TRUE COPY

Form No.TT/G-2B

Page No. 11
Order sheet.
(Continuation)

BF Infrastructure
-vs-
CTO, Taltola Charge & 2 Ors.

Case No.RN-414 of 2017

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017	For Applicant: Mr. D. Majumdar, Advocate. For Respondents: Mr. A. Chakraborty, S.R. Heard the Ld. Advocate for the petitioner and the Ld. S.R. Last hearing was held on 01.11.2017. Ld. Advocate for the petitioner made submissions with reference to the petition filed as well as CAN applications filed by the petitioner. **1.** Ld. Advocate for the petitioner submitted that the prayer in the application relates mainly to seeking direction for refund of a sum of Rs.1,76,59,759/- only arising out of the assessment order issued by the assessing officer for 4 quarters ended 31st March, 2014 vide assessment order dated 30thJune, 2016. Ld. Advocate for the petitioner further submitted that a notice of demand showing excess payment arising out of credit of Tax Deducted at Source (TDS) had also been issued to the petitioner. **2.** Ld. Advocate for the petitioner submitted that the petitioner had followed up from time to time with the respondents for refund of Rs.1,76,59,759/- in terms of the said assessment order, but the petitioners had not refunded the said amount even after the assessment orders had attained finality. ..to be contd. to next page.	

Form No.TT/G-2B

Page No. 12
Order sheet.
(Continuation)

BF Infrastructure Ltd. & Anr.
-vs-
CTO, Taltola Charge & 2 Ors.

Case No.RN-414 of 2017

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**2.1.** It may be re-called that it was submitted in the petition that the petitioner was assessed u/s.46 of the VAT Act, 2003, for the Financial Year 2013-14 vide order dated 30th June, 2016 and notice showing excess payment was issued vide notice of demand dated 30th June, 2016 in form 27 for an amount of Rs.1,76,59,715/- as stated in para 8 of the petition and notice of demand placed at Annexure D of the petition. It was also submitted that the petitioner was not issued any refund till the date of filing of the petition in the month of March, 2017. The petitioner had also submitted that it was mandatory to issue refund order along with the notice of demand under rule 59(4) of the VAT Act, 2003, as stated in para 10 of the petition. The clerical error of mentioning the rule 59(4) of the VAT Act, 2003 is overlooked and read as W.B. Value Added Tax Rules, 2005. **3.** It may also be re-called that a total sum of Rs.30 lakhs has already been released to the petitioner on ad hoc basis without prejudice to the rights and contentions of both the parties against indemnity bond, pursuant to orders of this Tribunal in course of hearing of this application. ..to be contd. to next page.	

TRUE COPY

Form No.TT/G-2B

Page No. 13
Order sheet.
(Continuation)

BF Infrastructure Ltd. & Anr.
-vs-
CTO, Taltola charge & 2 Ors.

Case No.RN-414 of 2017

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**4.** It may also be recalled that the respondents, have filed CAN Application vide CAN-185/17 in this regard and prayed leave of this Tribunal to initiate suo motu revision in view of certain anomalies/irregularities having been found in the assessment order regarding deductions allowed for payment to sub-contractors , wrong credit for certain claims for TDS as well as certain other aspects of the assessment order. In the said CAN application the respondents also submitted that the petitioners may not, therefore, be entitled to get refund of the excess tax amount as per assessment order, and the respondents sought leave to carry out suo motu revision of the assessment for the 4 quarters ended on 31st March, 2014, on the grounds stated in the CAN application, after following due process of law. It may also be submitted that a CAN application earlier filed by the respondents vide CAN application no. RN-143/17 was not considered since this was superseded by the CAN application no.185/17 after certain errors in the earlier CAN application no.143/17 were detected by the respondents. **5.** Ld. Advocate for the petitioner opposed the prayer of the respondents seeking leave of this Tribunal for permitting suo motu revision, and cited certain judgments of the Hon'ble Supreme Court of India and the Calcutta High Court in support of their contentions. ..to be contd. to next page.	WEST BENGAL TAXATION TRIBUNAL

