

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

**CWP No. 5397 of 2018 (O&M)**

Date of Decision: **23.03.2018**

Larsen & Toubro Limited

.....Petitioner

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE  
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE**

Present : Mr. Sujit Ghosh, Advocate with Mr. Arjun Sheoran and  
Mr. Onkar, Advocates, for the petitioner(s).

Mr. Pankaj Gupta, Additional Advocate General, Punjab,  
for the respondents.

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**S.J.VAZIFDAR, CHIEF JUSTICE**

The petitioner has sought a writ of certiorari to quash an order dated 30.06.2017/08/01/2018 passed by respondent No.2 dismissing its appeal against an order dated 11.11.2013 passed by the Assistant Excise & Taxation Commissioner-cum-Designated Officer. The proceedings were in respect of the assessment year 2009-10. The petitioner also seeks a writ of mandamus directing respondent No.2 to reconsider its appeal after waiving the condition of pre-deposit of 25% under section 62(5) of the Punjab Value Added Tax Act, 2005 (PVAT Act).

2. The petitioner executed various works contracts. While scrutinizing the petitioner's return, it was detected that it had made deductions on account of the labour expenses and had reflected heavy interstate sales under the Central Sales Tax Act, 1956 and had not deposited the supporting documents. The assessment proceedings were, therefore, initiated by the Excise and Taxation Officer-cum-Assessing Officer and an additional amount of about ₹44.36 crores

under the PVAT Act was created by imposing penalty under section 53 and interest under section 32(3) of the PVAT Act.

3. The petitioner challenged the order before the Joint Director (INV.) Jal.-cum-DCST (Appeals), Mohali. The appeal was on the ground that the demand raised was without jurisdiction, repugnant to the scheme of the statute and in violation of the principles of natural justice. Several other issues including as regards the interpretation of the provisions of the Constitution of India have been raised. The impugned order concludes as follows:-

“In response to the notice issued by the undersigned Shri Rishab Singla, counsel for the appellant appeared before the undersigned and ETI Shri Bharat Sharma appeared on behalf of the department. During the hearing before the undersigned and the perusal of the appeal, it was revealed that the appellant did not deposit 25% of the additional demand while filing the appeal though this is a pre-requisite for filing of appeal as per provisions of section 62(5) of PVAT Act-2005 and as such the appeal could not be entertained. The appellant was directed to deposit 25% of the tax which is Rs. 4,05,00,000/- (Rs.16,13,06,317/-) from the additional demand. After hearing the learned counsel the appellant was directed to deposit 25% on the next date of hearing i.e. Rs. 4,05,00,000/-. The learned counsel for the appellant sought time to comply with the provisions but the same was not deposited.

Any proof of deposit of 25% of the tax by the appellant has been neither submitted by him as directed by this Court nor while filing the appeal whereas deposit of the 25% of the additional demand is a pre-requisite for filing appeal. Section 62(5) of the Punjab VAT Act 2005 read with Rules 71 to 72 of Punjab VAT Rules makes it amply clear that the requirement of deposit of the 25% of additional demand is to be fulfilled while filing the appeal. As such it was for the appellant to fulfil the conditions of the appeal which he failed to despite the fact that he was given ample opportunities to deposit. The judgment in this case was reserved on 05.06.2017 and is hereby released on 30.06.2017 without any pre-requisite deposit for filing appeal.

As such, the appeal is dismissed in *limine*.”

4. We will presume that it is open to the Appellate Authority to reduce the pre-deposit. The Appellate Authority has in fact done so by demanding the deposit of only 25% of the tax and not 25% of the entire amount including

interest and penalty. It is true that the order does not contain elaborate reasons. However, in the facts and circumstances of this case, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India. The Appellate Authority has exercised its discretion by demanding only 25% of the tax. Thus, the amount of pre-deposit is only about 10% of the total demand. There are several issues regarding the applicability of the Act that require consideration. Apart from certain bald averments there is nothing to indicate that the financial position of the appellant is likely to be adversely affected to such an extent that the entire pre-deposit ought to be waived.

5. Mr. Gupta relied upon the fact that the petitioner before the Appellate Authority had sought time to deposit the amount but the petitioner denied the same. Considering the view that we have taken, it is not necessary to express any opinion in this regard.

6. At stage of deciding the issue of pre-deposit, the appellate authority is not expected to take a final view on the merits of the case. Only a *prima facie* view of the case is to be taken. The contentions raised are debatable. They have to be adjudicated upon. The waiver of the pre-deposit is not as a matter of routine. The deposit is a pre requisite as per the Act. It is only in appropriate cases that the appellate authority can use its discretion to reduce or waive the same to ensure that the appeal provisions are not rendered nugatory.

7. Apart from reiterating the grounds raised in appeal the petitioner has not shown that the direction of appellate authority to deposit approximately 10% of the demand would not be financially possible and hence remedy of appeal provided under the Act would be frustrated.

8. The petition is, therefore, dismissed. However, in the event of the petitioner depositing the amount as required by the impugned order by 30.04.2018, the appeal shall be heard on-merits.

**(S.J. VAZIFDAR)**  
**CHIEF JUSTICE**

**(AVNEESH JHINGAN)**  
**JUDGE**

23.03.2018  
ravinder/parkash

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|---------------------------|---------|
| Whether speaking/reasoned | √Yes/No |
| Whether reportable        | Yes/No√ |