



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12714 OF 2023

M/s. TML Business Services Ltd.,
TATA Motors Campus, Pimpri,
Pune – 4110018

..Petitioner

Versus

1. **The Deputy Commissioner of Salex Tax,**
Pune VAT – E-622 (LTU) Pune
2. **The Joint Commissioner of State Tax,**
LTU – 2, Pune Division, 4th Floor,
GST Bhavan, Airport Road Yerwada
Pune – 411 006

3. **State of Maharashtra**

..Respondents

Mr. Rafiq A. Dada, Senior Advocate a/w. Mr. Z. R. Dada, Mr. H. N. Vakil and Mr. Samkit Shah i/by. Mulla & Mulla & Craigie Blunt & Caroe for Petitioner.

Ms. S. D. Vyas, Addl. G. P a/w. Ms. P. N. Diwan, AGP and Mr. S. L. Babar, AGP for Respondent-State.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.

DATED : 9th JULY 2024

JUDGMENT :- (Per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. By consent of the parties taken up for final hearing at the admission stage.
2. By this Petition under Article 226 of the Constitution of India, Petitioner seeks refund of tax for the year 2011-2012 amounting to Rs.10,69,89,606/- with further interest thereon.

3. Petitioner is engaged in trading of vehicles and is registered with the Respondent-Tax Authority.

4. For the year 2010-2011, an assessment order was passed by Respondent No.1 on 30th March 2015 demanding a sum of Rs.17,76,93,422/-. The said order was challenged in appeal and on 28th February 2019, the Appellate Authority passed an order in appeal by which the demand was reduced to Rs.14,00,74,890/-.

5. For the year 2011-2012, an assessment order was passed demanding a sum of Rs.9,67,02,366/-. The said order was subject matter of appeal and on 28th February 2019 the appeal for the year 2011-2012 was allowed resulting in refund of Rs.10,69,89,606/-.

6. On 6th March 2019, Respondent No.3 issued an Ordinance for settlement of arrears of tax, interest, penalty and late fee outstanding as on 1st April 2019 upon payment of amount specified in the said Settlement Scheme. The said scheme was named as Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2019 (hereinafter referred to as the 'Settlement Scheme').

7. Petitioner informed Respondents through letter dated 12th April 2019 that they are considering to avail the benefit of the Settlement Scheme for the year 2010-2011 for which there was a demand of Rs.14,00,74,890/-. In the said letter, Petitioner also

informed Respondents not to adjust the refund of Rs.10,69,89,606/- which arose on account of appeal order for the year 2011-12 against the demand for the year 2010-2011.

8. On 13th May 2019, Petitioner informed Respondents that they have made online application under Settlement Scheme for the year 2010-2011 and paid Rs.8,46,84,821/- as per the said scheme against the original outstanding dues of Rs.14,00,74,790/-. Petitioner also enclosed with the said letter the challan evidencing the said payment and the acknowledgement of Respondents having received the said application in Form-1.

9. On 14th May 2019, defect notice was issued by Respondents under Section 11 of the Settlement Scheme, wherein it was informed to Petitioner that the requisite amount payable for the year 2010-2011 under the scheme is only Rs.66,17,057/-. It seems that the requisite amount of Rs.66,17,057/- is arrived at after adjusting the refund for the year 2011-2012 amounting to Rs.10,69,89,606/- and post application made by Petitioner.

10. On 23rd May 2019, i.e., after Petitioner availing the benefit of the Settlement Scheme for 2010–2011, Respondents issued a refund adjustment order under Rule 55 of the Maharashtra Value Added Tax Rules, 2005 (“**MVAT Rules**”) informing Petitioner that refund of

Rs.10,69,89,606/- for the year 2011-2012 will be adjusted towards the amount of tax due for the year 2010-2011.

