IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8343 OF 2019

TML Business Services Limited,
Having its officer at 3rd Floor,
Nanavatimahalay, 18 Homi Mody Street,
Hutatma Chowk, Mumbai-400 001 ...Petitioner

V/s.

1. The Deputy Commissioner of State Tax,
Pune VAT-E-622 (LTU) Pune

2. The Joint Commissioner of State Tax (F-701)
Cabin No. 228, GST Bhavan,
2nd Floor, Airport Road, Yerwada,
Pune-411 006.

3. State of Maharashtra ....Respondents

Mr. R. A. Dada, Senior Advocate with Mr. Z.R. Dada, Mr. H.N. Vakil and Ms. Shreya Mehta i/b Mulla & Mulla & Craige Blunt & Caroe for Petitioner.
Smt. S. D. Vyas, 'B' Panel Counsel for State-Respondent

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
RESERVED ON: 25 April 2023
PRONOUNCED ON : 4 May 2023

JUDGMENT : - (PER ABHAY AHUJA, J)

. By this petition, the Petitioner is seeking quashing of the Refund Adjustment Order dated 22 May 2019 issued by Respondent No.1-Deputy Commissioner of State Tax, Pune,

VAT-E, 622 (LTU), Pune by which the statutory refund pertaining to the year 2011-2012 available to the Petitioner was adjusted towards the statutory dues payable by the Petitioner for the year 2010-2011 purportedly without notice.

2. Petitioner statedly is a limited company engaged in procuring vehicles from Tata Motors Limited ("TML") and selling them to dealers within and outside the State of Maharashtra. The Petitioner was formerly known as the "TML Distribution Limited". Pursuant to order dated 11 March 2022 passed by NCLT, Mumbai Bench V in CA (CAA/255/MB-V/2021) all assets and liabilities of TML Distribution Company Limited have been transferred from transferor company (TML Distribution Company Limited) to the transferee company (TML Business Services Limited). Petitioner is registered under the Maharashtra Value Added Tax Act, 2002 ("MVAT Act") and Central Sales Tax Act, 1956 ("CST Act").

3. Pursuant to an assessment under Section 23 of the MVAT Act for the financial year 2010-2011, the Assessing Officer passed an Assessment Order dated 30 March 2015, raising a demand of Rs. 17,76,93,422/- including tax and interest. Aggrieved by the same, the Petitioner filed an appeal which resulted in a reduced demand of Rs. 14,00,74,890/-.

4. For the financial year 2011-2012 an assessment order dated 21 August 2017 was passed raising a demand of Rs. 9,67,02,366/- including tax and interest. A first appeal was filed by the Petitioner against this order which resulted in an order for refund of Rs.10,69,89,606/- on 28 February 2019. It is the Petitioner's case that the said order was received on 5 April 2019.

5. With respect to financial year 2010-2011, on 11 March 2019, Petitioner intimated the office of the Respondent No.1 in Form-314 that they were in the process of filing second appeal against the order dated 31 January 2019.

6. Earlier on 6 March 2019, the Government of Maharashtra issued an ordinance called the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019 (the "Amnesty Scheme") providing for settlement of arrears of tax, interest, penalty and late fee as on 1 April 2019 upon payment of a part thereof.

7. Being desirous of availing benefit of this Amnesty Scheme for settlement of its dues with respect to the year 2010-2011, the Petitioner withdrew the intimation made in Form-314 on 12 April 2019, informing Respondent No.1 of the same and also requested Respondent No. 1 to keep the refund of Rs. 10,69,89,606/- for the year 2011-2012 on hold.

8. After processing the refund, a refund approval proposal was moved to the Respondents office on 7 May 2019 and the proposal was approved by the Respondents on 10 May 2019 directing to proceed to grant the refund. It is the case of the Respondent Authorities that this is the date on which the refund became statutorily available for any adjustment / grant as per the statutory appeal order dated 28 February 2019.

9. On 13 May 2019, Petitioner made an application under the Amnesty Scheme for financial year 2010-2011 for settlement of dues by making a payment of Rs. 8,46,84,821/-, which was acknowledged by the Respondent Authorities.

