**(2015) 05 GUJ CK 0032**

**In the Gujarat High Court**

**Case No :** Tax Appeal No. 254 of 2015, Civil Application (OJ) No. 321 of 2015 in Tax Appeal No. 254 of 2015, Tax Appeal No. 255 of 2015, Civil Application (OJ) No. 322 of 2015 in Tax Appeal No. 255 of 2015 and Special Civil Application Nos. 6989 and 6990 of 2015

State of Gujarat APPELLANT

Vs

Essar Oil Ltd. RESPONDENT

**Date of Decision :** 01-05-2015

**Acts Referred:**

**Citation :** (2015) 82 VST 107

**Hon'ble Judges :** M.R. Shah, J;S.H. Vora, J

**Bench :** Division Bench

**Advocate :** P.K. Jani, A.A.G. and Manisha Lavkumar, G.P., for the Appellant; S.N. Soparkar and Uchit N. Sheth, Advocates for the Respondent

# Judgement

M.R. Shah, J.

1. As common question of law and facts arises in these tax appeals as well as Special Civil Applications, all these tax appeals as well as Special Civil Applications are heard, decided and disposed of together by this common judgment and order.

2. Feeling aggrieved by and dissatisfied with the impugned judgment and order passed by the learned Value Added Tax Tribunal, Ahmedabad (for short "learned Tribunal") dated 26.8.2014 passed in First Appeal Nos. 11 and 12 of 2013 as well as common order passed by the learned Tribunal dated 20.2.2015 passed in Misc. Applications Nos. 33 and 34 of 2015 in First Appeal Nos. 11 and 12 of 2013, the State of Gujarat through Commissioner of Commercial Tax has preferred the present tax appeals as well as Special Civil Applications.

3. The facts leading to the present tax appeals and the Special Civil Applications in nutshell are as under:

3.1 That the Deputy Commissioner of Commercial Tax Petroleum 1, Gujarat State (assessing authority) passed assessment orders for the year 2008-09 under the Gujarat Valued Added Tax Act (for short "the VAT Act") as well as under the Central Sales Tax Act (for short "the CST Act"). As per the assessment order passed against the respondent - M/s. Essar Oil Limited under the VAT Act, the respondent is liable to pay Rs. 591,67,61,310/-, which inter alia includes the tax amount of Rs. 33,42,80,3000/-, interest of Rs. 240,68,18,160/- and the penalty of Rs. 16,71,40,150/-. It appears that the amount of Rs. 2,11,121/- was recovered through the bank attachment and therefore, the total due outstanding against the respondent - dealer was Rs. 591,65,50,189/- under the VAT Act. The tax liability under the CST Act of the respondent for the aforesaid year was assessed at Rs. 68,23,43,962/-, which inter alia, includes tax amount of Rs. 39,67,72,238/- and the interest of Rs. 28,56,32,356/-. Feeling aggrieved by and dissatisfied with assessment orders passed by the Assessing Officer under the VAT Act as well as CST Act, the respondent - dealer - M/s. Essar Oil Limited, preferred two appeals before the first appellate authority - Joint Commissioner of Commercial Tax. That the first appellate authority passed an order directing the respondent herein - original appellant - dealer to deposit 20% of the tax demands and furnish guarantee for the remaining demands raised as a result of the assessment orders passed by the Assessing Officer, as pre-deposit and before the appeals are considered on merits. That feeling aggrieved by and dissatisfied with the order passed by the first appellate authority of pre-deposit directing the respondent - original appellant to deposit 20% of the tax demands and furnish Bank Guarantee for the remaining demands raised as a result of the assessment orders, the respondent dealer - original appellant preferred appeals being First Appeal Nos. 11 and 12 of 2013 before the learned Tribunal. That the aforesaid appeals came up for preliminary hearing before the learned Tribunal on 25.6.2013 and the learned Tribunal passed the following interim order on 25.6.2013. (page 29/2).

"1) The appellant is directed to pay Rs. 5 crores to the Department forthwith.

2) The appellant is further directed to furnish the Bank Guarantee of 5% of the total tax demand (exclusive of interest and/or penalty) both under the Gujarat VAT Act as well as under the CST Act immediately.

3) The appellant is further directed to pay 5% of the amount, of total tax demand (exclusive of interest and/or penalty), both under the Gujarat VAT Act as well as CST Act as reduced by Rs. 5 crore, if so paid earlier as per condition No. 1 within one and half month from today.

