

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on 25.02.2020**

**Judgment pronounced on 26.05.2020**

**Writ Appeal No. 211 of 2020**

(Arising out of Order dated 23.10.2019 passed by Hon'ble Single Judge  
in WPT-132 of 2019)

- M/s Shivshankar Solvent Extraction Private Limited R- 2, Vaishali Nagar, Green Paradize, Private Limited , Raipur , District Raipur Chhattisgarh. Through its Director Sudhir Kumar Singhal , S/o Late Shri Ratan Lal Singhal , Aged About 54 Years, R/o Sundarganj Ward , In Front of P.D.P. Company's Street , Dhamtari , District Dhamtari, Chhattisgarh

**----Appellant**

**Versus**

- Commissioner, Commercial Tax Civil Lines, Raipur, District Raipur, Chhattisgarh

**-----Respondent**

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| For Appellant  | : Shri Palash Tiwari, Advocate |
| For Respondent | : None appears                 |

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**Hon'ble Shri PR Ramachandra Menon, Chief Justice &**  
**Hon'ble Shri Justice Parth Prateem Sahu**  
**CAV Judgment**

**Per Parth Prateem Sahu, J.**

1. Heard on IA-1 of 2020, which is an application for condonation of delay in filing the writ appeal. Instant appeal is filed after delay of 64 days. Though we are not satisfied with the reasons stated in the application, but looking to the larger interest of justice, delay in filing the appeal is condoned and the matter is being heard.
2. Challenge in this appeal is to the order dated 23.10.2019 passed in WPT- 132 of 2019, wherein learned Single Judge disposed off the petition granting 30 day's time to the appellant/petitioner-

Company for making mandatory deposit before the Tribunal in Second Appeal Case No.A/229/45/2018/Prantiya and further directed that upon depositing the said mandatory deposit, aforesaid appeal would stand restored and the Tribunal is directed to decide the appeal on its merit.

3. Facts of the case in nutshell are that appellant establishment is registered for the VAT with state having TIN number 22021701545. Suo-Moto proceedings were initiated by Commissioner of Commercial Tax, Raipur under Section 49 (3) of the Chhattisgarh Value Added Tax (VAT). F-form issued by the dealers mentioned in schedule were unregistered, which is liable to be rejected. Notices were issued proposing tax to be levied @ 4% on Rs.8,96,01,955/-. Appellant / Assessee submitted reply to the notice, Commissioner upon considering reply passed order dated 23.02.2017 assessing the liability of tax of Rs.35,84,078/- upon appellant.

4. The order dated 22.02.2017 was put to challenge before Chhattisgarh Commercial Tax Tribunal in appeal case No.A/229/45/2018. This appeal came to be dismissed for non-enclosing the receipt of deposit of 20% of the demand as envisaged under Section 48(4)(ii) of the VAT Act vide order dated 05.03.2019.

5. Order of Tribunal was challenged by the appellant before this Court by filing a Tax Case bearing No.TAXC- 68 of 2019, which was

withdrawn by the appellant as tax case filed in its form was not maintainable. After withdrawing of Tax Case-68 of 2019, appellant filed WPT- 132 of 2019 which came up for hearing before learned Single Judge on 23.10.2019. After considering the grounds raised in tax case as well as in the writ petition, learned Single Judge disposed off the petition by remitting back the case to Tribunal, granting 30 days' time to the appellant / petitioner for making mandatory deposit before the Tribunal and further directed the Tribunal for restoring the appeal and deciding it on merits subject to depositing the mandatory deposit of the amount as envisaged under Section 48(4)(ii) of the VAT Act.

6. Appellant, aggrieved by the above order filed this appeal, mainly, raising the ground that appellant is not in a position to make pre-deposit in terms of Section 48(4)(ii) of VAT Act and learned Single Judge has not considered submissions made by learned counsel for the appellant appearing therein. Appellant further placed reliance in the matter of **Punjab State Power Corporation Limited Vs. State of Punjab and others** reported on 2016 (90) VST 66 and another case of Madhya Pradesh High Court in the matter of **M/s UV Engineers Ltd. Vs Commissioner of Commercial Tax and others** reported in 16 SCC online MP 3421 in support of its pleadings.

7. Learned counsel for the appellant submitted that due to mishap of fire in the appellant's factory, appellant has suffered huge loss and

even loss of business. Appellant is finding it extremely hard to meet the requirements of provisions of VAT particularly of the Section 48(4)(ii). He further submits that looking to the facts and circumstances of the case, as also position of appellant, entire amount of pre-deposit i.e. 20% of amount is to be relaxed and the appeal filed before the Tribunal to be considered for hearing on its merit. It is also pointed out that if the appeal filed before the Tribunal is not heard on merit, appellant will suffer adversely. He also referred the case law pleaded in his appeal.

8. We have heard learned counsel for the appellant, (as well as respondent) and also gone through the record available before us.

9. Annexure-A 2 is the order passed by this court in Tax Case-68/2019 filed by the appellant challenging order of Tribunal. Appellant after arguing for some time, withdrew the Tax Case to challenge the order of Tribunal in an appropriate proceeding before appropriate forum. The said case was filed with delay and learned counsel for appellant appearing therein made submissions that they have somehow managed to arrange required amount for mandatory pre-deposit. It was also recorded by this Court in order of Tax Case-68 of 2019, which reads as under:

“During the course of hearing, it is noted that the petitioner has specifically stated in “Ground-6” of the proceedings that the tribunal ought to have granted an opportunity to the appellant to effect the minimum deposit of 20%. It is stated that the Appellant / Assessee

after striving hard has made necessary arrangement to meet the requirement in this regard. But the question to be considered is whether this “appeal” as such can be held as maintainable, as the proceedings have been filed in terms of Section 55 of the Act, which only provides for a “reference” and the manner in which it is to be pursued.”

**10.** This court has taken note of Ground-6 raised by appellant in that case that some time ought to have been granted to the appellant to comply with requirement of Section 48(4)(ii) of VAT Act. By oral submissions, learned counsel also tried to convince this Court that now the appellant, somehow was able to arrange the amount required for the pre-deposit and as such, by recording submissions of learned counsel for the appellant, Annexure A2 order was passed. Learned Single Judge, while considering writ petition challenging order of the Tribunal dismissing the appeal for not making of pre-deposit of 20% as per requirement of Section 48(4)(ii) of VAT act, has taken note of submissions made by learned counsel for the petitioner in Tax Case-68 of 2019 mentioned in para-3 of order dated 04.09.2019 and has given following reasons for disposing off the petition.

“4. At this juncture, it would be relevant to take note of the observations made by the division bench of this court in tax case no.68/2019 filed by the petitioner assailing the very same order dated 05.03.2019 which is under challenge in the present writ petition. For ready reference paragraph 3 of t said order is produced herein under:

“During the course of hearing, it is noted that the petitioner has specifically stated in “Ground-6” of the proceedings that the tribunal ought to have granted an opportunity to the appellant to effect the minimum deposit of 20%. It is stated that the Appellant / Assessee after striving hard has made necessary arrangement to meet the requirement in this regard. But the question to be considered is whether this “appeal” as such can be held as maintainable, as the proceedings have been filed in terms of Section 55 of the Act, which only provides for a “reference” and the manner in which it is to be pursued.”

5. A plain reading of the aforesaid observation of the division bench makes it clear that in due course of time, the petitioner had made arrangements to meet the requirement as is required under sub-section 4 of section 48 of the act of 2005.

6. Reading paragraph 3 of the order of the division bench passed in tax case Annexure-A2 which was based on the “Ground No.6” of the proceedings of this court is of the view that the petitioner has by now made sufficient arrangement for meeting the pre-condition required for filing an appeal and in a position to make the deposit.

7. Given the said facts and circumstances of the case and also taking into consideration the Punjab and Haryana High Court in the case of Punjab State Power Corporation Limited (supra), learned Single Judge is of the opinion that ends of justice would meet if the matter is remitted back to the tribunal for deciding it on merits by granting 30days time to the petitioner in making mandatory deposits before the tribunal in 2<sup>nd</sup> appeal case No.A/229/45/2018/Prantiya. Subject to the petitioner making

mandatory deposit within 30days from the date of receipt of copy of this order, 2<sup>nd</sup> appeal case no. A/229/45/2018/Prantiya would stand restored and the tribunal shall decide the appeal on its merit.”

11. Looking to the pleadings of appellant in tax case no.68/2019 and in WP 132/2019, particularly ground no.6 wherein the appellant wanted an opportunity to make the default good. The other thing is that this court while passing orders in tax case no.68/2019, has recorded the submission of the learned counsel for the petitioner that by now somehow they managed to arrange funds to comply the provision of mandatory deposit. In the aforementioned facts of the case, appellant will not be permitted to raise the different pleas in different proceedings.

12. The case law relied upon by appellant i.e. **Punjab State Power Corporation** (supra), Hon’ble High Court of Punjab and Haryana observed that the jurisdiction of waiving off partial or entire pre-deposit is not to be exercised in a routine way, or a matter of course, in view of special nature of taxation and revenue laws. It can be exercised only when a strong *prima facie* case is made out. The other case i.e. **M/s. UV Engineers Ltd.** (supra) is on different facts.

13. In view of submissions made by learned counsel for the appellant in Tax Case-68 of 2019 that appellant, after making hard effort, has made necessary arrangements to meet the requirements

of pre-deposit, the case law relied upon by the appellant is of no help.

14. In view of aforementioned discussions, we do not find any tenable ground calling interference in the impugned order. Appeal is dismissed. However, looking to the facts and circumstances, as well as considering that, if time for depositing mandatory deposit in terms of Section 48(4)(ii) of VAT Act is not extended, appellant will remain unheard, which will be prejudicial to the interest of the appellant, we direct that 30 days' time granted by learned Single Judge in para-7 will start from the date of passing of this order. It is made clear that, if the appellant deposits mandatory deposit before the Tribunal within a period of 30 days from passing of this order, then he will be entitled to get benefit of further directions issued by learned Single Judge in para-7 of the impugned order.

15. With aforementioned observation, appeal stands dismissed.

Sd/-  
**(PR Ramachandra Menon)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**