

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(Proceedings through Video Conferencing)

CWP No.17975 of 2020

Date of Decision: 02.11.2020

M/s Kelmar (India) Exports, 28
Defence Colony, B.R.S. Nagar, Ludhiana,
Punjab through its proprietor Kamleshwar Sharma
age about 74 years s/o late Sh. Gokaleshwar SharmaPetitioner

Versus

State of Punjab and othersRespondents

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr. Aman Bansal, Advocate
for the petitioner.

Mr. Pankaj Gupta, Addl. A.G., Punjab
for the respondents.

DAYA CHAUDHARY, J.

Petitioner firm i.e M/s Kelmar (India) Exports is registered under Punjab Value Added Tax Act, 2005 (here-in-after called as 'PVAT Act') and Central Sales Tax Act, 1956 (here-in-after called as 'CST Act'). The firm deals in the trade of Iron and Steel goods. Notice for assessment under Section 29(2) of PVAT Act was issued by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II. The authorized representative of the petitioner firm appeared before the concerned authority and produced the invoices as well as other relevant documents. Respondent No.3 passed the impugned order dated 29.06.2016 (Annexure P-2) and created a demand of Rs.27,76,882/-, which is under challenge in the present petition.

Aggrieved by said order, the petitioner firm filed first appeal before the Deputy Excise and Taxation Commissioner (Admin), Ludhiana

Division, Ludhiana, Punjab (respondent No.2) along with an application for exemption of prior deposit of 25%. A direction was issued by respondent No.2 to the petitioner to deposit 10% of the total demand of Rs.27,76,882/-, which comes to Rs.2,77,688/- by relaxing pre-condition of deposit of 25%. The said amount was to be deposited by 21.03.2017. However, in spite of directions issued by respondent No.2, the petitioner did not deposit the said amount and ultimately, the appeal was dismissed vide Order dated 21.03.2017. Being aggrieved by said order, the petitioner filed an appeal before the Punjab VAT Tribunal, which was also dismissed on 05.11.2019 on the ground of non-deposit of 25% of the total demand. Thereafter, the petitioner has approached this Court by way of filing the present petition for quashing of impugned order dated 05.11.2019 (Annexure P-4) passed by the Punjab VAT Tribunal as well as order dated 21.03.2017 (Annexure P-3) passed by respondent No.2. A prayer has also been made for issuance of a writ in the nature of *mandamus* directing respondent No.2 to adjudicate the appeal on merits without insisting upon prior deposit of 25% as the petitioner is having a good case on merits and the firm is suffering a huge loss in business and is not in a position to pay the said amount of 25%.

Learned counsel for the petitioner also submits that the submissions made by the petitioner firm were not considered as there was a financial problem in depositing 10%. Learned counsel also submits that there is no requirement of pre-deposit, in case, there is merit in the appeal. The amount of pre-deposit could have been reduced.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case ***Civil Appeal No.7358 of 2019*** titled as ***M/s Tecnimont Pvt. Ltd. Vs State of Punjab and others*** decided on

18.09.2019 as well as judgment of this Court in case **CWP No.33146 of 2019** titled as **M/s Chadha Super Cars Pvt. Limited, Ludhiana vs State of Punjab and others** decided on **28.11.2019** in support of his arguments.

Learned counsel for the respondents-State Mr.Pankaj Gupta, Additional Advocate General (Punjab) has opposed the submissions made by learned counsel for the petitioner by submitting that pre-deposit of 25% is a mandatory requirement as per provisions of Section 62(5) of the PVAT Act. He also submits that nothing is mentioned in the petition as well as in the appeals that it was a case of financial hardship. Mr. Gupta has also relied upon the judgment of Hon'ble the Apex Court in case **Tecnimont Pvt. Ltd. Vs State of Punjab and others 2019 SCC OnLine SC 1228** as well as judgment of this Court in case **CWP No.16751 of 2011** titled as **Larsen & Toubro Limited vs The State of Haryana and others** decided on **19.01.2012**, wherein, it has been held that the appellate authority has no power to waive off the pre-deposit amount. Learned State counsel also submits that the condition of 25% pre-deposit for hearing of the appeal is not harsh, unreasonable and arbitrary.

Heard the arguments of learned counsel for the parties. We have also perused the impugned orders as well as other documents on the file.

Admittedly, the first appeal was filed by the petitioner along with an application for waiving off pre-deposit amount of 25%. The appeal was dismissed by the Deputy Excise and Taxation Commissioner (Admin), Ludhiana Division, Ludhiana on the ground that the petitioner was directed to deposit 10% of the total demand instead of 25% under Section 62(5) of the PVAT Act by 21.03.2017. However, the petitioner did not comply with

the directions. Thereafter, the VAT Appellate Tribunal also dismissed the appeal on the ground of non-depositing pre-deposit of 25% of the total demand. It was also directed to the petitioner to deposit 10% of the total demand within a period of two months but still that amount was not deposited. It was observed that the petitioner was having remedy under Article 226 of the Constitution of India for seeking any relaxation or waiving off the amount for hearing of the appeal. No doubt, any specific ground has not been taken for showing the financial hardship but it has been mentioned in second prayer that due to financial loss in business, the petitioner could not deposit the amount of 25% as pre-deposit. During the course of arguments, it has been submitted by learned counsel for the petitioner that the petitioner would deposit 10% of the total demand as directed by the Appellate Authority, in case, his appeal is heard on merits. Although, as per provisions of Section 62(5) of the PVAT Act, no appeal can be entertained unless the same is accompanied by satisfactory proof of the prior minimum payment of twenty-five percent of the total amount of additional demand created, penalty and interest, if any. It is not disputed that the Appellate Authority directed the petitioner to deposit 10% instead of 25% as pre-deposit for hearing of the appeal but the petitioner could not deposit the said amount as well. Now the petitioner is ready to deposit 10% of the total demand so that his appeal can be heard on merit.

Undisputedly, no relaxation can be given in view of ratio of judgment rendered in *M/s Tecnimont Pvt. Ltd.* case (supra) but the petitioner has to make out a case for financial hardship. Accordingly, by considering the interest of justice and also the fact that the petitioner is ready to deposit 10% as pre-deposit instead of 25% of the total demand

before the Appellate Authority within some reasonable period for deciding his appeal on merits, hence and as such, by exercising the inherent powers as provided under Section 226 of the Constitution of India and keeping in view the peculiar facts and circumstances of the case and by considering the financial hardship of the petitioner, we dispose of the petition by directing the petitioner to file an appeal within a period of two weeks from the date of receipt of certified copy of the order and respondent No.2 i.e the Deputy Excise and Taxation Commissioner (Admin), Ludhiana Division, Ludhiana is directed to entertain the appeal and to decide the same in accordance with law within a period of four weeks thereafter on depositing of 10% of the total demand.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

02.11.2020
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No