(2013) 07 KAR CK 0362

In the Karnataka High Court

Case No : Writ Petition No''s. 18624-18645 of 2012 (T-RES)

Applicomp (India) Ltd. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 66 VST 538

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : G. Sarangan, for G. Rabinathan, for the Appellant; K.M. Shivayogiswamy, Additional Government Advocate, for the Respondent

Judgement

Ram Mohan Reddy, J.—The petitioner, a company incorporated under the Companies Act 1956, a dealer registered under the Karnataka Sales Tax Act, 1957, for short, "the KST Act" and Karnataka Value Added Tax Act, 2003, for short, "the KVAT Act", as well as the Central Sales Tax Act, 1956, for short, "the CST Act", asserts that the Government of Karnataka issued an order bearing No. Cl. 30 SPC 96 dated March 15, 1996 announcing the industrial policy for a period of five years commencing from April 1, 1996 to March 31, 2001 for short the industrial policy 1996-2001, offering incentives to mega projects with investment in fixed assets in excess of Rs. 100 crore. The incentives, according to the petitioner, in terms of the notification, were inclusive of tax exemptions, such as deferment of tax payable on the goods manufactured by the mega projects and sold within the State and in the course of inter-State trade or commerce. The promise held out in the "industrial policy of 1996-2001" was the basis for the petitioner to cause investment of Rs. 351 crores to set up an industrial unit in Sy. No. 6-11, Krishna Sagar Village, Attibele, Bangalore-562107, for manufacture of consumer electronic durables such as TV sets, refrigerators, washing machine, air-conditioners, etc., and commenced production with effect from April 2001. Following the industrial policy, it is said, the Finance Department of the Government of Karnataka issued special Notification No. FD 296 CSL 99(1) dated

July 20, 2000, invoking section 19C of the KST Act, 1957, in the name of the petitioner extending exemption from tax on sales of goods manufactured by the petitioner for a period of 10 years from the date of commencement of commercial production. By yet another Notification No. FD 196 CSL 99(2) dated July 20, 2000 invoking section 8(5) of the CST Act, 1956, exemption was granted from payment of tax on inter-State sales of own manufactured goods for a period of 10 years from the date of commencement of commercial production. It is further asserted that the Department of Industries and Commerce, Government of Karnataka, issued eligibility certificate dated October 12, 2001 certifying that the petitioner was eligible to avail of tax exemptions on local and inter-State sales of own manufactured goods for a total amount of Rs. 351.26 crore over a period of 10 years commencing from April 1, 2001 to March 31, 2011 and also allowed exemption from tax on local and inter-State sales of own manufactured goods with effect from April 1, 2001. The State Government is said to have issued Government Order No. FD 303 CSL 99 dated January 7, 2000 to discontinue tax based incentives and concessions to new industries and investments under various industrial policies, with an exception to continue the incentives already offered and committed by the Government, until completion of the period of eligibility of such incentives.

2. The KST Act, 1957, was replaced by the KVAT Act, 2003, with effect from April 1, 2005. Sub-section (2) of section 5 of the KVAT Act invests a jurisdiction in the State to issue notifications for continuation of incentives to the extent of unavailed quantum and eligibility periods by way of refund of tax collected and paid. Keeping with the decision to continue the incentives offered to industrial units under the KST Act for the full period of eligibility, the Government of Karnataka issued notifications dated April 18, 2005 effective from April 1, 2005 continuing the tax exemption and tax deferral to industrial units which had the benefit of incentives under the KST Act for the remaining period of eligibility and limited to the unutilized quantum of exemption or deferral. In addition, for industrial units that were previously granted exemption from tax, a Notification No. FD 56 CSL 2005(1) dated April 18, 2005 was issued continuing the exemption by way of refund of net tax paid on a monthly basis, though the grant of exemption from tax is opposed to the scheme of the value added tax, and hence, the modified procedure for payment of net tax and refund thereon. It is asserted that clause (4) of the notification requires the Revenue to refund the net tax within 15 days from the date of filing of the monthly return and payment of net tax by the industrial units.

