

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**VATAP 54/2018(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 34 days in refiling the instant appeal, application bearing CM 8813-CII/2018 has been filed seeking condonation of said delay.

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

Similarly there being delay of 6 days in filing the appeal, CM 8814-CII/2018 has been filed seeking condonation of said delay.

The delay of 6 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 2010-11, appellant filed all its quarterly returns. The assessment of the appellant was framed vide order dated 27.2.2015 (A-1) calculating an excess ITC.

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 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 deposit 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