



Kishor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIONWRIT PETITION NO. 15511 OF 2023

Andreas Stihl Private Limited,
A private limited company
having its registered office at:
Plot No.E-2/5 & 2/6, Chakan,
MIDC Industrial Area, Phase III,
Village Kharabwadi, Tal. Khed,
Pune, Maharashtra – 410 501

...Petitioner

Versus

1. The Joint Commissioner of State Tax,
LTU-2, PUN-VAT-F-602, Pune Division,
Pune Cabin No.418, 4th Floor, GST
Bhavan, Yerwada, Pune – 411 006
2. The Deputy Commissioner of State Tax,
PUN-VAT-E-618, Cabin No.424,
4th Floor, GST Bhavan, Yerwada,
Pune – 411 006
3. State of Maharashtra,
Finance Department,
Mantralaya, Mumbai – 400 021

...Respondents

Mr. Anay Y. Banhatii a/w Ms. Asmita Gupta and Mr. Siddhant Chhabra
for Petitioner.

Ms. S. D. Vyas, Addl. G. P a/w Ms. Vrishali Raje, AGP for Respondent-
State.

CORAM : M. S. SONAK &
JITENDRA JAIN, JJ.

RESERVED ON : 18th OCTOBER 2024

PRONOUNCED ON : 23rd OCTOBER 2024

JUDGMENT (Per Jitendra Jain, J.) :-

1. Rule. Rule is made returnable forthwith with the consent of

both the parties and the Petition is taken up for final hearing and disposal since the pleadings are complete.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge review orders all dated 17th July 2023 for the financial years 2013-2014, 2015-2016 and 2017-2018 passed by the Joint Commissioner of State Tax, Pune under Section 15 of the Maharashtra Settlement of Arrears of Taxes, Interest, Penalties or Late Fees Act, 2022 (Settlement Act) in which invoking provisions of Section 50 of the Maharashtra Value Added Tax Act, 2002 (MVAT Act), refund amount for financial year 2016-2017 is sought to be adjusted against the outstanding demand for the financial years 2013-2014, 2015-2016 and 2017-2018 and consequently seeks to review settlement orders passed under Section 13(1) of the Settlement Act.

Brief facts:-

3. The Petitioner is engaged in the business of manufacturing and sale of machineries and is registered under the MVAT Act. The Petitioner is regularly filing its MVAT returns which are subjected to scrutiny and assessment orders are passed by the Respondents exercising its powers under the MVAT Act which are also carried in appeal by the Petitioner.

PROCEEDINGS FOR THE FINANCIAL YEAR 2013-14, 2016-17 & 2017-18:-

4. For the financial year 2013-2014, on 1st October 2021, an appeal order came to be passed by the Appellate Authority under the MVAT Act and pursuant thereto tax amount of Rs.1,01,51,134/- was payable by the Petitioner.

5. On 12th May 2022, an assessment order for the financial year 2017-2018 was passed by the Respondents under the MVAT Act and a demand of Rs.30,40,559/- was raised against the Petitioner.

6. Meanwhile, on 15th March 2022, the Settlement Act was passed for settlement of arrears of tax, interest, penalty or late fee which were levied, payable or imposed under various Acts administered by the Respondent State.

7. On 12th May 2022, an appeal order under the MVAT Act came to be passed for the financial year 2016-2017, pursuant to which sum of Rs.2,72,08,381/- was determined as refundable to the Petitioner. The copies of the said appeal order was marked to all the Respondents.

8. On 28th July 2022, Petitioner filed an application under the Settlement Act for the financial years 2013-2014 and 2017-2018 and as per the said application forms generated on the portal of the Respondents under the Settlement Act, a sum of Rs.26,61,347/- and Rs.9,31,526/- were payable as per the said Settlement Act. These applications were acknowledged by the Respondents under the Settlement Act on 28th July 2022 itself.

9. On 1st August 2022, Respondent No.2 passed an order of settlement under Section 13(1) of the Settlement Act for the financial years 2013-2014 and 2017-2018 and arrived at the same figure of the settlement amount which were calculated by the Petitioner in its application i.e. Rs.26,61,347/- for the financial year 2013-2014 and Rs.9,31,526/- for the financial year 2017-2018. Respondent No.2 acknowledged amount under the Settlement Act having been paid by the Petitioner and, therefore, passed an order for waiver of interest, penalty, etc.

