

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.621 of 2022

LARSEN & TOUBRO LTD, having its registered office at L&T House, Ballard Estate, P.O. Box:-278, Mumbai 400001, India and principal place of business in the State of Tripura at Agartala Medical College Campus, Agartala 799001, having TVAT TIN:-16040621026, represented by its Authorized Signatory Mr. Soumick Das, S/O. Late Ananda Mohan Das, residing at 2 Dwarika Nath Ghosh Lane, Sarat Centenary Co-Op Housing Society Limited, Block E-1, Kolkata, West Bengal, PIN:-700027.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, Represented by the Principal Secretary Finance Department, Government of Tripura, Civil Secretariat, New Capital Complex, P.O.-Kunjaban, Agartala, West Tripura, PIN-799010.
2. The Commissioner of Taxes, Government of Tripura, Agartala, Tripura at 3rd Floor, Khadya Bhawan, Pandit Nehru Complex, Gurkhabasti, Agartala, West Tripura-799006.
3. The Additional Commissioner of Taxes, Office of the Chief Commissioner of State Tax, 3rd Floor, Khadya Bhawan, Pandit Nehru Complex, Gurkhabasti, Agartala, Tripura (west)-799006.
4. The Superintendent of Taxes Charge I & II, (Other than Adjudication and recovery Cell), Tripura VAT Department, Agartala Kar Bhawan, Palace Compound, Agartala, Tripura(W)-799001.
5. The Superintendent of Taxes-Charge I, Agartala, Tripura VAT Department, Kar Bhawan, Palace Compound, Agartala, West Tripura, PIN-799001.

.....Respondent(s).

For Petitioner(s)

: Mr. Rahul Tangri, Advocate,
Mr. Tapas Kumar Deb, Advocate,
Mr. Vasudev A, Advocate,
Mr. Nirnoy Paul, Advocate,
Mr. Nanda Dulal Paul, Advocate,
Mr. B Lakshmi Narasimhan, Advocate.

For Respondent(s)

: Mr. Bibhal Nandi Majumder, Sr. Advocate,
Mr. Kohinoor N Bhattacharyya, G.A.,
Mr. Bikash Paul, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

CAV reserved on : **28.08.2025.**

Judgment delivered on : **10.09.2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

- 1) Heard Mr. Rahul Tangri, counsel for the petitioner as well as Mr. Bibhal Nandi Majumder, Senior counsel assisted by Mr. Kohinoor N Bhattacharyya, Government Advocate appearing for the respondents-State.
- 2) The petitioner is a Public Limited Company registered under the Companies Act, 1956 and is engaged in activities including construction, engineering, technology, manufacturing etc.
- 3) As part of its activities it also executes *turnkey work contracts* including drawing, construction of civil and mechanical structures for State and Central Governments, Public Sector Undertakings, private and Public Limited Companies.
- 4) It was performing similar activity in State of Tripura and was registered under the Tripura Value Added Tax Act, 2004 (for short 'the Act'). Its clients included the Oil and Natural Gas Corporation, a Central Government Corporation and the Public Works Department of the State of Tripura for whom it was doing works contracts.
- 5) The issue in this Writ Petition relates to the entitlement of the petitioner to refund of Value Added Tax (VAT) for the financial years 2006-07 to 2013-14.
- 6) During this period it is not in dispute that petitioner filed quarterly returns as mandated by Section 24 of the Act r/w Rule 18(III) of the Rules framed under the Act.

7) The Works Contract Tax (VAT) TDS was collected and deposited on petitioner's behalf by the ONGC and the PWD Department of the State of Tripura for Works Contract activity done by it in the State of Tripura and appropriate VAT on sale turnover was deposited by petitioner and this was reflected in its VAT returns.

8) These quarterly returns were found by the respondents *to be in order* and no queries were raised by the respondents as to the correctness of the same.

9) So under Section 29(3) of the Act it has to be deemed that there was a valid 'self assessment'.

10) Under Rule 7(8) of the Tripura VAT Rules, such TDS deductions and deposits are deemed to be 'provisional payment of tax' which shall be adjusted at the time of assessment under Section 29 of the Act.