4) It is made clear that on payment of Rs. 5 crore and furnishing Bank Guarantee of 5% of the tax demand as indicated above, the bank attachment on the above referred bank accounts of the appellant is directed to be lifted immediately and stay would come into operation against recovery of the outstanding demand against the appellant.

5) It is further made clear that if the appellant commits any default in making

 

compliance with the aforesaid conditions, stay granted as above shall stand vacated and it would be open for the department to reimpose the bank attachment on the bank accounts of the appellant.

6) It is also made clear that all the observations made hereinabove are prima facie in nature and the same may not have any bearing on the appeals of the appellant which are pending before the first appellate authority or on any other appeals pending before this Tribunal, involving identical issues."

3.2 It appears that pursuant to the aforesaid interim order dated 25.6.2013 and in compliance thereof, the respondent - dealer - original appellant deposited Rs. 18,69,75,730/- and also furnished the Bank Guarantee of 5% of the tax demand. That on that, the stay against the recovery of the balance amount came to be granted and continued. That thereafter, the aforesaid two appeals came up for hearing before the learned Tribunal. That in the meantime, in another case, in the case of ONGC Limited, the learned Tribunal had an occasion to consider the similar issue and held against the revenue. Therefore, though the tax appeals before the learned Tribunal were against the orders passed by the first appellate authority of pre-deposit only, the learned Tribunal without considering the legality and validity of the order of the first appellate authority of pre-deposit, allowed the aforesaid appeals and quashed and set aside the order passed by the first appellate authority directing the respondent - original appellant to make payment of 20% of the total demand as pre-deposit and remanded the matter to the first appellate authority with the direction to decide the first appeals pending before him keeping in mind the decision of the Tribunal in the case of ONGC Limited and/or in accordance with law within three months from the date of receipt of the said order. The learned Tribunal further passed an order that if the learned Joint Commissioner of Commercial Tax fails to decide the appeals within a period of three months from the date of receipt of the said order, in that case, the amount paid by the respondent - original appellant as a result of the interim order passed by the learned Tribunal on 25.6.2013 shall be refunded to the original appellant - respondent herein forthwith. The learned Tribunal also clarified that the respondent - original appellant shall not be required to furnish the renewal Bank Guarantee once the existing one gets expired. The learned Tribunal further passed an order that the stay granted by the Tribunal earlier against recovery of the outstanding demand shall continue till final disposal of the first appeals pending before him. That the said order came to be passed by the learned Tribunal on 26.8.2014. That as the said order passed by the learned Tribunal in the case of ONGC Limited was the subject matter of tax appeals before this Court and there was a direction by the learned Tribunal in the order dated 26.8.2014 directing the first appellate authority to decide the appeals within three months after considering the decision of the Tribunal in the case of ONGC Limited, to avoid any further multiplicity of proceedings, the State preferred Misc. Application Nos. 33 and 34 of 2015 before the learned Tribunal requesting the learned Tribunal to recall the judgment and order dated 26.8.2014 passed in First Appeal Nos. 11 and 12 of 2013 or to modify the said judgment and order in such a manner that it does not impose any outer time limit for deciding the first appeals pending before the learned first appellate authority.

3.3 On behalf of the revenue, it was specifically pointed out that the decision of the learned Tribunal in the case of ONGC Limited is the subject matter of appeals before this Court and the said tax appeals are admitted and this Court is seized with the matters. Despite the above, by order dated 20.2.2015, the learned Tribunal not only dismissed the said applications but even refused to modify its earlier order, by which, the first appellate authority was directed to decide the first appeals within three months and to consider the decision of the Tribunal in the case of ONGC Limited, which is the subject matter of appeals before this Court. The learned Tribunal in the applications filed by the State had directed the State to refund the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013, within 15 days from 20.2.2015, falling which the State to refund the aforesaid amount i.e. Rs. 18,69,75,730/- with interest at the rate of 18% per annum on such overdue payment of refund.

3.4 Feeling aggrieved by and dissatisfied with judgment and order passed by the learned Tribunal dated 26.8.2014 passed in First Appeal Nos. 11 and 12 of 2013 as well as order passed by the learned Tribunal dated 20.2.2015 passed in Misc. Application Nos. 33 and 34 of 2015, the State through Commissioner of Commercial Tax preferred present tax appeals as well as Special Civil Applications.