PROCEEDINGS FOR THE FINANCIAL YEAR 2015-16:-

10. On 28th September 2022, an order under the MVAT Act for the financial year 2015-2016 came to be passed whereby sum of Rs.1,41,86,978/- was determined as payable by the Petitioner. The Petitioner immediately, thereafter, on 29th September 2022 filed settlement application under the Settlement Act for the said financial year 2015-2016 with Respondent No.2 and arrived at a sum of Rs.42,69,775/- as the settlement amount payable under the Settlement Act. The said application was accepted and payment as per the Settlement Act was made by the Petitioner. On 3rd October 2022 an order of settlement under Section 13(1) of the Settlement Act was passed by the Respondent No.2 acknowledging the payment as per the Settlement Act and further waiving interest, penalty, etc.

PROCEEDINGS UNDER SECTION 13(3) OF THE SETTLEMENT ACT:-

11. On 21st March 2023, Respondent No.2 issued show cause notice under Section 13(3) of the Settlement Act for the financial years 2013-2014, 2015-2016 and 2017-2018 whereby a rectification was sought of its settlement orders dated 1st August 2022 and 3rd October 2022 for those financial years on the ground that after the settlement orders were passed it was noticed by Respondent No.2 that the Petitioner was entitle to a refund for the financial year 2016-2017 amounting to Rs.2,72,08,381/- by virtue of appeal order dated 13th May 2022 for that year. The said show cause notice further stated that the said refund for financial year 2016-2017 was available for adjustment towards pending dues under the MVAT Act and therefore in the application for settlement, Petitioner should have adjusted refund against demand for the years 2013-2014, 2015-2016 and 2017-2018 for arriving at outstanding amount for settlement. In the said show cause notices provisions of Section 50 of the MVAT Act were invoked.

12. On 24th April 2023, Petitioner filed its reply to the aforesaid show cause notice issued under Section 13(3) of the Settlement Act and made detailed submissions inter alia that the proposed rectification is time barred, without authority of law, without there being any mistake in the settlement order, etc. and prayer was made to drop the show cause notice. A personal hearing was also given to the Petitioner on 11th

May 2023 in connection with proceedings under Section 13(3) of the Settlement Act but no order came to be passed in those proceedings till today.

IMPUGNED REVIEW PROCEEDINGS UNDER SECTION 15 OF THE

SETTLEMENT ACT:-

13. On 17th May 2023, Respondent No.1 issued a show cause notice under Section 15, for review of the orders passed under Section 13(1) of the Settlement Act for the financial years 2013-2014, 2015-2016 and 2017-2018, was issued proposing to adjust refund of the financial year 2016-2017 against demand for these 3 years and recompute the settlement amount. On 15th June 2023, the Petitioner filed its reply to the aforesaid show cause notice and challenged the very review proceedings. The Petitioner, *inter alia*, submitted that there is no error in the determination of the amounts payable under the Settlement Act. The Petitioner after detailed written submissions prayed for dropping of the review proceedings. Personal hearing was also given to the Petitioner in the course of the review proceedings.

14. On 28th August 2023 three orders dated 17th July 2023 were served on the Petitioner for the financial years 2013-2014, 2015-2016 and 2017-2018 wherein provisions of Section 50 of the MVAT Act were invoked and the amount outstanding for the financial years 2013-2014, 2015-2016 and 2017-2018, after adjustment of refund for the financial

year 2016-2017, was arrived at. As per these review orders, no amount was outstanding for the financial years 2013-2014, 2015-2016 and 2017-2018 for consideration under the Settlement Act. Pursuant to these orders, a communication was addressed by the Respondent No.2 to the Petitioner referring to the settlement proceedings and the review orders passed in those proceedings and it was proposed as to why refund for financial year 2016-2017 should not be adjusted against dues payable as per the office records.

15. It is on the above backdrop that the Petitioner in the present proceedings has challenged review orders passed under Section 15 of the Settlement Act and subsequent communication dated 13th October 2023 whereby Respondent No.2 has proposed to adjust the refund for the financial year 2016-2017 against the demand for the financial years 2013-2014, 2015-2016 and 2017-2018.

