

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

(1) **Civil Writ Petition No. 9717 of 2020 (O&M)**
Date of Decision: 13.10.2020

Technimont Pvt. Ltd., Patiala, Punjab

..... Petitioner

Versus

State of Punjab and others

..... Respondents

AND

(2) **Civil Writ Petition No. 10326 of 2020 (O&M)**

Technimont Pvt. Ltd., Patiala, Punjab

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Jagmohan Bansal, Advocate and
Mr. Chetan Jain, Advocate
for the petitioner(s) (in both cases).

Mr. Pankaj Gupta, Additional Advocate General, Punjab
for the respondents / State.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

1. By this common order, CWP Nos. 9717 & 10326 of 2020, though involving different assessment years yet identical issue are disposed of. The petitioner through instant two Writ Petitions under Article 226 and 227 of the Constitution is seeking quashing of assessment orders dated 15.12.2015, 16.11.2018 & 20.11.2019 for the Assessment Years 2010-11, 2011-12 & 2012-13 respectively passed under Section 29 of the Punjab

Value Added Tax Act, 2005 (for short 'PVAT Act') by Excise and Taxation

Officer and in alternative seeking direction to First Appellate Authority to hear appeal without insisting for pre-deposit as required under Section 62(5) of the PVAT Act.

2. The petitioner is registered with Punjab VAT Authorities-Respondent under PVAT Act, 2005 and Central Sales Tax Act, 1956 (for short 'CST Act'). The petitioner in its ordinary course of business entered into a contract dated 12.5.2010 with NFL, Nangal for the supply of material and equipment required for the modernization and revamping of their chemical fertilizers plant. As per work order, the petitioner was further supposed to render services of designing, engineering and erection/commissioning of the plant. The supply of goods and services was spread over different assessment years. As per terms and conditions of contract, the petitioner was supposed to buy goods from suppliers approved by NFL and property in goods had to transfer by way of endorsement/transfer of title, in the course of Inter State Trade or Commerce. The buyer i.e. NFL was supposed to supply 'C' Form for concessional rate of tax, after obtaining them from ETO-Nangal / VAT Authorities.

3. The petitioner as per contract during 2010-11, 2011-12 and 2012-13 procured materials/equipment from vendors specified/approved by NFL. As the said goods were always meant for 'M/s. NFL', the selling party, wherever situated, while raising the sale invoices mentioned 'NFL' as consignee with the petitioner as the purchaser. The documents pertaining to each and every consignment were endorsed in favour of 'M/s. NFL' on the commencement of transportation of the specified goods. The transporters

‘Material Receipt Document’.

4. As per Section 3(b) of the CST Act, a sale or purchase is deemed to take place in the course of Inter-State trade or commerce if is effected by a transfer of documents of title to the goods during their movement from one State to another State. To establish the sale inter-state sale, in terms of different provisions of CST Act the original seller furnishes Form ‘E-1’ and subsequent buyer supplies Form ‘C’ which are obtained from jurisdictional VAT Authorities. In the case in hand, the petitioner obtained Form ‘E-1’ from its seller and ‘C’ from NFL who in turn had obtained from VAT Authorities-Respondent.

5. The respondent during all the years in question continued to issue Form ‘C’ and petitioner availed benefit of deemed inter-state sale, however the Assessing Authority at a later point of time formed an opinion that sale effected by petitioner is not inter-state sale, thus they are liable to pay VAT as applicable to sale within State of Punjab.

6. The Assessing Authority after issuing notice under Section 29 of PVAT Act vide order dated 15.12.2015, 16.11.2018 and 20.11.2019 framed assessment for the year 2010-11, 2011-12 and 2012-13 respectively. The Assessing Authority formed an opinion that ownership of goods did not transfer to NFL till completion of the project and petitioner remained owner of goods till their utilisation. The property in goods did not transfer to NFL though concededly invoices were issued to transfer the title of goods while in movement. The Assessing Authority for all the years in question, cumulatively taken, created additional demand of Rs. 20.22 Crore towards tax, Rs. 24.54 Crore towards interest and Rs. 40.45 Crore towards penalty.

the Appellant makes pre-deposit of 25% of additional demand.