Sl. No. & date of order	Order with signature	Office action with date and dated sig. parties when necessary
10 21.12.2017 (contd.)	**6.** Ld. Advocate for the petitioner further submitted that the respondents may not be allowed to undertake suo motu revision while the case was already pending before this Tribunal, which is a superior forum. Ld. Advocate for the petitioner cited judgment of the Hon'ble Supreme Court of India in the matter of Tel Utpadak Kendra vs Deputy Commissioner of Sales Tax dated 24th July, 1981,(1981) 48 STC 248, in support of his contentions. Some of the paras of the said judgment of the Hon'ble Supreme Court of India in the matter of Tel Utpadak Kendra v Deputy Commissioner of Sales Tax (1981) 48 STC 248 dated 24th July, 1981, read as below:- "Against the assessment and penalty orders for the two periods, the appellant appealed under clause (a) of sub-section (1) of section 55 of the Act to the Assistant Commissioner. By a common order dated 29th September, 1973, the Assistant Commissioner reduced the quantum of the turnover and, consequently, the tax liability to Rs.30,494.67 and the penalty to Rs.11,745.71 for the first period and the tax liability to Rs.16,447.33 and the penalty to Rs.5,572.26 for the second period. ..to be contd. to next page	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	Not fully satisfied by the relief granted, the appellant proceeded in second appeal to the Maharashtra Sales Tax Tribunal on 8th December, 1973. During the pendency of the appeals before the Tribunal, the Deputy Commissioner, Nagpur, issued two notices to the appellant on 24th April, 1974, requiring it to show cause why the appellate orders dated 29th September, 1973, passed by the Assistant Commissioner should not b3e revised under section 57 of the Act. The appellant objected to the exercise of revisional power by the Deputy Commissioner during the pendency of the appeals before the Tribunal. On 12thSeptember, 1975, the Deputy Commissioner rejected the objection. Against the order of rejection the appellant filed two appeals before the Tribunal, and by its order dated 27th October, 1977, the Tribunal dismissed the appeals. At the same time, the tribunal adjourned the two second appeals filed by the appellant against the appellate order dated 29th September, 1973, passed by the Assistant Commissioner. The Tribunal took the view that its deciding those appeals would result in nullifying the revisional power vested in the Deputy Commissioner". ..to be contd. to next page.	

TRUE COPY

Form No.TT/G-2B

Page No. 16
Order sheet.
(Continuation)

BF Infrastructure Ltd. & Anr.
-vs-
CTO, Taltola charge & 2 Ors.

Case No.RN-414 of 2017

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	"The only point pressed by the appellant before the High court was that the Commissioner of Sales Tax could not exercise his revisional power against the appellate order of the Assistant Commissioner when a second appeal against that order was pending before the Tribunal. The High Court turned down the plea by its order, dated 5th July, 1978, observing that it was always open to the Commissioner to interfere in revision with an order prejudicial to the revenue notwithstanding that such order may be already under appeal before the Tribunal. The High Court felt compelled to take this view because, in its opinion, the statute did not provide any other forum or jurisdiction for protecting the interests of the revenue. It relied on its earlier judgment in Commissioner of Sales Tax v. Motor and Machinery Manufacturers Ltd., and also sought support from the observations of this Court in Commissioner of Income tax v. Amritlal Bhogilal. It spoke further of the 'anomaly of overlapping jurisdiction" between the Commissioner and the Tribunal, and referred with approval to an earlier decision of the High Court in H.B. Munshi v. Oriental Rubber Industries Pvt. Ltd.". ..to be contd. to next page.	

