IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.9 of 2016 (O&M)
Date of decision:February 02, 2016

M/s S.H. Enterprises

……Appellant

The State of Punjab

…..Respondent

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. Avneesh Jhingan, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 11.9.2015, Annexure A.3 passed by the Value Added Tax Tribunal, Punjab, (in short, "the Tribunal") in Appeal No.90 of 2015 for the assessment year 2007-08, claiming following substantial questions 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 outcome 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 decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a registered dealer under the PVAT Act and the Central Sales Tax Act, 1956 (in short, "the CST Act"). The dealer filed all the quarterly returns and discharged its tax liability. The assessment was finalized for the assessment year 2007-08 by the assessing authority vide order dated 25.11.2008, Annexure A.1. The assessing authority created additional demand of ₹ 36,13,002/- and levied penalty under section 56 of the PVAT Act. Aggrieved by the order, the appellant filed appeal before the first appellate authority with a prayer that pre-deposit of 25% be not insisted for entertainment of the appeal. Vide order dated 20.11.2012, Annexure A.2, the appeal was dismissed. The appellant filed appeal before the Tribunal. Vide order dated 11.9.2015, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant.

3. Learned counsel for the appellant submitted that the issue involved herein relates to deposit of 25% amount of the additional demand as pre-deposit for entertainment of the appeal by the first appellate authority. It was contended that the first appellate authority as well as the Tribunal have dismissed the appeal for want of pre-deposit of 25% of the said additional demand. Reliance was placed on the

decision of this Court in ***Punjab Power Corporation Limited vs. The State of Punjab and others,*** CWP No.26920 of 2013 decided on 23.12.2015.

4. Notice of motion.

5. At the asking of the Court, Mr. D.S.Mann, DAG, Punjab appearing with Ms. Radhika Suri, Addl. A.G. Punjab accepts notice on behalf of the respondent.

6. 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."

7. In view of the above, the appeal stands disposed of in the same terms as in ***Punjab Power Corporation Limited's*** case (supra).

(Ajay Kumar Mittal)
Judge

February 02, 2016
'gs'

(Raj Rahul Garg)
Judge