

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
WP(C)No.58 of 2025

Thermax Instrumentation Ltd.,
having its registered office at Thermax House, 14 Mumbai-Pune Road,
Wakdewadi, Pune-411003 and place of business in the State of Tripura at
Birendranagar, Jirania, Tripura West, having VAT TIN-16180542112,
represented by its Authorised Signatory Mr. Prakash D More, S/o Dnyandeo
More, residing at Flat No.C-201, Balwanlpuram Samrajya Housing Society
Shivtirth Nagar, Kothrud, Pune, Pin-411003

.....Petitioner(s)

Versus

1.The State of Tripura,
Represented by Principal Secretary (Finance Department)-Government of
Tripura, at Civil Secretariat, New Capital Complex, P.O.-Kunjaban, Agartala,
West Tripura, PIN-799010
2. The Commissioner of Taxes & Excise,
Government of Tripura, at 3rd Floor, Khadya Bhavan, Pandit Nehru Complex,
Gurkhabasti, Agartala, West Tripura-799006
3. The Superintendent of Taxes-Charge VIII,
Tripura State VAT Department, Agartala, Kar Bhawan, Palace Compound,
Agartala, West Tripura, PIN-799001

.....Respondent(s)

For Petitioner(s) : Mr. Rahul Tangri, Advocate.
Mr. Shovit Betal, Advocate.

For Respondent(s) : Mr. Pradyumna Gautam, Sr. G.A.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT

Date of Hearing & Judgment : 06/04/2026

Whether fit for reporting : YES

JUDGMENT & ORDER (ORAL)

(M.S. RAMACHANDRA RAO, C.J.)

This Writ Petition is filed by the petitioner challenging the order dt.
05.10.2024 of the Superintendent of Taxes-Charge VIII (3rd respondent) refusing
to refund Rs.2,72,35,985.00/-towards excess Value Added Tax (for short
'VAT') under the Tripura Value Added Tax Act,2004 (for short 'the Act')

sought by the petitioner by the application dt. 11.05.2021 for the period from 2012-13 to 2016-17.

2. In the impugned order dt. 05.10.2024, the following reasons are assigned by the respondent no.3:

“i). As per Rule 16(7) of the TVAT Rules, 2005, every registered dealer is required to submit a detailed statement of purchases in Form No.XXXVII and a sales statement in Form No.XXXVIII along with their periodical returns. However, M/s. Thermax Instrumentation Limited have not furnished the said Form XXXVII and Form XXXVIII along with any returns covering the period from 2012-13 to 2016-17. Consequently, in the absence of these forms, application of M/s. Thermax Instrumentation Limited for a refund of Rs.2,72,35,985.00 cannot be justified.

ii). As per Section 10(6)(vii)(a) of TVAT Act, 2004, there is a requirement to produce the original Tax Invoice/Invoices to get the ITC. To get the refund of ITC, every registered dealer has to produce the original Tax Invoice/Invoices along with periodical returns but M/s. Thermax Instrumentation Limited didn't enclose the same with the periodical returns so submitted for the year 2012-13 to 2016-17.

iii.) M/s. Thermax Instrumentation Limited has availed the ITC during the year 2012-13, 2013-14, 2014-15 and 2015-16 amounting to Rs.31,75,954.00 in total but M/s. Thermax Instrumentation Limited didn't enclose the original Tax Invoice(s) with the said relevant returns for the said years 2012-13 to 2015-16; and

iv.) M/s. Thermax Instrumentation Limited furnished return for the month of 30.11.2012 (for the year 2012-13) wherein taxable turnover was recorded as Rs.6,35,49,166/- and taxable liability recorded thereof by M/s. Thermax Instrumentation Limited as Rs.38,12,950.00 and accordingly the tax was deposited through challan on 27.12.2012. M/s Thermax Instrumentation Limited claimed refund of the said amount of tax also.”

3. The petitioner admittedly along with the application dt. 11.05.2021 seeking refund had annexed the following documents:

- i. Monthly VAT returns filed by the petitioner for the said Tax period;
- ii. Works contract TDS Certificates issued by the Customer;
- iii. Additional Tax Payment Challan;
- iv. Summary giving details of tax payable, credit availed and works contract TDS deducted;

4. “Refund” of VAT under the Act is dealt with in Section 43 which states as under :

“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.”

5. The corresponding Rule in TVAT Rules dealing with the “refund” is Rule 35, which states as under :

“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 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.”

6. On perusal of the application dt.11.05.2021 for refund, it shows that all the details required by sub-rule (1) of Rule 35 have been furnished by the petitioner to the 3rd respondent along with it.

7. It is not open to the 3rd respondent to insist that the petitioner furnish documents which are not referred to in Rule 35 as a ground for refusing the refund for the reason that whatever information is necessary as required by the Rule for such refund was already annexed to the application made by it for refund. The rest of the documents sought by the respondents had anyway been filed along with the monthly returns and copies thereof have also been annexed to the Writ Petition.

8. As regards the plea of limitation of one year mentioned in Rule 35(4) of the TVAT Rules, in the judgment of ***Larsen & Toubro Ltd. v. State of Tripura***¹ this Court has held in the said judgment following the judgment of the Supreme Court in ***Bharat Barrel and Drum Manufacturing Co. Ltd. v. ESI Corporation***²

¹ 2025 SCC OnLine Tri 609

² 1971 2 SCC 860

that where substantive rights of parties are likely to be effected and extinguished, only the legislature should prescribe the period of limitation, and such limitation cannot be prescribed by the Rules made under the Statute.

This Court had held that 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 clause (f) thereof 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 did not prescribe such limitation.

This Court had taken a view that 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 an assessee as it is ultra vires the Act.

Therefore, the plea of bar of limitation raised in para 8 of the counter affidavit filed by the respondents also cannot be accepted.

9. The respondents have also raised the plea that the petitioner has an effective alternative remedy in filing an appeal under Section 69 of the Act.

10. A reading of the said provision indicates that the appeal is provided under Section 69 of the Act only against an order of assessment or penalty and not against an order refusing to grant the refund to an assessee. Therefore, the Writ Petition cannot, on that ground, also be said to be not maintainable.

11. For the aforesaid reasons, we are of the opinion that impugned order dt. 05.10.2024 rejecting the petitioner's claim for refund made by the application dt. 11.05.2021 is not sustainable and therefore, the said order dt. 05.10.2024 is set aside. The respondents are directed to consider the application dt. 11.05.2021 strictly in accordance with this judgment and then pass a reasoned order in

accordance with law within 2(two) months from the date of receipt of a copy of this order. If the prayer for refund is found to be acceptable, then interest shall be paid to the petitioner as per Section 45 of the Act along with the principal amount of refund claimed.

Writ Petition stands allowed and disposed of.

Pending application/s, if any, also stands disposed of.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)



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