IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-16-2018

Date of Decision: 20.11.2018

M/s Amco Industrial Enterprises Pvt. Ltd., Ludhiana

....Appellant.

Versus

The State of Punjab and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Sandeep Goyal, Advocate for the appellant.

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the dealer under Section 68 of the Punjab Value Added Tax Act, 2005 (in short “the Act”) against the order dated 4.8.2017 (Annexure A-5) passed by the Punjab Value Added Tax Tribunal (hereinafter referred to as “the Tribunal”) in Appeal No. 135 of 2017, claiming the following substantial questions of law:-

(a) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in rejecting the pleas of the appellant for not having the sufficient means to comply with the condition of pre-deposit U/s 62(5) of the Punjab VAT Act, 2005?

(b) Whether on the facts and in the circumstances of the case, the Tribunal was justified in not allowing the law laid down by the Hon'ble Punjab and Haryana High Court in the matter of M/s PSPCL Vs. State of Punjab and another?

2. Put shortly, the facts necessary for the disposal of the present appeal as narrated therein may be noticed. The appellant is a dealer having TIN No. 03952052293 and is engaged in the business of trading of various metals at Ludhiana. It had filed all its returns for the assessment year 2009-10 within the stipulated period and no tax was due to the State exchequer. Earlier, the assessment for the year 2009-10 was framed. The said assessment was challenged before the First Appellate Authority who dismissed the appeal of the appellant which gave rise to the appellant to file an appeal before the Tribunal. Accordingly, the appellant filed VATAP-242-2014 before the Tribunal. The Tribunal vide order dated 29.5.2015 (Annexure A-1) accepted the appeal and directed the Assessing Officer to frame a *de novo* assessment. In pursuance thereto, a notice was issued to the appellant. The Assessing Officer framed the assessment vide order dated 3.2.2016 (Annexure A-2) raising a demand of ₹ 1,09,86,225/- including the penalty under Section 53 of the Act and interest under Section 32 of the Act. Feeling aggrieved by the assessment order, Annexure A-2, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Admn.), who vide order dated 27.2.2017 (Annexure A-3) dismissed the appeal for non-deposit of 10% of the tax demand under Section 62(5) of the Act. The First Appellate Authority had reduced the pre-condition of deposit from 25% to 10%. Still dissatisfied, the appellant filed an appeal on 5.4.2017 (Annexure A-4) before the Tribunal. The Tribunal vide order dated 4.8.2017 (Annexure A-5) upheld the order, Annexure A-3

and dismissed the appeal. Hence, the present appeal.

3. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

4. The Assessing Officer while framing the assessment had noticed that in the absence of original purchase invoices and supporting documents like bank statement, GRs, in/out register or any other proof of movement of goods, the Input Tax Credit (ITC) claim cannot be allowed to the appellant. The ITC claimed on an amount of ₹ 55,205,933/- was disallowed. Accordingly, the Assessing Officer framed the assessment vide order, Annexure A-2, creating demand of ₹ 1,09,86,225/- including the interest and penalty. The appellant challenged the said assessment before the First Appellant Authority who relying upon the judgment of this Court in **M/s PSPCL v. The State of Punjab and others, CWP-26920-2013** decided on 23.12.2015, relaxed the pre-condition of deposit of 25% of the total amount to 10% of the tax demand as required under Section 62(5) of the Act. The appellant having failed to deposit 10% of the tax demand, the First Appellate Authority vide order, Annexure A-3 dismissed the appeal in limine. The relevant findings recorded by the First Appellate Court is as under:-

> "Both the parties have been heard at length and the record of the case has also been perused. I have also carefully gone through the ground of appeal as well as the judgment passed by the Hon'ble Punjab & Haryana High Court, Chandigarh in the case of M/s PSPCL Vs. The State of Punjab & others in CWP No. 26290-2013 decided on 23.12.2015. Keeping in view the entire facts

> of the case, it was appropriate to relax the pre-condition of deposit of 25% of the total demand to 10% of the tax demand only and accordingly on 23.01.2017 the appellant was directed to deposit 10% of the tax demand only by 27.02.2017, so that he can pursue his appeal. However, the appellant has failed to deposit the same. Accordingly, the appeal is dismissed in limine without going into the merits of the case."

5. On further appeal to the Tribunal, the Tribunal upheld the order of the First Appellate Authority and dismissed the appeal by holding that neither the appellant had pleaded that it had gone insolvent or was not in possession of any funds, nor it deposited any amount in terms of Section 62 (5) of the Act. The appellant had not filed any affidavit to the effect that it had gone into losses and was unable to pay even 10% of the tax demand. It was further recorded that in case the appeal was accepted then the amount as deposited by the appellant would be refunded whereas non-deposit of the amount would render Section 62(5) of the Act as redundant. The findings recorded by the Tribunal read thus:-

> "The Assessing Officer created demand of ₹ 1,09,86,225/- under the Punjab Value Added Tax Act, 2005. The appellant is not a cancelled dealer. It has neither pleaded that it has gone insolvent or is not in possession of any funds nor it deposited any amount in compliance of Section 62(5) of the Act. The appellant has also not filed any affidavit to the effect that appellant has gone into losses and is unable to pay even 10% of the

tax demand. The petition before the Hon'ble Debt Recovery Tribunal appears to be filed in the year 2014, whereas the case relates to the assessment year 2009-10. The filing of the petition by itself is no ground to establish that the appellant is suffering from any financial crunch. If the appellant is granted full protection, then it would encourage the appellant to enter into superfluous litigation and it would result into having loss of the State Revenue. If the appeal is accepted then the amount as deposited by the appellant firm would be refunded to him, whereas, the non deposit would render Section 62 (5) of the Act as redundant.

Under these circumstances of the case, this Tribunal is of the opinion that the appellant has been granted much relaxation by the First Appellate Authority U/s 62(5) of the Act. No further relief can be granted to him. This Tribunal also does not find any reasonable ground to interfere in the discretion as awarded by the First Appellate Authority to the appellant."

6. Learned counsel for the appellant has failed to pin point any illegality or perversity in the aforesaid findings recorded by the authorities below which may warrant interference by this Court. No substantial question of law as claimed by the appellant arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

7. Learned counsel for the appellant has prayed for extension of time for depositing the amount of 10% of the tax demand. It shall be open

the appellant to move an appropriate application before the concerned authority for extension of time which shall be decided by taking sympathetic view in accordance with law. Needless to say, anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

November 20, 2018 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**