

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.12922 of 2014(O&M)

Date of Decision: October 27, 2016

Maruti Suzuki India Limited

---Petitioner

Versus

Union of India and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. A.S.Narang, Advocate for
the petitioner.

Mr.Ankur Mittal, Addl. AG, Haryana
for respondents No.2 to 4.

Mr.Vikas Suri, Sr.Standing Counsel ESIC
for respondents No.5 and 6.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing Section 45-AA of the Employees State Insurance Act, 1948 (hereinafter referred to as the 'ESI Act') in so far as it imposes a condition of pre-deposit of 25% of the demanded amount for entertaining the appeal. The petitioner has further prayed for quashing the order dt 30.12.2013 and demand notice dated 05.06.2014 (Annexures P-18 and P-21 respectively) demanding contribution for the period from October, 2009 to August 2010. Also impugned is the order dated 21.02.2014 of the Appellate Authority (Annexure P-20) declining to entertain the appeal for non deposit of 25% of the amount.

2. The petitioner has also prayed that the respondent authorities be directed to take a decision on the request of the petitioner – Company for

grant of exemption from 01.10.2008 to 22.08.2010.

3. Briefly, the facts are that the petitioner Company which is in the business of manufacturing automobiles was initially set up as a Public Sector Undertaking in collaboration with M/s Suzuki Motors Corporation, Japan.

4. Vide notification dated 25.11.1986 issued by the Government of India, Ministry of Labour (respondent No. 1), the petitioner company was exempted from the operation of the ESI Act, retrospectively w.e.f., 01.08.1986 till 31st July, 1987. The exemption was regularly extended and continued till September 30, 2008. Before the expiry of the exemption period, the petitioner applied for extension for another year. This request was declined by respondent No. 1 on 23.01.2009 on the ground that the petitioner being no longer a Public Sector Undertaking/ Government Company, the 'appropriate government' for grant of exemption would be the State of Haryana (respondent No.2)

5. The petitioner company thereafter immediately applied to respondent No. 2 on 16.02.2009 seeking exemption from 01.10.2008. After a long delay the exemption was granted for one year from the date of publication of the notification i.e., 23.08.2010. As the period from 01.10.2008 to 22.08.2010 remained uncovered, the petitioner requested that the exemption be extended for this period as well. On the matter being referred to it for opinion, the Central Government initially opined that after the amendment of Section 91-A of the ESI Act on 1.6.2010, exemption could only be granted prospectively. Respondent no.2 accordingly, vide letter dated 29.11.2011 rejected the case of the petitioner company for grant

of exemption from 1.10.2008 to 22.8.2010. Thereafter the petitioner-company received a notice dated 14.8.2014 from respondent No.5 demanding contribution to the tune of ₹48, 81,884/- for the period from 1.10.2009 to 22.8.2010.

6. Meanwhile, on a representation from the petitioner the Central Government re-examined its earlier opinion and opined that as the case of the petitioner pertained to grant of exemption from 1.10.2008 to 22.8.2010, and the request, therefor, was made prior to the amendment of ESI Act on 1.6.2010, the State Govt. could grant exemption retrospectively. Based on this opinion, the petitioner company again requested the State Govt for reconsideration of grant of exemption from 1.10.2008 to 22.8.2010. It is the case of the petitioner, that no decision on the said request has been taken or communicated to the petitioner.

7. Without waiting for the decision on exemption, the Deputy Director, ESIC, Sub-Regional office of the Employees State Insurance Corporation, Gurgaon (respondent No.5) passed order dated 30.12.2013 (Annexure P-18) demanding contribution of ₹48,38,844/- for the period October 2009 to August 2010.

8. Aggrieved against that order, the petitioner- company preferred appeal under Section 45- AA of the ESI Act. The Appellate Authority declined to entertain the appeal of the petitioner since 25% of the amount claimed was not deposited. The matter was referred to respondent No.5 i.e. Recovery Officer of ESI Corporation, who sent a demand notice dated 5.6.2014 (Annexure P-21) claiming amount of ₹53,10,470/- from the petitioner company.

9. Hence, this writ petition.

10. On an application for stay moved by the petitioner, order dated 16.7.2014 was passed and it was directed that the Recovery Officer may attach only the amount in dispute. The petitioner would be allowed to operate the account, if it is more than the disputed amount.