10. It is the case of the Respondents that since past dues of the Petitioner amounting to Rs. 14,00,74,890/- were already available for recovery since 12 April 2019, as per the proviso of Section 50 (1) of MVAT Act, the Commissioner was mandated to first apply the excess towards the recovery of any amount due from the dealer and then proceed to refund the balance amount, if any, under Section 50 (1) of the MVAT Act, which reads as under:-

> *"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 to 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.
Provided that, for the period commencing on or after the 1st April 2012, a dealer whose refund claim in a year is rupees five lakh or less, may ,carry forward such refund to the return or revised return for immediate succeeding year to which such refund relates."

11. On 22 May 2019, the erstwhile Petitioner received an email from the MVAT Department enclosing a Defect Notice for compliance in Form-III as under:

"FORM-III
(See section 11 (1) of the Maharashtra Settlement of Arrears of tax)
Interest, Penalty or, Late fee Ordinance, 2019)
FORM OF DEFECT NOTICE
Notice of Defect in respect of application for settlement of arrears

To,
TML DISTRIBUTION CO LTD.

Subject: Defect notice under section 11 (2) Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late fee Ordinance, 2019.

Ref: Your application No. 54148529 Dated :14-05-2019

Gentlemen/Sir/Madam,

1. This is with reference to your application for settlement of arrears for the period from 01/04/2010 to 31/03/2011 submitted as per section 7 of the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late fee Ordinance, 2019. This application is received on14/05/2019 which is in FIRST PHASE. On preliminary scrutiny,of your captioned application certain defect (s) are observed which are as under:

Defect related to documents to be attached:

2. On scrutiny of the application for settlement of arrears it is noticed as under:

Defect related to payments:

(1) Difference in outstanding amount of arrears as on 1st April 2019.

SR No.	Amount outstanding as per this office record	Amount shown outstanding by the applicant	Difference
1	33,085,284	140,074,890	

(2) Difference in requisite amount to be paid

SR No.	Requisite amount payable	Requisite amount by the applicant	Short Paid
1	6,617,057	84,684,821	0

"

12. The above notice records that the amount shown outstanding by the erstwhile Petitioner was Rs. 14,00,74,890/- as on 1 April 2019 for which requisite amount paid by the

Applicant was Rs. 8,46,84,821/-. The notice also records that the amount outstanding as per the Respondent's office record is Rs. 3,30,85,284/- and the requisite amount payable for settlement of dues would be Rs. 66,17,057/-. The Defect Notice, shows a zero amount in the short paid column, thereby indicating no amount is payable by the Petitioner but also no amount is refundable to the Petitioner even though as noted above, only Rs. 66,17,057/- was payable whereas Petitioner has paid a larger sum of Rs. 8,46,84,821/- towards the settlement under the Amnesty Scheme against the dues of Rs. 14,00,74,890/- for the year 2010-2011. It is Petitioner's case that the said email did not mention anything about the amount paid by the erstwhile Petitioner in full settlement of the debt for the year 2010-2011.

13. A Refund Adjustment Order dated 23 May 2019 was received by the erstwhile Petitioner informing that the refund of Rs. 10,69,89,606/- which was due to them would be adjusted towards the amount of tax due for the year 2010-2011. The Defect Notice and the Refund Adjustment Order appear to have been issued by the same officer, viz. Deputy Commissioner of State Tax, PUN-VAT-E-622.

14. By letter dated 5 June 2019, the Petitioner replied to the Defect Notice and recorded that the action of the Respondents in adjusting the refund was unfair and unjust.

15. We have heard Mr. R. A. Dada, learned Senior Counsel for the Petitioner and Ms. Shruti D. Vyas, learned AGP for Respondent-State and with their able assistance, we have perused the papers and proceedings and considered the rival contentions.

16. Mr. Dada, learned Senior Counsel for the Petitioner would submit that the Respondents should have refunded the full amount of refund due for the year 2011-2012 and then set off the money of Rs. 8,46,84,821/- paid by the Petitioner in full settlement of the arrears due for the year 2010-2011 under the Amnesty Scheme.

17. He would submit that it was not open to the Respondents to adjust the refund of Rs. 10,69,89,606/- against the liability of Rs. 14,00,74,890/- for the year 2010-2011, since the erstwhile Petitioner had already made an application to settle the dues for the year 2010-2011 in accordance with the provisions of the said ordinance. The action of the Respondents has denied the Petitioner the refund of Rs. 10,69,89,606/-. That the Respondents have in fact arrived at the amount of Rs. 3,30,85,284/- due for the year 2010-2011 after adjusting the refund for the year 2011-2012 and have thereafter claimed that only an amount of Rs. 66,17,057 is due under the Amnesty Scheme. As against this, the amount paid by the erstwhile Petitioner under the said scheme is Rs. 8,46,84,821/- after the

calculations by the Respondents under the said scheme.