4. Shri PK Jani, learned Additional Advocate General appearing with Mrs. Manisha Lavkumar, learned GP has vehemently submitted that the impugned judgment and order passed by the learned Tribunal passed in First Appeal Nos. 11 and 12 of 2013 as well as Misc. Application Nos. 33 and 34 of 2015 insofar as directing the first appellate authority to decide the appeals pending before him within a period of three months and to follow the judgment of the learned Tribunal in the case of ONGC Limited is not justified in the facts and circumstances of the case, more particularly, when the appeals against the decision of the learned Tribunal in the case of ONGC Limited are admitted and pending before this Court and this Court is seized with the matter.

4.1 It is submitted that pendency of the appeals against the decision of the Tribunal in the case of ONGC Limited before this Court was pointed out to the learned Tribunal by way of Misc. Applications, however and despite the fact that the learned Tribunal was aware of the fact that the appeals against the decision of the learned Tribunal in the case of ONGC Limited are admitted and pending final disposal before this Court, the learned Tribunal, has still directed the first appellate authority to decide the appeals on remand within a period of three months and that too after following the decision of the Tribunal in the case of ONGC Limited.

 

4.2 It is submitted that propriety demands and as such, even otherwise, to avoid any further multiplicity of proceedings, the learned Tribunal could not have passed the order directing the first appellate authority to decide the appeals within three months after following the decision of the Tribunal in the case of ONGC Limited. It is submitted that if such a direction is not set aside, in that case, being a subordinate authority, the first appellate authority is bound to decide the appeals against the revenue and in favour of the dealer considering the order of the learned Tribunal in the case of ONGC Limited and thereafter, the State is required to prefer appeal before the learned Tribunal and thereafter, after following the decision in the case of ONGC Limited, the learned Tribunal dismissed the appeal, in that case, the State would be required to prefer appeals before this Court. Instead of that, if the appeals are kept pending before the learned first appellate authority waiting for the decision of this Court in the case of ONGC Limited, that would have been proper order under procedure, more particularly, when if such a course is adopted, the respondent - original appellant - dealer was not to be prejudiced as there was already stay against recovery in favour of the assessee/dealer continued by the learned Tribunal.

4.3 It is further submitted by Shri Jani, learned Additional Advocate General appearing for the State that even otherwise, the learned Tribunal has materially erred in directing the State to refund the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013. It is submitted that when the issue was at large before this Court, instead of directing the appellant State to refund the amount deposited by the respondent herein - original appellant, the learned Tribunal could have passed the order that the amount already deposited by the respondent herein - original appellant would be continued to be retained by the State, however, subject to the ultimate outcome of the decision by the first appellate authority on merits and that too after the decision of this Court in the case of ONGC Limited. It is submitted that the total tax liability pursuant to the assessment orders against the respondent herein - original appellant under the VAT Act and CST Act is Rs. 591,67,61,310/- and 68,23,43,962/- respectively. It is submitted that against which, as such, pursuant to the earlier interim order passed by the learned Tribunal, the respondent - dealer had deposited only Rs. 18,69,75,730/- and with respect to that also, the learned Tribunal has passed an order directing the appellant to refund the said amount to the respondent.

4.4 It is further submitted by Shri PK Jani, learned Additional Advocate General that even otherwise, the directions issued by the learned Tribunal in Misc. Application Nos. 33 and 34 of 2015, which in fact, the appellant State preferred to modify the judgment and order dated 26.8.2014 passed in First Appeal Nos. 11 and 12 of 2013 and/or for other modifications directing the appellant to refund the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013 with 18% interest is absolutely unjustifiable and perverse, which cannot be sustained. It is submitted that in the applications preferred by the State, the learned Tribunal ought not to have passed such order and/or could not have and ought not to have issued such direction.

4.5 Making above submissions, it is requested to allow the present tax appeals as well as the Special Civil Applications and granted the relief as prayed.

5. Shri SN Soparkar, learned senior counsel has appeared with Shri Uchit Sheth on behalf of the respondent - dealer Essar Oil Limited.

5.1 Under the instructions, he has stated at the bar that as the appeals against the order passed by the learned Tribunal in the case of ONGC Limited are admitted and pending for final disposal before this Court, he has no objection if the direction issued by the learned Tribunal in the order dated 26.8.2014 passed in First Appeal Nos. 11 and 12 of 2013 and even in the order passed by the learned Tribunal dated 20.2.2015 passed in Misc. Applications Nos. 33 and 34 of 2015 directing the first appellate authority to decide the appeals within three months after following the decision of the learned Tribunal in the case of ONGC Limited is quashed and set aside.