11. Ld. Counsel for the petitioner while assailing the requirement of deposit of 25% of the claimed amount, has argued that this condition is not to be treated as mandatory but the Appellate Authority has inherent power to pass interim order in appropriate cases dispensing with the pre-deposit. He states that this proposition has been settled by a Division Bench of this Court in **CWP No.26920 of 2013 Punjab State Power Corporation Limited Vs. State of Punjab and others** decided on December 23, 2015 (for short PSPCL case) and this petition is liable to be disposed of in the same terms.

12. Ld. Counsel for the respondents on the other hand argued that the aforesaid decision would not be applicable in the present case. He has argued that in the PSPCL case the Court was construing Section 62(5) of the Punjab Value Added Tax Act, 2005 (for short "VAT Act"). The Court interpreted the word 'shall' in Section 62(5) in the VAT Act to be directory. He argued that there is a distinct difference in terminology of Section 62(5) of the VAT Act and 45-AA of the ESI Act which would make a material difference to the interpretation. He argued that as per Section 45-AA of the ESI Act, the employer dissatisfied with the order under Section 45-A may prefer an appeal '*after depositing 25% of the contribution so ordered*'. As distinct from this, in Section 62(5) of the VAT Act, it has been provided that

'no appeal shall be entertained unless such appeal is accompanied by proof of prior payment of 25%'. Further, he states that as per the proviso to Section 45-AA, if the employer succeeds in the appeal, the Corporation is required to return such deposit together with such interest as may be specified in the Regulation. He argued that in no other Statute or in any of the cases relied on in the PSPCL case there is any provision for return of the amount deposited with interest. In sum, he argued that in Section 62(5) of the VAT Act, as per the language of the Statute, first an appeal is provided and then the condition of pre-deposit is incorporated in the proviso. By contrast, in the ESI Act, the right of appeal is plainly conditional on deposit of 25% amount. Hence, the ratio of the PSPCL case is not attracted in the present case.

13. He further argued that in the PSPCL case, this Court has not considered the decision of Hon'ble the Supreme Court in **Narain Chander Ghosh vs UCO Bank and others (2011)4 SCC 548** in which, it was held that the condition of pre-deposit for entertaining appeal under Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is mandatory.

14. Ld. Counsel for the petitioner responded by contending that the argument of the respondent lacks substance. It is nothing more than quibbling about words and an exercise in semantics. He argued that the consistent view of the Courts has been that any condition of pre-deposit has to be read down to incorporate within it inherent power of the appellate forum to grant interim relief regarding the pre-deposit in appropriate cases.

15. Heard Ld. Counsel for the parties and perused the records.

16. Section 45AA of the ESI Act is reproduced below:-

“45-AA. Appellate Authority – If an employer is not satisfied with the order referred to in Section 45-A, he may prefer an appeal to an appellate authority as maybe provided by regulation, within sixty days of the date of such order after depositing twenty five per cent of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation.

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as maybe specified in the regulation.”

Section 62 of the VAT Act, which was being considered in the PSPCL case is as under:

“62. (1) An appeal against every original order passed under this Act or the rules made thereunder shall lie,

(a) if the order is made by a Excise and Taxation Officer or by an officer-Incharge of the information collection centre or check post or any other officer below the rank of Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner; or

(b) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner; or

(c) if the order is made by the Commissioner or any officer exercising the powers of the Commissioner, to the Tribunal.

(2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Commissioner or any officer on whom the powers of the Commissioner are conferred, shall be further appealable to the Tribunal.

(3) Every order of the Tribunal and subject only to such order, the order of the Commissioner or any officer exercising the powers of the Commissioner or the order of the Deputy Excise and Taxation Commissioner or of the designated officer, if it

was not challenged in appeal or revision, shall be final.

(4) No appeal shall be entertained, unless it is filed within a period of thirty days from the date of communication of the order appealed against.

(5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of tax, penalty and interest, if any.

(6) In deciding an appeal, the appellate authority, after affording an opportunity of being heard to the parties, shall make an order –

(a) affirming or amending or canceling the assessment or the order under appeal;

or (b) may pass such order, as it deems to be just and proper.

(7) The appellate authority shall pass a speaking order while deciding an appeal and send copies of the order to the appellant and the officer whose order was a subject matter of appeal.”