18. Learned Senior Counsel would submit that Petitioner had paid the amount of Rs. 8,46, 84, 821/- in satisfaction of the liability for the year 2010-2011, which was Rs. 14,00,74,890/-. That this amount was paid in full settlement and satisfaction under the Amnesty Scheme.

19. He would submit that against tax dues of Rs. 14,00,74,890/- the Respondents have taken away a sum of Rs. 10,69,89,606/- from the refund of the year 2011-2012 and a sum of Rs. 8,46,84,894/- totaling to an amount of Rs. 19,16,74,501/-. That this action is totally perverse and instead of giving relief under the Amnesty Scheme, the Respondents have taken away Rs. 5,15,99,611/- extra.

20. That the idea under the scheme was to put an end to disputes and not to fuel litigation. That, therefore, the Refund Adjustment Order dated 23 May 2019 as also the action in not allowing the settlement of the total dues for the year 2010-2011 is illegal, unconstitutional and liable to be set aside by this Court.

21. On the other hand, Ms. Shruti Vyas, learned AGP relies upon the affidavit in reply dated 19 September 2019 filed on behalf of the Respondent Authorities. At the outset, learned AGP

submits that the writ is not maintainable as a remedy of statutory appeal is available and that Petitioner should have filed an appeal. She would further submit that as per proviso to Section 50 (1), the Commissioner has to first apply any excess towards the recovery of any amount due and after that refund the balance, if any. She submits that accordingly the dues of Rs. 14,00,74,890/-, which were available for recovery since 12 April 2019 were first adjusted to the refund that became available on 10 May 2019 for adjustment and the balance, if any, was to be refunded. Learned Counsel also relies upon the Trade Circular dated 15 May 2019 annexed to the reply, which has been issued as a clarification to the Amnesty Scheme/ Ordinance. Learned AGP refers to question no.23 of the said clarification in support of her contention. For the sake of convenience, the said question no.23 along with the answer to the same is quoted as under:-

> *"Q. 23 (1) An assessment order for period 2006-07 and 2008-09 was passed which resulted into additional demand due to disallowance of set-off. Against said orders the assessee has preferred an appeal. The appellate authority has decided the appeal say on 10th April 2019 and for the period 2006-07 determined the refund of Rs. 25,00,000/- and demand of tax and interest of Rs. 10,00,000/- for period 2008-09. In respect of both these appeals the appellate authority directed the assessing authority to take action as per the provisions of the MVAT Act.*
>
> *(2) What actions are expected to be taken by the assessing authority and whether dealer would be entitled to get the entire refund for the period 2006-07 of Rs.*

25,00,000/- first and then settle the arrears of Rs. 10,00,000/- treating as disputed tax.

Ans. (1) In this example after receipt of the order from the appellate authority for the period 2006-07 and 2008-09 the assessing authority the period 2008-09 shall as per the proviso to the sub-section (1) of section 50 of the MVAT Act adjust the arrears of Rs. 10,00,000/- against the refund of Rs. 25,00,000/- and grant only the balance amount of Rs. 15,00,000/- (25,00,000-10,00,000) as refund.

(2) After adjustment as above the balance arrears for the period 2008-09 shall be NIL. In other words, for the period 2008-09 there remains NO arrears of tax, interest or penalty for settlement".

Learned Counsel refers to the above and submits that adjustment made is therefore valid and cannot be questioned.

22. Learned AGP also refers to the Section 18 of the Ordinance and submits that under the said Section under no circumstances, the applicant shall be entitled to get refund of the amount paid under the scheme. Section 18 of the said Ordinance is quoted as under:-

"18. Under no circumstances, the applicant shall be entitled to get the refund of the amount paid under this Ordinance;
Provided that, in case of revocation of an order of the settlement in accordance with the provisions of section 16, the amount paid by the applicant under the Ordinance shall be treated to have been paid under the Relevant Act"

23. Learned AGP therefore submitted that even though the amount of Rs. 8,46,84,821/- was paid by the erstwhile Petitioner under the scheme and the requisite amount that was payable was only Rs. 66,17,057/-, in view of the above Section 18, the balance amount cannot be refunded to the Petitioner. Learned AGP would submit that it is the Petitioner, who should have planned its affairs accordingly and is solely responsible for the situation and now cannot seek the refund of the amount as the same is not permissible under the provisions of the scheme. She would submit that therefore, the Petition deserves to be dismissed.