11) Section 53 of the Act states that dealers, whose gross turnover exceeds forty lakh rupees or such amount as the Commissioner may prescribe by notification, shall get their accounts audited by an accountant within 6 months from the end of the year, obtain report of such audit in the prescribed form, and furnish copy of the report to the Commissioner by the end of the month after expiry of period of six months during which the audit would have been completed. There is a penalty prescribed for non-compliance.

12) So the petitioner, in due compliance with Section 53, submitted statutory VAT audit report within the prescribed period for each of the above financial years.

13) Though the Act contains no provision for filing of Annual Return, along with the VAT audit report for each year, petitioner submitted an

Annual return also calling it “Annual return/Revised Annual Return” wherein the final VAT liability was stated for each of the financial years along with applications seeking the refund of VAT.

14) The dates of filing the same are as under:

SL.NO.	FINANCIAL YEAR	DATE OF FILING OF REVISED ANNUAL RETURN/ANNUAL RETURN AND STATUTORY VAT AUDIT REPORT	DATE OF FILING OF REFUND APPLICATION
1.	2006-07	30.9.2007	30.9.2007
2.	2007-08	30.9.2008	30.9.2008
3.	2008-09	30.10.2009	30.10.2009
4.	2009-10	30.10.2010	30.10.2010
5.	2010-11	30.10.2011	30.10.2011
6.	2011-12	31.10.2012	31.10.2012
7.	2012-13	28.10.2013	29.10.2013
8.	2013-14	28.10.2014	28.10.2014

15) Refunds of VAT are dealt with by Section 43 of the Act. It states:

“Section 43. Refund.

(1) Subject to other provisions of this Act and the Rules made thereunder, the Commissioner shall, refund to a dealer the amount of tax, penalty and interest, if any, paid by such dealer in excess of the amount due from him.

(2) Where any refund is due to any dealer according to return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable as per the returns filed under section 24 for any subsequent period in the year;

Provided that, the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by the dealer on the date of such adjustment shall first be deducted from such refund before adjustment.”

16) Thus the Commissioner is obligated to refund to a dealer like petitioner the amount of tax, penalty and interest, if any, paid by such dealer in excess of the amount due from him subject to the provisions of the Act.

17) Rules 35 deals with the manner of seeking refund. It states:

“Rule 35: REFUNDS :

(1) An application for refund shall be made to the Superintendent of Taxes and shall include, amongst other, the following particulars;

- (a) the name, address and registration No. of the dealer;
- (b) the period of assessment for which refund is claimed;
- (c) the amount of dues already paid together with challan number and the date of payment and;
- (d) the amount of refund claimed and the grounds thereof.

(2) An application for refund shall be signed and verified by the person seeking 159 refund and shall be in Form XXXIII.

(3) Every registered dealer who is entitled to claim refund under Section 43 shall, within twenty one days from the end of each return period, submit a statement showing details of refund claimed in respect of each export sale effected during such period.

(4) *No claim of any refund shall be allowed unless it is made within one year from the date of the original order of assessment or within one year of the final order passed on appeal or revision as the case may be, in respect of such assessment.*”

18) As can be seen from the above provisions, limitation of 21 days is prescribed under sub–Rule (3) of Rule 35 for seeking a refund only from dealers doing ‘*export sales*’, but not from any dealer like petitioner doing works contracts.

19) The contention of respondents that this period of 21 days prescribed under sub–Rule (3) of Rule 35 also applies to petitioner though it is doing ‘works contracts’ and not ‘export sales’ cannot be accepted for the aforesaid reason.

20) Moreover, as held by the Supreme Court in ***Bharat Barrel and Drum Manufacturing Co. Ltd v. ESI Corporation***¹ where substantive rights of parties are likely to be affected and extinguished, only the legislature should prescribe the limitation, and such limitation cannot be prescribed by the Rules made under the Statute. It was held :

“5. The question which directly confronts us is whether the power to prescribe periods of limitation for initiating proceedings before the Court is a part of, and is included, in the power to prescribe “the procedure to be followed in proceedings before such Courts

... ..

7. The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of

¹ (1971) 2 SCC 860

that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary.

... ..

