IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(117) **CWP-26878-2023**
Decided on : 30.11.2023

M/s Punjab Traders

……Petitioner(s)

Versus

State of Punjab and others

……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr. Sandeep Goyal, Advocate for the petitioner (s).

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G.S. Sandhawalia, J. (Oral)

In the present writ petition filed under Articles 226/227 of the Constitution of India, in principle the petitioner is aggrieved against the orders dated 22.11.2021 (Annexures P-17 to P-19). Vide the said orders the First Appellate Authority dismissed the appeals filed under Section 62 of the Punjab Value Added Tax Act, 2005 (for short 'PVAT Act') of the assessee company against the order passed by the assessing authority creating demands of ₹75,43,797 for the assessment year 2013-2014. Similarly, a demand of ₹1,00,29,274/- had also been created for the assessment year 2014-2015, whereas another demand of ₹1,25,12,197/- had been made for the assessment year 2015-2016.

2. The appeals were dismissed on the ground that pre-deposit of 25% has not been done, which was required to be deposited under Section 62 (5) of the PVAT Act. The petitioner had thereafter approached the VAT Appellate Tribunal (for short 'the Tribunal') which vide the impugned order dated 27.05.2022 (Annexures P-23 to 25) dismissed the appeals by placing

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reliance upon the judgment of the Apex Court in **M/s Tecnimont Pvt. Ltd. Vs. State of Punjab (2019) 69 GSTR 193 SC**. The Tribunal, however, also granted the benefit as such that in case the appellant deposits the 25% by 28.07.2022, the appeal would be heard by the First Appellate Authority and in case of failure to make the pre-deposit the appeal would be deemed to have dismissed. The petitioner is alleged to have filed the rectification application before the Tribunal which is not functional presently. In pursuance of the said demands, recovery notices dated 09.10.2023 and 18.10.2023 (Annexure P-29) have also been issued, which are subject matter of challenge in the present appeal.

3. Counsel for the petitioner has referred to the observations of the Apex Court in **M/s Tecnimont (supra)** to submit that the jurisdiction of this Court has not been curtailed and only the Appellate Authority would not have implied power to grant such solace. It is, accordingly, submitted that the issue in question as such is regarding the classification aspect and, therefore, whether the amount claimed under the assessment orders are liable to be sustained or not. It is, accordingly, pointed out that in similar circumstances the Coordinate Bench in **CWP No.7811 of 2023 'Federal Agro Industries Pvt. Ltd. Vs. State of Punjab and others'** decided on 24.04.2023 had directed that the petitioner were entitled for the decision of the appeal on merits, if 25% of the additional demand of tax was deposited without insisting upon the petitioner to deposit penalty and interest.

4. Reference is accordingly made to the decision of the Tribunal in **Revision No.5 of 2015 'M/s R.R. Wine Traders, Nangal Vs. State of Punjab'** decided on 27.10.2016 (Annexure P-32) in this context that the

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amount was to be paid by the Distilleries and not by the L-1 licensees which is case of the petitioner herein.

5. We have perused the assessment order also and it is pointed out that from the additional demand created the tax due would be to the tune of ₹20,03,665/- for the first assessment year and ₹29,36,830/- for the second assessment year and for the third assessment year ₹41,77,695/-, totaling approximately to ₹91 lakhs.

6. It is submitted that the petitioner is willing to deposit the 25% against the said amount to fulfill the criteria of pre-deposit of 25% of the tax due.

7. Notice of motion.

8. Mr.Saurabh Kapoor, Addl.A.G., Punjab accepts notice on behalf of the respondents.

9. Keeping in view the above, we are of the considered opinion that since the matter would have to be adjudicated upon and whether the amount claimed as such is sustainable by the authorities, it would be appropriate if the petitioner deposits a sum of ₹25 lakhs by 18.12.2023. In case the amount is deposited, the three appeals shall be restored to the Board of the First Appellate Authority who shall decide the same on merits. Resultantly, order dated 22.11.2021 (Annexures P-17 to P-19) will no longer remain in force. It is, however, made clear that in case the amount is not deposited by the petitioner, the said order shall continue to remain in force and the present writ petition would be deemed to have been dismissed. Needless to say that if the amount is deposited by the said date, there shall be stay on the recovery proceedings till the decision of the appeals by the First Appellate Authority.

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10. With the abovesaid observations the present writ petition stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

30.11.2023 **(LAPITA BANERJI)**
Naveen **JUDGE**

Whether speaking/reasoned :	Yes	
Whether Reportable :		No

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