3. In compliance with the notification dated April 18, 2005, annexure A, the Joint Commissioner of Commercial Taxes (Admn.) issued an entitlement Certificate No. JCCT/EN-32/2005-06 dated May 7, 2005, annexure B, certifying that the petitioner is entitled to avail of exemption from tax on local and inter-State sales for a total amount of Rs. 295.75 crore being the unutilized portion as on April 1, 2005 during the remaining eligibility period from April 1, 2005 to March 31, 2011.

4. According to the petitioner, annexure C details the monthly returns filed, net tax paid and refunded for the period from April 2005 to March 2011; the material particulars in annexure D are in respect of 22 tax periods intervening May 2005 to May 2009 for which only monthly returns in forms VAT 100 were filed, and net tax not paid due to serious financial difficulties.

5. It is the contention of the petitioner that under clause (4) of the notification dated April 18, 2005-annexure A, the petitioner could either file the monthly returns and pay the net tax within the specified time-limit of 20 days from the close of the previous month or after the expiry of the specified time, while the Revenue is required to refund the net tax within 15 days from the date of such payment. The petitioner, it is said, entertained a bona fide belief that in respect of the 22 tax periods for which only returns were filed, it was permissible for the petitioner to pay the net tax even after the expiry of the time-limit of 20 days specified in section 35 of the KVAT Act, entitled to refund of the net tax. While such payment of net tax and refund thereon within 15 days was more of a procedural requirement since the actual object of the notification was to extend exemption from the payment of tax and that it would be in order that proceedings are drawn up by the concerned authority over the net tax to have been paid and refunded without there being actual payment of the net tax.

6. It is the allegation of the petitioner that the third respondent held that the net tax payable by the petitioner for the 22 tax periods was a liability to tax, which the petitioner was required to discharge and the non-payment of the net tax was liable for recovery as also levy of interest u/s 36 of the KVAT Act and accordingly issued notice of demand in form VAT 210 dated December 23, 2011, annexure E, demanding payment of Rs. 32,02,92,610 as arrears of net tax payable and Rs. 22,33,10,886 as interest payable thereon, though without a notice proposing the levy of tax and extending an opportunity to the petitioner to file objections. The petitioner submits that there is no statutory appeal under the KVAT Act to remedy the grievance of the petitioner over the notice, annexure E and therefore filed Writ Petition No. 3513 of 2012 (Applicomp (India) Ltd. v. State of Karnataka), whence this court by order dated February 22, 2012, annexure F, disposed of the petition directing the petitioner to pay the tax amount due as on that date, within four weeks therefrom, and the State was directed to refund the same in terms of the notification-annexure A while the petitioner was permitted to file his reply in so far as the interest component was concerned, within a period of two weeks therefrom, whereafterwards third respondent was directed to consider the same in accordance with law.

7. The petitioner paid Rs. 6,75,15,688 as against Rs. 32,02,92,610 which the Revenue was required to refund within 15 days, i.e., on or before April 2, 2012. At the same time petitioner is said to have filed an application in W.P. No. 3513 of 2012 (Applicomp (India) Ltd. v. State of Karnataka) for extending the period of payment which was allowed and time extended by four weeks by order dated March 20, 2012, annexure G. It is thereafter that the petitioner paid Rs.

9,50,41,466 on April 16, 2012 and in terms of the notification, annexure A the Revenue was obliged to refund the said amount to the petitioner on or before May 31, 2012. The failure on the part of the respondent-Revenue to refund the amounts deposited, led to several letters requesting refund of amount paid towards net tax for 6 tax periods from May 2005 to October 2005 and August 2006 to May 2007, which was rejected on the premise that the petitioner was required to pay the full amount of net tax of Rs. 32,02,92,610 relating to all the 22 tax periods by letter dated April 3, 2012, annexure J.

8. The petitioner filed its replies annexures K and L to the notice dated December 23, 2011 for payment of interest of Rs. 22,33,10,886, inter alia, pointing to clause (4) of the notification-annexure A and stating that, while, it is the obligation of the Revenue to refund the amount within 15 days of payment by the petitioner, failing which the amount would carry interest, the notification did not mandate payment of interest by the petitioner on either delayed payment or non-payment of the amount of tax collected, placing reliance upon the decision of this court in The Commissioner of Central Excise and Service Tax Vs. Bill Forge Pvt. Ltd., , holding that interest payable to Government would be only to the period for which the Government was deprived of tax revenue and not beyond, following the decision of the apex court in the case of Pratibha Processors and others Vs. Union of India and others, , explaining the terms "tax", "interest" and "penalty" in fiscal statutes. The third respondent rejected the plea of the petitioner by order dated May 17, 2012-annexure M, demanding payment of interest of Rs. 25,06,04,125.

