IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6847 of 2015
Date of decision:January 21, 2016

M/s Nanak Rice and Gen. Mills

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

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

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 62(5) of the Punjab Value Added Tax Act, 2005 (in short, the PVAT Act”) to be ultravires 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 appeal without giving any discretion to the appellate authority to waive such deposit. Further prayer has been made for quashing the orders dated 19.12.2012, 29.11.2013 and 12.2.2015, Annexures P.1, P.3, P.3/A, P.5 and P.6

respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a dealer duly registered under the provisions of the PVAT Act as well as the Central Sales Tax Act, 1956 (in short, "the CST Act"). It is engaged in the business of running a rice mill at Faridkot. It is an exempted unit having been granted exemption from 10.12.1999 to 9.12.2009. The petitioner had an unutilised exemption of ₹ 68,84,716/- as on 1.4.2005. For the assessment year 2008-09, the petitioner was entitled to exemption upto 9.12.2009 whereafter it was liable to pay tax as a normal dealer. Assessment proceedings were initiated under Section 29 (2) of the PVAT Act. The Assessing authority observed that since the dealer had failed to export 25% of its turnover outside the country during the year in question, it was liable to pay tax on its entire turnover. The Assessing authority framed assessment raising a demand of ₹ 10,09,687/-under the PVAT Act followed by another demand amounting to ₹ 5,99,542/- under the Punjab Infrastructure (Development and Regulation) Act, 2002. Aggrieved by the order, the petitioner filed appeals before the first appellate authority i.e. Deputy Excise and Taxation Commissioner (Appeals) [DETC] alongwith applications for entertainment of appeals without insisting upon 25% of the prior deposit as required under section 62(5) of the PVAT Act. Vide orders dated 29.11.2013, Annexures P.3 and P.3/A, the appeals were dismissed without giving any time to the petitioner to deposit the

payment of 25%. The petitioner filed appeals before the Tribunal. Vide orders dated 12.2.2015, Annexures P.5 and P.6, the Tribunal dismissed the appeals. Hence the instant petition by the petitioner.

2. We have heard learned counsel for the parties.

3. 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, 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."

4. In view of the above, the writ petition is disposed of in the same terms as in ***Punjab State Power Corporation Limited's*** case (supra).

(Ajay Kumar Mittal)
Judge

January 21, 2016
'gs'

(Raj Rahul Garg)
Judge