5.2 He has also stated at bar, under the instructions, that the respondent - dealer - original appellant is ready and willing to furnish the unconditional and irrevocable Bank Guarantee for Rs. 18,69,75,730/- in the name of the Commissioner of Commercial Tax within a period of seven days from today and on furnishing Bank Guarantee for an amount of Rs. 18,69,75,730/- and the State may be directed to refund the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013. It is submitted that therefore, to the aforesaid extent, the judgment and order passed by the learned Tribunal dated 26.8.2014 in Tax Appeal Nos. 11 and 12 of 2013 may be modified. He has also stated at the bar under the instructions that the respondent - dealer - original appellant has no objection if the order passed by the learned Tribunal dated 20.2.2015 passed in Misc. Application Nos. 33 and 34 of 2015, by which the learned Tribunal has directed the appellant to refund/return the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013 with interest at the rate of 18% per annum, is set aside and/or the impugned order passed by the learned Tribunal dated 20.2.2015 passed in Misc. Application Nos. 33 and 34 of 2015 is quashed and set aside.

6. Shri PK Jani, learned Additional Advocate General, as such, has insisted to quash and set aside the order passed by the learned Tribunal, by which the appellant is directed to return the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013, however ultimately, he has left it to the Court with a request to strike the balance and protect the interest of the revenue also.

 

7. Heard learned advocates appearing on behalf of the respective parties.

7.1 At the outset, it is required to be noted that what is challenged in the present tax appeals and the respective Special Civil Applications in the impugned judgment and order passed by the learned Tribunal dated 26.8.2014 passed in First Appeal Nos. 11 and 12 of 2013 as well as the impugned order passed by the learned Tribunal dated 20.2.2015 passed in Misc. Application Nos. 33 and 34 of 2015 insofar as while remanding the matter to the first appellate authority, the learned Tribunal has directed the first appellate authority to decide and dispose of the appeals within three months and after following its earlier decision in the case of ONGC Limited. The appellant State has also challenged the impugned order, by which the learned Tribunal has directed the appellant to return the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013 and that too with 18% interest on completion of 15 days from the order dated 20.2.2015.

7.2 At the outset, it is required to be noted that as such, the appeals before the learned Tribunal were against the order of pre-deposit passed by the first appellate authority i.e. order passed by the first appellate authority directing the respondent - original appellant to deposit 20% of the total amount due and payable. It is required to be noted that total amount due and payable by the respondent - original appellant as per the original assessment 2008-09 i.e. Rs. 591,67,61,310/- and 68,23,43,962/-, the first appellate authority passed an order to deposit 20% of the aforesaid as pre-deposit. Against which, the respondent preferred aforesaid two appeals before the learned Tribunal. By interim order dated 25.6.2013, the learned Tribunal passed the following order:

"1) The appellant is directed to pay Rs. 5 crores to the Department forthwith.

3) The appellant is further directed to furnish the Bank Guarantee of 5% of the total tax demand (exclusive of interest and/or penalty) both under the Gujarat VAT Act as well as under the CST Act immediately.

3) The appellant is further directed to pay 5% of the amount, of total tax demand (exclusive of interest and/or penalty), both under the Gujarat VAT Act as well as CST Act as reduced by Rs. 5 crore, if so paid earlier as per condition No. 1 within one and half month from today.

4) It is made clear that on payment of Rs. 5 crore and furnishing Bank Guarantee of 5% of the tax demand as indicated above, the bank attachment on the above referred bank accounts of the appellant is directed to be lifted immediately and stay would come into operation against recovery of the outstanding demand against the appellant.

5) It is further made clear that if the appellant commits any default in making compliance with the aforesaid conditions, stay granted as above shall stand vacated and it would be open for the department to reimpose the bank

 

attachment on the bank accounts of the appellant.

6) It is also made clear that all the observations made hereinabove are prima facie in nature and the same may not have any bearing on the appeals of the appellant which are pending before the first appellate authority or on any other appeals pending before this Tribunal, involving identical issues."