9. It is the further allegation of the petitioner that a day prior to the order-annexure M, proceedings were drawn in the presence of Commissioner of Commercial Taxes, as disclosed at reference No. 8 to the said order and therefore the order-annexure M was as a direct result of such proceedings, at the behest of the Commissioner of Commercial Taxes, hence it is submitted that an appeal to the Commissioner of Commercial Taxes is neither efficacious nor an alternative remedy. It is further alleged that the adjustment of Rs. 16,25,57,154 paid by the petitioner as net tax towards interest, is illegal.

10. In addition, it is submitted that despite the objections filed by the petitioner to the demand notice, nevertheless the third respondent issued the notice dated May 29, 2012-annexure Q, proposing to impose, (a) penalty of Rs. 20,50,500 at the rate of Rs. 50 per day u/s 72(1)(a)(ii) of the KVAT Act on the ground that there was delay in furnishing returns as per section 35 of the KVAT Act; (b) penalty of Rs. 3,20,29,261 u/s 72(1)(b)(ii) equivalent to 10 per cent of the tax levied on Rs. 32,02,92,610 since the delay was more than 10 days in furnishing the return and payment of tax for each tax period. That notice was opposed by the petitioner by filing statement of objections dated June 5, 2012, annexure R.

11. The petitioner, left with no other alternative, has presented this petition to quash the order-annexure M and the endorsement-annexure N, as also the notice dated May 29, 2012-annexure Q and for a writ of mandamus directing the

third respondent to refund to the petitioner Rs. 6,75,15,688 paid on March 17, 2012 and Rs. 9,50,41,466 paid on April 16, 2012 towards net tax for the months of May 2005 to October 2005; August 2006 to May 2007, respectively.

12. Petition is opposed by filing statement of objections of the Revenue, inter alia, not denying the issue of notification, quantum of exemption of tax and the period of exemption, as also the issue of the exemption certificate by the Joint Commissioner. The respondent-Revenue, points to conditions (2), (3), (4) and (5) in the notification-annexure A to contend that the petitioner is required to collect the tax applicable under the KVAT Act on the sale of goods manufactured by it and pay the net tax along with the return prescribed under the Act with the jurisdictional authority, whereafter the Department is obliged to refund the said net tax paid within 35 days at the end of the month to which the return relates. If such a return is filed within the time specified u/s 35 of the KVAT Act or within 15 days from the date of filing of the return, interest shall be paid for any delay in the refund. According to the Revenue, though the petitioner is exempt from payment of tax, is required to collect tax on the sale of manufactured goods, since under the KVAT Act every sale is taxable, and pay net tax as per the Act and thereafter claim refund, to be adjusted towards unavailed portion of the tax concession extended under the KST Act. Notification-annexure A provides for payment of interest by the Revenue if there is any delay in effecting refund of the said sum. It is asserted that the petitioner having failed to pay net tax along with the return filed is liable to pay interest u/s 36 of the KVAT Act for belated payment. In paragraph 6, it is stated thus:

The condition imposed in the notification dated April 18, 2005 is to see how much the industrial unit is entitled for availment of tax exemption. The net tax payable by the industrial unit is to be adjusted or refunded in view of the unavailed portion of exemption granted under the Karnataka Sales Tax Act 1957.

13. It is not disputed that the amounts deposited by the petitioner pursuant to the direction in W.P. No. 3513 of 2012 (Applicomp (India) Ltd. v. State of Karnataka) was adjusted towards interest due as against delayed payment of tax for the relevant tax periods. At paragraph 10 it is stated that refund is within the province of legitimate tax enactment and the Legislature is within its power to require the refund to be applied for, within a reasonable time and that a right to obtain a set-off, is a right conferred by the statute and the Legislature while recognizing an entitlement to set-off in certain circumstance, a lawful entitlement to prescribe the condition subject to which the set-off can be ordered. According to the Revenue, the condition imposed in the notification-annexure A is not unreasonable and not opposed to the earlier notification issued under the KST Act. At paragraph 12 it is submitted that a person who claims exemption or concession, is required to establish entitlement to the same, while the provisions relating to exemption, concession or exception is to be construed strictly to certain extent depending upon which the provisions have been placed in the statute and the object and purpose to be achieved. The compliance of conditions,