In **PSPCL's case** (supra), this Court had framed the following questions for consideration:

“4. From the submissions made by learned counsel for the parties, the following questions emerge for our consideration:-

(a) Whether the State is empowered to enact Section 62(5) of the PVAT Act?

(b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?

(c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?”

17. The Court considered a large number of decisions of Hon'ble the Supreme Court and different High Courts and relying on the same it was concluded that as the right to appeal is a creature of a statute it can be

conditional or qualified. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal and cannot be considered to be unconstitutional.

18. Among the decisions of the Hon'ble Supreme Court considered were Govt. of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720 and Har Devi Asnani v. State of Rajasthan, (2011) 14 SCC 160. Relevant extracts therefrom are being reproduced below:

19. In **P. Laxmi Devi's case** (supra), there is a reference to earlier decisions in the point as under:

“22. In this connection we may also mention that just as the reference under Section 47-A has been made subject to deposit of 50% of the deficit duty, similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions which are noted below.

23. In Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [(1999) 4 SCC 468] this Court referred to its earlier decision in Vijay Prakash D. Mehta v. Collector of Customs [(1988) 4 SCC 402] wherein this Court observed: (Vijay Prakash case [(1999) 4 SCC 468] , SCC p. 406, para 9)

“9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.”

24. In Anant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175] this Court held that the right of appeal is a creature of the statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.

25. In Elora Construction Co. v. Municipal Corpn. of Gr. Bombay [AIR 1980 Bom 162] the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre-deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of this Court in Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [AIR 1968 SC 623] . This Court has also referred to its decision

in Shyam Kishore v. Municipal Corpn. of Delhi [(1993) 1 SCC 22] in which a similar provision was upheld.

26. *It may be noted that in Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [AIR 1968 SC 623] the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax. In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.*

27. *In view of the above, we are clearly of the opinion that Section 47-A of the Stamp Act as amended by A.P. Act 8 of 1998 is constitutionally valid and the judgment of the High Court declaring it unconstitutional is not correct.”*

The relevant observations in **Har Devi Asnani's case** (supra) are as under:

“9. The ground taken by the appellant in the writ petition before the High Court was that unless the appellant deposited fifty per cent of the total amount of Rs 15,70,000 towards deficit stamp duty, registration charges and penalty, the revision petition of the appellant would not be entertained and the appellant was not in a position to deposit such a huge amount as a condition for filing the revision. The appellant accordingly contended before the High Court that the precondition of payment of fifty per cent of the recoverable amount for entertaining a revision petition was arbitrary, unreasonable and unconstitutional.

12. *For appreciating the contentions of the learned counsel for the parties, we must refer to Section 65 of the Act. Section 65 of the Act is quoted hereinbelow:*

“65. Revision by the Chief Controlling Revenue Authority.—(1) Any person aggrieved by an order made by the Collector under Chapters IV and V and under clause (a) of the first proviso to Section 29 and under Section 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order:

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty per cent of the recoverable amount.

(2) The Chief Controlling Revenue Authority may suo motu or on information received from the registering officer or otherwise call for and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the

proceedings and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.”

13. *The learned counsel for the appellant submitted that although sub-section (1) of Section 65 of the Act confers a right on a person to file a revision against the order of the Collector, the proviso to Section 65(1) of the Act renders this right illusory by insisting that the revision application shall not be entertained unless it is accompanied by a satisfactory proof of the payment of fifty per cent of the recoverable amount. He submitted that the proviso to Section 65(1) of the Act is therefore unreasonable and arbitrary and violative of Article 14 of the Constitution and should be declared constitutionally invalid.*

14. *The learned counsel for the appellant cited the decision of this Court in *Mardia Chemicals Ltd. v. Union of India* [(2004) 4 SCC 311] in which the provision requiring pre-deposit of 75% of the demand made by the bank or the financial institution in Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been held to be onerous and oppressive rendering the remedy illusory and nugatory and constitutionally invalid.*

15. *The learned counsel for the appellant submitted that assuming that the proviso to Section 65(1) of the Act is constitutionally valid where the valuation adopted by the Additional Collector or Collector and the consequent demand of additional stamp duty are unreasonable and exorbitant, the alternative remedy of revision after deposit of 50% of the exorbitant demand is not efficacious, and affected party should be able to move the High Court under Article 226 of the Constitution. In support of this submission, he cited the decision of this Court in *Govt. of A.P. v. P. Laxmi Devi* [(2008) 4 SCC 720] .*

