IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 9 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. The delay in refilling the appeal is condoned.

2. The appellant-assessee has filed the instant appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 21.07.2017, Annexure A.4, passed by the Punjab VAT Tribunal, (in short, "the Tribunal") in Appeal No. 49 of 2017, for the assessment year 2008-09, claiming following substantial questions of law:-

> (i) "Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in dismissing the appeal of the appellant for failure to make pre deposit of 25% of tax demand without taking into cognizance the factual financial position of the appellant's company ?
>
> (ii) Whether the Ld. Tribunal was justified in dismissing the appeal of the appellant by ignoring the real question involved in the present case i.e. whether the First Appellate Authority was justified in ordering 25% 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?

(vi) Whether on the facts and circumstances of the case, the excess amount of ₹ 1,83,454/- lying with the department is required to be considered for the purposes of Pre-deposit?

(vii) Whether the order dated 17.08.2017 of the Ld. Tribunal, passed in six appeals of the appellant for the years 2006-07 to 2012-13 and the impugned order dated 21.07.2017 passed in the case of appeal for the year 2008-09 are inconsistent with each other? In order dated 17.08.2017, the Ld. Tribunal ordered uniformity and ordered 10% of tax as pre-deposit and granted time to deposit the same. Whereas through the impugned order dated 21.07.2017, the Ld. Tribunal dismissed the appeal of the appellant for non-deposit of 25% of tax, as ordered by Ld. First Appellate Authority?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal 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. Original assessment for the year 2008-09 in case of the appellant-assessee was framed under Section 29(2) of the PVAT Act by the Designated Officer, Hoshiarpur vide order dated 18.9.2012. The Assistant Excise and Taxation Commissioner, Hoshiarpur framed amendment in assessment under Section 29(7) of the PVAT Act vide order dated 29.7.2015, Annexure A.1 creating an additional demand of ₹ 70,79,176/- (Tax = ₹ 19,52,876/-, penalty under Section 53= ₹ 29,29,314/- and interest under Section 32(3) = ₹ 21,96,986/-) 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 25% of tax demand. Vide order dated 26.10.2016, Annexure A.3, 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 21.7.2017, Annexure A.4, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant-assessee.

4. We have heard learned counsel for the appellant.

5. Admittedly, the original assessment in the present case was framed under Section 29(2) of the PVAT Act on 18.9.2012. The Assistant Excise and Taxation Commissioner, Hoshiarpur made amendment in assessment under Section 29(7) of the PVAT Act vide order dated 29.7.2015 creating an additional demand of ₹ 70,79,176/- (Tax = ₹ 19,52,876/-, penalty under Section 53 = ₹ 29,29,314/- and interest under Section 32(3) = ₹ 21,96,986/-) On first appeal filed by the appellant before

the first appellate authority, the plea of the appellant to completely waive off the condition of pre deposit was not entertained and direction was given to the assessee to deposit 25% of the tax demand. The second appeal filed before the Tribunal by the appellant assessee was dismissed vide order dated 21.7.2017, Annexure A.4. 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 it was neither rarest of the rare case where further protection could be granted. The financial condition of the appellant was not bad so as to grant it full protection from making compliance of Section 62(5) of the Act. Still the appellate authority had in its discretion relaxed the condition by way of directing the appellant to deposit 25% of the additional tax only instead of deposit of 25% of additional demand, penalty and interest. Thus, the Tribunal rightly dismissed the appeal filed by the appellant. Learned counsel for the appellant was unable to point out any illegality or perversity in the findings recorded by the Tribunal.

6. In view of the above, no substantial question of law arises in the appeal and the same stands dismissed. Since the main appeal has been dismissed, the application for condonation of delay in filing the appeal is also dismissed.

(Ajay Kumar Mittal)
Judge

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

Whether speaking/reasoned Yes/No

Whether reportable Yes/No