7.3 Subject to the aforesaid directions and observations, the learned Tribunal disposed of the stay applications. That the respondent herein - original appellant deposited Rs. 18,69,75,730/- pursuant to the aforesaid directions. That thereafter, the aforesaid appeals came up for hearing before the learned Tribunal and it was brought to the notice of the learned Tribunal and even the learned Tribunal was of the opinion that the issue involved is squarely covered by its earlier decision in the case of ONGC Limited and appeals before it were against the order of pre-deposit only. The learned Tribunal has remanded the matter to the learned first appellate authority by quashing and setting aside the order passed by the first appellate authority of pre-deposit and granting unconditional stay of recovery during the pendency of the appeals by the first appellate authority. To that extent, there cannot be any difficulty and/or any fault can be found with the learned Tribunal. However, the learned Tribunal directed the first appellate authority to decide the appeals within a period of three months and to follow its judgment in the case of ONGC Limited. The learned Tribunal also directed the appellant State to return/refund the amount of Rs. 18,69,75,730/-, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013 forthwith. That thereafter, the appellant - State preferred Misc. Applications before the learned Tribunal being Misc. Application Nos. 33 and 34 of 2015 in the aforesaid First Appeal Nos. 11 and 12 of 2013 requesting the learned Tribunal to recall the judgment and order dated 26.8.2014 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013 or to modify the said judgment and order in such a manner that it does not impose any outer limit for deciding the first appeals pending before the first appellate authority. By filing the aforesaid applications, the appellant - State of Gujarat brought it to the notice of the learned Tribunal that the decision of the learned Tribunal in the case of ONGC (supra) is challenged before the High Court and the High Court has admitted the appeals and the appeals are pending for final disposal and therefore, the High Court is seized with the matter. Despite the aforesaid brought to the notice of the learned Tribunal, the learned Tribunal not only dismissed the said applications by not removing the outer time limit fixed by it directing the first appellate authority to decide the appeals within a period of three months after following its earlier decision in the case of ONGC Limited, reiterated again and directed the first appellate authority to decide the appeals within stipulated time after following its decision in the case of ONGC Limited. Not only that, but in the said Misc. Applications preferred by the State, the learned Tribunal by impugned order dated 20.2.2015 has directed the State to refund/return the amount of Rs. 18,69,75,730/- within a period of 15 days with applicable rate of interest, failing which, to refund the aforesaid amount with 18% interest.

7.4 When it was also brought to the notice of the learned Tribunal that its decision in the case of ONGC Limited is subject matter of appeals before the High Court and the High Court has admitted the appeals on substantial question of law and are pending final disposal and the High Court is seized with the matter, we fail to appreciate the anxiety on the part of the learned Tribunal to dispose of the appeals by the first appellate authority following its earlier in the case of ONGC Limited. Once it was brought to the notice of the learned Tribunal that the appeals against its decision in the case of ONGC Limited are pending before this Court and this Court is seized with the matter, even to avoid any further multiplicity of proceedings, the learned Tribunal could not have insisted for disposing of the appeals by the first appellate authority following its earlier decision in the case of ONGC Limited, which are the subject matter of appeals before this Court and that too within stipulated period. The proper course on the part of the learned Tribunal would have been to remand the matter to the first appellate authority without any further directions and wait for the outcome of the appeals by the High Court. If the aforesaid course would not have been adopted, in that case, the first appellate authority shall have to decide the appeals after following the decision in the case of ONGC Limited; thereafter, the aggrieved party would have to prefer appeal before the learned Tribunal and the learned Tribunal also may have to follow its own decision in the case of ONGC Limited and thereafter, the aggrieved party shall have to prefer appeal before the High Court. Instead, if the first appellate authority waits till the decision by the High Court on the issue/point, it would avoid the aforesaid litigations. It is very unfortunate that despite the pendency of appeal against the order in the case of ONGC Limited before the High Court, the learned Tribunal still insisted and directed the first appellate authority to decide the appeals within three months and that too after following the decision of the Tribunal in the case of ONGC Limited and in accordance with law. At this stage, it is required to be noted that as such, if the outer limit to decide the appeals by the first appellate authority would have been deleted, the respondent - original appellant was not to suffer, as such as, the learned Tribunal had already continued/granted stay against the recovery of the demand during the pendency and final disposal of the first appeals by the first appellate authority. Under the circumstances, the judgment and order passed by the learned Tribunal directing the first appellate authority to decide the appeals before it within a period of three months and that too after following the decision of the Tribunal in the case of ONGC Limited deserves to be quashed and set aside. At this stage, it is required to be noted that even Shri Soparkar, learned senior counsel appearing on behalf of the respondent - original appellant has stated at bar that he has no objection, if that part of the order, by which the learned Tribunal has directed the first appellate authority to decide the appeals within three months and that too after following the decision of the Tribunal in the case of ONGC Limited is quashed and set aside.

