IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP 51/2018(O&M
Date of decision:02.07.2019

M/s Punjab State Warehousing Corporation Hoshiarpur

..............Appellant

v.

State of Punjab and another

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra

Present:- Mr.Rishab Singla,Advocate for the appellant.

Jaswant Singh,J.

Since there is delay of 30 days in refiling the instant appeal, application bearing CM 8811-CII/2018 has been filed seeking condonation of said delay.

For the reasons stated in the application, the same is allowed and delay of 30 days in refiling,being insignificant, is condoned.

Similarly there being delay of 5 days in filing the appeal, CM 8812-CII/2018 has been filed seeking condonation of said delay.

The delay of 5 days,being insignificant, is condoned. Application stands allowed.

Main Appeal.

Appellant, a Punjab Government agency, is engaged in food grain procurement activity. It procures paddy from farmers and gives the same to Rice Millers for milling. As per agreement entered into between appellant and Millers, out of total paddy 67% of the shelled rice is to be supplied back to the appellant. The bye-products i.e. rice husk, rice bran, broken rice etc., are retained by the Millers and the appellant has nothing to do with the same.

For the purpose of sales tax in the State of Punjab it is registered with Assessing Authority,Hoshiarpur. It is averred that for the assessment year 2009-10, appellant filed all its quarterly returns. The assessment of the appellant was framed vide order dated 11.10.2012 (A-1) calculating an excess ITC. The said order was reassessed vide order dated 24.9.2015 (A-2) and a demand of Rs.1,25,95,683/- was raised including interest under Section 32(3) and penalty under Section 53 to the tune of Rs.37,49,860/- and Rs.49,99,813/- respectively. The said demands have been raised on account of reversal of ITC accrued on Purchase Tax under Section 19(4) of the Punjab VAT Act read with rule 21(6) of the Punjab VAT Rules on the bye-products,retained by millers, generated during milling of rice.

Feeling aggrieved appellant filed appeal before the 1st Appellate Authority and insisted for waiver of pre-deposit as required under Section 62(5) of the Punjab VAT Act by filing an application during the course of proceedings. The reassessment order dated 24.9.2015(A-2) was challenged on the ground that it was without jurisdiction as the basis for amendment of assessment does not fall under the purview of re-assessment as provided under Section 29(7) of the Punjab VAT Act. Further the issues of interest, penalty and tax were also challenged. The 1st Appellate Authority vide its order dated 14.9.2016 (A-4) directed the appellant to deposit 25% of the tax amount by 28.9.2016 and to produce proof of such deposit by 29.9.2016. The said order A-4 was further challenged before the Punjab VAT Tribunal by contending that the appellant due to financial hardship being faced by it was not in a position to depsit the requisite tax amount. The Punjab VAT Tribunal vide order dated 15.5.2017 (A-6) dismissed the appeal filed by appellant on account of non-deposit of 25% of the tax, however, three months time was granted to deposit the amount from the date of order failing which the appeal was to be treated as dismissed.

It is in these circumstances that the instant appeal has been filed.

At the time of hearing, learned counsel for the appellant very fairly concedes that the issue involved in this appeal stands settled by a Division Bench of this Court vide judgment dated 27.5.2019 in **VATAP 246/2018 (M/s Punjab State Civil Supplies Corporation,Amritsar v State of Punjab and another)** wherein it was held that as per Section 62 (5) of the Punjab VAT Act,2005, 25% of the tax amount has to be deposited for entertaining an appeal and that the First Appellate Authority has a power to waive off the precondition in **"appropriate cases"**. The condition of deposit of 25% of the tax amount was held to be reasonable and justified.

In view of the above, no further adjudication in the matter is required and the appeal is accordingly dismissed.

(Jaswant Singh)
Judge

02.07.2019.
joshi

(Lalit Batra)
Judge

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**