14. It appears to us that where the Legislature clearly intends to provide specifically the period of limitation in respect of claims arising thereunder it cannot be considered to have left such matters in respect of claims under some similar provisions to be provided for by the rules to be made by the Government under its delegated powers to prescribe the procedure to be followed in proceedings before such Court. What is sought to be conferred is the power to make rules for regulating the procedure before the Insurance Court after an application has been filed and when it is seised of the matter. That apart the nature of the rule bars the claim itself and extinguishes the right which is not within the pale of procedure. Rule 17 is of such a nature and is similar in terms of Section 80. There is no gain-saying the fact that if an employee does not file an application before the Insurance Court within 12 months after the claim has become due or he is unable to satisfy the Insurance Court that there was a reasonable excuse for him in not doing so, his right to receive payment of any benefit conferred by the Act is lost. Such a provision affects substantive rights and must therefore be dealt with by the Legislature itself and is not to be inferred from the rule-making power conferred by regulating the procedure unless that is specifically provided for. It was pointed out that in the Constitution also where the Supreme Court was authorised with the approval of the President to make rules for regulating generally the practice and procedure of the Court, a specific power was given to it by Article 145(1)(b) to prescribe limitation for entertaining appeals before it. It is therefore apparent that the Legislature does not part with the power to prescribe

limitation which it jealously retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment. The view taken by the Madhya Pradesh, Madras, Punjab and Andhra Pradesh High Courts in the case already referred to are in consonance with the view we have taken.”

(emphasis supplied)

21) This was also followed by a Bench of the Jharkhand High Court in ***M/s Kirloskar Brothers Ltd v. State of Jharkhand and others***².

22) In the absence of prescription of limitation for claiming refunds in the substantive law/statute i.e., Section 43 of the Act by the State Legislature, Section 87 of the Act which empowers the State to make Rules ‘for carrying out the purposes of the Act’ and in clause (f) to prescribe ‘the manner in which refunds shall be made’ (in exercise of which Rule 35 is made), cannot prescribe a period of limitation for filing a refund application if the substantive provisions of the statute do not prescribe such limitation.

23) So even assuming for the sake of argument without conceding that the sub-Rule (4) of Rule 35 is valid, for the aforesaid reason, it will not also be applicable to petitioner as it is *ultra vires* the Act.

24) The applications for refund for each financial year have been filed by petitioner within 7-8 months from end of the financial year on 31st of March, and within one year from the end of the financial year in question, and therefore they cannot be said to have been filed after an unreasonable period of time or time barred. So they needed to be considered by the respondents.

² Judgment dt.26.4.2023 in W.P.No.3944 of 2022

25) The record reveals that after the Writ Petition was filed, a counter affidavit was filed by respondent nos.4 and 5 initially stating in para 8 thereof that no claim for refund would lie without assessment of 'final amount' of tax, that no refund can be allowed to any dealer without conducting 'assessment', but admitting that petitioner had filed its self declaration/return, and contending that the TDS deductions are provisional in nature.

26) In para 12 of the counter affidavit this is reiterated by respondents as under:

".. without making any assessment of the dealer/petitioner, the actual amount of tax cannot be ascertained and the claim raised by the petitioner cannot be proved conclusively".

It is further stated that:

*"a dealer is selected for assessment **on random basis** and after completion of assessment, the actual tax liability of the dealer can be determined and the excess amount of tax may be refunded to the dealer".*

27) If the respondents do assessments on *random* basis, and they did not select the petitioner's case for assessment under Section 30 or for an Audit assessment under Section 31 or Section 34 of the Act on such *random* basis, they cannot deny refund saying that there was no 'assessment' of the petitioner. The petitioner cannot be blamed for the inaction of the respondents in not making an 'assessment' and it cannot deny a refund on that basis.

28) The respondents cannot be allowed to plead mistake, if any, in not disputing petitioner's quarterly returns and take advantage of their own wrong, particularly, when the window for making 'assessments' is fixed as 5

years under Section 33 of the Act and the said period of 5 years had expired long back.

29) Moreover admittedly, in the instant case, the quarterly returns filed by petitioner have been accepted by the respondents after finding them to be in order (as they did not raise any query or dispute), and as per Section 29(3), the said return has to be accepted as 'self assessment'. Thus 'self assessment' under Section 29(3) is also a form of 'assessment' under the Act and so this plea about lack of 'assessment' cannot be raised by respondents.

