IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 7 of 2018 (O&M)
Date of decision: 04.04.2018

M/s Punjab Agro Food Grains Corporation Limited

……Appellant

Vs.

The State of Punjab and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr.Surjeet Bhadu, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. This order shall dispose of VATAP Nos. 7, 8 and 10 to 13 of 2018 as according to the learned counsel for the appellant-assessee, the issue involved in all these appeals is identical. However, the facts are being extracted from VATAP No. 7 of 2018.

2. The delay in refilling the appeal is condoned.

3. VATAP No. 7 of 2018 has been filed by the appellant under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 17.08.2017, Annexure A.3, passed by the Punjab VAT Tribunal, (in short, "the Tribunal") in Appeal No. 195 of 2017, for the assessment year 2010-11, claiming following substantial questions of law:-

> (i) "Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in directing the appellant to make pre deposit of 10% of tax demand without taking into cognizance the factual financial position of the appellant's company?

(ii) Whether the Ld. Tribunal was justified in framing the two questions mentioned in the impugned order dated 17.08.2017 by ignoring the real question involved in the present case i.e. whether the First Appellate Authority was justified in ordering 10% of tax as pre-deposit in the case of appellant, who was suffering from extreme financial difficulties and prayed for complete waiver of pre-deposit?

(iii) Whether the impugned order is in accordance with law laid down by this Hon'ble Court in the case of ***Punjab State Power Corporation Limited Vs. State of Punjab & Ors*** (2016) 90 VST 66 (P&H)?

(iv) Whether Ld. Tribunal was justified in ignoring the prima facie case of the appellant?

(v) Whether on the facts and circumstances of the case, the order passed by the Ld. Tribunal is against the principles of natural justice?

4. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.7 of 2018 may be noticed. The appellant-assessee M/s Punjab Agro Food Grains Corporation Limited is a government company. It is engaged in the business of procurement of food grains and is duly registered under the provisions of the PVAT Act and the Central Sales Tax Act, 1956 (in short, "the CST Act"). It regularly filed its returns and also discharged its tax liability thereon. Assessment for the year 2010-11 in case of the appellant-assessee was framed under Section 29(2) of the PVAT Act by the ETO-cum-Designated Officer, Hoshiarpur vide order dated 28.7.2015, Annexure A.1. The assessment resulted in additional demand of ₹ 75,38,995/- under the PVAT Act. Aggrieved by the order, the assessee filed an appeal before the first appellate authority with a prayer to waive off the condition of pre deposit of 25% of the additional demand as prescribed under section 62(5) of the PVAT Act for

entertainment of appeal. The first appellate authority did not entertain the plea of the assessee to completely waive off the condition of pre deposit and directed to deposit 10% of tax demand. Vide order dated 17.1.2017, Annexure A.2, the first appellate authority dismissed the appeal of the appellant in default for failure to deposit the amount of pre deposit. Still not satisfied, the appellant filed second appeal before the Tribunal. Vide order dated 17.8.2017, Annexure A.3, the Tribunal dismissed the appeal and directed the appellant to deposit 10% of tax within two months failing which the appeal shall stand dismissed. Hence the instant appeals by the appellant-assessee.

5. We have heard learned counsel for the appellant.

6. Admittedly, the assessment in the present case was framed under Section 29(2) of the PVAT Act on 28.7.2015, creating additional demand of ₹ 75,38,995/-. On first appeal filed by the appellant before the first appellate authority, the plea of the appellant to completely waive of the condition of pre deposit was not entertained and direction was given to the assessee to deposit 10% of the tax demand. On second appeal before the Tribunal, it was ordered to deposit 10% of tax within two months failing which the appeal shall stand dismissed. Relying upon the judgment passed by this Court in ***Punjab State Power Corporation vs. State of Punjab and others,*** (2016) VST 66, it was concluded by the Tribunal that protection under Section 62(5) of the PVAT Act cannot be granted in each case but only in the rarest of the rare case where the impugned order is without jurisdiction and such deposit would frustrate the purpose of filing of appeal and that the assessee is suffering from any financial incapacity or is under any other hardship on account of poverty or insolvency. In the present case, it was concluded that when the turnover of the appellant Corporation runs into crores, it cannot be believed that the appellant was not in a position to deposit 10% of the tax. Further, the appellant failed to establish

that the deposit of the amount will cause any undue hardship or adversely affect the day to day business of the appellant-Corporation. The Tribunal had exercised discretion in favour of the appellant who had been granted partial protection by requiring to deposit only 10% of the tax demand. Learned counsel for the appellant was unable to point out any illegality or perversity in the findings recorded by the authorities below.

7. In view of the above, no substantial question of law arises in these appeals and the same stand dismissed.

(Ajay Kumar Mittal)
Judge

April 04, 2018 **(Anupinder Singh Grewal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**