IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Writ Petition No.4810 of 2021
Date of Decision: March 1st, 2021

M/s Punjab Agro Food Grains Corporation Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Umang Goyal, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Senior Deputy Advocate General, Punjab.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Petitioner-M/s Punjab Agro Food Grains Corporation Ltd. (hereinafter referred to as 'Corporation') has approached this Court with a prayer for issuance of writ of certiorari for quashing the order dated 19.03.2015 (Annexure P-2) passed by Designated Officer-cum-Assessing Authority, Jalandhar-1-respondent No.3 framing the assessment for the year 2013-14 and concluding that the total tax due comes to ₹2,49,14,396.00 being violative of and in contravention of the provisions of the Punjab Value Added Tax Act, 2005. Prayer has also been made for quashing the order dated 24.11.2015 (Annexure P-4) passed by the First Appellate Authority under the Punjab VAT Act, 2005 and the order dated 28.09.2020 (Annexure P-6) passed by the Punjab VAT Tribunal dismissing the appeals filed by the petitioner on the ground of non-compliance of Section 62 (5) of the Punjab VAT Act, which mandates the deposit of 25% of the total amount of tax, penalty and interest, if any, prior to entertaining the appeal. It has further been prayed that the mandamus be issued directing the First Appellate Authority to consider the appeal of the petitioner and decide the same on merits without insisting for pre-deposit of 25% of the additional demand as per the order dated 19.03.2015 (Annexure P-2).

2. It is the contention of learned counsel for the petitioner with reference to the balance sheet that the petitioner-Corporation is suffering losses and, therefore, is unable to comply with the provisions of Section 62 (5) of the Punjab VAT Act, 2005. He asserts that the appeal may be heard on merits without insisting for the pre-deposit of 25% of the additional demand as per the impugned order dated 19.03.2015 (Annexure P-15) keeping in view the hardship being faced by the petitioner. Counsel has also asserted that although the Hon'ble Supreme Court in the case of ***M/s Technimont Pvt. Ltd. Versus State of Punjab and others (2019)69 GSTR 193 SC*** holds that the Appellate Authority and the Tribunal does not have the jurisdiction to waive the minimum deposit of 25% of the total tax liability provided under Section 62 (5) of the Punjab VAT Act but in the case of extreme hardship, this Court can exercise its powers under Article 226 of the Constitution of India. He, therefore, prays for the said relief in the facts and circumstances of the case.

3. Having considered the submissions made by the counsel for the petitioner and on going through the records of the case, we do not find the present case to be of such extreme hardship, where this Court should exercise its extraordinary writ jurisdiction to interfere and waive the mandatory requirement of Section 62 (5) of the Punjab VAT Act. The mandatory provisions under Section 62 (5) of the Punjab VAT Act need to be complied with, especially in the light of the fact that the *vires* of the

said provisions have been upheld by the Supreme Court in M/s Technimont Pvt. Ltd.'s case (supra) by observing as follows:-

> *"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."*

4. In the light of the above, the petitioner having not complied with the mandatory requirement of the statute, cannot assert and challenge the order dated 24.11.2015 (Annexure P-4) passed by the First Appellate Authority and the order dated 28.09.2020 (Annexure P-6) passed by the Punjab VAT Tribunal as not sustainable which would require setting aside of the same by pressing into service a writ of certiorari as prayed for.

5. In the light of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

March 1st, 2021 **(ASHOK KUMAR VERMA)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No