30) This can also be looked at in another way.

31) Under Section 53 of the Act, every dealer whose turnover exceeds Rs. 40 lakhs or such other amount as may be notified, has to get its accounts audited by an accountant within 6 months from the end of the year and obtain report of an audit, and then furnish it to the Commissioner by the end of the month after expiry of period of 6 months during which the audit would have to be completed, and in para 24, it is stated that this was done by petitioner.

32) This is not disputed by the respondents.

33) Under Section 52 of the Act, the Commissioner may, for any purpose related to the administration or enforcement of the provisions of the Act, by notice require any person to provide to the Commissioner within such reasonable time as may be stipulated in the notice, with any information or additional information.

34) Thus after getting such information, the Commissioner can take appropriate action against the dealer which may include assessment under Section 31 or Section 32 of the Act.

35) When the statute prescribes for an audit by an accountant of dealers like the petitioner who have more than the prescribed turnover, and petitioner obtained such an audit report and submitted it to the respondents as directed under Section 53, and they never disagreed with those reports when they were submitted, these audit reports will also fall in the category of 'additional information' under Section 52 of the Act available to the Commissioner to initiate appropriate action under the Act.

36) Had the audit reports indicated that petitioner had paid less tax than what it is liable for, proceedings would have been undoubtedly initiated against the petitioner for assessment under Section 30 within the period of 5 years prescribed under Section 33 of the Act, on basis of the audit report to collect shortfall in tax and penalty by the respondents.

37) Conversely, when those audit reports filed by the petitioner within the time prescribed by the Act indicate that petitioner should get a refund, the respondents cannot deny the same raising untenable objections.

38) The respondents have also contended that petitioner did not submit the claim for Refund in Form XXXIII and it had given the request for refund on plain paper and so petitioner cannot seek the refund.

39) This plea was raised for the first time in a Letter dt.9.7.2015 to the petitioner by the Joint Commissioner of Taxes. It is highly belated as the disputes pertain to period 2006-07 onwards.

40) The petitioner then made an application in the said Form XXXIII on 31.5.2016 (Annexure XV to the rejoinder).

41) When the bar of limitation is not prescribed in the Act (as discussed supra) in respect of 'self assessment' returns under Section 29 of

the Act, and when the petitioner submitted the refund claims for each of the financial years in question on 31.5.2016 (in addition to the previous refund applications within 7-8 months of end of financial years in question), the respondents ought to have processed it and could not have rejected it.

42) Not only is the objection raised by the respondents highly belated because prior to 9.7.2015, it was never made, but it cannot also be countenanced since the substantive right conferred by Section 43 of the Act to get a refund of tax cannot be denied for non compliance with a procedural provision i.e. non submission of Refund claim in Form XXXIII.

43) In **Ramnath Exports (P) Ltd. v. Vinita Mehta**³, the Supreme Court declared:

“15. It is trite law that the procedural defect may fall within the purview of irregularity and capable of being cured, but it should not be allowed to defeat the substantive right accrued to the litigant without affording reasonable opportunity.”

44) In **Lakshmi Rattan Engg. Works Ltd. v. CST**⁴, the Supreme Court had declared as under:

“11. It is to be remembered that all rules of procedure are intended to advance justice and not to defeat it.”

45) The respondents 4 and 5 went to the extent of contending in para 11 of the Counter affidavit that no copy of the refund application in Form XXXIII could be located in the concerned charge office and that the Chief Commissioner of State Taxes wrote a letter dt.7.1.2022 that no copies of

³ (2022) 7 SCC 678 : (2022) 4 SCC (Civ) 150, at page 683 :

⁴ (1968) 1 SCR 505 : AIR 1968 SC 488 : (1968) 2 SCJ 1 : (1968) 1 SCWR 433 : 21 STC 154

refund applications in Form XXXIII could be located in the concerned charge Office.

46) Petitioner then filed the letters dt.31.5.2016 (pg. 141-148 along with the Writ Petition) enclosing the Form XXXIII applications for refund of each of the financial years in question. They were also resubmitted on 31.1.2022 to the respondent No.3.