WEST BENGAL TAXATION TRIBUNAL

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	"An assessment order under the Bombay Sales Tax Act is appellable under Section 55 of the Act, and we may mention only that when the order is made by the Sales Tax Officer an appeal lies to the Assistant Commissioner, if the order is made by the Assistant Commissioner an appeal goes to the Commissioner and if it has been made by the Commissioner an appeal lies before the Tribunal. Sub-section (2) of section 55 provides for a second appeal against the appellate order of the Asst. Commissioner. The second appeal lies at the option of the appellant to the Commissioner or the Tribunal. The Tribunal, it will be noticed , exercises, appellate jurisdiction by way of second appeal in respect of an assessment order made by the Sales Tax Officer. It also exercises, by way of first appeal, appellate jurisdiction over an assessment order made by the Commissioner. It is at the apex of the appellate hierarchy, the Sales Tax Officer, the Asst. Commissioner and the Commissioner, all of them being, therefore, sub-ordinate to it. Section 57 of the Act provides for revisional jurisdiction. "57. (1) Subject to the provisions of Section 56 and to any rules which may be made in this behalf,---- (a) the Commissioner may, of his own motion, call for and examine the record of any order passed (including an order passed in appeal) under this Act or the Rules made thereunder by any officer or person subordinate to him, and pass such order thereon as he thinks just and proper". ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	" Now it seems to us past question that when the appellate jurisdiction of a superior authority is invoked against an order and that authority is seized of the case, it is inconceivable for a subordinate authority to claim to exercise jurisdiction to revise that very order. The Tribunal is the supreme appellate and revisional authority under the statute. It cannot be divested of its jurisdiction to decide on the correctness of an order; it cannot be frustrated in the exercise of that jurisdiction, merely because a subordinate authority, the Commissioner, has also been vested with jurisdiction over that order. Unless the statute plainly provides to the contrary, that appears to us to be incontrovertible. It is not open to the Commissioner to invoke his power under clause (a) of sub-section (1) of Section 57 and summon the record of an order over which the Tribunal has already assumed appellate jurisdiction. The subordinate status of the Commissioner precludes that". "It is evident then that in a second appeal under sub-section (2) of Section 55 of the Bombay Sales Tax Act, the Tribunal has power to enhance the assessment. That being so, plainly it is open to the revenue to invoke that power in a pending second appeal filed by the dealer before the Tribunal. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	The High Court is in error in concluding that the power to enhance an enhance an assessment can be discovered only in the revisional jurisdiction of the Commissioner and nowhere else. The compulsion which drove the High Court to the construction placed by it on sub-section (1) of section 57 of the Act does not have substance, and the entire substratum underlying the High Court judgment must give way". **6.1.** Ld. Advocate for the petitioner, submitted that the leave for suo motu revision, as prayed for by the respondents, may not be granted, based on the principles emerging from the said judgment of the Hon'ble Supreme Court of India, regarding exercise of revisionary jurisdiction by the Commissioner, while the case was subjudice before WBTT, a superior forum. **6.2.** We have gone through the judgment of the Hon'ble Supreme Court of India in the matter of Tel Utpadak Kendra. It would be seen that in the first appeal the Assistant Commissioner had granted certain relief by reducing the tax liability and penalty as against that imposed in the assessment order. The petitioner had approached the Maharashtra Sales Tax Tribunal, being not fully satisfied with the relief by the first appellate authority i.e. the Assistant Commissioner of Sales Tax. Thus the first appellate order was subjudice in entirety before the Maharashtra Sales Tax Tribunal. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	It may also be seen that the second appeal against the order of the Assistant Commissioner lies at the option of the appellant to the Commissioner or the Tribunal u/s.55(2) of the Bombay Sales Tax Act as stated in the judgment of the Hon'ble Supreme Court of India. 6.3. Commissioner of Commercial Tax had issued notices to the appellant for refusing the same appellate order under different section, i.e. section 57 of the Bombay Sales Tax Act. Thus, the Commissioner had proposed to revise the appellate order which was already subjudice before the Maharashtra Sales Tax Tribunal. Hence, it was held that when a superior authority is seized of the case it is inconceivable for a subordinate authority to claim to the jurisdiction to revise that very order. 