7. Mr. Bansal, Counsel for the petitioner contended that to hold a sale as inter-state sale, three conditions need to be satisfied namely (i) there should be movement of goods (ii) sale is effected by transfer of documents of title to the goods and (iii) movement of goods must be from one State to another and in the case of petitioner all the three conditions are satisfied. The respondent just to confirm the demand has mis-read terms and conditions of the contract which categorically require the petitioner to transfer title of goods by way of transfer of documents during the course of movement of goods. He further vehemently contended that Form 'C' in respect of each transaction was issued by respondent which till date has not been cancelled, thus petitioner cannot be fastened with liability of VAT. In support of his contention he relied upon judgments of this court in the case of ***State of Punjab Vs. Dada Motor Garage MANU/PH/10/2009*** and ***Rions India Vs. State of Punjab MANU/PH/3598/2013***.

Mr. Bansal though claimed that impugned orders are contrary to law yet offered to deposit Rs. 5 Crore which comes to 25% of tax demanded as pre-deposit and prayed that First Appellate Authority may be directed to hear appeals on merits which stand dismissed on the ground of non-compliance of requirement of pre-deposit.

8. Mr. Pankaj Gupta, Ld. State Counsel, fairly contended that this court in exercise of power conferred by Article 226 of Constitution may waive or reduce condition of pre-deposit in deserving cases. On the question of quashing of impugned assessment orders, he contended that petitioner had already filed appeals before Appellate Authority assailing assessment orders, thus petitioner cannot challenge same order before this Hon'ble

Court. On the question of alternative prayer of the petitioner, Mr. Gupta contended that court may show indulgence if there is prime facie case on merits or financial hardship is proved whereas in the case of petitioner no financial hardship is even pleaded except oral plea of COVID-19. The judgments cited by petitioner are not applicable because it was a Turnkey Project so property was transferred on completion of project.

9. Having heard arguments of both sides and scrutinised record of the case, we are not inclined to allow prayer of the petitioner to quash impugned assessment orders, however we find ourselves in agreement with petitioner on the question of reduction of amount of pre-deposit.

10. The petitioner did not make only a single transaction, but multiple transactions were made during different assessment years. The respondent-consignee issued Form 'C' and authorities of seller issued Forms 'E-1' which at no stage were either discontinued or subsequently cancelled. Thus, the respondent-Department accepted transactions in question as inter-state though vide impugned orders has declared intra-state. The petitioner has entered into contract with NFL, a State owned company so there seems no manipulation of terms and conditions in the contract. To declare transactions in question as 'inter-state', there is no dispute with respect to two out of three conditions namely (i) the goods in question moved from one state to another state and (ii) movement concluded in State of Punjab i.e. other than State from which goods started. The dispute is confined to transfer of title of goods. As per terms and conditions of the contract as reproduced in the impugned assessment order and pointed out by counsel for the petitioner, the property in goods was transferred by way of transfer

of title of goods and they issued Form 'C' to NFL still petitioner continued to be owner of goods till completion of the Turnkey Project.

11. On perusal of terms and conditions of contract, documents submitted by petitioner including Form 'C' and judgments cited, we are of the opinion that petitioner has *prime facie* case on merits. The respondent issued Form 'C' for all the years in question and in case of doubt must have stopped as well initiate appropriate steps instead of waiting for framing assessment at fag end of limitation period. It would be harsh if petitioner is required to deposit 25% of tax, interest and penalty. Penalty imposed is 200% and it is a case of interpretation and not fraud.

Keeping in mind that petitioner has *prime facie* case on merits, we **direct** the petitioner to make pre-deposit of 25% of tax and further some amount towards interest, which would make a total deposit Rs. 7.5 Crore towards the condition of pre-deposit for hearing of the three appeals for assessment years concerned. We make it clear that petitioner shall make deposit of Rs. 7.5 Crore within one month from the date of receipt of certified copy of this order and it would be in respect of Assessment years 2010-11, 2011-12 and 2012-13. On furnishing of proof of deposit, First Appellate Authority i.e. Deputy Excise and Taxation Commissioner (Appeals) shall hear and decide appeals preferably within three (03) months.

Both the petitions are **disposed of** accordingly.

(JASWANT SINGH)
JUDGE

October 13, 2020
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No