

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CWP-2650-2022

M/s Shiva TexFabs Ltd.

....Petitioner

vs.

State of Punjab and ors.

...Respondents

2. CWP-2651-2022

M/s Shiva TexFabs Ltd.

....Petitioner

vs.

State of Punjab and ors.

...Respondents

3. CWP-2653-2022

M/s Shiva TexFabs Ltd.

....Petitioner

vs.

State of Punjab and ors.

...Respondents

Date of decision:- 03.10.2023

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

Present: Mr. Amar Partap Singh, Advocate
for the petitioner

Mr. Saurabh Kapoor, Addl.A.G. Punjab
for the respondent-State

Ritu Bahri, J.

1. This order shall dispose of the above three petitions wherein the same firm is challenging assessment order dated 25.06.2018 (P-1), order dated 18.07.2019 (P-2) and order dated 03.11.2020 (P-4) (CWP-2650-2022), 26.06.2018 (P-1), order dated 18.07.2019 (P-2), 03.11.2020 (P-4) (CWP-2651-2022) 27.06.2018 (P-1), order dated 18.07.2019 (P-2) & 03.11.2020 (P-4) (2653-2022) for the assessment year 2015-16. However, the facts are being taken from CWP No. 2650-2023.

2. The facts in brief are that petitioner is engaged in the business of manufacture and sale yarn manufactured from pet bottle. The Petitioner is registered as a dealer with TIN no. 03061019393 under Punjab Value Added Tax Act, 2005 (for short 'Act 2005').

3. The business premises of the Petitioner was inspected by the office of Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala along with the officers of EIU Wing. The Petitioner produced its books of accounts before the office of EIU Wing and the Wing made certain observations on the basis of documents placed on record. The observations made by the EIU Wing were placed on the file and respondent no. 2 was directed to frame the final assessment on the Petitioner on the basis of the summary report and the returns filed by the Petitioner.

4. Thereafter, assessment proceedings were initiated under Section 29 (3) of the Act 2005 read with Section 9(2) of the Central Sales Tax Act, 1956 (for short 'Act 1956') by issuing a show cause notice. The Petitioner appeared before Respondent no. 2 and furnished all the necessary documents and information. Respondent no. 2 passed impugned assessment order dated 25.6.2018 (Annexure P-1) for the assessment year 2013-14 and held that the Petitioner has

made ingenuine purchases from some firms. The Petitioner has submitted sale invoices and documents for movement of goods pertaining to movement of goods pertaining to following firms, M/s Nayyer Steel, M/s Abhishek Trading Co., M/s Naresh Aggarwal Agencies, M/s Shree Ganesh Trading Co., M/s Anand Udyog and M/s Kabira Petro Products Pvt Ltd. The purchases made from these firms were verified from the TINXYS and found to be genuine hence the input tax credit ("ITC") claimed against the purchases was allowed. However, the ITC claimed by the petitioner on the purchases made from below mentioned firms could not be verified hence the ITC claimed by the Petitioner was disallowed amounting to Rs.51,05,411/- on proportionate basis. However, penalty and interest was not imposed on the petitioner and the penalty and interest proceedings were kept in abeyance.

- (i) M/s Guru Kirpa - Rs.13,49,282/-
- (ii) M/s Balaji Sales Corp. - Rs.71,031/-
- (iii) M/s Shri Ganesh Traders - Rs.19,85,842/-
- (iv) M/s Metplast - Rs.4,10,596/-
- (v) M/s Chinmastika Enterprises- Rs.12,88,660/-

5. Aggrieved by the impugned order dated 25.6.2018, the Petitioner filed Appeal No. 117/2019-20/Ldh before Deputy Excise and Taxation Commissioner (Appeal), Ludhiana Division, Ludhiana (Respondent no. 3) and respondent no. 3 ordered the Petitioner to deposit 15% of the total demand for fulfilling the requirement of Section 62(5) of the PVAT Act. However, due to poor financial condition, the Petitioner was not able to deposit 15%, therefore the appeal was rejected, vide order dated 18.07.2019 (Annexure P-2).

6. Aggrieved by the order dated 18.7.2019 Annexure P-2, the Petitioner filed Appeal no. 139/2019 before Punjab VAT Tribunal. Vide order dated 03.11.2020 (Annexure P-4), the Punjab VAT Tribunal dismissed the appeal granting three months time to the Petitioner to make the pre-deposit of 25% of the additional demand. It was further ordered that if the pre-deposit was not made within three months, the appeal will be deemed to have been dismissed.