16. *The learned counsel for the respondents, on the other hand, submitted that a revision or an appeal is a right conferred by the statute and the legislature while conferring this statutory right can lay down conditions subject to which the appeal or revision can be entertained and that there is nothing unreasonable or arbitrary in the proviso to Section 65(1) of the Act requiring deposit of 50% of the recoverable amount before the revision application is entertained. He argued that the proviso to Section 65(1) of the Act is in no way illusory and is only a provision to ensure that the stamp duty demanded is recovered in time and is not held up because of the pendency of the revision.*

17. *In support of his submission, the learned counsel for the respondent relied on the decisions of this Court in *Anant Mills Co. Ltd. v. State of Gujarat* [(1975) 2 SCC 175] ; *Seth Nand Lal v. State of Haryana* [1980 Supp SCC 574] ; *Vijay Prakash**

D. Mehta v. Collector of Customs [(1988) 4 SCC 402] and Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [(1999) 4 SCC 468] .

18. *The learned counsel for the respondents submitted that the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] declaring the provision of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand as constitutionally invalid does not apply to the facts of the present case. He submitted that in Mardia Chemicals Ltd. [(2004) 4 SCC 311] this Court clearly held that the amount of deposit of 75% of the demand is at the (sic stage of) initial proceedings itself when the bank or the financial institution makes its demand on the borrower and the requirement of deposit of such a heavy amount on the basis of one-sided claim of the bank or the financial institution at this stage, before the start of the adjudication of the dispute, cannot be said to be a reasonable condition.*

19. *The learned counsel for the respondents submitted that in the instant case, the first adjudicatory authority is the Collector and only after the Collector determines the amount of stamp duty payable on the documents, the affected party has a right of revision under Section 65(1) of the Act. He further submitted that the requirement of 50% of the amount determined by the Collector at the stage of filing of the revision is therefore not a requirement at the initial stage but a requirement at the revisional stage and the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] is distinguishable from the facts of the present case.*

20. *We need not refer to all the decisions cited by the learned counsel for the parties because we find that in Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] this Court has examined a similar provision of Section 47-A of the Stamp Act, 1899, introduced by A.P. Amendment Act 8 of 1998. Sub-section (1) of Section 47-A, introduced by Andhra Pradesh Act 8 of 1998 in the Stamp Act, is extracted hereinbelow:*

“47-A. Instruments of conveyance, etc. how to be dealt with.—(1) *Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Col-*

lector for determination of the market value of the property and the proper duty payable thereon:

Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.”

21. *Under sub-section (1) of Section 47-A quoted above, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon where the registering officer has reason to believe that the market value of the property which is the subject-matter of the instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties. The proviso to sub-section (1) of Section 47-A, however, states that no such reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned. This proviso to sub-section (1) of Section 47-A was challenged before the Andhra Pradesh High Court by P. Laxmi Devi and the Andhra Pradesh High Court held that this proviso was arbitrary and violative of Article 14 of the Constitution and was unconstitutional. The Government of Andhra Pradesh, however, filed an appeal by special leave before this Court against the judgment of the Andhra Pradesh High Court and this Court held in para 18 at p. 735 of Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] that there was no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by Andhra Pradesh Amendment Act 8 of 1998 and that the amendment was only for plugging the loopholes and for quick realisation of the stamp duty and was within the power of the State Legislature vide List II Entry 63 read with List III Entry 44 of Schedule VII to the Constitution.*

22. *While coming to the aforesaid conclusions, this Court in P. Laxmi Devi case[(2008) 4 SCC 720] has relied on Anant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175] , Vijay Prakash D. Mehta v. Collector of Customs [(1988) 4 SCC 402] and Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad[(1999) 4 SCC 468] in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Section 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State Legislature.*

23. We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in Choksi Heraeus (P) Ltd. v.State [AIR 2008 Raj 61] for rejecting the challenge to the proviso to Section 65(1) of the Act. We have perused the decision of the Division Bench of the High Court in Choksi Heraeus (P) Ltd. v. State [AIR 2008 Raj 61] and we find that the Division Bench has rightly taken the view that the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive.

