IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-26-2019 (O&M)

Date of Decision: 25.2.2019

M/s Jay Aar Enterprises, Chandigarh

....Appellant.

Versus

Union Territory of Chandigarh and another

...Respondents.

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

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

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the dealer under Section 9(2) of the Central Sales Tax Act, 1956 (for brevity "the 1956 Act") read with Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") as applicable to UT, Chandigarh against the order dated 9.10.2018 (Annexure A-6) passed by the Value Added Tax Tribunal, UT, Chandigarh (hereinafter referred to as "the Tribunal") in Appeal No.25 of 2018, for the assessment year 2010-11, claiming the following substantial question of law:-

> "Whether on the facts and circumstances of the case, the Ld. VAT Tribunal is justified in dismissing the appeal of the assessee on the ground of non-compliance of Section 62(5) of the PVAT Act, 2005 (as applicable to Chandigarh), when the assessee is in possession of valid declaration forms (C-Forms) and in view of the judgment of Hon'ble High Court in the case of PSPCL v. State of

Punjab (90 VST 66), THERE CAN BE WAIVER OF 25% of additional demand there being a strong prima facie case in the favour of the assessee?"

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant filed all its quarterly returns in Form VAT-15 as well as Annual return in Form VAT-20 for the assessment year 2010-11. Its case was taken up for scrutiny and the Assessing Authority vide order dated 9.11.2017 (Annexure A-1) framed the assessment raising a demand of ₹ 17,54,915/- including interest on account of non-production of declaration Forms 'C' and 'H'. Feeling aggrieved by the order, Annexure A-1, the appellant filed an appeal on 4.4.2018 (Annexure A-2) before the Deputy Excise and Taxation Commissioner (Appeals) [hereinafter referred to as 'the first Appellate Authority'] along with an application for waiver of 25% of the additional demand. The first Appellate Authority vide order dated 8.6.2018 (Annexure A-3) dismissed the said appeal as well as application for non-compliance of provisions of Section 62(5) of the Act. Still dissatisfied, the appellant filed an appeal on 18.9.2018 (Annexure A-4) along with an application (Annexure A-5) for waiver of 25% of additional demand before the Tribunal. The Tribunal vide order dated 9.10.2018 (Annexure A-6) dismissed the said appeal for non-deposit of 25% of the additional demand. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the Tribunal was not justified in dismissing the appeal of the assessee for non-compliance of Section 62(5) of the Act when the appellant was in possession of C-Forms as well as H-Forms.

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

5. For the assessment year 2010-11, the case of the appellant was taken up for scrutiny and the Assessing Authority vide order dated 9.11.2017 (Annexure A-1) found that the appellant was liable to pay tax of ₹ 1,20,767/- under the Act and ₹ 17,54,915/- under the 1956 Act. The appeals against the said assessment order were dismissed by the first Appellate Authority and the Tribunal. The Tribunal while dismissing the appeal of the appellant noticed that the appellant had not filed the appeal under the 1956 Act and as such the demand of tax under the 1956 Act was not covered in the appeal filed before the Tribunal and, therefore, the appellant was liable to pay tax under the 1956 Act. The appellant sought time before the Tribunal to deposit 25% of the additional demand of tax and ultimately refused to deposit the said amount. Since the appellant failed to deposit 25% amount of the additional demand of the tax as required under the law, the Tribunal dismissed the appeal on that account.

6. In the present case, the appellant has been required to pre-deposit 25% amount of the additional demand of the tax as a condition precedent for hearing of the appeal, which was reasonable and justified.

7. No illegality or perversity could be pointed out by the learned counsel for the appellant in the findings recorded by the Tribunal which may warrant interference by this Court. No question of law arises in this appeal. Accordingly, finding no merit in the instant appeal, the same is hereby dismissed.

8. A prayer was made by the learned counsel for the appellant to grant some time for pre-deposit. However, in the interest of justice, we grant

one month's time to the appellant to make pre-deposit of the amount as directed by the Tribunal. It is directed that in case the appellant deposits 25% amount of the additional demand of the tax within a period of one month from the date of receipt of the certified copy of the order, the appeal shall be heard by the first Appellate Authority on merits in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

February 25, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No