IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 17 of 2016 (O&M)

Date of Decision: 6.5.2016

M/s Guru Nanak Cotton Factory, Boha, Mansa

....Appellant.

Versus

The State of Punjab and others

...Respondents.

1. Whether the Reporters of the 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?

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

PRESENT: Mr. Jaskaran Singh, Advocate for
Mr. Sandeep Goyal, Advocate for the appellant.

**AJAY KUMAR MITTAL, J.**

1. This appeal has been filed by the dealer under Section 68 of the Punjab Value Added Tax Act, 2005 (in short “the Act”) against the order dated 18.9.2015 (Annexure P-3) passed by the Punjab Value Added Tax Tribunal (hereinafter referred to as “the Tribunal”) in Appeal No. 122 of 2015, claiming the following substantial question of law:-

> Whether on the facts and circumstances of the case, both the authorities below were justified in dismissing the appeals of the appellant by holding the condition of pre deposit of 25% as mandatory for the entertainment of appeal?

2. A few facts relevant for the disposal of the present appeal as narrated therein may be noticed. The appellant is a dealer having TIN No. 03402047018 and is engaged in the business of Cotton Ginning and

Rice Shelling etc. It had filed all the returns in VAT 15 and 20 for the assessment year 2011-12 and availed the Input Tax Credit (ITC). A notice dated 28.6.2014 was issued to the appellant by the Excise and Taxation Officer for the assessment year 2011-12 under Section 29(2) of the Act. The assessment was framed for the assessment year 2011-12 vide order dated 24.9.2014 (Annexure P-1) by creating additional demands of ₹ 1,08,05,499/- under the Act and ₹ 1,74,165/- under the Central Sales Tax Act, 1956. Feeling aggrieved by the assessment order, Annexure A-1, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)], who vide order dated 16.2.2015 (Annexure P-2) dismissed the appeal for non-deposit of 25% under Section 62(5) of the Act. Still dissatisfied, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 18.9.2015 (Annexure P-3) upheld the order of the DETC(A) and dismissed the appeal. This Court in **CWP No.26920 of 2013 (Punjab State Power Corporation Limited v. The State of Punjab and others)** decided on 23.12.2015 wherein the vires of Section 62(5) of the Act were challenged, had upheld the same, but remanded the matter to the first appellate authority to decide the prayer for interim protection in accordance with the observations made therein. Thereafter, the appellant filed CWP No. 364 of 2016 challenging the vires of Section 62 (5) of the Act which was dismissed as withdrawn by this Court vide order dated 11.1.2016 (Annexure P-4) as the vires of Section 62(5) of the Act had been upheld. Hence, the present appeal.

3. Notice of motion was issued to the respondents for today.

4. At the asking of the Court, Ms. Sudeepti Sharma, Deputy Advocate General, Punjab, accepts notice.

5. We have heard learned counsel for the parties.

6. It is not disputed by the learned counsel for the parties that the issue involved in this appeal stands concluded by the decision of this Court in **CWP No. 26920 of 2013 (Punjab State Power Corporation Limited v. The State of Punjab and others)** decided on 23.12.2015 wherein after considering the relevant statutory provisions and the case law on the point, it was held 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."

7. In view of the above, the orders dated 16.2.2015 (Annexure P-2) passed by the Deputy Excise and Taxation Commissioner (Appeals) and dated 18.9.2015 (Annexure P-3) passed by the Tribunal are set aside. The matter is remanded to the Deputy Excise and Taxation Commissioner (Appeals) and the present appeal is disposed of in terms of the judgment in **Punjab State Power Corporation Limited's case (supra)**.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**May 6, 2016** **(RAJ RAHUL GARG)**
gbs **JUDGE**