11. Petitioner challenged the aforesaid defect notice and refund adjustment before this Court in Writ Petition No.8343 of 2019. The said Writ Petition was disposed on 4th May 2023, by remanding the matter back to Respondents to consider the refund application filed by Petitioner after giving opportunity of hearing. Pursuant to the said order, on 26th June 2023 the refund application came to be rejected on the ground that refund of Rs.10,69,89,606/- is adjusted against the demand for the year 2010-2011. It is on this backdrop that the present petition is filed praying for refund for the year 2011-2012 of Rs.10,69,89,606/-.

Submissions of the Petitioner :-

12. Mr. Dada, learned Senior Counsel appearing for Petitioner submits that Petitioner has paid Rs.19,16,74,501/- for the year 2010-2011 as against the amount payable under the Settlement Scheme of Rs.8,46,84,821/-. This is so because, Respondents adjusted the refund for the year 2011-2012 of Rs.10,69,89,606/-, against demand for the year 2010-2011 after Petitioner filed the settlement application and Petitioner pursuant to the Settlement Scheme paid Rs.8,46,84,821/-. Petitioner, therefore, is entitled to the refund of excess amount of

Rs.10,69,89,606/- alongwith interest. Petitioner further submitted that Respondents could not have adjusted the refund for the year 2011-2012 since on the date of refund adjustment order i.e., on 23rd May 2019, Petitioner had already availed the benefit of Settlement Scheme for the year 2010-2011 and made payment and, therefore, there was no outstanding amount for the year 2010-2011 for making any adjustment of the refund for the year 2011-2012. Petitioner further submitted that pursuant to RTI application, Petitioner received information that the refund for the year 2011-2012 of Rs.10,69,89,606/- was already approved by higher authorities on 10th May 2019 and on 14th May 2019. Therefore, Respondents were not justified subsequently to adjust the same against demand. Petitioner further submitted that the adjustment sought to be made is also contrary to Rule 60 of the MVAT Rules since the adjustment could be made against the demand of subsequent orders and not of the prior years. Petitioner, therefore, submitted that they are entitled to the refund of Rs.10,69,89,606/- for the year 2011-2012 alongwith interest.

Submissions of Respondent:-

13. Ms. Vyas, learned Additional Government Pleader for Respondent-State placed reliance on Section 18 of the Settlement Scheme which provides that under no circumstances, the applicant shall be entitled to get refund of the amount paid under the said Act. It is,

therefore, her submission that on account of this provision, Petitioner is not entitled to the refund as claimed. At the same time, Ms. Vyas agreed that giving purely by numbers, there has been an excess payment by Petitioner of Rs.10,69,89,606/-.

Analysis and conclusions:-

14. There is no dispute that as per the Settlement Scheme for the year 2010-2011, Petitioner is liable to make payment of Rs.8,46,84,821/-. There is also no dispute that the said amount for the year 2010-2011 as per the Settlement Scheme was paid by Petitioner on 13th May 2019 and same was communicated to Respondents alongwith the copies of challan on 14th May 2019, and same was also acknowledged on the said date by Respondents. Therefore, as on 13th May 2019, there was no outstanding due for the year 2010-2011 against which Respondents could have adjusted on 23rd May 2019 the refund of year 2011-2012 of Rs.10,69,89,606/-. Therefore, the refund adjustment on 23rd May 2019 itself is illegal and consequently, Petitioner is entitled for the refund of Rs.10,69,89,606/-.

15. It is also important note that pursuant to RTI application made by Petitioner the refund for the year 2011-2012 was already approved on 10th May 2019 and 14th May 2019 by the Assistant Commissioner of State Tax and Joint Commissioner of State Tax and the case records

were transferred for further necessary action to complete the refund procedure. If that be so, then we fail to understand as to how on 23rd May 2019 an officer below the rank of approving authority could have adjusted the said refund against a demand for the year 2010-2011 which, as more particularly observed hereinabove, itself did not exist on the date of adjustment of refund. Therefore, even on this count, the refund adjustment order is required to be set aside.