24. In our considered opinion, therefore, the proviso to Section 65(1) of the Act is constitutionally valid and we are therefore not inclined to interfere with the order dated 16-11-2009 [Har Devi Asnani v. State of Rajasthan, Civil Writ Petition No. 14220 of 2009, order dated 16-11-2009 (Raj)] in DB CWP No. 14220 of 2009. The civil appeal arising out of SLP (C) No. 20964 of 2010 is, therefore, dismissed.”

20. On the issue of constitutionality of the requirement of pre-deposit, this Court concluded as under:

“24. From the reading of the judicial pronouncements noticed above, the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed. Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. In other words, while granting this right, the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the provision is to keep balance between the right of appeal and the right of the revenue to speedy

recovery of the amount. The conditions imposed including prescription of a pre-deposit are meant to regulate the right of appeal and the same cannot be held to be violative of Article 14 of the Constitution of India unless demonstrated to be onerous or unreasonable. To put it differently, right of appeal being a statutory right, it is for the legislature to decide whether to make the right subject to any condition or not. In the light of the above enunciation, we proceed to examine Section 62(5) of the PVAT Act. A perusal of sub section (5) of Section 62 of the PVAT Act shows that pre-deposit of twenty five percent of the total amount of tax, interest and penalty is a condition precedent for hearing an appeal before the first appellate authority. Any challenge to the constitutional validity of this provision for pre-deposit before entertaining an appeal on the ground that onerous condition has been imposed and right to appeal has become illusory must be negated and such a provision cannot be said to be ultra vires Article 14 of the Constitution of India. The object of the provision is to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and the right of the revenue to speedy recovery of the tax. It is, thus, concluded that the State is empowered to enact Section 62(5) of the Act and the said provision is legal and valid. The condition of 25% pre-deposit for hearing first appeal is not onerous, harsh, unreasonable and violative of the provisions of Article 14 of the Constitution of India”.

This Court then considered question (c) as to whether the requirement of pre-deposit for entertaining the appeal, is a mandatory requirement or it should be read as directory, with an inherent power in the appellate authority to waive or reduce the amount where considered necessary. In this regard the relevant discussion is as under:

“25. Now question (c) remains to be answered. With regard to the said question whether the first appellate authority in its right to hear appeal has powers to grant interim protection against imposition of such a condition for hearing of appeals on merits, the following facets of the argument would arise for our consideration:- (a) Inherent powers of the Court to grant interim protection; (b) Whether the expression “shall” used in Section 62(5) of the PVAT Act is mandatory or by implication would be read as directory meaning thereby whether the first appellate authority can grant partial or complete waiver of condition of pre-deposit; The legal position in this regard is being discussed hereinafter.

26. Taking up the issue of 'inherent powers of the Court', it

may be observed that Constitution of India and the statutes confer different jurisdiction on the Court whereas “inherent powers” of the court are those necessary for ordinary and efficient exercise of jurisdiction already conferred. They are as such result of the very nature of its organization and are essential to its existence and protection and for the due administration of justice. The inherent power of a court is the power to do all things that are reasonably necessary for administration of justice within the scope of court's jurisdiction. The basic principal is to be found in Maxwell On Interpretation of Statutes, eleventh Edition at page 350. The statement contained therein is that “where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution.” Learned counsel for the petitioners vehemently argued that the provision has to be read down to include the right to waive the condition by the appellate authority in an appropriate case. Main emphasis was laid by the learned counsel for the petitioners on the judgment of the Apex Court in Income Tax Officer, Cannanore vs. M.K. Mohamad Kunhi, AIR 1969 SC 430, wherein the question was whether the Income Tax Appellate Tribunal had the power under the relevant provisions of the Income Tax Act, 1961 to stay recovery of the realization of the penalty imposed by the departmental authorities on an assessee during the pendency of an appeal before it. After considering the matter, the Apex court held that the Appellate Tribunal has power to grant stay as incidental or ancillary to its appellate jurisdiction subject to there being a strong prima facie case and satisfaction that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal.