47) The respondents admitted during the course of hearing of the Writ Petition before the Court during submissions and by filing affidavits that records were not being maintained in register form of receipt of refund applications and the Court also gave directions from time to time in that regard (order dt.1.8.2023, order dt.10.8.2023, 13.12.2023).

48) It appears that every effort was made by the respondents to avoid disposal of the Writ Petition by dragging the proceedings taking one pretext or the other and by filing multiple pleadings each time raising some new objection. Their conduct is not *bona fide*.

49) Counsel for respondents contended that petitioner should have also produced the challans for tax paid by ONGC and the PWD Department of the State Government.

50) Admittedly the petitioner is the beneficiary of the TDS deducted for payments made to it by ONGC and the PWD Department of the State Government.

51) Under Rule 7(1), TDS is to be deducted by the above referred organizations and under Rule 7(3), and ONGC and the PWD Department of the State *have to pay it* by challan to the State Government.

52) Though Rule 7(4) directs furnishing of challan copies to the dealer/petitioner (works contractor), and Rule 7(7) states the dealer has to enclose the challans to the Superintendent of Taxes along with the quarterly returns, the respondents had not rejected the quarterly returns saying these challans were not given by petitioner. They are therefore presumed to have been submitted by petitioner along with the returns. Maybe they were misplaced by the respondents.

53) In any event, petitioner is a Works Contractor for both ONGC and PWD department of the State Government. Any doubts regarding the TDS certificates or challans which the respondents entertained could have easily been be cross-checked by them with the said parties by the respondents by invoking power under Section 52 and calling for information. Such State or Central Government organizations/Departments cannot be normally accused of giving incorrect TDS certificates and they have to be believed.

54) In fact in the affidavit filed by the under Secretary to the Finance department on 29.1.2024, at para 6, the respondents admit that they did ask ONGC and the PWD department of the State, that ONGC has given them 34 out of 38 challans relevant to the TDS claim of petitioner. In para 11 thereof it is stated that even TDS certificates submitted by petitioner had signature of the Executive Engineer of the PWD Department.

55) On 15.2.2024, petitioner filed a rejoinder enclosing thereto as Annexure P-18, a 6 page VAT TDS reconciliation with corresponding details of Treasury Vouchers date and Sl.No. They also enclosed as Annexure P-19, a Letter dt.22.12.2023 of the Executive Engineer, PWD Department details of

deposit of VAT to the Government exchequer deducted from petitioner from 2005-06 to 2017-18.

56) In spite of having all the above material with it, on 11.3.2024, the Superintendent of Taxes, Charge-I, Agartala (respondent no.5) passed a refund rejection order under Section 29 of the Act.

The refund rejection order and challenge to it

57) This order, having been passed pending the Writ Petition with permission of the Court, an IA No.1/2024 was filed by petitioner to take it on record and quash it.

58) The said application was allowed on 15.5.2024, the said order was taken on record and parties were asked to file submissions regarding it.

59) The respondents filed written objections why the said order cannot be quashed.

Consideration of correctness of the order dt.11.3.2024 passed by 5th respondent and objections filed by the respondents in support thereof by the Court

60) Firstly, the heading of the order says that it is passed under Section 29 of the Act.

Refunds are provided under Section 43 of the Act. Section 29 deals with 'self assessment'.

Consideration of refund application cannot be under Section 29 of the Act because the quarterly assessments made had been accepted without demur and the same had attained finality and cannot be reopened at this stage.

61) Next, the respondent No.5 admits that petitioner filed both quarterly and annual returns, but states that annual returns are not according to the Act, and actual refund was claimed on figures incorporated in the annual return.

The respondent no.5 might be correct in stating that annual returns are not permitted by the Act and they cannot be considered.

But each of the refund applications given in the financial years in question mention the statutory VAT audit report as well. In fact the statutory audit report under Section 53 is the basis for the annual return as well.

Conveniently, the respondent no.5 ignores the fact that the claim for refund is also based on the statutory VAT audit report. This is a dishonest consideration of the VAT refund claim by the said official.

