IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118 **CWP-10168-2021(O&M)**
Date of Decision : 28.6.2021

Bharat Sanchar Nigam Limited and another ...Petitioners

Versus

State of Punjab and others ...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR.JUSTICE VIKAS BAHL
***

Present : Mr.Sanjeev Kaushik, Advocate,
for the petitioners.

***

AJAY TEWARI, J. (Oral)

1. This petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 17.3.2021/24.3.2021 (Annexure P-21) whereby it has refused to accept an appeal in view of the non-deposit of mandatory 25% of the assessed amount.

2. The claim of the petitioner is that the stock transfer from one unit to different SSAs (units of BSNL) does not amount to sale, however, the authority described stock transfer as sale on the ground that different SSAs have different registration certificate and as such they have separate identity.

3. Notice of motion.

4. On advance notice, Mr. Pankaj Gupta, Addl. A.G., Punjab has entered appearance on behalf of the respondents and has argued that the provision of exemption of mandatory deposit has been accepted by the Supreme Court in the judgment passed in *M/s Tecnimont Pvt. Ltd.*

(Formerly known as Tecnimont ICB Private Limited) vs. State of Punjab and others reported as *2019 SCC Online SC 1228* only in extreme cases. As per him, extreme cases can be where there is financial incapacity of the assessee or where the order is palpably without jurisdiction. On the other hand, learned counsel for the petitioner states that one of the reasons for imposing pre-deposit is that some money comes to the kitty of the revenue because otherwise some assesses may keep on filing appeal without making payment and ultimately it would become difficult for the revenue to recover the amount. As per him, the petitioner is a Government of India enterprise and even if the appeal is heard without pre-deposit there is no question of loss being caused to the revenue on account of non-payment and therefore, prays that the entire amount should be exempted. In our opinion, the argument of both the learned counsel are too extreme. No doubt, mandatory pre-deposit cannot be exempted lightly but on the other hand, where the situation is of money going from the left pocket into the right pocket, the insistence of complete deposit may also not be justified.

5. In the circumstances, we dispose of this writ petition with a direction that in case the petitioner deposits 15% of the demanded amount the respondent No.2 will proceed to decide the appeal in accordance with law and order dated 17.3.2021 (Annexure P-21) is quashed.

6. Learned counsel for the petitioner further states that the petitioner will deposit the money within one month but then respondent No.2 should also be directed to decide the same within any reasonable time.

7. We find the argument of the learned counsel for the petitioner well merited and consequently, direct the petitioner to deposit the amount within one month from the date of receipt of the certified copy of this order

and then respondent No.2 is further directed to the decide the appeal within two months further, in accordance with law.

8. Since the main case has been decided, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

28.6.2021
anuradha

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No