IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2192 of 2016
Date of decision:April 05, 2016

M/s M.K.Overseas Pvt. Limited

……Petitioner

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

PRESENT: Mr. Sanjiv Thakur, Advocate for
Mr. Sanjiv Bansal, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.2192, 2433, 2454, 2456 and 2474 of 2016 as according to the learned counsel for the petitioner(s), the issue involved in all the petitions is identical. However, the facts are being extracted from CWP No.2192 of 2016.

2. In CWP No.2192 of 2016, the petitioner impugns the order dated 2.12.2015, Annexure P.10 passed by respondent No.3 under the provisions of Section 65 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") directing the petitioner to deposit an amount of ₹ 2,99,11,497/- towards the tax payable under the Act and an amount of ₹

8,97,23,118/- towards Central Sales Tax (CST) within 30 days.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.2192 of 2016 may be noticed. The petitioner is a company namely M/s M.K.Overseas Pvt. Limited. It is engaged in the business of processing of meat and sales thereof. The petitioner purchases discarded buffalos as raw material and after slaughtering the same, the meat is processed, packed and frozen for sale, whereas the other byproducts such as meat bone meal and Tallow oil are extracted. Under Section 16 of the Act, certain goods are notified as tax free goods as per Schedule A appended to the Act. Under the provisions of the Act, the petitioner had been selling the poultry feed supplements to various parties. On 10.6.2011, a vehicle which was transferring goods from the poultry unit of the petitioner company reached the Information Collection Centre, Jharmari from Derabassi side. On inspection of documents, it transpired that the goods being transported were poultry feed supplements and thus were exempt. The Designated Officer however vide order dated 27.6.2011, Annexure P.3 imposed a penalty of ₹ 1,03,495/- under Section 51(7)(b) of the Act The petitioner filed an appeal against the order before the Deputy Excise and Taxation Commissioner (Appeals) [DETC]. Vide order dated 5.8.2013, Annexure P.4, the matter was remanded to the Designated Officer with a direction to examine whether the item was covered under Schedule 'A' or not and if it was covered, reasons for levy of penalty be given. After the remand, vide order dated 24.3.2014,

Annexure P.5, the Designated authority set aside the order of imposing penalty holding that the goods in question were poultry feeds which were tax free. Thereafter, Excise and Taxation Officer, respondent No.4 passed order of assessment Annexure P.6 for the assessment year 2010-11 imposing total tax due amounting to ₹ 4,79,924/- and ₹ 71,138/-. The petitioner deposited the said amount on 18.9.2014, Annexure P.7 and intimated the same to respondent No.4. The aforesaid order came up for suo motu consideration before respondent No.3 who issued notice dated 5.11.2015, Annexure P.8 to the petitioner requiring it to produce certain documents. The petitioner submitted reply dated 17.11.2015, Annexure P.9 claiming that no amount had either been saved from taxation nor was required to be added back as stipulated in the notice dated 5.11.2015, Annexure P.8. Thereafter, the petitioner received order dated 2.12.2015, Annexure P.10 whereby respondent No.3 passed order under Section 65 of the Act requiring the petitioner to pay the amounts of ₹ 2,99,11,497/- and ₹ 8,97,23,118/-. Hence the instant writ petition by the petitioner.

4. We have heard learned counsel for the petitioner.

5. The issue regarding interpretation and validity of Section 62(5) of the Act has been settled by this Court vide judgment dated 23.12.2015 rendered in CWP No.26920 of 2013 (**Punjab State Power Corporation Limited vs. The State of Punjab and others).** The following questions arose for consideration before this Court in the said petition:-

"(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?"

This Court while upholding the provisions of Section 62(5) of the Act had concluded as under:-

> "**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. Against revisional order passed by the Commissioner, revision is maintainable under Section 65(2) of the Act. Further sub-section (3) of Section 65 of the Act which is pari materia to Section 62 (5) of the Act provides for mandatory pre-deposit before entertaining of revision by the Tribunal. Sub-sections (2) and (3) of Section 65 of the Act are quoted thus:-

"**Revision**

65. (1) xxxxxxx

(2) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1), within a period of thirty days from the date of communication of the order, may call for and examine the record of any such case and pass such order thereon, as it thinks just and proper.

(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."

After considering the relevant statutory provisions and the case law on the point, the provisions of Section 65(3) of PVAT Act were held to be intra vires in CWP No.2184 of 2015 ***(M/s Ambuja Cements Limited vs. The State of Punjab and Others)*** decided on 21.1.2016 with the rider that the first appellate authority may grant interim protection qua partial or complete waiver of condition of pre-deposit in deserving cases.

6. Identical issues being raised in the present petitions, the same are disposed of in the similar terms as in CWP No.2184 of 2015 ***(M/s Ambuja Cements Limited vs. The State of Punjab and Others).***

(Ajay Kumar Mittal)
Judge

April 05, 2016 (Raj Rahul Garg)
'gs' Judge