IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-234-2018 (O&M)

Date of Decision: 30.4.2019

M/s Punjab State Warehousing Corporation, Sri Muktsar Sahib

....Appellant.

Versus

State of Punjab and another

...Respondents.

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

PRESENT: Mr. Rishab Singla, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing VATAP Nos.234 and 236 of 2018 as according to learned counsel for the appellant, the facts and issues involved therein are identical. For brevity, the facts are being extracted from VATAP-234-2018.

2. Delay of 38 days in refiling VATAP-234-2018 is condoned.

3. VATAP-234-2018 has been filed by the appellant under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 17.8.2017 (Annexure A-5) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal") in Appeal No.139 of 2017, for the assessment year 2007-08, claiming the following substantial questions of law:-

> (i) Whether on the facts and circumstances of the case, Ld. Tribunal was justified in directing the appellant to deposit 25% of the tax inspite of the

fact that appellant is incurring huge losses as is evident from the Balance Sheets and is not in a position to deposit the amount?

(ii) Whether on the facts and circumstances of the case, the Assessing Authority was justified in reversing Input Tax Credit on account of purchase tax under Section 19(4) of the Punjab VAT Act on closing stock of wheat and rice?

(iii) Whether on the facts and circumstances of the case, the Assessing Authority was justified in reversing Input Tax Credit on retention of bye products by the Rice Millers under Rule 21(6) of Punjab VAT Rules, 2005?

4. A few facts necessary for adjudication of the instant appeal as narrated in VATAP-234-2018 may be noticed. The appellant procured the paddy from the farmers and give the same to the rice millers for milling. As per the agreement entered between the appellant and the rice miller, out of the total paddy, 67% of the shelled rice was to be supplied back to the appellant. The bye products, i.e., rice husk, rice bran, broken rice etc. were to be retained by the rice miller. The appellant filed all its quarterly returns as well as Annual return for the assessment year 2007-08. The Assessing Authority vide order dated 20.11.2014 (Annexure A-1) framed the assessment and raised a demand of ₹ 35,60,282/- on account of reversal of Input Tax Credit (ITC) accrued on purchase tax under Section 19(4) of the Act and excess ITC claimed by the appellant. The said order was rectified by respondent No.2 vide order dated 30.6.2015 (Annexure A-2) raising

demand of ₹ 51,24,027/- on account of reversal of ITC on closing stock of paddy under Section 19(4) of the Act and on the bye products shelled out of the paddy during milling by the rice miller and retained by it. Feeling aggrieved by the order, Annexure A-2, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) [hereinafter referred to as 'the first Appellate Authority']. The appellant also filed an application for waiver of pre-deposit as required under Section 62(5) of the Act. The first Appellate Authority vide order dated 29.6.2016 (Annexure A-3) dismissed the said appeal as well as application for non-compliance of provisions of Section 62(5) of the Act as the appellant had failed to deposit 25% of the additional demand. Still dissatisfied, the appellant filed an appeal (Annexure A-4) before the Tribunal on 7.4.2017. The Tribunal vide order dated 17.8.2017 (Annexure A-5) dismissed the said appeal. However, two months' time was granted to make pre-deposit of 25% of the additional demand whereupon the appeals were to be heard and decided on merits, failing which the order of the first appellate authority was to remain intact. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the Tribunal was not justified in dismissing the appeal of the assessee and directing the appellant to deposit 25% of the additional demand within two months.

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

7. For the assessment year 2007-08, the Assessing Authority vide order dated 20.11.2014 (Annexure A-1) raised a demand of ₹ 35,60,282/-. The said order had been rectified by the Assistant Excise and Taxation Commissioner vide order dated 30.6.2015 (Annexure A-2) raising a

demand of ₹ 51,24,027/-. The assessee challenged the said order by filing an appeal before the DETC(A). The assessee also filed an application for waiver of pre-deposit as required under Section 62(5) of the Act. However, the DETC(A) directed the appellant to deposit 25% of the additional demand. The assessee having failed to comply with the said direction, the appeal against the said assessment order was dismissed by the first Appellate Authority. The Tribunal while dismissing the appeal of the appellant noticed that the law required the entertaining of the appeal only when compliance under Section 62(5) of the Act was made. Therefore, the appellant was liable to comply with the provisions of Section 62(5) of the Act. Since the appellant failed to deposit 25% amount of the additional demand as required, the Tribunal dismissed the appeal on that account. However, two months' time was granted to the appellant to deposit the 25% of the additional demand.

8. In the present case, the appellant was required to pre-deposit 25% amount of the additional demand of tax liability as directed by the DETC(A) and the Tribunal as a condition precedent for hearing of the appeal, which was reasonable and justified.

9. 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 the appeals. Accordingly, finding no merit in the appeals, the same are hereby dismissed.

10. In both the appeals, applications have been filed under Section 5 of the Limitation Act, 1963 for condonation of 54 days' delay in VATAP-234-2018 and 35 days' delay in VATAP-236-2018 in filing the appeals.

Since, the appeals have been dismissed on merits, no further orders are required to be passed on the applications for condonation of delay in filing the appeals and the same are disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

April 30, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**