SUBMISSIONS OF THE PETITIONER:-

16. Mr. Banhatti, learned counsel for the Petitioner submits that the impugned orders are wholly without jurisdiction inasmuch as calculation of arrears made in the impugned orders dated 17th July 2023 is contrary to the provisions of the Settlement Act. There is no provision in the Settlement Act for calculating arrears of a particular year by adjustment of refund of the other years. Mr. Banhatti further submits that looking at the scheme of the Settlement Act and the orders

passed accepting the settlement application, Petitioners have not challenged and/or withdrawn appeals for those years and they have lost a vital remedy which were proposed to be settled under the Settlement Act. It is his submissions that the Settlement Act is a self-contained code. He further submits that on the date when the settlement orders were passed, there was no order under Section 50 of the MVAT Act for adjustment of refund nor the said order is passed thereafter and therefore exercise done by the Respondents to recalculate the arrears/outstanding as per the Settlement Act by invoking provisions of Section 50 of the MVAT Act is without jurisdiction. Mr. Banhatti, therefore, submitted that the petition be allowed in terms of prayer clause (a) and (b) by quashing the impugned orders and directing Respondents to refund Rs.2,72,08,381/- being refund for the financial year 2016-2017.

SUBMISSIONS OF THE RESPONDENTS:-

17. Ms. Vyas, learned Additional GP has strongly opposed the petition and submitted that the Petitioner has not disclosed in the application that they were eligible for refund for the financial year 2016-2017 and therefore the calculation made in the settlement application and accepted by Respondents in the settlement order contains an error which empower them to review the order under Section 15 of the Settlement Act. The learned Additional GP has relied

upon the Affidavit-in-Reply filed by one Mr. Rajendra and affirmed on 26th March 2024. It is her submission that the petition is devoid of merits and is required to be dismissed.

18. We have heard learned counsel for the Petitioner and the Respondents and have also perused documents annexed to the petition and reply of the Respondents.

ISSUES:-

19. The short issue which arises for our consideration is whether the Respondents were justified in exercising the review powers under Section 15 of the Settlement Act to review the settlement orders passed under Section 13(1) of the said Settlement Act and recalculating the amount of 'arrears' which were initially accepted by the Respondents while passing the settlement orders.

20. To answer the said issues following questions needs to be answered.

(A) Whether authorities under the Settlement Act can abdicate and exercise powers granted to authorities under the MVAT Act?

(B) Whether on a reading of the Settlement Act, amount for considering for settlement is to be arrived at after adjusting refund of other years against the dues of the years for which application is made under the Settlement Act?

- (C) Whether in the absence of any order under Section 50 of the MVAT Act for adjustment of refund order, are the authorities under the Settlement Act justified in invoking review powers under Section 15 of the Settlement Act?

ANALYSIS AND CONCLUSIONS:-

21. Before we dwell upon the reasoning, it is necessary to dissect the scheme of the Settlement Act and the relevant provisions of the MVAT Act.
22. The Statement of objects and reasons for enactment of the Settlement Act is reproduced herein :

“STATEMENT OF OBJECTS AND REASONS

1. *With a view to give effect to the proposals contained in the Budget Speech for the year 2022-2023, the Government considers it expedient for settlement of arrears under the various Acts administered by the Goods and Services Tax Department.*
2. *The Goods and Services Tax Act has come into force with effect from the 1st July 2017. Prior to the implementation of Goods and Services Tax in the State, various Tax Laws were in force. Some of the Tax Laws have been repealed and subsumed in the Goods and Services Tax. A large number of cases involving outstanding dues and litigations are pending. In order to unlock the amount involved in the outstanding dues and reduce the old pending litigations, the Government considers it expedient to provide for a scheme for settlement of arrears of tax, interest, penalty or late fee under the Relevant Act, for the specified period ending on or before the 30th June 2017.*
3. *In view of the Covid-19 pandemic, small industries, traders and other dealers have undergone a lot of financial stress. Therefore, the Government considers it expedient to provide a relief to such dealers. This scheme mainly targets the class of dealers by providing lump sum payment option for settlement of dues and closure of old pending litigations.*
4. *For other classes of dealers, the scheme safeguards the revenue in respect of un-disputed tax with an incentive towards the partial waiver of disputed tax, interest, penalty or the late fee. For bigger dealers who are facing financial crunch, option to pay the amount by instalments has been provided.*

