106 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-1917-2020
DECIDED ON: FEBRUARY 07, 2020

M/S CITY METALS LUDHIANA

PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

RESPONDENTS

2. CWP-1927-2020

M/S CITY METALS LUDHIANA

PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

RESPONDENTS

3. CWP-1972-2020

M/S CITY METALS LUDHIANA

PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

RESPONDENTS

AND

4. CWP-1991-2020

M/S CITY METALS LUDHIANA

PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

RESPONDENTS

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

Present: Mr. Aman Bansal, Advocate
for the petitioner(s).

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<u>AJAY TEWARI, J (Oral):</u>

By this common order, we shall dispose of the afore-said writs as the same question of law is involved. For convenience the facts are taken from CWP No.1917 of 2020 .

2. This petition has been filed against the order dated 19.11.2019 passed by the VAT Appellate Tribunal, Punjab dismissing the appeal for lack of pre-deposit.

3. The brief facts are that the petitioner had filed returns for the relevant years which were picked up for scrutiny. Since purchases appeared to be bogus, notices were issued and Sh. S.K. Bansal appeared as Consultant. He was confronted with the issues and asked to prove the purchases. He however, failed to produce any record in original except some photocopies of 'kanda parchies', bills and copies of the account statement of the parties. Not only were the kanda parchies photocopies but strangely even in today's day and age they were prepared manually, whereas, it is well known that now the entire business weigh and wages is bye and large computerized.

4. In the circumstances ITC credit was disallowed and additional demand created. The petitioner filed an appeal where the First Appellate Authority initially allowed it to make a pre-deposit of 10% against statutory requirement of 25% which was also not done rather appeal was filed before Tribunal. During the interregnum the judgment of the Supreme Court in

<u>M/s Tecnimont Pvt. Ltd. (Formerly known as Tecnimont ICB Pvt. Ltd.) Vs. State of Punjab and others;</u> 2019 AIR (SC) 4489 was delivered which took away the right of the Appellate Authority to waive the pre-deposit. The appeal was dismissed for want of pre-deposit and that is why the present petition has been filed.

5. At the very outset we indicated to the learned counsel that in case the petitioner is ready to make pre-deposit as per law the matter would be remanded back to the Appellate Authority for decision on merits but after taking instructions from the petitioner, learned counsel states that petitioner is not in a position to make pre-deposit. He prays that this Court should exercise its writ jurisdiction to exempt the petitioner from making pre-deposit. It is also stated that the petitioner has all the original records in the same can be produced now. However, when we asked the learned counsel as to what was the reason for not producing the original documents before the A.O he is not able to give any reason.

6. Learned counsel for the petitioner has urged that the manner in which the A.O. has treated this case is clear because in the tabulation one purchase from M/s Guru Kirpa Steels has been shown but actually no purchase was done at all from M/s Guru Kirpa Steels.

7. The contention raised by learned counsel for the petitioner cannot be accepted in view of the facts on record. No reason has been put forth for not producing the original documents before the A.O. Under Section 13 and 15 of the Act, the onus was on the dealer to prove entitlement for input tax credit. In spite of the opportunities provided the relevant original record was not produced. Photocopy of the kanda parchies, copy of accounts

statement of the parties and bills were produced, the kanda parchies were not found worth reliance.

8. The contention that there was no purchase made from M/s Guru Kirpa Steels Industries is a factual aspect and cannot be gone into at this stage. No such contention was raised in the assessment proceedings. There is nothing annexed with the writ petition to substantiate the said contention .

9. Be that as it may there is another aspect of the matter that the First Appellate Authority had directed only 10% of the demand created as pre-deposit, even that was not complied with. There is a statutory remedy provided against the assessment order i.e. by way of appeal, for appeal there is a pre requisite of pre deposit. It is only in the exceptional circumstances as mentioned by the Apex Court in ***Govt. of A.P. v. P. Laxmi Devi;*** ***2008 (4) SCC 720*** that in the writ jurisdiction interference is to be made.

10. No case is made out to bring the matter within the exception, no interference is warranted, the writ petitions are dismissed.

[AJAY TEWARI]
JUDGE

[AVNEESH JHINGAN]
JUDGE

FEBRUARY 07, 2020
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No