24. Mr. Dada, learned Senior Counsel in rejoinder, drew the attention of this Court to Rule 60 of the MVAT Rules, 2005 with effect from 1 April 2005 to submit that in the matter of grant of refund, any adjustment is to be at the desire of the dealer to adjust the refund and that too against tax payable in respect of any subsequent period and not for any previous period as is sought to be done in the present case. Rule 60 of the MVAT Rules, 2005 is quoted as under:-

> *"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."*

25. He would submit that Section 50 of the MVAT has to be read along with Rule 60 as quoted above and not otherwise.

26. Learned Senior Counsel submits that the refund is of the year 2011-2012, whereas it has purportedly been adjusted against the demand for the year 2010-2011 and that too in respect of an order for which the erstwhile Petitioner had filed an application under the Amnesty Scheme.

27. Learned Senior Counsel would also submit that the FAQ No. 23 relied upon by the learned AGP on behalf of the Respondents is not applicable to the facts of the Petitioner's case as in that case, a refund for an earlier year was sought to be adjusted against a demand for a subsequent year whereas in the present case, a refund of a subsequent year has been adjusted against the demand of an earlier year, which cannot be permitted.

28. Mr. Dada would also submit that the adjustment of the refund made is after the filing of the application under the Amnesty Scheme, when the scheme was being considered and this clearly suggests that the whole action on the part of the Respondents authority is to defeat the scheme despite the idea of the scheme being to put an end to disputes. Learned Senior Counsel would submit that the Petitioner was not even put to notice that such an adjustment was going to be made which is also clearly in breach of the provisions of Section 32 (4) of the MVAT Act, which requires service of notice by the Commissioner, more so in the face of communication dated 12 April 2019 pursuant to which the Respondent Authorities were given a no objection if the refund amount was kept on hold till the filing of the Amnesty application by Petitioner. Section 32 is quoted as under:

> *"32. Payment of tax, etc*
> *(1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed.*
> *(2) A registered dealer furnishing returns as required by section 20 shall pay into the Government treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the period covered by a return which he is required to file along with the amount of interest and any other sum payable by him.*
> *(3) A registered dealer furnishing a revised return in accordance with sub-section (4) of section 20, when the revised return shows that a larger amount of tax than, the tax already paid, is payable, shall first pay into the Government treasury the extra amount of tax.*
> *(4) (a) (i) The amount of tax due where the return or*

revised return has been furnished without full payment thereof shall be paid forthwith.

(ii) the amount of tax which it becomes necessary to pay on account of the reduction in set-off because of any contingency specified in the rules, shall be paid at the time prescribed for making payment of tax for the period in which such contingency occurs.

(b) (i) The amount of tax due as per any order passed under any provision of this Act, for any period, less any sum already paid in respect of the said period; and

(ii) the amount of interest or penalty or both, if any, levied under any provision of this Act; and

(iii) the sum, if any, forfeited and the amount of fine, if any, imposed under the Act or rules; and

(iv) the amount of tax, penalty and interest demanded in the context of excess availment of incentives or availment of incentives not due; and

(v) any other amount due under this Act,

shall be paid by the person or dealer or the person liable therefor into the Government treasury within thirty days from the date of service of the notice issued by the Commissioner in respect thereof:

Provided that, the Commissioner may, in respect of any particular dealer or person, and for reasons to be recorded in writing, allow him to pay the tax, penalty, interest or the sum forfeited, by instalments but the grant of instalment to pay tax shall be without prejudice to the other provisions of this Act including levy of penalty, or interest, or both.

(5) Any tax, penalty, interest, fine or sum forfeited, which remains unpaid after the service of notice under sub-section (4), or any instalment not duly paid or any amount due or payable under this Act, shall be recoverable as an arrears of land revenue.