5. *The Bill seeks to achieve the above objectives.”*

ANALYSIS OF THE SETTLEMENT ACT:-

(a) Section 2 of the Settlement Act defines certain terms for the purposes of this Act. Section 2(d) defines “**arrears**” to mean outstanding amount of tax, interest, penalty or late fee payable by an assessee as per any statutory order under the Relevant Act or admitted in the return or revised return and which has not been paid or determined and recommended to be payable by the auditor as per Section 61 of the Value Added Tax Act, 2005. Relevant Act would include MVAT. Section 2(l) defines the term “**requisite amount**” to mean amount required to be paid under the Settlement Act towards undisputed tax and disputed tax, interest, penalty and late fee as determined under Sections 8 and 9 of the said Act and as specified in Annexures A and B appended thereto. Section 2(o) defines “**statutory order**” to mean any order passed under the Relevant Act raising the demand of tax, interest, penalty or late fee payable by the Applicant. Section 2(g) defines “**disputed tax**” to mean the tax other than the undisputed tax as defined in clause (q) and clause (q) defines “**undisputed tax**” to mean tax collected under the Relevant Act or payable as per the return, etc. Section 2(k) defines “**Relevant Act**” to mean various Acts specified therein which includes the MVAT Act. Section 2(2) provides that words

and expressions used in the Settlement Act but not defined in the said Act shall have the same meanings as assigned to them under the Relevant Act.

- (b) Section 3 provides for who would be the designated authority for the purposes of the Settlement Act. The Commissioner of State Tax shall be the Commissioner for the purpose of the Settlement Act.
- (c) Section 4 provides for who would be eligible for settlement.
- (d) Section 6(1) starts with *non obstante* clause, overriding the Relevant Act (which in the instant case is MVAT) and it provides determination of arrears of tax, interest, penalty or late fee for settlement. Section 6(1)(a) provides that any payment made in respect of a statutory order shall first be adjusted towards the amount of undisputed tax and then disputed tax and, thereafter, towards the interest and the balance amount remaining unjusted shall then be adjusted towards the penalty and the late fee. Section 6(1)(b) provides that after adjustment of the amount specified in clause (a), the amount remaining outstanding as on the cutoff date shall be considered for the settlement under the said Act.
- (e) Section 8 provides that the “requisite amount” determined under Section 6 shall be payable towards the settlement of arrears as

specified in Annexures (A) and (B). The said annexures deals with one time payment option or installment option and the percentage of the amount of undisputed tax, disputed tax, interest, penalty and late fee to be paid towards the settlement.

- (f) Section 11 provides for conditions for settlement. The condition being that the applicant would withdraw the appeal, fully and unconditionally, pending before any authority and application for withdrawal of appeal should be filed along with the settlement application.
- (g) Section 12 provides for making of application for settlement of arrears separately for each financial year before the last date specified in Section 10. Along with the application, the applicant is required to pay the requisite amount.
- (h) Section 13 of the Settlement Act provides for order of settlement to be passed by the designated authority on satisfaction that the applicant has paid the requisite amount determined in accordance with Sections 8 and 9 and on passing such settlement order, applicant shall be discharged of his liability to the extent of the amount of waiver specified in the order of settlement. If the application is not in accordance with the provisions of the Settlement Act then the designated authority may reject the application after giving an opportunity of being heard to the

applicant. Section 13(3) empowers the designated authority to rectify any error apparent from the record.

- (i) Section 15 of the Settlement Act confers power of review on the Commissioner after noticing any error in the settlement order, if it is prejudicial to the interest of revenue.
- (j) Section 16 provides for bar on reopening of the settled cases, subject to the power of review, rectification or revocation.
- (k) Section 17 of the Settlement Act provides that, notwithstanding anything contained in Section 16, if the applicant has obtained the benefit of settlement by suppression of material information or particulars or by furnishing any incorrect or false information, etc., then the settlement order passed would be revoked.
- (l) Section 18 provides that no refund of the amount paid under the Settlement Act shall be granted except, if the order of settlement is revoked or rejected in which case, the amount paid shall be treated to have been paid under the Relevant Act.

