

CWP-7864-2023

Date of decision:24.04.2023

Federal Agro Industries Pvt. Ltd.

....Petitioner

V/s.

State of Punjab and others

....Respondents

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

Present: Mr. Amrinder Singh, Advocate,
Ms. Shreya Khunteta, Advocate and
Ms. Gulrukh Kaur Sidhu, Advocate
for the petitioner.

Mr. Saurabh Kapoor, Addl.A.G., Punjab.

Ritu Bahri, J. (Oral).

The petitioner is seeking direction to respondent No.3 to decide the appeal (Annexure P-1) filed against the order dated 25.02.2022 without insisting upon the condition of pre-deposit under Section 62(5) of the PVAT Act, 2005.

Learned counsel for the petitioner submits that the appeal is pending before respondent No.3 and the department is insisting upon the condition of pre-deposit as per Section 62(5) of the PVAT Act, 2005.

Learned counsel for the State, on instructions from Mr. Avtar Singh, STO informs that the petitioner has already deposited 25% of the additional demand of the tax but that does not include penalty and interest. As per Section 62(5) of the PVAT Act, 2005, the appeal can only be entertained when 25% of the total amount of the additional demand, penalty and interest, if any, is deposited.

Learned counsel for the petitioner states that dispute in the present case is classification of goods. He is seeking benefit of the judgment passed by the Tribunal in *M/s. Mirha Exports Pvt. Ltd. vs. State of Punjab* decided on 02.03.2022 (Annexure P-4) which has already been decided in favour of other assesseees.

In the above said judgment, it has been held that the poultry feed supplement is a tax free item and it cannot be included in the 'residuary entry' of the Schedule to warrant higher rate of tax. Hence, without commenting on the merits of the case and keeping in view that the petitioner has already deposited 25% of the additional demand of tax, direction is being given to respondent No.3 to decide the appeal expeditiously without insisting upon the petitioner to deposit penalty and interest.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

24.04.2023

Divyanshi

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No