6.4. It may be seen that that the petition before this Tribunal is for seeking directions upon the respondents for non-action in release of refunds. The issues regarding proposal for suo-motu provisions are completely different and not part of adjudication in this application. Similarly, grievances of the petitioner is thus different and is not being subjected to adjudication in suo motu revision. Hence, in our opinion, principle, emerging from the judgment of Hon'ble Supreme Court of India, as referred to above, do not apply in this case. 7. Ld. Advocate for the petitioner also cited judgment of the Hon'ble Calcutta High Court in the matter of **State of West Bengal and Others v. Satyesh Ch. Lahiri and Ors (1979) 44 STC 246(Cal).** Some of the relevant paras of the judgment read as below:- " 3. It is not in dispute that, on such reassessment, three sums, being Rs. 10,037.62, Rs. 21,908.03 and Rs. 26,589.91, were determined to be the excess amount of taxes earlier paid by the respondents for the aforesaid three periods. Accordingly, a notice in form VII was issued under Section 11(3) of the Bengal Finance (Sales Tax) Act, 1941, showing such excess payment of the tax. Such reassessment was made on 8th December, 1965, and on 11th December, 1965, the respondents filed three applications under Rule 59 read with Section 12 of the said Act. The appellants, however, failed to discharge their statutory duties in disposing of these applications in terms of Rules 61 and 62 of the Rules or grant the refund under Rule 63 thereof. ....to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	4. The aforesaid facts are not in dispute and the only question, which has now been agitated before us, is as to whether, in view of the fact that two years after the aforesaid reassessment, when the Assistant Commissioner of Commercial Taxes initiated suo motu proceedings for revision under Section 20(3) of the said Act and issued show cause notices on 18th December, 1967, the appellants could hold back the money which was repayable to the respondents until the disposal of the said proceeding. ..... 5. Mr. Dutt, appearing in support of these appeals, has contended that the learned Judge in the trial court was not right in his conclusion that, even pending the disposal of the suo motu proceeding for revision, the respondents could enforce refund of the amounts as aforesaid. According to Mr. Dutt, the assessment does not reach a stage of finality as and when a suo motu proceeding for revision is initiated and, until such finality is reached, the liability for refund under Section 12 does not arise. We are, however, unable to accept this contention of Mr. Dutt. Section 12 in clear terms lays down that the Commissioner shall refund to the dealer any amount paid by him in excess of the amount due from him. The amount due, in our view, necessarily means the liability determined and does not mean any amount which ultimately may be found to be due. The section nowhere provides that even when an assessment (sic) being revised or set aside, any amount which is determined to have been paid in excess, that amount will not be refundable only because a further appeal or revision has been preferred or is pending. Such a view, in our opinion, is not consistent with the scheme of Section 12 and the Rules framed under the Act. The proviso to Section 12 enables the dealer to apply for the refund either within 12 months from the assessment or within six months of the final order. The section, therefore, contemplates that refund can be enforced even prior to the final order provided the other conditions are fulfilled and the amount is determined to be one paid in excess of the dues assessed. Option lies with the dealer and not with the commercial tax authorities as to when he would enforce the refund. The Rules again provide that the refund orders are to be issued if it comes within Rule 62 within 60 days from the date of the application. Such is the provision in the rule, while Section 20(3) permits a suomotu proceeding for revision to be initiated at any time within four years. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	Therefore, it could not have been the intention of the legislature that, unless the assessment attains finality on exhaustion of all proceedings in relation thereto, the dealer is not entitled to refund. The only test laid down by the statute is that the Commissioner is to see whether the dealer has paid any amount towards tax or penalty in excess of the amount due from him on those amounts or not and, if it is so found, the amount has to be refunded, either conditions of Section 12 being fulfilled. The liability imposed upon the Commissioner by the language of the statute is mandatory apart from the fact that it is a provision for refund of excess amount realised towards a tax liability. As both these conditions were fulfilled in the present case, the learned Judge in the trial court, in our view, held that a mere pendency of a proceeding or proceedings under Section 20(3) could not have been pleaded as a justification for not discharging the statutory obligations. 