23. PROVISIONS OF THE MVAT ACT:-

50. Refund of excess payment:-

- (1) *Subject to the other provisions of this Act and the rules made thereunder, the Commissioner shall, by order refund to a person the amount or tax, penalty, interest, security deposit deposited under Section 16 and fee except when the fee is paid by way of court fee stamp, if any, paid by such person in excess of the amount due from him. The refund may be either by deduction of such excess from the amount of tax, penalty, amount forfeited and*

interest due, if any, in respect of any other period or in any other case, by cash payment:

Provided that, the Commissioner shall first apply such excess towards the recovery of any amount due in respect of which a notice under sub-section (4) of section 32 has been issued, or, as the case may be, any amount which is due as per any return or revised return but not paid and shall then refund the balance, if any.

- (2) If a registered dealer has filed any returns, fresh returns or revised returns in respect of any period contained in any year and any amount is refundable to the said dealer according to the return, fresh return or revised return, then subject to rules, the dealer may adjust such refund against the amount due as per any return, fresh return or revised return for any period contained in the said year, filed under this Act or the Central Sales Tax Act, 1956 (74 of 1956) or the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002.

RULE 60 OF THE MVAT RULES

60. **Grant of Refund:-**

- (1) Application for refund under section 51 shall be made in Form 501.
- (2) When the Commissioner is satisfied that a refund is due, he shall pass an order in Form 502, showing the amount of refund due and shall communicate the same to the dealer.
- (3) When an order for refund has been made under any rule, the Commissioner shall, if the applicant desires payment in cash, issue to him a refund payment order either in Form 503 or, in form, 504. If the dealer desires adjustment of refund, against tax payable in respect of any subsequent period contained in the year to which the refund relates under this Act, the Central Sales Tax Act, 1956, or the Maharashtra Tax on Entry of Goods into Local Areas Act, 2003, the Commissioner shall issue a Refund Adjustment Order in Form 506.

24. On an analysis of the Settlement Act, in our view, it is a self-contained code in itself, inasmuch as, it defines various terms for the purpose of the said Act. It provides for the designated authority for implementation of the said Act. It provides for eligibility for the settlement of the arrears, the amount which is to be considered for the settlement of the Act, the time within which the amount determined for

settlement is required to be paid, the conditions to be satisfied for availing the settlement, order to be passed accepting or rejecting the settlement, power of rectification, review and appeal. Consequences of settlement order obtained by suppression and conclusiveness of the proceedings covered by settlement.

Issue A

(A) Whether authorities under the Settlement Act can abdicate and exercise powers granted to authorities under the MVAT Act?

25. Under Section 3 of the Settlement Act, an authority is designated for implementation of the said Act. The Commissioner of State Tax is the said authority.

26. The Settlement Act is a separate Act which is enacted for settlement of outstanding dues under various State Acts, each of which have separate and distinct authorities under their respective Acts for their administration. Although the Commissioner of State Tax is a Commissioner under the MVAT Act, he wears a different hat as a “designated authority” under the Settlement Act. Though he is one person but he wears 2 hats. In such a situation, it is well settled that the powers available under different enactments are not to be intermixed. Powers under one statute cannot be exercised for dealing with the matters covered or falling under another statute. In *Evergreen Apartment, Co-operative Housing Society Ltd. Vs. Special Secretary*

*(Appeals), Revenue Department*¹, the Gujarat High Court has held that an officer of the revenue department occupying different capacity under different statute would not empower him to exercise powers under one enactment while proceeding under another enactment.

27. Applying the above, order under Section 50 of the MVAT Act for adjustment of refund is to be passed under the said MVAT Act by the authority specified under the said MVAT Act. In the case before us, there is no order under Section 50 of the MVAT Act for adjustment of refund of the Financial Year 2016-17 against dues of Financial years 2013-14, 2015-16 and 2017-18. The authorities under the Settlement Act may also be the authorities under the MVAT Act but while exercising powers under the Settlement Act, they cannot invoke provisions of Section 50 of the MVAT and that too in review proceedings under the Settlement Act. Therefore, on this count itself, impugned orders dated 17th July 2023 are required to be quashed.

