IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 4 of 2016

Date of Decision: 18.3.2016

M/s Goyal Automobiles, Chamarheri, Patiala

....Appellant.

Versus

The State of Punjab

...Respondent.

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. Avneesh Jhingan, Advocate for the appellant.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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 1.10.2015 (Annexure A-3) passed by the Punjab Value Added Tax Tribunal (hereinafter referred to as “the Tribunal”) in Appeal No. 204 of 2015, claiming the following substantial question of law:-

(i) Whether in the facts and circumstances of the case, the order of the Tribunal, Annexure A-3 is sustainable in law?

(ii) Whether in the facts and circumstances of the case, the Tribunal should have waited for the out come of the pending petition in the High Court?

(iii) Whether in the facts and circumstances of the case, Annexures A-2 and A-3 are sustainable in law in view of the decision of the Hon'ble High Court in cases of vires of Section 62(5) of PVAT Act?

2. A few facts relevant for the disposal of the present appeal as narrated therein may be noticed. The appellant is a registered dealer having TIN No. 03372018953 and is carrying on the business of sale of cars and its spare parts etc. It had filed all its quarterly returns and discharge its tax liability. The provisional assessment for the period from 1.4.2010 to 31.12.2010 was finalized by the Assessing Authority on 31.5.2011 creating an additional demand of ₹ 1,66,73,267/-. against which the dealer filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala who directed to deposit 25% of the additional demand. The appellant challenged the said order before the Tribunal. The Tribunal remanded the case to the Deputy Excise and Taxation Commissioner (Appeals) on fulfilling the condition under Section 62(5) of the Act who vide order dated 18.4.2013 dismissed the appeal. During the said proceedings, the year had completed. The Assessing Authority vide assessment order dated 24.2.2014 (Annexure A-1) framed the assessment for the assessment year 2010-11 by creating an additional demand of ₹ 3,49,57,455/-. Feeling aggrieved by the assessment order, Annexure A-1, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner

(Appeals), Patiala Division, Patiala, who vide order dated 27.11.2014 (Annexure A-2) dismissed the appeal for non-deposit of 25% of the total demand. Still dissatisfied, the appellant challenged the order, Annexure A-2, before the Tribunal by way of an appeal. The Tribunal issued directions to explain how the appeal could be entertained without pre-deposit of 25% of additional demand, upon which the appellant filed CWP No. 15261 of 2015 challenging the vires of Section 62(5) of the Act. The said writ petition was disposed of by this Court vide order dated 23.12.2015. However, the Tribunal vide order dated 1.10.2015 (Annexure A-3) upheld the order of the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala and dismissed the appeal. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. 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."

5. In view of the above, the orders dated 27.11.2014 (Annexure A-2) passed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala and dated 1.10.2015 (Annexure A-3) passed by the Tribunal are set aside. The matter is remanded to the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala 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

March 18, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**