount to an arbitrary exercise of power if proceedings initiated in 1997 are not taken to their logical conclusion for over two decades and then a prayer is made for its early conclusion, no sooner than the matter enters the portals of this Court. We agree with the decision in Parle International Limited (supra) to the extent it lays down the law that the proceedings should be concluded within a reasonable period and that proceedings that are not concluded within a reasonable period, which the Court on the facts of each case has to consider, may not be allowed to be proceeded with further. On facts and in the circumstances, we are satisfied that the proceedings arising out of the impugned show-cause notice having remained dormant for about fourteen years since hearing was given to the petitioners, it should not be allowed to be carried forward further in the absence of a satisfactory explanation.*
>
> *16. Article 14 of the Constitution of India is an admonition to the State against arbitrary action. The State*

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action in this case is such that arbitrariness is writ large, thereby incurring the wrath of such article. It is a settled principle of law that when there is violation of a Fundamental Right, no prejudice even is required to be demonstrated.

(emphasis supplied)

34. In the circumstances, Rule made absolute in terms of prayer clause - (a) and (b) which read as under :

WRIT PETITION (L) NO. 2121 and 2129 OF 2022

(a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India declaring that the sales tax dues of M/s. Twin City Organics Pvt. Ltd., cannot be recovered from its director, namely the Petitioner.

(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to : i) the impugned Order dated 27.09.2021 passed by the Respondent No.3; ii) the consequential Notice of Demand dated 27.09.2021 issued under Section 38 of the BST Act; and iii) the consequential Final Notice of Assessment dated 27.09.2021 in Form VIII(B) under the CST Act; and iii) Final Notice of Assessment dated 27.09.2021 in Form VIII(B) under the CST Act (Exhibit "A") and the quash and aside the same after going into the validity and legality thereof.

WRIT PETITION (L) NO. 2133 OF 2022

(a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India declaring that the sales tax dues of M/s. Twin City Organics Pvt. Ltd., cannot be recovered from its director, namely the Petitioner.

(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to : i) the impugned Order dated 27.09.2021 passed by the Respondent No.3; ii) the consequential Notice of Demand dated 27.09.2021

issued under Section 38 of the BST Act; and iii) the consequential Final Notice of Assessment dated 27.09.2021 in Form VIII(B) under the CST Act; and iii) Final Notice of Assessment dated 27.09.2021 in Form VIII(B) under the CST Act; iv) the Demand Notice dated 22.11.2021 issued u/s. 267 of the Maharashtra Land Revenue Code, 1966 (Exhibit "A") and the quash and aside the same after going into the validity and legality thereof.

35. Petitions disposed accordingly. No order as to costs.

(GAURI GODSE, J.) (K.R. SHRIRAM, J.)