7. Petitioner is challenging the impugned assessment order dated 25.06.2019 passed by Respondent no. 2 (Annexure P- 1), impugned order dated 18.07.2019 passed by Respondent no. 3 (Annexure P-2) and order dated 3.11.2020 passed by the Punjab VAT Tribunal (Annexure P-4) on the ground that the petitioner is not in a financial condition to comply with the condition of pre-deposit of 25% of the additional demand under Section 62 (5) of Act 2005.

8. Learned counsel for the petitioner is relying upon judgment of Hon'ble the Supreme Court of India in a case of *M/s Tecnimont Pvt. Ltd (formerly known as Tecnimont ICB Pvt. Ltd) vs. State of Punjab and others, 2019 (9) TMI 788*.

9. Reference has further been made to Division Bench judgment of this Court in a case of *M/s Kelmar (India) Exports, Ludhiana vs. State of Punjab and others*, passed in CWP No. 17975-2020, decided on 02.11.2020 wherein petitioner was issued notice for assessment under Section 29(2) of PVAT Act and the authorized representative of the petitioner appeared before the concerned authority and produced the invoice as well as other relevant documents. However, the impugned order was passed created a demand of Rs. 27,76,882/-. The petitioner preferred appeal before DETC (Admin) Ludhiana along with an application for

exemption of pre deposit of 25% and direction was issued to deposit 10% of the total demand by 21.03.2017 by relaxing pre-condition of deposit of 25%. But the petitioner did not deposit even 10% and the appeal was dismissed on 05.11.2019. Then the petitioner filed the writ petition seeking direction to respondent No. 2 to adjudicate the appeal on merits without insisting upon prior deposit of 25% as the petitioner is having a good case on merits and further the firm is suffering a huge loss in business and is not in a position to pay the said amount of 25%. The writ petition was disposed of by relying upon *M/s Tecnimont Pvt. Ltd's case (supra)* and *M/s Chadha Super Cars Pvt Ltd, Ludhiana vs. State of Punjab and others*, passed in CWP No. 33146-2019, decided on 28.11.2019.

10. Learned counsel for the petitioner states that the case of the petitioner is squarely covered by *M/s Tecnimont Pvt. Ltd's case (supra)* as in the present case as well, during the financial year 2018-19, the petitioner was under heavy debts and was unable to pay the same due to prevalent market scenario. The total outstanding loans against the petitioner as on 31.003.2019 was 855.82 crores (Long Term and Short Term). Further from 29.06.2018 onwards, the petitioner is payment installments as per para No. 16 of the writ petition and running the business. The entire surplus is used for payment the installment of loan, salaries of employees and working requirements. The petitioner is financially not in a position to pay the pre-deposit of 25%. Copy of the balance sheet for the financial year 2021-21 is attached as Annexure P-6.

11. *Per contra*, learned counsel for the respondent has referred to reply filed by way of affidavit of Jagdeep Saigal, Asstt. Excise and Taxation Commissioner, Ludhiana-I, Punjab wherein it has been stated that the petitioner is

not facing financial difficulties. Reference has been made to a chart depicting the turnover of the petitioner (R-1) and a chart depicting payment of GST in cash (R-2). Further it has been submitted that Hon'ble the Supreme Court in *M/s Tecnimont Pvt. Ltd's case (supra)* has upheld the provisions of Section 62 (5) of the Punjab Vat Act being mandatory and has rejected the contention that the same is erroneous. The petitioner is in no more in financial difficulty, as the petitioner is paying GST regularly in cash and is thus not entitled to the concession earlier granted by the First Appellate Authority.

12. Heard learned counsel for the parties at length.

13. The balance sheet for the financial year 2020-21 placed on record by the petitioner (P-6) is not being disputed by the respondent. It is not in dispute that if the petitioner will be forced to pay 25% pre-deposit, he will not be able to pay the installments of the loan. He is also paying GST regularly to the department and if he will shut down the business, it will lead to cancellation of GST registration. Thus, the condition of 25% pre deposit is liable to be modified, keeping in view the fact that the petitioner is in hug debt.

