

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

CWP No.2184 of 2015
Date of decision: January 21, 2016

M/s Ambuja Cements Limited

.....Petitioner

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not? **YES**

3. Whether the judgment should be reported in the Digest?

Present: Mr. Sandeep Goyal, Advocate for the petitioner-assessee.

Ms.Radhika Suri, Addl.A.G.Punjab with
Mr. D.S.Mann, AAG, Punjab.

Ajay Kumar Mittal,J.

1. Prayer in this petition is for declaring the provisions of Section 65(3) of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") to be ultra vires the Constitution of India being violative of Article 14 as it provides mandatory deposit of 25% tax, interest and penalty as a condition precedent for hearing of revision without giving any discretion to the revisional authority to waive such deposit. Further prayer has been made for quashing the demand notice dated 2.2.2015, Annexure P.10 directing the petitioner to deposit an amount of ₹

5,13,09,680/-.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a company duly registered under the provisions of the Companies Act, 1956. It had established two cement grinding units in the State of Punjab at Ropar and Bathinda in the years 1994 and 2001 respectively. The petitioner had also expanded its manufacturing facilities at the Ropar unit in the year 2004. Assessment for the year 2006-07 was carried out on the basis of returns filed by it showing a total turnover of ₹ 964,36,04,370/-. The tax payable under the Punjab Value Added Tax Act, 2005 (in short, “the PVAT Act”) amounting to ₹ 94,51,58,556/- and ₹ 8,08,58,339/- under the Central Sales Tax Act, 1956 (in short, “the CST Act”) was exempt from payment of tax in view of the provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 which was deducted out of the eligible amount available to the petitioner. In addition, an amount of ₹ 10,26,19,108/- was also deducted on account of tax calculated on stock transfers and deducted from exemption limit which was otherwise not deductible. The order dated 20.11.2009, Annexure P.1 was passed by the assessing authority under Section 29 of the PVAT Act. Subsequent thereto, the period of limitation for framing of assessment had expired on 20.11.2010 in terms of section 29(4) of the PVAT Act and the period for retention of account books and other documents for the year in question had also expired on 31.3.2013 in terms of Section 44 of the

PVAT Act according to which the assessee was to maintain the account books only for the period of six years from the end of the financial year. On the expiry of the said period, the petitioner was of the belief that the entire proceedings had become final and no further action would be required in respect of assessment year 2006-07. On 7.10.2014, the petitioner received a notice whereby respondent No.2 initiated revisional proceedings under Section 65 of the PVAT Act read with Section 9(2) of the CST Act for the assessment year in question observing that there was huge difference of sale price per bag of cement for inter state sale and value of per bag of cement for stock transfer and therefore the case was taken up for revision under section 65 of the PVAT Act. The petitioner filed written statement on 10.11.2014 inter alia pleading that initiation of proceedings itself was bad as the same was barred by limitation. On 14.11.2014, the petitioner received another notice. The petitioner was asked to show cause as to why penalty and interest be not imposed. The petitioner filed reply dated 18.11.2014 and the same day the order was reserved. On 21.11.2014, the petitioner filed Civil Writ Petition No.23873 of 2014 to challenge the revisional proceedings. Vide order dated 21.11.2014, Annexure P.2 this Court declined to interfere at that stage but granted liberty to raise all the pleas in appropriate proceedings in case any adverse order was passed. On 30.12.2014, the petitioner was served with order dated 19.11.2014, Annexure P.3 revising the order passed by the Assessing authority raising huge demand on the

enhanced value of stock transfer. Aggrieved by the order, the petitioner filed CWP No.1002 of 2015 which was disposed of by this Court vide order dated 21.1.2015, Annexure P.4 relegating the petitioner to the remedy of revision before the Tribunal. The petitioner thereafter filed revision petition before the Tribunal alongwith application for entertainment of revision petition under section 65(3) of the PVAT Act and stay of recovery. For the assessment year 2007-08, the petitioner had deposited an amount of ₹ 64,50,000/- and for the year 2010-11, it had deposited a sum of ₹ 4,95,81,836/-. In total, it had deposited a sum of ₹ 5,60,31,836/-. Vide order dated 17.7.2014, Annexure P.7, the DETC(Appeals) set aside all those orders and the matters were remitted back to the assessing authority. The petitioner approached the Tribunal against the order dated 19.11.2014, Annexure P.3. The petitioner also prayed that the aforesaid amount being refundable in view of the order dated 17.7.2014, Annexure P.7, it may be considered towards deposit of 25% of the additional demand raised by the revisional authority. It was also prayed that in terms of Rule 74 of the Punjab VAT Rules, 2005 (in short, "the PVAT Rules") recovery of balance amount may be stayed as the petitioner had complied with the condition of pre-deposit of 25%. On 21.1.2015, the Excise and Taxation Officer issued notice proposing to impose penalty and interest. The petitioner submitted reply dated 2.2.2015, Annexure P.9 stating that its revision before the Tribunal was pending. When the executive of the petitioner had attended the proceedings on 6.2.2015, he was again issued a demand

notice dated 2.2.2015, Annexure P.10 directing the petitioner to deposit an amount of ₹ 5,13,09,680/-. Hence the instant writ petition to challenge the vires of section 65(3) of the PVAT Act.

3. We have heard learned counsel for the parties.

4. Section 65(3) of the PVAT Act which is pari materia with Section 62(5) of the PVAT Act reads thus:-

“Revision

65. (1) xxxxxxxx

(2) xxxxxxxxxxxx

(3) No application for revision under sub-section (2), shall be entertained unless such application 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.”

5. It is not disputed by the learned counsel for the parties that the issue involved in this appeal stands decided by this Court in CWP No.26920 of 2013 (*Punjab State Power Corporation Limited vs. The State of Punjab and Others*) vide order dated 23.12.2015, wherein after considering the relevant statutory provisions and the case law on the point interpreting Section 62(5) of the PVAT which is pari materia with Section 65(3) of PVAT Act, following conclusions were drawn:-

“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.

34. In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the

appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and 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 observations made above. All the cases stand disposed of in the above terms.”

6. In view of the above, the provisions of Section 65(3) of PVAT Act are held to be intra vires, however, the Tribunal shall decide the matter in accordance with law in terms of the judgment in *Punjab Power Corporation Limited's* case (supra). The writ petition stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

January 21, 2016
'gs'

(Raj Rahul Garg)
Judge