

CWP-7814-2023

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 quashing/setting aside order dated 21.12.2022 passed by respondent No. 3 (Annexure P-1) whereby its appeal against the order dated 11.02.2021 has been dismissed for non-compliance of Section 62(5) of the PVAT Act 2005 as it had not produced any proof of the 25% of the additional demand, which is the pre-condition of hearing the appeal.

Learned counsel for the State informs that the petitioner has 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-5) 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, order dated 21.12.2022 (Annexure P-1) is set aside and a 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