6. There is another aspect, which is required to be considered. As we have indicated hereinbefore, the reassessment having been made on 8th December, 1965, notices under form VII were issued by the Commercial Tax Officer showing the aforesaid amounts as excess payments. The respondents had a right on issue of such notices to claim refund and apply for such refund, which they did in terms of Rule 59. Rule 60 provides that, on receipt of such an application, the assessing authority, if he is satisfied that the refund is due, shall, except as provided in Rule 61 or Rule 62, record an order sanctioning the refund and communicate the order to the applicant. Rule 61 provides that, if the assessing authority is the Commercial Tax Officer and if the amount to be refunded exceeds Rs. 1,000, he should forward the application together with his own opinion thereon to the Assistant Commissioner for orders. *Rule 62 then provides that within 30 days from the date of submission of the application under Rule 61, the Assistant Commissioner shall record his order in writing and shall communicate it to the Commercial Tax Officer for necessary action.* Rule 63 provides for issue of refund payment order, when so desired by the dealer, on issue of an order made under Rule 60 or Rule 62. Such being the position in law, when the application for refund was made on 11th December, 1965, and when there was no other proceeding pending, the Commercial Tax Officer and the Assistant Commissioner had their legal obligations under Rules 60, 61 and 62 to be discharged by them. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	Admittedly, they failed to do it and made no orders on the application so filed, which was kept pending for over two years and then the Assistant Commissioner initiated suo motu proceedings under Section 20(3) of the Act for revision. Thus, it appears that, having initiated such a proceeding for revision, they are trying to take advantage of their own default earlier made, because had not they failed to discharge their obligation earlier, the money would have been refunded to the respondents long ago. This, we hold, the appellants were never entitled to. In this view, we cannot but uphold the order as passed by the learned single Judge." **7.1.** Ld. Advocate for the petitioner, therefore, submitted that the respondents do not have power to withhold the refund, after the assessment order had attained finality, on the ground of undertaking suo motu revision of the assessment order, keeping in view the principles emerging from the said judgment, as referred in para 7 above. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**7.2.** Ld S.R. submitted that the judgment of the Hon'ble Calcutta High Court was passed in the year 1978 and the judgment was passed with reference to the Bengal Finance (Sales Tax) Act, 1941 read with the relevant rules. **7.3.** The Ld. S.R. submitted that the Sales Tax law has undergone substantial change after introduction of the Value Added Tax Act in West Bengal with effect from 1st April, 2005. Ld. S.R. submitted that there was no provision for claiming Input Tax Credit (ITC) in the earlier Sales Tax Act and the Sales Tax Act was predominantly a single point tax. **7.4.** Ld. S.R. in this regard submitted that in view of various provisions of the law verifications of ITC claimed by the petitioner are required to be made by the respondents, many times after the assessment was completed by the Assessing Officer . Ld. S.R. submitted that claim of ITC. There are cases when demand and refund amounts substantially get reduced or even in many such cases is found admissible for short payment of tax has to be raised on the assessee, after completion of suo motu revision proceedings in such cases, although the assessment order, at the first instance, shows excess amount of tax paid by the petitioner. Ld. S.R. submitted that this is a normal procedure being undertaken by the respondents in order to guard the public interest. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**7.5.** Ld. SR in this respect, also drew attention to rule 61 and 62 of the Bengal Finance Sales Tax Act, 1941 and rule 59(4) of the WBVAT Tax Rules. Ld. SR also drew attention to differences between the provisions of section 12 of the Bengal Finance Sales Tax Act, 1941 and section 62 of the VAT Act which deals with the provisions relating to refund of tax etc. paid in excess. Ld. SR also drew attention to the section 85 of the VAT Act which contains provisions for suo motu revision by Commissioner for reasons to be recorded in writing before releasing refund without comprehensive verification of ITC. **7.6.** Ld. S.R. also submitted that this Tribunal has been granting leave for undertaking suo motu revision in such cases, after an application is made by the respondents, while giving directions for refund of part amount of excess tax paid by the petitioner in various cases based on merits of the case, and also by giving direction for time bound verification of ITC. **8.** We have carefully gone through the judgment of the Hon'ble Calcutta High Court as to referred to para 7 of this order and also submissions made by the Ld. Advocate of the petitioner and the Ld. S.R. Our views in this case, are arrived at based on interpretations of the provisions of law in the following paragraphs . ..to be contd. to next page.	WEST BENGAL TAXATION TRIBUNAL