7.5 In the Misc. Applications preferred by the appellant State, the learned

 

Tribunal has directed the appellant State to refund/return the amount deposited by the respondent - original appellant pursuant to the interim order/direction dated 25.6.2013 passed in First Appeal Nos. 11 and 12 of 2013 with interest at the rate of 18% per annum. The aforesaid order/direction is absolutely beyond the scope and ambit of the powers of the learned Tribunal. Even, such a direction could not have been issued by the learned Tribunal in the Misc. Applications preferred by the State. As recorded herein above, Shri Soparkar, learned senior counsel appearing on behalf of the respondent - original appellant has also stated at the bar, under the instructions, that even he/respondent has no objection if the direction issued by the learned Tribunal directing the appellant to return/refund the amount, which the respondent - original appellant deposited with interest at the rate of 18% per annum.

7.6 Now, the only issue to be decided is the order passed by the learned Tribunal directing the respondent - original appellant to return/refund the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013. Shri Soparkar, learned senior counsel appearing on behalf of the respondent - original appellant has stated at bar, under the instructions, that the respondent - original appellant may be permitted to withdraw the aforesaid amount on furnishing Bank Guarantee of the like amount, which would be continued till final disposal of the appeals before the first appellate authority. Having heard the learned advocates appearing on behalf of the respective parties, we are of the opinion that the suggestion made by Shri Soparkar, learned senior counsel appearing on behalf of the respondent seems to be reasonable in the facts and circumstances of the case. We are of the opinion that if the respondent - original appellant is permitted to withdraw the amount, which the respondent - original appellant deposited pursuant to the interim order dated 25.6.2013 passed by the learned Tribunal in First Appeal Nos. 11 and 12 of 2013 i.e. Rs. 18,69,75,730/- on furnishing unconditional and irrevocable Bank Guarantee of the like amount in the name of the Commissioner of Commercial Tax, it will make the ends of justice and it will protect the interest of both the parties.

8. In view of above and for the reasons stated above, both tax appeals as well as Special Civil Applications are partly allowed. The impugned judgment and order passed by the learned Tribunal dated 26.8.2014 passed in First Appeal Nos. 11 and 12 of 2013 as well as common order passed by the learned Tribunal dated 20.2.2015 passed in Misc. Applications Nos. 33 and 34 of 2015 in First Appeal Nos. 11 and 12 of 2013 insofar as directing the first appellate authority to decide the appeals pending before it within a period of three months and to follow the judgment of the Tribunal in the case of ONGC Limited as well as the direction issued by the learned Tribunal in the order dated 20.2.2015 in Misc. Applications No. 33 and 34 of 2015 directing the respondent - original appellant to refund the amount of Rs. 18,69,75,730/- (the amount deposited by the respondent - original appellant pursuant to the interim order/direction dated 25.6.2013 passed in First Appeal Nos. 11 and 12 of 2013) are hereby quashed and set aside. The

 

impugned order passed by the learned Tribunal directing the respondent - original appellant to return/refund the amount of Rs. 18,69,75,730/- (the amount deposited by the respondent - original appellant pursuant to the interim order/direction dated 25.6.2013 passed in First Appeal Nos. 11 and 12 of 2013) is hereby modified to the extent that it is directed that on furnishing unconditional and irrevocable Bank Guarantee of like amount i.e. Rs. 18,69,75,730/- in favour of the Commissioner of Commercial Tax if furnished within 15 days from today (as agreed by Shri Soparkar, learned senior counsel appearing on behalf of the respondent - original appellant), the appellant State shall return the said amount i.e. Rs. 18,69,75,730/- to the respondent forthwith. However, the aforesaid shall be without prejudice to the rights and contentions of the respective parties in the appeals pending before the first appellate authority. As on the similar/identical issues, the appeals in the case of ONGC Limited are pending before this Court and the decision of this Court in the appeals in the case of ONGC Limited has a direct bearing on the appeals in the present case and to avoid any further multiplicity of proceedings, the first appellate authority is directed to decide and dispose of the appeals pending before it after the decision of the Division Bench of this Court in the appeals in the case of ONGC Limited.

9. With this, present tax appeals and the respective Special Civil Applications are partly allowed to the aforesaid extent. No costs.

 