IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8361 of 2015
Date of decision:December 23, 2015

Shiv Medical Store, Shop No.1, Block D, GMCH, Sector 32, Chandigarh

……Petitioner

U.T.Chandigarh and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Divya Suri, Advocate,
Mr. Sachin Bhardwaj, Advocate and Mr. Madhur Sharma, Advocate for the petitioner.

Mr. IPS Doabia, Advocate for the respondent-UT Chandigarh.

Ajay Kumar Mittal,J.

1. Challenge in this petition is to the vires of Section 62(5) of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") as applicable to the Union Territory of Chandigarh. Prayer has also been

made for a direction for waiving the condition qua requirement of pre-deposit of 25% of additional demand for hearing the appeal before the first appellate authority under Section 62(5) of the PVAT Act.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a partnership firm which was incorporated on 12.1.2012 through the partners namely Atul Goyal and Rajesh Goyal in pursuance to the profit and loss sharing for the purpose of carrying and conducting of the business in accordance with the partnership deed. The business activities are with regard to purchase and sale of medicines and medical equipments having been procured from various manufacturers and wholesale suppliers. The said purchases were being done through account payee cheques through the banking channels covered under the Banking Regulation Act, 1949 and the payments thereof were credited to the bank accounts of the said manufacturers. All the purchases were being accounted, recorded, disclosed and declared in the purchase registers maintained as required. On 19.8.2014, there was an inspection by the respondents on the premises of the petitioner wherein due to physical stock taking, certain differences had been found out and the assessment had been concluded through interim report alongwith order of the Excise and Taxation Commissioner dated 29.9.2014 by finding a difference of ₹ 2,75,72,416/- by interpolating figures of discount provided by the petitioner on the medicine sales to one and all sundry patients identically. The respondents levied the demand of ₹

41,40,860/- through order dated 5.3.2015, Annexure P.8 which is under challenge before this court qua the aspect of availing the remedy of first appeal without enforcing the condition of pre-deposit of the amount. According to the petitioner, the Apex Court vide order dated 31.1.2014 in WP(C) No.1055 of 2013, ***Dishnet Wireless Limited vs. CTO and another*** stayed the operation and implementation of sub section (5) of Section 62 of the PVAT Act as an interim protection. For the year 2014-15, the petitioner is unable to avail remedy of appeal against the assessment order because of the condition under Section 62 (5) of the PVAT Act requiring pre-deposit of 25% of the tax, interest and penalty assessed additionally. No authority under the Act has been empowered to waive off the condition even in cases where the petitioner is unable to make the payment due to real hardship. Hence the instant writ petition.

3. We have heard learned counsel for the parties.

4. On perusal of the averments made in the petition, we find that this writ petition has been filed without even filing an appeal. In such a situation, the requirement of deposit of 25% of the amount as a pre-condition under Section 62(5) of the PVAT Act for hearing the appeal before the first appellate authority does not apply. Consequently, the writ petition is disposed of with the observation that it shall be open for the petitioner to file an appeal against the order of assessment in accordance with the provisions of the PVAT Act and also an application for interim protection/injunction from the requirement of

pre-deposit of 25% of the amount, which issue has already been decided by this Court vide order of even date in CWP No.26920 of 2013 ***(Punjab State Power Corporation Limited vs. The State of Punjab and others).***

(Ajay Kumar Mittal)
Judge

December 23, 2015 **(Ramendra Jain)**
'gs' **Judge**