

Gurbax Singh
2017.12.20 13:50

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**PVR No. 2 of 2017 (O&M)
Date of decision: 11.12.2017**

M/s M.K. Overseas Private Limited

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. K.L. Goyal, Senior Advocate with
Mr. Rohit Gupta, Advocate for the petitioner
Mr. Pankaj Gupta, Additional A.G., Punjab.

Ajay Kumar Mittal,J.

1. This order shall dispose of PVR Nos. 2 to 6 of 2017 as learned counsel for the parties are agreed that the identical issue involved in these petitions relates to condition of pre-deposit in entertaining the revision petitions under Section 65(3) of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act"). PVR Nos.2, 4 and 6 of 2017 have been filed by M/s M.K.Overseas Private Limited whereas PVR Nos. 3 and 5 of 2017 have been filed by M/s Mirha Exports Pvt. Limited questioning identical orders passed by the Punjab VAT Tribunal (in short, "the Tribunal"). However, the facts are being extracted from PVR No.2 of 2017. PVR No. 2 of 2017 has been filed by the petitioner under Section 68 of the Act against the orders dated 17.04.2017 and 10.07.2017, Annexures P.11 and P.13 respectively

passed by the Tribunal in Revision Petition No.8 of 2016, for the assessment year 2010-11.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner-M/s M.K. Overseas Private Limited is engaged in the business of process of meat and sales thereto. It purchases discarded buffalos as raw material and after slaughtering the same, the meat is processed, packed and frozen for sale, whereas the other by-products such as bone meal and tallow oil are extracted. As per the provisions of the Act, Schedule A which is under Section 16 of the Act, the following goods are notified as “Tax Free Goods”:-

SCHEDULE-A

Serial No.	Name of Commodity
4	Aquatic feed, poultry and cattle feed including feed supplements, grass, hay and straw

SCHEDULE-B

Serial No.	Name of Commodity
11	Bone meat

The petitioner who is engaged in the sale of poultry feed supplements of the by-products, i.e. Meat Bone Meal (MBM) had been treating it as tax free and did not charge any tax from the purchasers in view of the specific bar under Section 16 of the Act. On 10.06.2011, a vehicle of the petitioner was detained while it was transporting poultry feeds supplements. When it had reported the goods voluntarily at ICC Jharmari at Lalru, it was detained on the ground that goods in question were bone meal whereas these had been described as poultry feed supplement and, thus, the documents in question

were not genuine. The Detaining Officer concluded that goods in question were bone meals which were taxable in the State of Punjab and all these transactions were being conducted with an intention to evade the payment of tax on the goods. The contention raised by the petitioner was not accepted since the item 'bone meal' had been specifically made taxable with the insertion of Entry 11 in Schedule-B appended with the Act. According to the petitioner, it had already been assessed by the Assessing authority for the year 2006-07 by treating the item in question as tax free. The Detaining Officer imposed penalty of ₹ 1,03,495/- under section 51(7)(b), vide order dated 27.06.2011, Annexure P.2. Aggrieved by the order, the petitioner filed an appeal before the First Appellate Authority who set aside the order by observing that there was no sufficient elaboration on taxability of the commodity and accordingly the case was remanded back to the Excise and Taxation Officer, ICC, Jharmari with a direction to examine whether the item was covered in Schedule-A or not and no penalty be imposed if it was so covered. The Excise and Taxation Officer on remand, accepted the evidence led by the petitioner which included the assessment order and test reports etc. It was concluded that test report of International Test Centre, Panchkula revealed that goods in question were poultry feed which was a tax free item and, therefore, no tax was leviable on the goods in question. Consequently, penalty proceedings were dropped vide order dated 24.03.2014, Annexure P.4. This order had become final as no appeal or revision was filed against it. The petitioner submits that prior to these happenings regarding imposition of penalty, assessment for the year in question i.e. 2010-11 had also been framed and after considering the item i.e. meat bone meal, the same was held to be tax free, vide order dated Nil Annexure P.5. To the utter shock of the petitioner, it had received a notice

