IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RA-CW-226-2021 in/and
CWP-1735-2021(O&M)
Decided on : 04.02.2022

Bharat Sanchar Nigam Limited and another ....Petitioners

VS

State of Punjab and others ....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

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

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AJAY TEWARI, J.(Oral)

1. This application has been filed by the applicants-petitioners under Order 47 Rule 1 read with Section 151 Code of Civil Procedure for review of Judgment dated 27.01.2021 (Annexure R-1).

2. Notice of the application.

3. On advance notice, Mr. Gaurav Dhuriwala, Sr. DAG, Punjab appears and accepts notice of the application on behalf of the non-applicant/State and states that no reply is required to be filed.

4. Learned counsel for the applicants-petitioners states that while dismissing the writ petition, this Court did not consider that part of the judgment of "*Tecnimont ICB Private Limited vs. State of Punjab and others reported as 2019 SCC Online SC 1228"* wherein it has been specifically held that the Tribunal has no power to relax the mandatory

condition of pre-deposit but in writ jurisdiction, the High Court would have such power. He further points out that in a similar case involving same parties in CWP-10168-2021 decided on 28.06.2021 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 <u>(Formerly known as Tecnimont ICB Private Limited) vs. State of Punjab and others</u> reported as <u>2019 SCC Online SC 1228</u> 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. He further states that in this case this Court had granted limited relief and had directed the respondents to decide the appeal in case the petitioner deposits 15% of the demanded amount.

6. Learned State Counsel is not in a position to deny that differential order has been passed.

7. In the circumstances, we dispose of the review application by recalling the judgment dated 27.1.2021 and direct that the instant petition would be disposed of in the same terms as in **CWP-10168-2021** titled as "**Bharat Sanchar Nigam Limited and another Versus State of Punjab and others**"

(AJAY TEWARI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

February 04, 2022
anuradha

Whether speaking/reasoned - Yes
Whether reportable - No