IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.1 of 2015 (O&M)
Date of decision:January 21, 2016

Singla Builders and Promoters Limited
……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. Sandeep Goyal, Advocate for the appellant-assessee.

Ms. Radhika Suri, Addl.A.G.Punajb with
Mr. D.S.Mann, AAG, Punjab.

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 18.11.2014, Annexure A.14 passed by the Value Added Tax Tribunal, Punjab, (in short, "the Tribunal") in Appeal No.78 of 2014 for the assessment year 2009-10, claiming following substantial questions of law:-

"a) Whether under the facts and circumstances of the case, the condition of pre-deposit under section 62(5) of the PVAT is unreasonable, arbitrary, discriminatory and ultra vires Articles 14 and 19(1)(g) of the Constitution of India?

b) Whether on the true and correct interpretation of Section 68 (PVAT) read with Section 100 of CPC, the High Court can exercise the jurisdiction for waiving the condition of pre-deposit under section 62(5) of the PVAT?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-company is engaged in the business of developing the land purchased from various authorities and individuals. It is constructing residential apartments and commercial buildings with the purpose of selling them for consideration to interested persons and continue to be the owner of the said property till the execution of registered sale deed as per the terms of the agreement to sell. For the assessment year 2010-11, assessment order under section 29(2) of the PVAT Act was passed on 24.1.2014 raising demand of ₹ 80,67,170/- after allowing the benefit of input tax credit and tax paid. A penalty under Section 56 of the PVAT Act of ₹ 1,61,34,339/- was levied alongwith interest under section 32 (3) of the PVAT Act for ₹ 56,87,354/-. The said order was challenged before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)] by the assessee in appeal. For the assessment year 2012-13, the provisional assessment under section 30 of the PVAT Act was passed on 28.5.2013, Annexure A.1 which was challenged before the DETC(A). Vide order dated 1.7.2013, Annexure A.2, the DETC(A) dismissed the appeal on the ground of non-fulfilment of the provisions of Section 62(5) of the PVAT Act i.e. pre-deposit of 25% of the

additional demand before institution of the appeal. The assessee filed appeal before the Tribunal. Vide order dated 8.8.2013, Annexure A.3, the Tribunal dismissed the appeal with the direction to deposit 25% of additional tax demand. The appellant challenged the said order before this court through CWP No.22437 of 2013 wherein notice of motion alongwith notice regarding stay was issued. In the meantime, the respondent passed another assessment order dated 23.10.2013, Annexure A.5 creating additional demand of ₹ 2,04,85,306/- which was challenged in appeal before DETC(A) alongwith application for admission of appeal without pre-deposit of 25% of additional demand. The DETC(A) dismissed the appeal vide order dated 8.1.2014, Annexure A.8. On 24.1.2014, assessment order for the assessment year 2010-11 was made creating demand of ₹ 2,98,88,864/- comprising of ₹ 80,67,170/- as tax, ₹ 1,61,34,339/- as penalty and ₹ 56,87,354/- as interest. According to the appellant on 31.1.2014, the Apex Court in ***Dishnet Wireless Limited vs. The Commercial Tax Officer and another,*** WP(C) No.1055 of 2013 granted stay of operation and implementation of sub section (5) of Section 62 of the PVAT Act. Vide order dated 7.2.2014, Annexure A.11 in CWP No.2343 of 2014 filed by the appellant, stay and interim order was granted in the same terms as per the order of the Apex Court. On 17.2.2014, the order dated 8.1.2014, Annexure A.12, passed by the DETC(A) was challenged in appeal by the appellant alongwith prayer for grant of stay before the Tribunal. Vide order dated 18.11.2014, Annexure A.14, the

Tribunal dismissed the appeal. Hence the instant appeal by the appellant-assessee.

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 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."

5. In view of the above, the orders dated 8.1.2014 and 18.11.2014 and 18.11.2014, Annexures A.8 and Annexure A.14 passed by the DETC(A) and the Tribunal respectively are set aside. The first appellate court i.e. DETC(A) shall decide the application dated 27.11.2013, Annexure A.6 filed by the appellant-assessee under section 62(5) of the PVAT Act for waiver of deposit of 25% of amount in accordance with law in terms of the judgment dated 23.12.2015 in ***Punjab State Power Corporation Limited's*** case (supra).

6. The appeal stands disposed of.

(Ajay Kumar Mittal)
Judge

January 21, 2016 **(Raj Rahul Garg)**
'gs' **Judge**