for revision from the Revisional Authority-cum-Assistant Excise and Taxation Commissioner, Mohali on 5.11.2015 on the same issue which had already been concluded in many proceedings including the case where penalty under Section 51 of the Act had been imposed. The AETC observed that petitioner had shown tax free sales valuing ₹ 6,90,38,250/- which were taxable being meat bone meal goods. In response to notice, the petitioner filed a detailed reply reiterating its stand that goods in question were poultry feed supplements and, thus, not taxable. The AETC passed an order holding that item in question was meat bone meal which was taxable. It was further recorded that item in question was not mentioned in any of the Schedules and was taxable at the rate of 12.50 per cent holding that it was a raw material for poultry feed. Accordingly, the AETC passed the order dated 2.12.2015, Annexure P.7 raising a demand of ₹ 95,87,199/- on account of tax and imposed interest of ₹ 89,16,095/- and a penalty under Section 53 of ₹ 1,18,88,127/-, thus, raising an additional demand of ₹ 3,03,91,421/-. A similar demand was raised under the Central Sales Tax Act, 1956 totaling ₹ 8,97,23,118/- but no penalty under Section 53 of the said Act was imposed. Aggrieved by the order, the petitioner filed CWP No. 2192 of 2016 before this Court. Vide order dated 05.04.2016, the said writ petition was disposed of in terms of orders passed by this Court in CWP No. 26920 of 2013. Accordingly, the petitioner approached the Tribunal by filing an application for revision under Section 65(2) of the Act, Annexure P.9, on 06.06.2016 alongwith an application for condonation of delay. Alongwith the said revision, the petitioner also moved an application for seeking exemption from payment of pre deposit as required under Section 65(3) of the Act, Annexure P.10. Vide order dated 17.04.2017, Annexure P.11, the Tribunal disposed of said application with the direction that the petitioner should

deposit 25 per cent of the tax and interest imposed by the Revisional Authority. However, the pre-deposit of 25% on the penalty amount was stayed. The petitioner was granted time to deposit the said amount before the next date of hearing i.e. 10.07.2017. Thereafter, the petitioner also moved an application before the Tribunal for rectification of said order, Annexure P.12, which was dismissed. Since, the petitioner had not deposited the amount as per earlier order, the main revision petition had also been dismissed vide order 10.07.2017, Annexure P.13. Hence the instant petition before this Court.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioner submitted that the Tribunal has directed 25% of the tax liability and interest as a condition precedent for the hearing of the revision under Section 65(3) of the Act. According to the petitioner, though the petitioner has a very good case on merits, yet in order to show its bonafide, the petitioner is ready to deposit 25% of the tax liability in case deposit of 25% of the interest amount was stayed by this Court.

5. Accordingly, on 2.11.2017, learned counsel for the petitioner stated that the petitioner was prepared to discharge 25 per cent of the outstanding tax liability by 31.03.2018, after adjustment of amount already paid. Learned counsel prayed for time to file affidavit to that effect. Accordingly, an affidavit dated 8.11.2017 has been filed in all the five revision petitions. Identical affidavits have been filed in PVR Nos. 2, 4 and 6 of 2017 preferred by M/s M.K.Overseas Pvt. Limited whereas in PVR Nos. 3 and 5 of 2017 filed by M/s Mirha Exports Pvt. Limited, identical affidavits have been filed. It has been stated in the affidavit filed in PVR Nos. 2, 4 to 6 of 2017, that the petitioner has already deposited consolidated sum of ₹ 1.60

crores in respect of three petitions taken together for the assessment years 2008-09, 2009-10 and 2010-11. As of now, the petitioner is required to deposit another sum of ₹ 2,27,94,215/- before it completes the deposit of 25 per cent amount of additional tax demand for these three assessment years i.e. 2008-09, 2009-10 & 2010-11. Further it has been stated that the petitioner undertakes to deposit another sum of ₹ 2,27,94,215/- till 3^{1st} March 2018 for the purpose of meeting requirement for entertainment of revisions by the Tribunal. In PVR Nos. 3 and 5 of 2017, it has been stated that the petitioner has already deposited consolidated sum of ₹ 95.00 lacs in respect of two petitions taken together for the assessment years 2011-12 and 2012-13. As of now, the petitioner is required to deposit another sum of ₹ 2,02,40,146/- before it completes the deposit of 25% amount of additional tax demand for these two assessment years i.e. 2011-12 and 2012-13. Further it has been stated that the petitioner undertakes to deposit another sum of ₹ 2,02,40,146/- till 3^{1st} March 2018 for the purpose of meeting requirement for entertainment of revisions by the Tribunal.

6. In view of the above, the present revision petitions are disposed of with a direction to the petitioner(s) to deposit the remaining consolidated amount of ₹ 2,27,94,215/- for the assessment years 2008-09, 2009-10 and 2010-11 in PVR Nos. 2, 4 and 6 of 2017 (M/s M.K.Overseas Pvt. Limited) and consolidated amount of ₹ 2,02,40,146/- for the assessment years 2011-12 and 2012-13 in PVR Nos. 3 and 5 of 2017 (M/s Mirha Exports Pvt. Limited) upto 31.03.2018 as per the affidavits dated 8.11.2017 filed by them. The interest will be waived off in the pre-deposit. In case, the amount is not deposited within the stipulated time, the revision petitions before the Tribunal shall be deemed to be dismissed. If the petitioners deposit the amount as per affidavits dated 08.11.2017 filed by them in this

Court, the Tribunal shall hear the revision petitions in accordance with law. The order passed by the Tribunal impugned in these revision petitions stands modified to this extent indicated above. Needless to say, anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy involved.

(Ajay Kumar Mittal)
Judge

December 11, 2017
‘gs’

(Raj Mohan Singh)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes