IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-248-2018 (O&M)

Date of Decision: 2.5.2019

M/s Punjab State Warehousing Corporation, Nawanshahr

....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. Delay of 3 days in refiling the appeal is condoned.

2. This appeal has been filed by the appellant-Corporation under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 27.2.2017 (Annexure A-4) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal") in Appeal No.279 of 2016, for the assessment year 2008-09, 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?

3. A few facts necessary for adjudication of the instant appeal as narrated therein 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 2008-09. The Assessing Authority vide order dated 17.11.2015 (Annexure A-1) framed the assessment raising a demand of ₹ 3,82,63,175/- on account of reversal of Input Tax Credit (ITC) accrued on purchase tax under Section 19(4) of the Act read with Rule 21(6) of the Punjab Value Added Tax Rules, on the bye products shelled out of the paddy during milling by the rice miller retained by it including interest under Section 32(3) of the Act and penalty under Section 53 of the Act of ₹ 50,79,656/- and ₹ 2,03,18,628/-, respectively. Feeling aggrieved by the order, Annexure A-1, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals)

[hereinafter referred to as 'the first Appellate Authority']. The first Appellate Authority vide order dated 14.9.2016 (Annexure A-2) dismissed the appeal for non-compliance of Section 62(5) of the Act. Further, the appellant was directed to deposit 25% of the additional demand of the tax failing which the appeal was to be dismissed in limine. Still dissatisfied, the appellant filed an appeal on 30.11.2016 (Annexure A-3) before the Tribunal. The Tribunal vide order dated 27.2.2017 (Annexure A-4) dismissed the said appeal for non-deposit of 25% of the additional demand of tax. However, the Tribunal granted three months' time to deposit 25% of the additional demand of tax only, failing which the order of the DETC(A) was to remain intact. Hence, the present appeal.

4. 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 whereby the appellant was required to deposit 25% of the additional demand of tax and granting three months' time to do so.

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

6. For the assessment year 2008-09, the Assessing Authority vide order dated 17.11.2015 (Annexure A-1) raised a demand of ₹ 3,82,63,175/- along with interest and penalty. The appeal against the said assessment order was dismissed by the first Appellate Authority and the Tribunal on account of non-fulfilment of condition of pre-deposit under Section 62(5) of the Act. The Tribunal while dismissing the appeal of the appellant noticed that since the deposit of 25% of the tax was a condition precedent for entertaining the appeal in the light of Section 62(5) of the Act, therefore,

non-deposit of the same was certainly to end in dismissal of the appeal. Since the appellant failed to deposit 25% amount of the additional demand of the tax as directed by the DETC(A) and the Tribunal, the Tribunal had rightly dismissed the appeal on that account.

7. In the present case, the appellant was 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.

8. 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.

9. CM-21182-CII-2018 has been filed under Section 5 of the Limitation Act, 1963 for condonation of 288 days' delay in filing the appeal. Since, the appeal has been dismissed on merits, no further orders are required to be passed on the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

May 2, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**