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**9.** In this regard, it would be appropriate to refer to the relevant provisions of law, being section 62(1) of WB VAT Act and Rule 59(4), which read as below:- "S. 62: (1) Subject to other provision of this Act, the Commissioner shall, in the manner and within the time, as may be prescribed, refund to a dealer any amount of tax, late fee, interest or penalty paid by such dealer in excess of the amount due from him under this Act and also excess of net tax credit over output tax payable under this Act". "R. 59 (4) If after an order of assessment made under rule 57 or rule 58 in respect of a dealer, the amount of net tax, penalty, interest or late fee payable is found to be less than the amount paid by such dealer in respect of the same period, the appropriate assessing authority shall,- (a) serve upon the dealer a notice in Form no.27 or in Form 27A, as the case may be , specifying the amount of excess, unadjusted net tax credit, or the amount paid in excess, and the adjustment, if any, of the amount assessed to have been paid in excess with the tax, penalty, interest or late fee due from such dealer in respect of any other period which remains unpaid by such dealer till the date of assessment; and ..to be contd. to next page.	WEST BENGAL TAXATION TRIBUNAL

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	(b) subject to provisions of section 62, send to the dealer, within one month from the end of the month in which the order of assessment is issued, a Refund Adjustment Order thereby authorizing the dealer to adjust the amount specified therein against the amount payable according to the return which falls due subsequent to the date of receipt of the Refund Adjustment Order by the dealer. Provided that if the amount of refund exceeds rupees twenty thousand, the appropriate assessing authority shall, before issue of Refund Adjustment Order, obtain prior approval of the Commissioner or such other authority as may be authorized by the Commissioner". **9.1.** It is clear that Rule 59(4)(b) provides for seeking prior approval of Commissioner, before issue of refund and the time limit of one month is specified only where refund amount does not exceed rupees twenty thousand. We are of the view that Commissioner may examine correctness of the assessment order, carry out verification of Input Tax Credit claimed by the assessee etc. to ensure that these are in accordance with provisions of law, before according approval. Although there is no time limit is laid down in the relevant rules, decision on such proposals seeking approval to release of refund to be taken within the reasonable period. **9.2.** On reading of provisions of section 62(1) it is clear that the refund of excess amount of tax, late fee etc. is to be made to a dealer in the manner and within the time as may be prescribed in the rules. **9.3.** On going through rule 59(4) of VAT Rules we find that there are two separate stages for refunding the excess amount of tax, penalty etc. Rule 59(4)(a) mandates the assessing authority to issue notice of demand specifying the amount that is paid in excess, although no period is specified, such notice is expected to be communicated within a reasonable time. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	Rule 59(4)(b) mandates the assessing officer to issue refund adjustment order within 1 month from the end of the month in which the order of assessment is issued. However, this rule is subject to obtaining prior approval of the Commissioner or other authorized officer, by the assessing authority where such amount of refund exceeds Rs.20,000/-. Thus, period of 1 month in our considered opinion does not apply where the amount of refund exceeds Rs.20,000/-. It is clear from the reading of the provisions of rule 59(4) of the VAT Rules that issue of notice of demand and issue of refund adjustment order are not simultaneous activities. As per our interpretation of the relevant rules, issue of refund adjustment order follows issue of notice of demand. Hence, we cannot accept the submissions of the petitioner that refund adjustment order or refund order should have been issued along with the notice of demand. **9.4.** Keeping in view the relevant provisions of the VAT Act and the rules made thereunder we are of the view that decision by the superior authorities under rule 59(4)(b) should be taken within a reasonable period including the need for suo motu revision. Such decision should emerge while dealing with the proposal of the assessing officer for according approval for issue of refund to the dealer, under rule 59(4)(b) of the VAT Rules, 2005. In the event of long period of delay without any justified reasons, the authorities may be directed for refund of the amount as considered appropriate by this Tribunal, subject to the conditions as considered appropriate, based on the merits of the case. ..to be contd. to next page.	TAXATION TRIBUNAL

