IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2160 of 2021 (O&M)
Date of decision: 08.05.2023

M/s Larsen and Toubro Ltd.

.....Petitioner

Versus

Union Territory of Chandigarh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amrinder Singh, Advocate,
for the petitioner.

Mr. Ajay Jagga, Advocate,
for the respondent-U.T., Chandigarh.

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Ritu Bahri, J.

Petitioner is seeking quashing of the order dated 21.01.2021 (Annexure P-14) passed by respondent No.2-Deputy Excise & Taxation Commissioner (Appeals) and the demand notice dated 22.01.2021 (Annexure P-15). Further prayer has been made for issuance of direction to respondent No.2 to hear the statutory appeal filed by the petitioner, without insisting for pre-deposit in terms of the amended sub section (5) of Section 62 of the Punjab VAT Act, 2005 (for short 'the Act'). The petitioner is also seeking direction to the respondents to constitute the Appellate Tribunal in accordance with the directions of Hon'ble the Supreme Court in ***Madras Bar Association vs. Union of India,*** 2020 SCC OnLine SC 962.

Brief facts of the case are that the assessment proceedings with respect to the financial year 2010-11 were finalized on 01.03.2013 (Annexure P-2) and additional demand of Rs.7,15,42,823/- was created. Against the said order, the petitioner-assessee filed its first appeal before the Deputy Excise and Taxation Commissioner (Appeals)-respondent No.2 without making the pre-deposit. As per petitioner, along with the said appeal, an application (Annexure P-3) seeking waiver of additional pre-deposit was filed in view of the tax already paid, which was sufficient for the purpose of Section 62 (5) of the Act, as applicable at the time of filing the appeal. Consequently, Section 62 (5) of the Act was amended vide notification dated 28.07.2015 (Annexure P-4). Petitioner received a letter dated 04.09.2015 (Annexure P-5) from the Excise & Taxation Officer (Ward-III) asking it (petitioner) to deposit the amount of 25% of the additional demand created by the Assessing Officer in order to hear the appeal of the petitioner. In response to the said letter, petitioner made its additional submissions dated 16.09.2015 (Annexure P-7) vide letter dated 18.09.2015 (Annexure P-6). However, vide order dated 26.05.2020 (Annexure P-8), respondent No.2 dismissed the appeal of the petitioner for want of 25% pre-deposit of the additional demand in accordance with the amended provisions of Section 62 (5) of the Act.

Initially, the petitioner challenged the said order before this Court by filing CWP No.12917 of 2020, which was disposed of vide order dated 09.11.2020 (Annexure P-12) by giving direction to the Appellate Authority to pass a fresh order keeping in view the provisions of amended Section 62 (5) of the Act. Thereafter, on account of COVID-19 situation, the appeal of the petitioner could not be disposed of and an application (CM-13160-CWP-2020) for extension of time was made before this Court, which was allowed vide order dated 15.12.2020 (Annexure P-13) and time for complying with the directions of this Court was extended till 01.02.2021.

Thereafter, respondent No.2, vide order dated 21.01.2021 (Annexure P-14) dismissed the application filed by the petitioner for waiver of pre-deposit of 25% under Section 62 (5) of the Act. While passing the said order, it was observed as under:-

> "(i) Additional demand is Rs.7,15,42,823/-, as per impugned assessment order dated 01.03.2013.
>
> (ii) The appellant, admittedly, has not made any payment at the time of filing of appeal or even after that.
>
> (iii) The appellant was given opportunities on 14.12.2020 & 22.12.2020 to deposit 25% of the additional demand, towards pre-deposit, but, the appellant refused to make any payment.
>
> (iv) No payments were made by the appellant after the date of impugned assessment order dated 01.03.2013."

The said order is being challenged by the petitioner by way of present petition.

Upon notice, written statement dated 20.10.2022 on behalf of the respondents has been filed, stating therein that the petitioner has an alternative remedy to file the second appeal before the VAT Tribunal, U.T., Chandigarh, as per Section 63 of the PVAT Act, 2005, as the said Tribunal is functioning. On merits, it is stated that the petitioner was given proper opportunities to pre-deposit the amount on 14.12.2020 and 22.12.2020. It was stated that the impugned order dated 21.01.2021 (Annexure P-14) has been rightly passed after complying with the directions given by this Court vide order dated 09.11.2020. The present case is not a fit case to bypass the alternative remedy provided under the Act. Reference has been made to a decision given by Hon'ble the Supreme Court in ***The State of Maharashtra vs. Greatship (India) Ltd.,*** Civil Appeal No.4956 of 2022 (decided on

20.09.2022) and ***M/s Technimont Pvt. Ltd. vs. State of Punjab and others,*** Civil Appeal No.7358 of 2019, wherein it has been held that the condition of pre-deposit of 25% of additional demand is mandatory in nature before filing of appeal under Section 62 (5) of the Punjab VAT Act. It is further stated that in the present case, the Appellate Authority has passed the order in compliance with the orders and direction given by this Court, therefore, the decision given in ***Embassy Property Developments P. Ltd. vs. State of Karnataka,*** 2019 SCC OnLine SC 1542 is not applicable to the facts of the present case. A further stand is taken that the present case is of regular assessment and not a case of inspection and provisional assessment. Finally, it has been prayed that as per the judgments passed in ***M/s Technimont Pvt. Ltd.'s*** case (supra), the present petition is liable to be dismissed.

