IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 27th May, 2019

(1) VATAP No. 246 of 2018

M/s Punjab State Civil Supplies Corporation, Amritsar
.. Appellant

v.

State of Punjab and another
.. Respondents

(2) VATAP No. 306 of 2018

M/s Punjab State Civil Supplies Corporation, Amritsar
.. Appellant

v.

State of Punjab and another
.. Respondents

(3) VATAP No. 313 of 2018

M/s Punjab Agro Food Grains Corporation Ltd.
.. Appellant

v.

The State of Punjab and others
.. Respondents

(4) VATAP No. 3347 of 2018

M/s Punjab Agro Food Grains Corporation Ltd.
.. Appellant

v.

The State of Punjab and others
.. Respondents

(5) VATAP No. 8355 of 2018

M/s Punjab State Civil Supplies Corporation, Amritsar
.. Appellant

v.

State of Punjab and another
.. Respondents

(6) VATAP No. 8359 of 2018

M/s Punjab Agro Food Grains Corporation Ltd.
.. Appellant

v.

The State of Punjab and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rishab Singla and Mr. Aman Bansal, Advocates for the appellant(s).

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AVNEESH JHINGAN, J.

This order shall dispose of six appeals bearing VATAP Nos. 246, 306, 313, 3347, 8355 and 8359 of 2018. The said appeals are being disposed of by a common order as these arise from one order passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as 'the Tribunal') and according to learned counsel for the appellant(s), the facts and issues involved therein are identical.

The appeals have been filed under Section 68 of the Punjab Value Added Tax Act, 2005 (for short, 'the Act') against the order dated

17.8.2017 passed by the Tribunal. For convenience, the facts are being taken from VATAP No. 246 of 2018. The appeal is for the assessment year 2008-09 claiming 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 in spite 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?"

The facts necessary for adjudication of the appeal are that the appellant is a Government agency engaged in supply of food grains to Food Corporation of India and is registered under the Act and Central Sales Tax Act, 1956. The appellant procured food grains including paddy from the farmers and the same was given to the miller for milling as per the agreement entered. As per the clauses of the agreement, 67% of rice produced was to be supplied back to the appellant. The miller was entitled to retain the bye products i.e. rice husk, rice bran, broken rice etc. The quarterly return for the relevant assessment year and the annual statement was filed. The assessment was finalised vide order dated 17.4.2015. A demand of ₹9,29,33,163/-was created. The additional demand was a result of reversal of input tax credit on the bye products left with the miller. Further purchase tax was levied on the closing stock of wheat and paddy.

Aggrieved of the assessment order, appeal was filed along with a request for waiver off deposit of 25% pre-deposit for entertainment of appeal. The First Appellate Authority directed the appellant to deposit 25% of the tax amount. The appellant failed to comply with the order and the appeal was dismissed on 7.3.2017.

Further appeal was preferred before the Tribunal pleading that the appellant is not in a position to deposit 25% of the tax amount. The Tribunal dismissed the appeal vide order dated 17.8.2017, however granted another opportunity to the appellant to deposit 25% of demand of tax and interest within two months, failing which the order of the First Appellate Authority shall remain intact, hence the present appeal.

Section 62(5) of the Act is quoted below:

" **CHAPTER-XI**

APPEAL AND REVISION

S.62. First appeal.

xx xx xx

(5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.

Explanation.- For the purposes of this sub-section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central Sales Tax Act, 1956 (Act No. 74 of 1956)."

As per Section 62(5) of the Act, no appeal shall be entertained unless there is a deposit of minimum payment of 25% of tax, interest and penalty. The vires of the said provision was challenged. This Court in **Punjab State Power Corporation Limited v. The State of Punjab and others, 2016(2) R.C.R. (Civil) 559,** held as under:

> "33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is

made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly."

The vires of the aforesaid provision was upheld opining that the First Appellate Authority in certain circumstances has the power to waive off the requirement of pre-deposit in certain cases. The power of waiver is not to be exercised as a routine.

Learned counsel for the appellant argued that the Tribunal erred in dismissing the appeal and directing the appellant to deposit 25% of the tax within two months.

The contention raised by learned counsel for the appellant lacks merit. As per the provisions of Section 62(5) of the Act, 25% of the amount has to be deposited for entertainment of the appeal. However, as per the decision of this Court in **Punjab State Power Corporation Limited's case (supra)**, the First Appellate Authority has a power to waive off the pre-condition in appropriate cases. It would be pertinent to note here that additional demand in the present case is with regard to tax only and the appellant is required to deposit 25% of the tax amount. The condition imposed by the First Appellate Authority and the Tribunal for entertainment of appeal was reasonable. The Tribunal while dismissing the appeal granted further two months time to enable the appellant to deposit 25% of the additional tax demanded. The condition is reasonable and justified.

Learned counsel for the appellant has not been able to point out any perversity in the order of the Tribunal. No interference is called for in the impugned order.

The appeals involve no question of law much less a substantial question of law.

Accordingly, all the appeals are dismissed being without merit.

The appeals have been filed along with applications under Section 5 of the Limitation Act, 1963 for condoning the delay in filing the appeals. As the appeals have been dismissed on merits, no further orders are required to be passed on the applications for condonation of delay.

(JASWANT SINGH)
JUDGE

(AVNEESH JHINGAN)
JUDGE

27th May, 2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No