IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13508-2021.
Date of Decision:-26.07.2021.

Punjab State Power Corporation Limited

.....Petitioner

Versus

State of Punjab and others

......Respondents

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

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

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AJAY TEWARI, J. (Oral)

By this petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the order of the Appellate Authority declining to entertain the appeal without the pre-deposit.

2.) The primary ground raised by learned counsel for the petitioner is that the petitioner is also a Government Corporation and in any case, penalty could not be levied upon it and, consequently, has prayed that it should be exempted from making the pre-deposit. It is further averred that the petitioner has financial exigencies and is incurring substantial losses every year.

3.) Notice of motion.

4.) On advance notice, Mr. Pankaj Gupta, Additional Advocate

General, Punjab has entered appearance on behalf of the respondents.

5.) In a similar case i.e., ***CWP-10168-2021*** titled as ***"Bharat Sanchar Nigam Limited and another Vs. State of Punjab and others",*** identical issues were there. The Bharat Sanchar Nigam Limited was also running into losses. It was also disputing its liability. In that case, this Court held as follows:-

> *"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.*
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> *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."*

6.) In the light of the above, this petition is also disposed of in same terms and it is directed that in case the petitioner deposits the amount within one month from the date of receipt of the certified copy this order, then the Appellate Authority shall decide the appeal within two months further, in accordance with law.

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

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

July 26, 2021.
sandeep
Whether speaking/reasoned:- Yes / No
Whether Reportable:- Yes / No.