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

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1) **CWP-9799-2022**
Decided on : 21.10.2024

Patiala Locomotive Works (formerly known as Diesel Loco Modernization Works, Patiala, Ministry of Railways)

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

2) **CWP-9823-2022**

Patiala Locomotive Works (formerly known as Diesel Loco Modernization Works, Patiala, Ministry of Railways)

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

3) **CWP-9843-2022**

Patiala Locomotive Works (formerly known as Diesel Loco Modernization Works, Patiala, Ministry of Railways)

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

4) **CWP-9856-2022**

Patiala Locomotive Works (formerly known as Diesel Loco Modernization Works, Patiala, Ministry of Railways)

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

5) **CWP-9857-2022**

Patiala Locomotive Works (formerly known as Diesel Loco Modernization Works, Patiala, Ministry of Railways)

. . . Petitioner(s)

Versus

State of Punjab

... Respondent(s)

6) **CWP-9858-2022**

Patiala Locomotive Works (formerly known as Diesel Loco Modernization Works, Patiala, Ministry of Railways)

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

7) **CWP-11288-2022**

Patiala Locomotive Works (formerly known as Diesel Loco Modernization Works, Patiala, Ministry of Railways)

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Sourabh Goel, Sr. Panel Counsel
for the Petitioner(s) – UOI.

Mr. Saurabh Kapoor, Addl. AG, Punjab.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of aforementioned appeals i.e. CWP-9799-2022, CWP-9823-2022, CWP-9843-2022, CWP-9856-2022, CWP-9857-2022, CWP-9858-2022 & CWP-11288-2022, as the issue involved therein is identical.

However, for the purpose of disposal of these appeals, main/common order is being passed in CWP-9799-2022.

2. The order under challenge before this Court is the interim order passed by the VAT Appellate Tribunal, dated 18.01.2022, wherein, the

Tribunal passed the following order:-

" Heard. On the application u/s 18(A)(5) of the GST Act against the impugned assessment order passed by the Designated Officer/Notified Authority, Patiala.

After hearing counsel for the applicant and the State Counsel, we find that the appellant claims to be not a dealer u/s 6 and 6(A) of the CST Act, 1956. The Designated Officer determined gross turnover of sales in VAT-20 and enhanced the same, in view of the movement of the material inter-state to other railways.

The appellant is registered with the Department of Excise & Taxation, Patiala with respect to VAT on the sale of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts of accessories thereof. The benefit under the VAT Act have already been granted by the Designated Officer.

The following question of law and facts requires to be adjudicated by this Tribunal:-

> *Whether the appellant is a dealer u/s 2(b) of the CST Act, 1956, falling in exemption of Explanation no.2 of Section 2(b) and is liable to pay CST in respect of inter-state outward transactions not supported by mandatory F forms, u/s 9(2) read with Section 6(A), 6 & A of CST Act read with Section 29(3) of the PVAT Act, 2005 ?*

ADMITTED, to be heard inter-alia in the above said point on 13.05.2022 on the legal and factual issues involves.

Meanwhile the recovery of the demand raised shall remain stayed subject to appellant/applicant depositing 10% of the tax due of the assessment year in dispute, in this case within a *period of two months, after the receipt of certified copy of this order. The superintendent shall ensure the supply of the copy of the Counsel for both the parties as soon as the same is available."*

3. While framing question of law, Tribunal passed the order that the recovery would not be done subject to appellant/applicant depositing 10% of the tax due of the assessment year in dispute.

4. Learned counsel submits that the pre-deposition under Section 18(A)(5) of the CST Act, is wholly for the purpose of admission of appeal and no condition can be laid down for the purpose of staying the recovery.

5. We have considered the submissions and carefully gone through the order passed and find that the Appellate Authority was examining the case on an application under Section 18(A)(5) of the CST Act, as is apparent from the first para of the order and proceeded to frame a question of law for the purpose of admission. But while passing the order, it has made a stay of recovery, subject to condition of depositing 10% of the tax due. The language, in our opinion, may be a little misleading, but the very purpose is of depositing 10% of the tax due, as a pre-condition for admission in stay, which is in consonance with Section 18(A)(5) of the CST Act. Section 18(A)(5) of the CST Act, is to be noted as under:-

"18A. Appeals to highest appellate authority of State.—

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xx xxx xx xxx

(5) Notwithstanding anything contained in a State Act, the highest appellate authority of a State may, on the application of the appellant and after considering relevant facts, including the deposit of any amount towards local or central sales tax in other States on the same goods, pass an order of stay subject to such terms and conditions as it thinks fit, and such order may, inter alia, indicate the

portion of tax as assessed, to be deposited prior to admission of the appeal.

Explanation.—For the purposes of this section and sections 20, 21, 22 and 25, "highest appellate authority of a State", with its grammatical variations, means any authority or tribunal or court, except the High Court, established or constituted under the general sales tax law of a State, by whatever name called."

6. Thus, from above, it is clear that the admission of appeal would be subject to pre-deposit of 10% of the tax, which has been directed by the VAT Appellate Tribunal. The order, therefore, does not warrant any interference.

The writ petitions are dismissed accordingly.

Pending misc. application(s), if any, shall also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

October 21, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No