28. It is important to note that the Settlement Act nowhere provides or empowers the authorities under the said Act to import the provisions of the MVAT Act and more particularly provisions of Section 50 of the MVAT Act for determination of the requisite amount to be paid under the Settlement Act. Therefore, the action of the Respondents in passing the review order by importing the provisions of Section 50 of

1 AIR 1992 Guj 118

the MVAT Act is wholly without the authority of law and without jurisdiction. If the legislature wanted to empower the authorities under the Settlement Act with the powers conferred under the MVAT Act then nothing prevented them from providing the same under the Settlement Act. The legislature while enacting the Settlement Act in Section 2(2) provided that the “words and expressions” used in the Settlement Act, but not defined in the said Act shall have the same meanings assigned to them under the Relevant Act. However, the legislature consciously and rightly so did not empower the authorities under the Settlement Act with the powers conferred under the MVAT Act and, therefore, any action of the authorities under the Settlement Act by encroaching upon the powers conferred under the MVAT Act would be without jurisdiction.

Issue B

(B) Whether, on a reading of the Settlement Act, amount for considering for settlement is to be arrived at after adjusting refund of other years against the dues of the years for which application is made under the Settlement Act?

29. The requisite amount to be paid under the Settlement Act can be found in Sections 6 and 8 read with Annexures (A) and (B) of the Settlement Act. Section 6(1)(a) provides that if any payment is made in respect of the statutory order, then same would be adjusted towards undisputed tax, then disputed tax, then interest and balance towards

penalty and late fee and it is only the balance amount which would be considered as outstanding for the purposes of the Settlement under the Act and this amount so arrived will be the basis of computing the amount payable under the Settlement Act as per Section 8 read with Annexures (A) and (B). If the legislature intended that any refund due on the date of making the application or cutoff date for any year is required to be adjusted against the demand of the year for which the application under the Settlement Act is made and only the balance would be considered for the purpose of settlement under the Settlement Act then nothing prevented them to provide so under the Settlement Act. Having not provided, the authorities under the Settlement Act cannot confer upon themselves the powers given under Section 50 of the MVAT Act for determining the amount payable under the Settlement Act. Section 6(1)(a) provides for adjustment to be made of payment made by the Petitioners for the year to which statutory order is concerned and not refund of another year. Also, Section 6 of the Settlement Act overrides anything contained in the Relevant Act for the purpose of adjustment and determination of arrears to be considered for the settlement under the said Act. Therefore, even on this count, action of Respondents in invoking provisions of Section 50 of the MVAT Act for arriving at the settlement amount is contrary to the Settlement Act.

30. It is a settled position in taxation laws that each year is a

separate year for the purpose of the assessment. This is also codified in Section 12 of the Settlement Act which provides for separate application to be made for each financial year. As per the Settlement Act, the amount payable as per Annexure-A is certain percentage of the undisputed tax, disputed tax, interest payable, outstanding, penalty, etc. as per statutory order which is again for each year. Thus, amounts of undisputed tax, disputed tax, interest, penalty, etc. should be outstanding amount as per the statutory order to be recovered which would constitute 'arrears' as defined by Section 2(d) of the Settlement Act. The scheme of the Settlement Act read with the MVAT Act is that an application to calculate the undisputed tax, disputed tax, interest, penalty, etc. for "each year" is to be made for which an applicant proposes to apply for the Settlement. Therefore, as per the Settlement Act one has to calculate the outstanding arrears for "each year" on the date of application. Admittedly in the instant case, there is no dispute that the amount outstanding on the date when the Petitioner made application and also on the date when settlement orders under Section 13 were made, the outstanding arrears as per the statutory orders for the financial years 2013-2014, 2015-2016 and 2017-2018 were Rs.1,01,51,134/-, 1,41,86,978/- and 30,40,559/- respectively. On that date there was no proceedings pending or any order passed under Section 50 of the MVAT Act to adjust refund for the year 2016-2017 against these demands.

31. In our view, there is no provision under Settlement Act which provides for calculation of outstanding arrears of a particular year to be arrived at after adjustment of refund for another year moreso in a case where there is no such adjustment of the refund order on the date of application or on the date of settlement order under Section 13 of the Settlement Act. In our view, therefore the impugned action of the Respondents to recalculate the outstanding arrears for the financial years 2013-2014, 2015-2016 and 2017-2018 after passing the settlement order by invoking provisions of Section 15 of the Settlement Act admittedly without there being an order Section 50 of the MVAT Act is certainly without jurisdiction.

Issue C

(C) Whether in the absence of any order under Section 50 of the MVAT Act for adjustment of refund order, are the authorities under the Settlement Act justified in invoking review powers under Section 15 of the Settlement Act?