14. In *Tecnimont Pvt. Ltd's case (supra)*, Hon'ble the Supreme Court was dealing with three questions, which reads as under:-

- a. Whether the State is empowered to enact Section 62(5) of the PVAT Act?*
- b. Whether the condition of pre-deposit for hearing first appeal is onerous, harsh, unreasonable and therefore, violative of Article 14 of the Constitution of India?*
- c. Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition of hearing of appeals on merits?*

With respect to question No. (a) and (c), Hon'ble the Supreme Court accept the conclusions drawn by the High Court but with regard to question No.

C, the view taken by the High Court was set aside. In para No. 18, 23 and 24 it has been observed as under:-

*18. It is true that in cases falling in second category as set out in paragraph 11 hereinabove, where no discretion was conferred by the Statute upon the Appellate Authority to grant relief against requirement of pre-deposit, the challenge to the validity of the concerned provision in each of those cases was rejected. But the decision of the Constitution Bench of this Court in **Seth Nand Lal 1980 (Supp) SCC 574** was in the backdrop of what this Court considered to be meagre rate of the annual land-tax payable. The decision in **Shyam Kishore (1993) 1 SCC 22** attempted to find a solution and provide some succour in cases involving extreme hardship but was well aware of the limitation. Same awareness was expressed in **P. Laxmi Devi (2008) 4 SCC 720** and in **Har Devi Asnani (2011) 14 SCC 160** and it was stated that in cases of hardship a writ petition could be an appropriate remedy. But in the present case the High Court has gone a step further and found that the Appellate Authority would have implied power to grant such solace and for arriving at such conclusion reliance is placed on the decision of this Court in **Kanhi (1969) 2 SCR 65**.*

*23. In respect of powers exercisable under Section 482 of the Cr.P.C., it was observed in **Sooraj Devi v. Pyare Another (1981) 1 SCC 500**, "Now it is well settled that the inherent power of the Court cannot be rosed for doing that which is specifically prohibited by the Code. The principle was followed in **Simrikhia Doley Mukherjee and Chhabi Mukherjee and Another (1990) 2 SCC 437** and in **State v. K. V. Rajendran and Others (2008) 8 SCC 673**.*

24. If the inherent power the existence of which is specifically acknowledged by provisions such as Section 151 of the CPC and Section 482 of the Cr.PC, is to be read with the limitation that exercise of such power cannot be undertaken for doing that which is specifically prohibited, same limitation

*must be read into the scope and width of implied power of an appellate authority under a statute. In any case the principle laid down in **Matajog Dobey 1955 (2) SCR 925** states with clarity that so long as there is no express inhibition, the implied power can extend to doing all such acts or employing such means as are reasonably necessary for such execution. The reliance on the principle laid down in Kunhit cannot go to the extent, as concluded by the High Court, of enabling the Appellate Authority to override the limitation prescribed by the statute and go- against the requirement of pre-deposit. The High Court was clearly in error in answering question (c)."*

*25. As stated in **P. Laxmi Devi (2008) 4 SCC 720** and **Har Devi Asnani (2011) 14 SCC 160**, in genuine cases of hardship, recourse would still be open to the concerned person. However, it would be completely a different thing to say that the Appellate Authority itself can grant such relief. As stated in **Shyam Kishore (1993) 1 SCC 22** any such exercise would make the provision itself unworkable and render the statutory intendment nugatory."*

In the present case, the petitioner is in debt and is paying installments of loan regularly and this fact is not being disputed by the respondents. Hence for all intents and purpose, the petitioner in order to run the business should be able to make the payment of loan, as per detail given in balance sheet (P-6) at page No. 51 of the paper book. In order to avoid cancellation of its GST registration, the petitioner is seeking direction to respondent No. 3 to entertain the appeal of the petitioner on merits without insisting upon the condition of pre-deposit under Section 62 (5) of the Act 2005. Petitioner is ready to pre-deposit 10% of the amount, as observed in the order dated 25.6.2018.

Accordingly, keeping in view the fact that the petitioner is in huge debt and the fact that the petitioner is ready to deposit 10% as pre-deposit instead of 25% of the total demand before the Appellate Authority, this Court by exercising the inherent powers as provided under Article 226 of the Constitution of India and by considering the financial hardship faced by the petitioner, this petition is being *disposed of* by directing the petitioner (s) to file an appeal and respondent-authorities is directed to entertain the appeal and decide in accordance with law on merits by passing a final order, by accepting 10 percent of pre-deposit of the total demand.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

03.10.2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No