(6) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where any sum collected by a person by way of tax in contravention of section 60, is forfeited under section 29 and is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected. A refund of such sum or any part thereof can be claimed from the Commissioner by the person from whom it was realised by way of tax, provided such person has not resold the goods within a period of two years from the date of purchase and an application in writing in the prescribed form is made to the Commissioner, within two years from the date of the order of forfeiture. For this purpose, the Commissioner may send an intimation in the prescribed form to such of the said purchasers whose names and addresses are available in the records of the person who has collected any sum in contravention of section 60. On receipt of such application, the Commissioner shall hold such inquiry as he deems fit, and if the applicant proves to the satisfaction of the Commissioner that the goods are not resold by him as aforesaid and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid in Government treasury or recovered and no set-off or refund in respect of that amount was granted, he shall refund the sum or any part thereof, which is found due to the person concerned.

(7) (i) There shall be established a Fund to be called "the Maharashtra Consumer Protection and Guidance Fund" (hereinafter, in this section, referred to as "the Fund"). From the amounts forfeited and recovered except for the amounts refunded as aforesaid to the purchasers and except for the amounts in respect of which a set-off or refund is granted, the remaining amount shall, after deducting the expenses of collection and recovery as determined by the State Government, under appropriation duly made by law

in this behalf, be entered into, and transferred to, that Fund.

(ii) No sum from the Fund shall be paid or applied for any purpose other than the one specified in clause (iii).

(iii) The Fund shall be administered in the prescribed manner; and the amount in the Fund shall be utilised for meeting the expenses of any activities related to consumer protection and guidance as the State Government may direct, and for giving grant in the prescribed manner to any voluntary consumer organisation, society, association, body or institution engaged in providing for the better protection of the interests of the consumers and having such qualifications as may be prescribed.

(8) (a) Any dealer or person may apply to the Commissioner in the prescribed form for a clearance certificate and thereupon the Commissioner may, on the basis of the record, issue a certificate in the prescribed form within a period of fifteen days from the date of receipt of the application, in so far as he may, stating therein, the periods for which the returns have been filed or, as the case may be, have not been filed, assessments have been made, the status of pending proceedings, if any, and the amounts payable by the applicants, if any.

(b) The Commissioner may, every year on the basis of the record, issue to every registered dealer a certificate regarding the amounts payable by him, as on the 1st April of that year, stating therein the periods for which returns have not been filed, the period-wise outstanding amounts of tax, penalty, interest and sum forfeited payable by the dealer including the amounts for which the due date of payment is not yet over, the amounts, the recovery of which has been stayed and the amounts under instalment The certificate shall in so far as it may be issued immediately after the 1st of April every year.

(c) Nothing in the certificates issued under this sub-section shall be a bar on the Commissioner to initiate or continue

any proceedings including recovery proceedings, if it is subsequently found that the certificates were issued on the basis of incomplete or erroneous information."

(emphasis supplied)

29. In this view of the matter, Mr. Dada submits that the Petition deserves to be allowed and the Defect Notice and Refund Adjustment Order deserve to be set aside as serious prejudice has been caused to Petitioner.

30. Facts are not in dispute in this case. By communication dated 12 April 2019, Petitioner had informed the Respondent Authorities that it was desirous of availing the benefit of the Amnesty Scheme and therefore, it had withdrawn the intimation made in Form-314 of its intention to file an appeal against the order for the year 2010-2011 and had also requested that refund of Rs. 10,69,89,606/- for the year 2011-2012 be kept on hold till filing of its application under the Amnesty Scheme. It is not in dispute that against the said communication there was no response from the Respondent Authorities. The Petitioner filed an application under the Amnesty Scheme on 13 May 2019 by making a payment of Rs. 8,46,84,821/-. No objection to the communication dated 12 April 2019 or any response to the fact of the request made by the Petitioner to keep the refund on hold was communicated to the Petitioner by the Respondent Authorities. It is only pursuant to the Defect Notice, Petitioner

figured out that the excess amount would not be refunded to the Petitioner and it is only on 23 May 2019 pursuant to the Refund Adjustment Order that the Petitioner came to know that the refund of Rs. 10,69,89,606/- granted for the year 2011-2012 would be adjusted towards the amount of tax due for the period 2010-2011. There was no notice whatsoever of this adjustment to the erstwhile Petitioner.