This Court in ***A.K. Sinha vs. Canara Bank and others,*** CWP No.17779 of 2017 (decided on 18.07.2019) had held that if, an amendment is made during the pendency of the application, which was decided after the amendment, then the amended provisions of the Act would apply because unamended provisions would go in oblivion and would not be applicable.

Heard, learned counsel for the parties.

In the present case, while issuing notice of motion on 29.01.2021, interim directions were given not to take coercive steps to make the recovery qua the additional demand for the assessment year 2010-2011. After filing of the written statement, the respondents filed an application i.e. CM-1819-CWP-2021 seeking vacation of the interim stay granted by this Court vide order dated 29.01.2021. Along with the said application, the respondents had placed on record copies of the attachment orders dated 28.01.2021 (Annexure A-2 colly.), whereby bank accounts of the petitioner had been attached.

Reference can now be made to a judgment passed in ***A.K. Sinha vs. Canara Bank and others,*** CWP No.17779 of 2017 (decided on 18.07.2019), whereby Division Bench of this Court had examined the case of pre-deposit at the time of filing of appeal before the Debts Recovery Tribunal (DRT). In that case, an application had been filed before the DRT. As per Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the appellant was to deposited 75% of the amount as determined by the Tribunal under Section 19 of the DRT Act. During the pendency of the application, the provision of the Act was amended by Section 35 of Act No.44 of 2016, whereby pre-deposit was reduced from 75% to 50%. The Division Bench of this Court held that if, during the pendency of application for waiver of pre-deposit, the amendment has come, then the amended provisions would apply and DRT could not pass an order ignoring the amended provisions. It was further observed that as per pre-amended provisions, 75% of the amount had to be deposited at the time of filing of the appeal. After the amendment, Appellate Tribunal, for the reasons to be recorded in writing, can reduce the amount, which shall not be less than 25% of the total amount due. The complete waiver of pre-deposit was done away with after the amendment. In this backdrop, the Division Bench held that after the amendment, the DRT has no jurisdiction to waive off the pre-deposit while deciding the appeal.

In the facts of the present case, wording of Section 62 (5) of the Act, prior to its amendment, was as under:-

> "No appeal shall be entertained unless such appeal is accompanied by satisfactory proof of the prior minimum payment of 25% of the amount of tax/interest/penalty, if any."

The aforesaid section was amended w.e.f. 28.07.2015, which now reads as under:-

> "No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty five per cent of the total amount of additional demand and interest, if any."

Learned counsel for the appellant has argued that as per un-amended provisions of the Act, the petitioner was required to deposit 25% of the amount of tax/interest/penalty at the time of filing of the appeal. With respect to the tax due, without additional demand, the petitioner has already deposited 76%. Therefore, now 25% additional demand cannot be raised keeping in view that amendment in Section 62 (5) came into force w.e.f. 28.07.2015 when its application was pending before the authority. This very question has been considered by this Court in ***A.K. Sinha's*** case (supra), whereby this Court had held that if, any amendment is made during the pendency of the appeal, the unamended provisions cannot be applied.

In the present case as well, the appeal filed by the petitioner before the Appellate Authority could only be entertained, if it had deposited 25% of the additional demand as per amended provisions of Section 62 (5) of the Act. The application for waiver of pre-deposit was pending when the amendment came into force. The Appellate Authority was bound by the amendment as the application was to be decided in accordance with law. Hence, the conditions of pre-deposits, in any case, are procedural and the petitioner cannot claim that its right to appeal has to be considered as per the un-amended provisions of the Act. The judgment passed by Hon'ble the Supreme Court in ***M/s Technimont Pvt. Ltd.'s*** case (supra) is very clear that right of appeal is a right granted by the statute and whatever conditions are imposed, the assessee is bound by those.

In the present case, the amendment came into force w.e.f.

28.07.2015. At that time, application seeking waiver of the pre-deposit was pending. In this backdrop, the jurisdiction of the Appellate Authority to completely waive off the conditions of pre-deposit, as per un-amended provisions of Section 62 (5) of the Act, was not existing. Therefore, no ground is made out to interfere in the impugned order as no illegality, much less perversity, has been found therein.

Resultantly, finding no merits, the present petition is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

08.05.2023
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No