it is said, is a sine qua non for seeking exemption. Default on the part of the petitioner has disentitled it to any concession or eligibility for refund, as a result of which the respondent justifiably levied interest u/s 36(1) and penalty u/s 72 of the KVAT Act. It is the further submission of the respondent-Revenue that the rectification order dated February 23, 2013-annexure R1 was passed invoking section 69(1) of the KVAT Act read with section 10(5) of the said Act, adjusting an amount of Rs. 15,77,35,446 out of Rs. 16,25,57,154 and that the petitioner is due and payable a balance of Rs. 48,21,708. In addition it is stated that a further rectification order dated May 20, 2013-annexure R2 was made invoking sections 69(1) and 10(5) of the KVAT Act adjusting the refund of Rs. 16,25,57,154 towards Central Sales Tax Act for the period April 2011 to June 2012 and therefore balance refundable is Rs. 8,24,71,104 and that the same when forwarded to the Joint Commissioner of Commercial Taxes for necessary approval counter-signature was obtained on May 24, 2013, a voucher dated May 24, 2013 prepared for refund of Rs. 8.25 crores, hence what remains for consideration is with regard to levy of interest and penalty for the belated payment of tax amount in terms of the notification dated April 18, 2005.

14. The learned senior counsel for the petitioner submits that the notification, annexure A does not require the petitioner to physically make payment of the tax collected in terms of the KVAT Act since such a tax is exempted and therefore non-payment along with submission of the monthly return is of no consequence. Elaborating the said submission, points to the conditions in the notification-annexure A granting exemption from payment of tax as a public policy for new industries and the formality of filing the returns or payment of the tax collected is only to account for the amount to be adjusted against unutilized quantum of tax exemption during the exempted period since whatever is collected and paid, is refunded. In addition, it is submitted that the notification-annexure A does not provide for applicability of section 36 or section 72 of the KVAT Act on failure to pay the collected tax and therefore the question of payment of interest, much less penalty, does not arise. It is the further submission of the learned senior counsel that clause (4) of the notification-annexure A is a mandate for the respondent-Revenue to refund the amount paid and any delay in making payment is liable to interest at 1.25 per cent per month. Learned senior counsel points to sub-section (2) of section 5 of the KVAT Act to submit that exemption from the payment of tax in exercise of jurisdiction vested in the State is notwithstanding the provisions of the KVAT Act and therefore the provisions relating to payment, filing of return, applicability of interest for delayed payment or delay in filing the return, levy of penalty, are inapplicable. It is lastly submitted that regard being had to clause (5) of the notification-annexure A that an industrial unit claiming exemption from tax, shall not be deemed to have been assessed based on the return filed while the refund, if any, shall be subject to the assessment requiring production of accounts in support of the return filed, is also a pointer to the fact that the State did not require the industrial unit to strictly adhere to the mandate of the provisions of the KVAT Act, contrary to section 38

of the KVAT Act. In the alternative, learned senior counsel submits that the terms "tax", "interest" and "penalty" in the fiscal statute, as has been explained by the apex court in Pratibha Processors and others Vs. Union of India and others, , interest being essentially compensatory and different from penalty which has a penal character, should be geared to the actual amount of tax withheld and the extent of delay in paying the tax on the due date.

15. Per contra, learned Government Advocate seek to sustain the order impugned as being well merited, fully justified and not calling for interference. Learned counsel, while reiterating the averments set out in the statement of objections, in addition places reliance upon paragraph 34 of the decision of the Bombay High Court in M/s.Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur Vs. The State of Maharashtra and Ors, , wherein the decision of the Constitution Bench of the apex court in Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others, etc. etc., , is extracted. According to the learned counsel, the petitioner ought to have strictly adhered to and complied with the conditions in the notification-annexure A in order to seek exemption, since the mandatory requirement of the conditions must be obeyed or fulfilled exactly and having not done so, is disentitled to the reliefs.