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**9.5.** We are of the considered view that various provisions of law providing authority for suo motu review or suo motu revision of the assessment order or orders passed at the subsequent stages of adjudication, do not provide independent authority for withholding refunds. The authorities are to take decision for according approval to release of refund to dealers, on reference being made by the concerned assessing officer under rule 59(4)(b) of the WB VAT Rules, and only in processing of such cases, if the facts of the case warrant ~~of~~ appropriate provisions of law may be invoked for suo motu revision. Our observations that the other provisions under the Value Added Tax Act, 2003 and rules made thereunder for suo motu review, suo motu revision or any modification of the assessment order at subsequent stages, do not provide independent authority means that the respondent authorities cannot withhold refund, to guard against the situation which may warrant in future suo motu review or suo motu revision of the assessment order. Thus provisions for suo motu review or suo motu revision may be invoked only if such an opinion emerges in processing of the proposal for according approval to refund under rule 59(4)(b) of the West Bengal VAT Rules, 2005. ..to be contd. to next page.	TAXATION TRIBUNAL

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**9.6** While forming our views we have kept in view the spirit of the judgment of the Hon'ble Calcutta High Court in the matter of State of West Bengal and Ors. vs. Satyesh Ch. Lahiri and Ors (1979) 44 STC 246 (Cal) and adopted basic principles emerging from the said judgment regarding payment of refund to the petitioners, arising out of the assessment appeal or other subsequent orders, with suitable modifications keeping in view the changed features of the law under West Bengal Value Added Tax Act, 2003 and provisions incorporated therein. We have noted that there is no time limit specified for according approval under rule 59(4)(b) of the VAT Rules while there was a time limit laid down under rule 62 of the rules framed under Bengal Finance (Sales Tax) Act, 1941. We are of the view that decision on proposal of assessing officer for making refund of excess tax paid by the assessee, is to be taken within reasonable period even if no time limit is provided in the VAT Act. **10.** We, have been, considering and directing payment of substantial amount of refund to petitioners where sufficient period has lapsed after issue of the assessment, appellate orders of the Board or while granting leave to undertake suo motu revision, after following due process of law, by the respondents, based on merits of CAN application, where such process is proposed only after petitioners file application with the Tribunal for seeking directions for refund from the respondents. ..to be contd. to next page.	TAXATION TRIBUNAL

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**11.** We have gone through the CAN application. In the said application the respondents have raised important grounds such as contractors issuing tax invoices to the petitioner (and petitioner claiming input tax credit against such tax invoices), to which they are not entitled, despite such contractors being covered under composite scheme and this aspect having been overlooked in the assessment order. Similarly, some other issues have been raised, which prima facie justify grounds for undertaking suo motu revision u/s.85 of the VAT Act. It may be seen that such specific issues do not appear to have been raised in the judgment of Calcutta High Court cited by the petitioner. **12.** We are, therefore, satisfied that the respondents have a case for taking up suo motu revision u/s 85 of the VAT Act, strictly as per the provisions of law and after giving opportunity of being heard to the petitioner. **12.1.** It is clarified that we have not gone into merits of the application for seeking leave to undertake suo motu revision save and except as required for disposal of this application. No opinion may be drawn on observations made in this regard in any manner whatsoever. **13.**The petitioner has already been refunded a sum of Rs.30 lakhs by orders of this Tribunal against indemnity bond, before filing of this CAN application. In view of the facts and circumstances of the case, there is no grounds for giving directions for issue of orders for release of further amount of excess tax to the petitioner. ..to be contd. to next page.	

Sl. No. & date of order	Order with signature	Office action with date and dated sig. Of parties when necessary
10 21.12.2017 (contd.)	**14.**Hence, the petition is disposed of with liberty to the respondents for undertaking suo motu revision strictly as per the provisions of law and after giving opportunity of being heard to the petitioner. We also direct that the proceedings for suo motu revision be completed within 30th April, 2018. **15.** The petitioner is at liberty to seek appropriate remedies under the provisions of law, if so advised in the matter against the orders to be passed, after conclusion of the suo motu revision proceedings, by the respondents, if so advised. The petition is, thus, disposed of. No order as to costs. Plain copies of the orders be supplied to both the parties Sd/- (Malay Marut Banerjee) Chairman Sd/- (Chanchalmal Bachhawat) Technical Member Compared & Verified by me 22/12/17 Bam 22/12/17 Superintendent W.B. Taxation Tribunal	WEST BENGAL TAXATION TRIBUNAL