31. These actions of the Respondent Authorities in our view cannot be countenanced. Apart from the general law that no action adverse to a party can be taken without giving the party an adequate notice and an opportunity of defending, the provisions of the MVAT Act also mandate the Respondents to put the Assessee on notice before making any adjustment of refund. Section 32 as quoted above, also appears to suggest this. In our view, the Defect Notice and the Refund Adjustment Order are apart only by a day and this could not have provided sufficient opportunity to the Petitioner even to seek redressal of his grievance from the Authorities. Even while the Authorities had not responded to the communication dated 12 April 2019 of the Petitioner, whereby the Petitioner had requested the Authorities to keep the refund amount on hold as they were in the process of filing an application under the Amnesty Scheme, the Respondent Authorities, in our view, could not have, while the application for the Amnesty Scheme was under consideration in the absence of

any response to the erstwhile Petitioner's communication dated 12 April 2019 gone ahead without any notice to the Petitioner and adjusted the refund amount for the year 2011-2012 against the dues for the year 2010-2011and that too when the Petitioner had already filed the application under the Amnesty Scheme which was accepted by the Respondent Authorities alongwith the payment of Rs. 8,46,84,821/-under the said scheme.

32. Non communication of any stand with respect to the Petitioner's communication dated 12 April 2019 to keep the refund for the year 2011-2012 on hold led the Petitioner to believe that the request to keep the refund on hold was accepted. And based on this belief Petitioner went ahead and took an irretrievable decision including filing of the application dated 13 May 2019 under the Amnesty Scheme. This is particularly relevant as the same officer issued the Defect Notice as well as the Refund Adjustment Order. In the facts of the case, it was the duty of the officer to act fairly and inform the Petitioner, which as can be seen, he failed to do. Though, requirement of the communication of the stand of the authorities to a communication/representation of the Petitioner will depend on the facts and circumstances of each case and we are not laying down any absolute proposition of law in this regard, however, in this case, the requirement of communication of the stand of the Respondent-Authority will have to be interpreted as a necessity

in the light of our observations, which in our view, has resulted in grave prejudice to the Petitioner.

33. Further, in our view, serious prejudice has also been caused to the Petitioner by the Respondent Authorities in not putting the Petitioner to notice of the adjustment that was effected pursuant to the Refund Adjustment Order.

34. The Statement of Objects and Reasons for introducing the Amnesty Scheme clearly record that as large number of cases and litigation are pending in respect of the repealed laws pursuant to the introduction of the GST Act locking substantial amount of tax, therefore, the Government considered it expedient to provide a scheme for settlement of arrears of tax, interest, penalty or late fee under those Acts for the period ending on or before 30 June 2017, so that the settlement of such disputes would safeguard the revenue and also settle the arrears of tax.

35. In the face of such objectives of the Amnesty Scheme, the State cannot submit in its affidavit or the AGP cannot be heard to be arguing that just because of the communication dated 12 April 2019 pursuant to which the Petitioner withdrew the intimation to file an appeal in respect of the year 2010-2011 where the dues were Rs. 14,00,74,890/-, that the said amount became available for recovery from 12 April 2019. In our view, such an approach

by the State clearly militates against the objectives of the Amnesty Scheme. Having said this, we do not think it is necessary for us to dwell into the rival contentions of the parties on the merits of the matter, in as much as the very action of the Respondent authorities in making the adjustment of refund due to Petitioner for the year 2011-2012 while considering the application under the Amnesty Scheme for the year 2010-2011 without notice to the Petitioner and even without responding to Petitioner's communication dated 12 April 2019, in our view is in utter disregard of the well established principles of natural justice and has caused grave prejudice to the Petitioner, which action cannot be sustained in any manner. The Petitioner cannot in the circumstances be relegated to the statutory remedy of Appeal.

36. Therefore, in view of the breach of the principles of natural justice as noted above, we are inclined to set aside the Defect Notice dated 22 May 2019 and the Refund Adjustment Order dated 23 May 2019 and remand the matter back to the Respondent Authorities, which we hereby do, and direct the Respondent Authorities to consider the refund application dated 13 May 2019 after giving an opportunity of hearing and after considering the submissions of the Petitioner pass a reasoned order in accordance with law, within a period of six weeks from the date of this order.

37. Petition stands allowed in the above terms. Parties to bear their own costs.

(ABHAY AHUJA, J.) (NITIN JAMDAR, J.)