16. Having heard the learned senior counsel for the petitioner and learned Government advocate for the respondent-Revenue, perused the pleadings and examined the orders impugned, the core question for decision-making is, whether the petitioner is liable to pay interest on delayed payment or non-payment of tax collected under the KVAT Act in terms of the notification, annexure A?

17. There is no dispute that the petitioner, an industrial unit registered under the KST Act was extended an exemption from payment of tax up to Rs. 351.26 crores during the period of 10 years commencing from April 1, 2001 to March 31, 2011, had utilized only a portion of the exemption until coming into force of the KVAT Act with effect from April 1, 2005. State having brought into force the KVAT Act, exercised its jurisdiction under sub-section (2) of section 5 of the KVAT Act to issue a fresh notification, annexure A, in tune with the exemption earlier granted under the KST Act except for certain modifications since the KVAT Act brought in a regime for submitting returns on a monthly basis. The conditions for claiming exemption in the notification, annexure A, reads thus:

(1) The industrial unit is eligible for tax exemption on sale of goods manufactured by it, under the notification issued by the Government under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act, 25 of 1957);

(2) The tax exemption extended in this notification shall be limited to the unavailed portion of period and extent of tax exemption extended in the relevant notification and any Government Order and also subject to the overall tax concession originally extended;

(3) The industrial unit shall charge and collect the tax applicable under the said

Act, on the sale of goods manufactured by it, and pay the net tax payable along with the return prescribed under the said Act to the jurisdictional authority;

(4) The industrial unit shall be refunded, such net tax paid within thirty five days after the end of the month to which the return relates, if it is furnished within the time specified u/s 35 of the said act or within fifteen days from the date of filing of the return, if it is filed after the time specified, in the manner prescribed under the said Act by the jurisdictional authority and interest shall be paid for any delay in the refund as specified under the said Act.

(5) The industrial unit claiming tax exemption under this notification shall not be deemed to have been assessed based on the return filed by him and any refund made shall be subject to assessment requiring production of accounts in support of the return filed;

(6) The tax exemption extended in this notification shall not be available to an industrial unit on its sale of goods to another industrial unit which is claiming exemption of tax on its purchase in terms of the notification No. FD 56 CSL 2005(3), dated April 18, 2005.

(7) On any claim of deduction of input tax by a registered dealer on his purchase from the industrial unit claiming tax exemption under this notification, on account of any sale in the course of inter-State trade or export outside the country of the goods purchased, the amount refunded to such industrial unit shall be repayable to the extent of input tax claimed by the purchaser.

(8) The unit claiming tax exemption under this notification shall be eligible for input-tax rebate as specified under the said Act, while calculating the net tax payable by the industrial unit.

(9) The industrial unit claiming tax exemption under this notification shall file an application before the jurisdictional Joint Commissioner of Commercial Taxes within 30th April 2005, giving details of the extent and period of tax exemption extended, availed and the balance, the relevant notification under which it was availing the tax exemption and the date from which it intends to claim tax exemption under this notification.

(10) The jurisdictional Joint Commissioner of Commercial Taxes shall issue a certificate of entitlement regarding the tax exemption available to the industrial unit under this notification, within ten days from the date of filing of an application by the industrial unit after verification of the claim made.

18. The entitlement certificate dated May 7, 2005, annexure B, issued by the Joint Commissioner of Commercial Taxes (Admn.,), inter alia, exempts the petitioner from sales tax for the period from April 1, 2001 to March 31, 2011 to the extent of exemption limit of Rs. 351.59 crores, out of which, the petitioner availed Rs. 55.84 crores by March 31, 2005 and entitled to avail sales tax exemption for the balance of Rs. 295.75 crores from April 1, 2005 onwards.

19. From a bare reading of the conditions supra, what can be deciphered is that the petitioner-industrial unit is entitled to tax exemption limited to unavailed portion of the period and extent of tax exempted, but is required to collect the tax applicable under the KVAT Act on the sale of goods manufactured by it and pay the net tax along with the return prescribed under the said Act to the jurisdictional authority, while, the State Government is obliged to refund the said amount within the time specified u/s 35 of the KVAT Act or within 15 days from the date of filing of the return and failure to do so, would entail the State Government to pay interest for the period of delay. Significantly, clause 5 of the notification makes it abundantly clear that the petitioner while claiming tax exemption under the notification shall not be deemed to have been assessed based upon the return filed by it and any refund made is subject to assessment requiring production of books of accounts in support of the return. This is a departure from section 38 of the KVAT Act relating to filing of returns and payment of tax collected.