30. *Adverting to the second facet of the argument as to whether a statute is mandatory or directory, the same depends upon the intent of the legislature and not upon the language in which the intent is clothed. The issue has been considered by a Full Bench of this Court in CIT vs. Punjab Financial Corporation, (2002) 254 ITR 6 wherein it was noticed that the meaning and intention of the legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, design and the consequences which would follow from construing it one way or the other. The use of the word “shall” in a statutory provision, though generally taken in a mandatory sense does not necessarily mean that in every case it shall have that effect, that is to say, unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word “may” has been used, the statute is only permissive or directory in the sense that non compliance*

with those provisions will not render the proceedings invalid. The relevant portion reads thus:- “6. Before proceeding further, we may notice some of the principles of interpretation of the statutes. These are : (1) The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other--Crawford on Statutory Construction (Edition 1940, art. 261, page 516). (2) The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceedings invalid--State of U. P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912 (headnote). (3) All the parts of a statute or sections must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction put to be on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd and anomalous results which could not have been intended by the Legislature. (4) The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions--CIT v. National Taj Traders [1980] 121 ITR 535 (SC) (headnote).”

32. Before we record our conclusion on question No.(c), noticed hereinbefore, it would also be apposite to refer to a five Judges Full Bench of this Court in Ranjit Singh vs. State of Haryana and others, (2012) 2 RCR (Civil) 353 to which one of us (Ajay Kumar Mittal,J.) was a member which was dealing with similar provision i.e. Section 13B of the Punjab Village Common Lands (Regulation) 1961 wherein entertainment of appeal was subject to deposit of amount of penalty imposed under sub section (2) of Section 7 of the said Act with the Collector. This court after considering the entire case law on the point and by reading down the provision held that Section 13B of the said Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case by passing a speaking order even while normally insistence may be made on pre-deposit of the penalty.

In such a case, the appellate authority would have to give reasons for granting interim relief of stay.

33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly.”

21. It was clearly and unequivocally concluded that provisions of Section 62(5) of the VAT Act were directory in nature and that the first appellate authority was empowered to partially or completely waive the condition of pre-deposit by necessary implication and intendment and in the interest of justice. But this power was not to be exercised in routine but only on a strong prima facie case being made out and the first appellate authority being satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it.

22. In our view, the ratio of this decision is squarely applicable to the present case as well. We also agree with the Ld. Counsel for the petitioner that there is no substance in the argument of the Ld. Counsel for the respondent that the judgment is distinguishable merely because Section 45-AA is not similarly worded as Section 62(5) of the Punjab VAT Act. The principle settled by various decisions relied on in the PSPCL case is that the requirement of pre-deposit for entertaining the appeal cannot be read to be mandatory and that the appellate forum would have inherent power to waive, completely or partially, this requirement of pre-deposit. Different statutes may be differently worded, but that does not affect the applicability of the above principle.

23. The other argument of the Ld. Counsel for the respondent that the decision of Hon'ble the Supreme Court in Narayan Chandra Ghosh's case (supra) having not been considered in PSPCL case, hence that judgment in PCPL case is per incuriam also does not appear to be well founded. In Narayan Chandra Ghosh's case (supra) the vires of the provisions regarding pre-deposit was not in issue. Also the argument that in an appropriate case, on strong prima facie case being shown, the Appellate Forum may reduce or waive the pre-deposit amount was neither raised nor considered. Hence, that case cannot be relied on for the proposition that was canvassed and decided in the PSPCL case.

24. Thus, it is held and declared that the requirement of pre-deposit under Section 45-AA is not mandatory and the Appellate Authority is empowered to waive, either partially or completely, the requirement of pre-deposit in the same circumstances and conditions as explained in detail in

the PSPCL case (supra). To summarize, the Appellate Authority is empowered to partially or completely waive the condition of pre-deposit in given facts and circumstances. It is, however, not to be exercised in a routine manner or as a matter of course. Only when a strong prima facie case is made out, will the Appellate Authority consider, whether to grant interim protection/ injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the Appellate Authority is satisfied that the entire purpose of the appeal would be frustrated or rendered nugatory because of the condition of pre-deposit for hearing the appeal and a reasoned order would require to be passed.

25. Accordingly, the order dated 21.02.2014 (Annexure P-20) passed by the Appellate Authority is quashed. The matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the principles set out above.

26. The interim order dated 16.7.2014 to continue till the decision of the application for interim injunction/ protection.

27. This case is disposed of in the above terms.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 27, 2016

Atul

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes