IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 2 of 2017 (O&M)
Date of decision: 21.8.2017

M/s Milton Exports, Amritsar

……Appellant

Vs.

The State of Punjab and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Dr. Naveen Rattan, Advocate for the appellant-assessee.

Mr. Jaswinder Singh, Sr. DAG, Punjab

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the instant appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, " the Punjab VAT Act) against the order dated 29.09.2016, Annexure A.12, passed by the Punjab VAT Tribunal, (in short, "the Tribunal") in Appeal No. 116 of 2016, for the assessment year 2009-10, claiming following substantial questions of law:-

> (i) "Whether on the facts and circumstances of the case, the order of first appellate authority i.e. DETC is justified to dismiss the appeal of the appellant by holding that the condition of pre-deposit of 25% as mandatory for entertainment of the appeal?
>
> (ii) Whether on the facts and circumstances of the case, the order of the Tribunal to grant partial waiver without providing an opportunity to file stay application before first appellate authority is justified?

(iii) Whether the findings of the Hon'ble Tribunal are perverse and contrary to the record?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee, is a dealer registered under the provisions of the Punjab VAT Act and Central Sales Tax Act, 1956 (CST Act). It is engaged in the business of trading in rice at Amritsar. The assessee filed its returns regularly in accordance with law. For the assessment year in question, the assessee filed all his quarterly returns as well as annual return in Form VAT-15 and VAT-20 respectively. The tax was paid in accordance with the provisions of the Punjab VAT Act. The assessment was framed by the Designated Officer creating an additional demand of ₹ 83,53,624/- including interest of ₹ 10,25,884/- under Section 32 of the Punjab VAT Act and penalty under Section 53 of the PVAT @ 2% of ₹ 48,85,160/- Annexure A.4, the first appellate authority i.e. Deputy Excise and Taxation Commissioner Appeals [DETC(A)], dismissed the appeal on the ground of non deposit 25% under Section 62(5) of the PVAT Act. According to the assessee, an exparte order was passed during the pendency of challenge to vires of Section 62(5) of the PVAT Act, before this Court. On 06.06.2016, the department informed the assessee that its appeal was dismissed and direction was given to deposit the entire amount on or before 21.06.2016. On that day, the assessee requested for supply of original copy of order passed by the DETC(A). On 17.06.2016, the assessee filed an appeal before the Tribunal. On objection being raised by the Tribunal regarding non-production of the original copy of the order passed by the DETC, the assessee was supplied original copy duly attested by the Inspector on 06.06.2016. On 18.07.2016, the Tribunal issued notice for 01.08.2016. The assessee was directed to appear before the

Tribunal for pre-hearing and explain as to if the appeal could be entertained without depositing 25% amount. On 29.07.2016, the assessee replied that the appeal was filed within the limitation period and the original copy supplied by the department was also furnished. Vide order dated 29.09.2016, the Tribunal condoned the delay subject to deposit of 25% of the tax amount and gave partial relief without allowing the assessee to move an application for waiver before the first appellate authority in the light of the judgment given by this Court in ***Punjab State Power Corporation Limited Vs. State of Punjab,*** CWP No. 26920 of 2013 decided on 23.12.2015. In the said judgment, it was held by this Court that the first appellate authority could grant waiver in deserving cases. According to the assessee, its case is also deserving one as the firm is closed and the partners are dispersed. Thus, in these circumstances, the assessee was not in a position to pay 25% of the additional demand of tax as directed by the Tribunal. Hence, the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. The issue that arises for consideration in this appeal is whether the first appellate authority could waive or reduce the requirement of pre-deposit of 25% of the additional demand of tax as a condition precedent for hearing the first appeal on merits.

5. The matter is no longer res integra. The issue has already been settled by this Court in ***Punjab State Power Corporation Limited's*** case (supra). In the said case, the following questions emerged for consideration:-

(a) Whether the State is empowered to enact Section 62(5) of the PVAT Act?

(b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?

(c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?"

After examining the relevant statutory provisions and the case law on the point, it was concluded by this Court that 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. The relevant observations recorded by the Bench read thus:-

> "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."

6. In view of the above, the matter is remanded to the first appellate authority i.e. Deputy Excise and Taxation Commissioner (Appeals), for a fresh decision, in the light of the judgment of this Court in ***Punjab State Power Corporation Limited*** case's (supra) after hearing the parties in accordance with law. The appeal stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

August 21, 2017
'gs'

(Amit Rawal)
Judge

Whether speaking/reasoned **Yes**
Whether reportable **Yes**