16. There is no dispute that Petitioner's liability under the Settlement Scheme is Rs.8,46,84,821/- as against which the Respondents have recovered from the Petitioner Rs.19,16,74,501/- thereby resulting into excess collection by Respondents to the extent of Rs.10,69,89,606/-. The excess arose because on 13th May 2019, Petitioner, under the Settlement Scheme, paid Rs.8,46,84,821/- and subsequently on 23rd May 2019, Respondents, without any authority of law, adjusted the refund for the year 2011-2012 amounting to Rs.10,69,89,606/- against the demand for the year 2010-2011 which did not exist. This has not been disputed by Respondents. Therefore, even on this count, the claim of Petitioner for refund of Rs.10,69,89,606/- is justified since it is a settled position that the State authorities cannot retain the excess amount which is not in accordance with law and same would be violative of Article 265 of the Constitution of India.

17. It is also important to note that the defect notice issued under Section 11 is dated 14th May 2019, wherein the outstanding amount as per Respondents record is shown at Rs.3,30,85,284/- being difference between the outstanding for the year 2010-2011 amounting to Rs.14,00,74,890/- and the adjustment of refund of Rs.10,69,89,606/-for the year 2011-2012. We fail to understand as to how on 14th May 2019, Respondents have arrived at the outstanding amount of Rs.3,30,85,284/- after adjusting the refund for the year 2011-2012, when refund adjustment order is itself of 23rd May 2019. Therefore, the defect notice itself is defective and not in accordance with the law. Furthermore, on a reading Section 11 of the Settlement Scheme, the defect notice is issued when there is a shortfall in making the payment and not when an applicant has paid the correct amount. In the instant case, on a perusal of the defect notice it states that requisite amount payable is Rs.66,17,057/-, whereas Petitioner has paid Rs.8,46,84,821/- which is excess payment and not short payment. Therefore, even on this count, defect notice is contrary to Section 11 of the Settlement Scheme.

18. Reliance placed by Respondents on Section 18 of the Settlement Scheme for not granting the refund is also misconceived. Section 18 provides that under no circumstances, shall the applicant be entitled to get refund of the amount paid under the Settlement Scheme. In the instant case before us, Petitioner is not seeking refund of

Rs.8,46,84,821/- which is the undisputed amount paid under the Settlement Scheme, but is seeking a refund of Rs.10,69,89,606/- which is refund for the year 2011-2012 arising out of the appeal order for the said year and not an amount paid under the Settlement Scheme. Therefore, on this count also, we do not find any force in the submissions of Respondents to withhold the refund amount for the year 2011-2012.

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

ORDER

(i) Rule is made absolute in terms of prayer clauses (a), (b)

and (c) which read as under:-

- (a) *That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the papers and proceedings of the present matter, the Refund Adjustment Order dated 26th June 2023 Exhibit "Q" to the present Petition and the Order of Settlement dated 15th June 2023 Exhibit "R" to the present Petition and after going through the legality thereof, to quash and set aside the same;*
- (b) *That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents to give the Petitioner the refund for the Year 2011-12 amounting to Rs.10,69,89,606/-; together with interest thereon at such rate as this Hon'ble Court may deem fit from the date the refund became originally due till the date of payment.*
- (c) *That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents to treat the amount of Rs.8,46,84,821/-, as paid in full and final settlement of the dues for the Year 2010-11 amounting to Rs.14,00,74,890/-.*

- (ii) Respondents are directed to refund to Petitioner a sum of Rs.10,69,89,606/- alongwith interest at 6% per annum as per Section 52 read with Rule 88 of the MVAT Rules from 1st June 2019 till the date of payment.
- (iii) Petitioner is directed to furnish the bank account details to Respondents within two weeks from the date of uploading of the present order and Respondents are directed to credit the bank account of Petitioner with the amount of refund alongwith interest within four weeks from the date of Petitioner furnishing the bank details.

20. Petition disposed.

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]