

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-81-2018 (O&M)

Date of Decision: 19.3.2019

M/s Punjab State Warehousing Corporation, Patiala

....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 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 17.8.2017 (Annexure A-5) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as “the Tribunal”) in Appeal No.109 of 2017, for the assessment year 2011-12, 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?

2. 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 2011-12. The Assessing Authority vide order dated 15.9.2015 (Annexure A-1) framed the assessment raising a demand of ₹ 15,38,51,832/- on account of reversal of Input Tax Credit (ITC) accrued 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 ₹ 4,13,31,179/- and ₹ 5,51,08,238/-, 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 appellant also filed an application dated 16.10.2015 (Annexure A-2) for waiver of 25% of the additional demand.

The first Appellate Authority vide order dated 29.2.2016 (Annexure A-3)

required the appellant to deposit 25% of the additional demand relating to tax and interest only. However, the appellant refused to deposit the same and accordingly, the DETC(A) dismissed the said appeal for non-compliance of provisions of Section 62(5) of the Act. Still dissatisfied, the appellant filed an appeal on 22.3.2017 (Annexure A-4) before the Tribunal. The Tribunal vide order dated 17.8.2017 (Annexure A-5) dismissed the said appeal for non-deposit of 25% of the additional demand of tax and interest only, However, the Tribunal granted two months' time to deposit 25% of the additional demand of tax and interest only, failing which the order of the DETC(A) was to remain intact. Hence, the present appeal.

3. 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 interest only and granting two months' time to do so.

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

5. For the assessment year 2011-12, the Assessing Authority vide order dated 15.9.2015 (Annexure A-1) raised a demand of ₹ 15,38,51,832/- 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 protection under Section 62(5) of the Act cannot be granted in each case but only in rare of the rarest cases where the impugned order is void and without jurisdiction and such deposit would frustrate the purposes of

filing of appeal and that the appellant was suffering from any financial incapacity or was under any other hardship on account of poverty or insolvency. Further, the law required the entertainment of appeal only when compliance under Section 62(5) 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 of the tax and interest only as directed by the DETC(A) and the Tribunal, the Tribunal had rightly dismissed the appeal on that account.

6. In the present case, the appellant was required to pre-deposit 25% amount of the additional demand of the tax and interest only as a condition precedent for hearing of the appeal, which was reasonable and justified.

7. 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.

8. A prayer was made by the learned counsel for the appellant to grant some time for pre-deposit. However, in the interest of justice, we grant two months' time from the date of receipt of certified copy of the order to the appellant to make pre-deposit of the amount as directed by the Tribunal. It is directed that in case the appellant deposits 25% amount of the additional demand of the tax and interest within a period of two months from the date of receipt of the certified copy of the order, the appeal shall be heard by the first Appellate Authority on merits in accordance with law.

9. CM-12068-CII-2018 has been filed under Section 5 of the

Limitation Act, 1963 for condonation of 32 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

March 19, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes