

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 1005 of 2020

Date of decision: January 30, 2020

M/s Sumit Wool Processor

.. Petitioner

v.

The State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sukhdip Singh Brar, Advocate for the petitioner.

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AVNEESH JHINGAN, J.

The writ petition is filed for quashing of order dated 24.10.2019 passed by Value Added Tax Tribunal, Punjab (for short, 'the Tribunal') upholding the order of the Appellate Authority dismissing appeal for failure to make pre-deposit as per Section 62(5) of the Punjab Value Added Tax Act, 2005 (for short, 'the Act'). Further prayer is for direction to the Appellate Authority to hear the appeal without insisting for pre-deposit.

The facts are that the assessment year involved is 2014-15. The petitioner was registered under the Act and was engaged in the manufacture of knitted cloth. An inspection was conducted on 24.8.2015 by the officers of Excise and Taxation Department. No account books were produced at the time of inspection, however, during the proceedings the account books were produced which were not found worth reliance. The Designated Officer

framed best judgment assessment vide order dated 30.12.2015 and raised an additional demand of 1,14,64,680/-. An appeal was filed before the Appellate Authority, accompanied by an application for waiver of pre-deposit as per Section 62(5) of the Act. The Appellate Authority ordered deposit of 10% of the additional demand be deposited. The petitioner filed further appeal before the Tribunal. The same was dismissed in view of the judgment of the Supreme Court in **M/s Tecnimont Pvt. Ltd. v. State of Punjab and others**, 2019(9) JT 303, hence the present petition.

Section 62(5) of the Act is reproduced below:

“SECTION 62. FIRST APPEAL:

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(5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.”

The vires of the said provision was challenged before this Court in bunch of petitions, the main being **Punjab State Power Corporation Limited v. The State of Punjab and others**, 2016(2) R.C.R. (Civil) 559. The vires of the said provision was upheld, however, it was held that the Appellate Authority had inherent power to grant interim protection against pre-deposit for hearing of appeal on merits.

The Supreme Court in **M/s Tecnimont Pvt. Ltd.'s case (supra)** upheld the judgment of this Court with regard to the vires of Section 62(5) of the Act, however, the said judgment was set aside to the extent that the Appellate Authority had inherent power to grant interim protection against pre-deposit. It was held that the Appellate Authority cannot go against the

statutory provision and cannot waive off the requirement of pre-deposit. The relevant portions of the judgment are reproduced below:

“17. In the light of these principles, the High Court rightly held Section 62(5) of the PVAT Act to be legal and valid and the condition of 25% of pre-deposit not to be onerous, harsh, unreasonable and violative of Article 14 of the Constitution of India. Now we turn to question (c) as framed by the High Court and consider whether the conclusions drawn by the High Court while answering said question were correct or not.

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24. If the inherent power the existence of which is specifically acknowledged by provisions such as Section 151 of the CPC and Section 482 of the Cr.P.C. is to be read with the limitation that exercise of such power cannot be undertaken for doing that which is specifically prohibited, same limitation must be read into the scope and width of implied power of an appellate authority under a statute. In any case the principle laid down in Matajog Dobey¹⁸ states with clarity that so long as there is no express inhibition, the implied power can extend to doing all such acts or employing such means as are reasonably necessary for such execution. The reliance on the principle laid down in Kunhi¹ cannot go to the extent, as concluded by the High Court, of enabling the Appellate Authority to override the limitation prescribed by the statute and go against the requirement of

pre-deposit. The High Court was clearly in error in answering question (c).

25. As stated in P. Laxmi Devi¹⁰ and Har Devi Asnani¹¹, in genuine cases of hardship, recourse would still be open to the concerned person. However, it would be completely a different thing to say that the Appellate Authority itself can grant such relief. As stated in Shyam Kishore⁷ any such exercise would make the provision itself unworkable and render the statutory intendment nugatory.

26. In the premises, we accept the conclusions drawn by the High Court as regards questions (a) and (b) are concerned but set aside the view taken by the High Court as regards question (c). The appeals preferred by the assesses are therefore dismissed and those preferred by the State against the decision in respect of question (c) are allowed. No costs.”

Learned counsel for the petitioner argued that the Tribunal erred in dismissing the appeal. It is submitted that the petitioner is in financial crunch, its account has been declared as Non-Performing Asset by the bank and the hypothecated property was put to auction by the bank but could not be sold. The prayer is for setting aside the order of the Tribunal and for direction to the Appellate Authority to hear the appeal without pre-deposit. A feeble attempt was made to argue that the assessment order passed was without granting reasonable opportunity.

It would be pertinent to note at this stage that neither there was any prayer against the assessment order nor the same has been annexed with the writ petition.

The order passed by the Tribunal is in the light of the decision of the Supreme Court in M/s Tecnimont Pvt. Ltd.'s case (supra). As per the said decision, the Appellate Authority has no power to waive the condition of pre-deposit of 25% of the additional demand.

The Supreme Court while dealing with the issue had considered its decision in Anant Mills Co. Ltd. v. State of Gujarat, (1975) 2 SCC 175, wherein it was held as under:

“..... The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We failed to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right.....”

The petitioner had exercised the right of appeal which is subject to the condition. The mere fact that its account has been declared as Non-Performing Asset would not empower the Appellate Authority to waive off pre-deposit.

The petitioner has failed to make out any case for interference under Article 226 of the Constitution of India.

The writ petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

January 30, 2020
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No