32. We may observe that for adjustment of refund of one particular year against demand of another year proceedings under Section 50 of the MVAT Act is required to be initiated. In the instant case, we have not been shown any order passed under Section 50 of the MVAT Act till today for adjusting the refund for the year 2016-2017 against the outstanding demand for the years 2013-2014, 2015-2016 and 2017-2018. The Respondent No.2 has now, vide order dated 13th

October 2023 after the review order was passed, is proposing to adjust the refund for the financial year 2016-2017. Therefore, admittedly there were no proceedings pending under Section 50 of the MVAT Act or any order passed under the said MVAT Act adjusting the refund for the financial year 2016-2017 against outstanding demand for the years 2013-2014, 2015-2016 and 2017-2018 either on the date of application made by the Petitioner under the Settlement Act or on the date when the order of settlement under Section 13 of the said Act was passed or on the date when the review order dated 17th July 2023 is passed.

33. In our view and on a reading of Section 50 of the MVAT Act, it provides that there has to be **an order** granting refund either by cash payment or by deduction of such refund against the demand for any other period and such order is required to be passed by the Commissioner appointed under the said MVAT Act. In the instant case, there is no such order. Section 50 of the MVAT Act has be read alongwith Rule 60 of the MVAT Rules. Section 50 of the MVAT Act provides that the refund may be made either by cash payment or by adjustment against the dues of other year. The phrase used under Section 50 while dealing with the mode of grant of refund uses the phrase 'may' and this has to be read alongwith Rule 60 (3) of the MVAT Rules which provides that the Commissioner shall, if the applicant desires payment in cash issue to him a refund payment order in Form

503 or 504 but if the dealer desires adjustment of refund against tax payable in respect of any subsequent period contained in the year to which the refund relates, the Commissioner shall issue a refund order in Form 506. Therefore, on conjoint reading of Section 50 and Rule 60, in our view, unless an assessee desires for adjustment of refund of one year against demand of another year, the Commissioner cannot, under Section 50 adjust the same on its own volition and even if he proposes to do so he has to do so by giving an opportunity of hearing. In the instant case before us, admittedly there is neither such desire expressed by the Petitioner nor we have been shown any order under Section 50 which is passed for adjusting the refund of Financial Year 2016-2017 against demand for the years 2013-2014, 2015-2016 and 2017-2018. Therefore, in our view in absence of any order under Section 50 read with Rule 60 of the MVAT Rules, the impugned action of the Respondents to adjust refund by resorting to the provisions of the Settlement Act is wholly without jurisdiction.

OTHERS:-

34. It is important to note that Respondents, after having passed the Settlement order under Section 13 resorted to provisions of Section 13(3) for rectifying the settlement order on the ground that the settlement order contains error apparent from the record by not adjusting the refund as per Section 50 of the MVAT Act while

calculating outstanding arrears under the Settlement Act. Although show cause notice was issued proposing to adjust the refund, Respondents did not pass any order under Section 13(3) of the Act in spite of the Petitioner replying to the same and making its submissions during the personal hearing. The only conclusion which can be drawn is that the Respondents accepted contention of the Petitioner that there was no error apparent from the record which can be rectified under Section 13(3) of the Settlement Act. Having failed to do so, Respondents cannot now make one more attempt by resorting to provisions of Section 15 of the Settlement Act and passing the orders which are impugned before us. Unless proceedings initiated under one section are concluded by passing an order one way or the other, on the same ground initiation of proceedings under another provision would be bad-in-law.

35. Section 15 of the Settlement Act provides that any order passed under the Settlement Act may be reviewed within 12 months from the date of service of order after noticing error in such order insofar as it is prejudicial to the interest of revenue. Therefore, first pre-condition for invoking provisions of Section 15 of the Settlement Act is that there has to be an 'error' and that 'error' should be in the order passed under the Settlement Act. The phrase 'error' means a mistake, something incorrectly done through ignorance or inadvertence. In our