20. The exemption under the notification annexure A is by way of a public policy of the State to encourage new industrial units to set up business in the State of Karnataka, more so, when the investments are more than Rs. 100 crores. The State, in its wisdom, extended the benefit of tax exemption by invoking sub-section (2) of section 5 of the KVAT Act, while section opens with a non obstante clause that is, "notwithstanding anything contained in the KVAT Act", though the submission of returns under the KVAT Act was shifted from annually to monthly and the tax collected by the petitioner was required to be accounted only to be adjusted against the exemption extended during the relevant period. This purpose is also highlighted by the State in its statement of objections at paragraph No. 6 supra. If this is the scope, object and purpose behind the condition requiring the petitioner to submit its monthly returns and also payment of the tax collected, indicates that the said procedure contemplated is only for the purpose of adjustment of the amount as against the total quantum of exemption from tax and to ascertain the period within which such availment is permissible and nothing more.

21. Yet again section 38 of the KVAT Act provides for imposition of certain strict criteria in the matter of submission of monthly returns, specifically given a go-bye as indicated in clause 5 of the notification, annexure A. In other words, the industrial unit will not be deemed to have been assessed to tax though returns are submitted but subjecting the refund to assessment on production of books of account. All the conditions, when comprehensively read, do not indicate that they must be strictly construed, having regard to the object and purpose sought to be achieved by the exemption. Non-compliance with the condition of deposit of the tax collected by the petitioner does not affect the essence or the substance of the notification annexure A being grant of exemption.

22. Another aspect of the matter is that the State did not choose to impose a condition on the petitioner to be liable to pay interest in the event of delay or

default in paying the tax collected while on the contrary what is made mandatory is payment of interest on delayed refund by the State. Therefore, in the absence of a condition requiring the petitioner to pay interest on delayed payment or deferred payment, or non-payment it can neither be said that the notification annexure A mandates such a condition nor that the Revenue could invoke section 36(1) of the KVAT Act.

23. To a question of this court, learned Government Advocate submits that even if payment of the tax collected by the petitioner is made to the State in terms of condition No. 4, it is more of a formality of accounting that amount as against the total amount of exemption from payment of tax during the relevant period and nothing more. If that is so, there cannot be a failure of the object or purpose of the notification if the petitioner did not make payment of tax collected in order to account for the amounts to be adjusted as against the entitlement. Though the petitioner filed its monthly returns, nevertheless is inconsequential in the light of the clause 5 of the notification, annexure A the compliance of which would sequentially enable the Revenue to adjust the amounts as against the entitlement.

24. Looking at it from any angle, the petitioner though did not make payment of the tax collected under the KVAT Act along with some of the monthly returns submitted and for some months having made delayed payments, the Revenue could not have imposed interest by exercising a jurisdiction u/s 36 of the KVAT Act.

25. In fact, the decision in Pratibha Processors and others Vs. Union of India and others, , in the circumstances, has no application and there is no necessity to go into the merit of the submission made in the alternative by the learned senior counsel for the petitioner.

26. The law laid down in Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others, etc. etc., supports the case of the petitioner in the matter of whether the conditions imposed in annexure A notification are to be construed strictly or otherwise. The apex court, having observed that mandatory requirements of conditions while seeking exemption must be obeyed or fulfilled exactly, nevertheless stated that at times, some latitude can be shown if there is failure to comply with some requirements, which are directory in nature and non-compliance of which "would not affect the essence or substance of the notification granting exemption". A reading of the statement of objections filed by the Revenue does not indicate that the non-compliance of the payment of tax collected by the petitioner under the KVAT Act, apparently would not affect the essence or substance of the notification, annexure A, granting exemption from payment of tax. The question supra is answered in the negative. In the result, these petitions are allowed. The order of the third respondent dated May 17, 2012, annexure M, is quashed. Sequentially, endorsement dated May 22, 2012, annexure N and proposition notice dated May 29, 2012, annexure Q are quashed. The respondents are directed to refund the amount deposited by the

petitioner, if not already refunded.