62) The respondent no.5 then states that the *returns* for the year 2006-07 to 2013-14 is not *incorporated* with proper TDS certificates and challan copies. It is even said that there are discrepancies between the quarterly returns and annual returns and the quarterly returns are not acceptable. It is concluded that petitioner has submitted 'false' information in the returns filed by it.

When the respondents had accepted the quarterly returns filed within time by petitioner without demur, and there is under Section 29(3) of the Act, a deemed 'self assessment', in 2024, long after 5 years limitation for assessment under section 33 of the Act has expired, it is not open to the respondent no.5 to find fault with the returns filed by petitioner.

This is wholly without jurisdiction as the respondent no.5 cannot act contrary to the Act and do a re-assessment of the returns which is utterly time barred.

63) Moreover the respondent no.5 cannot ignore whatever challans and TDS certificates have now been furnished by ONGC and the PWD Department of the State and by the petitioner to the respondents in this Writ

Petition. This shows that the respondent no.5 wants to somehow or other reject the refund claim with a pre-determined approach and with a *mala fide* intention.

64) A doubt is also expressed on the certificate of the Chartered Accountant submitted by the petitioner along with the statutory VAT audit reports for the financial years 2006-07 to 2013-14 by saying that it is not in prescribed format.

Admittedly, when the Act was passed and the Rules were made in 2005, the respondents had omitted to prescribe the format for the Chartered Accountant's certificate under Section 53 of the Act for filing the statutory VAT audit report and the same came to be prescribed only on 7.12.2021 through a notification of the Tripura Value Added tax (Eighth Amendment) Rules, 2021. Rule 45A was inserted and a format Form XLIV was prescribed.

To expect that in 2006-07 to 2013-14, the certificates issued by the Chartered Accountants to petitioner should be in the format prescribed for such a certificate in 2021 is perverse and shocking to the conscience of the Court.

65) In ***Popatrao Vyankatrao Patil v. State of Maharashtra***⁵, the Supreme Court directed that the State should act as a model litigant; that it is no ordinary party trying to win a case against one of its own citizens by hook or by crook; and that it is the State's interest to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a

⁵ (2020) 19 SCC 241, at page 245 :

weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. It declared:

“5. This Court, has time and again held, that the State should act as a model litigant. In this respect, we can gainfully refer to the following observations made by this Court in **Urban Improvement Trust, Bikaner v. Mohan Lal**⁶ : (SCC pp. 515-16, paras 6-9)

“6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.”

7. In **Dilbagh Rai Jarry v. Union of India**⁷ this Court extracted with approval the following statement [from an earlier decision of the Kerala High Court (**P.P. Abubacker case**⁸, AIR pp. 107-08, para 5)] : (SCC p. 562, para 25)

‘25. ... “5. ... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State’s interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation

⁶ (2010) 1 SCC 512

⁷ (1974) 3 SCC 554

⁸ AIR 1972 Kerala 103

costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.” ’

8. In **Madras Port Trust v. Hymanshu International**⁹ this Court held : (SCC p. 177, para 2)

‘2. ... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.’

9. In a three-Judge Bench judgment of **Bhag Singh v. State (UT of Chandigarh)**¹⁰ this Court held : (SCC p. 741, para 3)

‘3. ... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.’”(emphasis supplied)

⁹ (1979) 4 SCC 176

¹⁰ (1985) 3 SCC 737

66) We are of the view that in the instant case, the respondents have consistently taken false, vexatious and unjust pleas all through and have exhibited bad faith.

67) In this era where States are expected to be business friendly and there is much talk of the 'ease of doing business', it behoves the respondents to eschew conduct of the above nature if it were to attract business investments in the State and make the State prosperous.

68) Therefore for all the above reasons, the Writ Petition is allowed and the order dt.11.3.2024 passed by the 5th respondent is set aside. The respondents shall take into account the details furnished by petitioner in the statutory VAT audit reports, and the challans, TDS certificates and other documents on record and process and grant refund to the petitioner of the amounts due to it. They shall also pay interest thereon to the petitioner under Section 45 of the Act. The respondents shall also pay costs of Rs.2 lakhs to the petitioner. These payments shall be made within 3 months from today.

69) All pending applications are disposed of.

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)

PULAK BANIK

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