view, as observed above, there was no error in the calculation of the outstanding arrears for the years 2013-2014, 2015-2016 and 2017-2018 at the time when the application was made and the settlement order was passed. This is so because Settlement Act did not provide for adjustment of refund of one particular year against the demand of another year for arriving at the amount payable under the Settlement Act. Secondly, on the date when the application was made and settlement order was passed, there was no order under Section 50 of the MVAT Act justifying adjustment of the refund for the financial year 2016-2017 against the demand for the years 2013-2014, 2015-2016 and 2017-2018 and because there was no order, the question of ignoring such non-existing order also does not arise and consequently no power of review can be exercised in the absence of any such 'error'. Admittedly, till today there is no order passed under Section 50 of the MVAT Act by the authority under the said MVAT Act for adjustment of the refund. By exercising the powers under Section 15 of the Settlement Act and by relying on Section 50 of the MVAT Act in the said review proceedings, refund of amount cannot be adjusted against the demand of the other years for which the settlement application is made and settlement order is passed. This is not empowered under the Settlement Act.

36. The calculation of arrears and the amount payable under the

Settlement Act has to be strictly in accordance with the scheme of the said Act and if on the day when the application was made and the order of settlement was passed, there was no order adjusting the refund then we fail to understand how can there be an error in the settlement order. For an error in the settlement order, in the facts of our case, there should have been any existence of order under Section 50 of the MVAT Act on the date of application by which the refund for the year 2016-2017 was adjusted against the demand for the years 2013-2014, 2015-2016 and 2017-2018. Such an order not being in existence nor any proceedings being pending on the date of application or on the date of settlement order, in our view, any review proceedings without any order being passed under Section 50 of the MVAT Act, Respondents cannot recalculate the amount payable under the Settlement Act by adjusting the refund for the year 2016-2017 against demand for the other years.

37. It is also important to note that there is no notice under Section 32(4) of the MVAT Act as provided in the first proviso to Section 50(1) of the said Act, which would empower the Commissioner under the MVAT Act to adjust the refund. In our view, the said notice is required to be issued even if the refund arises out of the appeal order. Although as observed by us in the instant case, there is no order under Section 50 of the MVAT Act itself.

38. The contention of the Respondents that in the settlement

application, Respondents have not disclosed the refund for the year 2016-2017 is misconceived. On a perusal of the application for settlement there is no such column or row which obliges an applicant to disclose the refund for some other year. The Form only requires the details of the outstanding amount for the year for which the application is made to be disclosed and admittedly there is no dispute that the said information has been correctly disclosed. If there is no provision in the application Form to disclose refund of the year other than the year for which the application is made, in our view, there cannot be any allegation of mis-declaration or suppression. It is also important to note that the Respondents have not revoked the settlement order under Section 17 of the Settlement Act which provides for revocation of settlement order in case of suppression. The appeal order which resulted into refund was also marked to the authorities under the MVAT Act. Therefore, if said authorities had knowledge of refund, one fails to understand how they can allege suppression. Therefore, the contention of Respondents is to be rejected on this count also.

39. The Petitioner did raise other grounds including of limitation which we are not adjudicating.

40. The Petitioner has challenged the very jurisdiction of Respondents to pass an order under Section 15 of the Settlement Act and as observed above by us the orders passed under Section 15 of the

Settlement Act dated 17 July 2023 are wholly without jurisdiction and therefore we are exercising our discretionary powers under Article 226 of the Constitution of India by interfering in these proceedings. The Respondents in their reply has also not raised the issue of alternate remedy.

41. To conclude: In the absence of any order under Section 50 of the MVAT Act by the authorities under the said Act, review orders passed by authorities under the Settlement Act conferring power upon itself powers under Section 50 of the MVAT Act is without jurisdiction and also there is no provision under the Settlement Act to adjust such refund for arriving at the amount to be considered for the settlement and, therefore, there cannot be any error in the settlement orders for the authorities to exercise review powers under Section 15 of the Settlement Act.

42. In view of above, we pass the following order:-

ORDER:-

(i) The impugned review orders dated 17th July 2023 passed under Section 15 of the Settlement Act for the years 2013-2014, 2015-2016 and 2017-2018 are hereby quashed and set aside and consequently impugned communication dated 13th October 2023 is also quashed and set aside.

(ii) The Respondents are directed to refund sum of Rs.2,72,08,381/- being refund for the financial year 2016-2017 alongwith interest as per the Act and the said refund should be credited to the Petitioner's account within four weeks from the date of uploading the present order.

(iii) Petition disposed of. Rule made absolute in above terms.

(JITENDRA JAIN, J.)

(M. S. SONAK, J.)

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2024.10.23
11:36:30 +0530