



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

Reserved on : 02.09.2024

Date of Pronouncement : 16.09.2024

1. CWP No. 20059 of 2019 (O&M)

M/s Anand Rathi Commodities
International Private Limited ...Petitioner

Versus

The State of Haryana and others ...Respondents

2. CWP No. 11250 of 2019 (O&M)

M/s Xage Communication India Private Limited ...Petitioner

Versus

The State of Haryana and others ...Respondents

3. CWP No. 11270 of 2019 (O&M)

M/s Xage Communication India Private Limited ...Petitioner

Versus

The State of Haryana and others ...Respondents

4. CWP No. 19985 of 2019 (O&M)

SKS Overseas Private Limited ...Petitioner

Versus

The State of Haryana and others ...Respondents

5. CWP No. 19995 of 2019 (O&M)

Buniyad International ...Petitioner

Versus

The State of Haryana and others ...Respondents

6. CWP No. 20385 of 2019 (O&M)

SKS Overseas Private Limited ...Petitioner

Versus

The State of Haryana and others ...Respondents

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

Present: Mrs. Radhika Suri, Senior Advocate assisted by
Mr. Abhinav Narang, Advocate, for the petitioner
in CWP No. 20059 of 2019.
Mr. Rajiv Agnihotri, Advocate, in the remaining writ petitions
(through video conferencing)
Mrs. Mamta Singla Talwar, Dy. Advocate General, Haryana.

VARINDER SINGH
2024.09.18 10:19
I attest to the accuracy and
authenticity of this
order/judgment

**SANJEEV PRAKASH SHARMA, J.**

These are six writ petitions which have been taken up together for adjudication of a common question of law.

CWP No. 20059/2019

2. At the outset, learned senior counsel for the petitioner does not press the prayer for declaring Section 33(5) of the Haryana Value Added Tax Act, 2003 (hereinafter to be referred as “the HVAT Act”) as ultra vires because of the judgment of the Supreme Court having been passed in **M/s Tecnimont Private Limited (formerly known as Technimont ICB Private Limited) vs State of Punjab and others** (2021) 12 SCC 477. She further submits that the net worth of the petitioner company is much less than the demand as raised by the respondents and, therefore, would not be able to fulfill the condition under Section 33(5) of the HVAT Act. Keeping in view the observations made in **M/s Tecnimont Private Limited** (supra), learned counsel for the petitioner prays for waiving off the requirement of pre-deposit of surety bond or bank guarantee for hearing of the appeal.

3. Learned Senior counsel for the petitioner has further submitted that the petitioner company had placed on record the material before the Haryana Tax Tribunal as well as before the Joint Excise and Taxation Commissioner (Appeal), Faridabad, to reflect that the petitioner is unable to furnish security in the form of surety bond or bank guarantee. There was already a demand against the defaulting debtors of more than ₹ 50 crores and the petitioner had lodged FIR for the said purpose. It has submitted nil income for the year 2016-17, 2017-18, 2018-19.

Petitioner -M/s Anand Rathi Commodities International Private Limited has filed the certificate of its net worth, as certified by the Chartered



Accountant for the various years as at March 31, 2018 upto as at March 31,2023. The same is extracted as under:-

Particulars	As at March 31, 2023 (unaudited)	As at March 31, 2022 (unaudited)	As at March 31, 2021 (unaudited)	As at March 31, 2020 (unaudited)	As at March 31, 2019 (unaudited)	As at March 31, 2018 (unaudited)
Equity Paid up share capital	1,05,000	1,05,000	1,05,000	1,05,000	1,05,000	1,05,000
Add: Security Premium	-	-	-	-	-	-
Add: Reserves and Surplus	23,79,992	37,45,007	45,11,696	48,74,990	39,78,143	52,60,843
Total	24,84,992	38,50,007	46,16,696	49,79,990	40,83,143	56,65,843

4. Learned Senior counsel for the petitioner has relied on M/s Tecnimont Private Limited (supra) to submit that while the concerned appellate authorities may not have the powers available to grant exemption from the precondition under Section 33(5) of the HVAT Act but this Court can pass appropriate orders considering the financial position of the petitioner company.

5. Learned counsel for the petitioner has also relied on Supreme Court judgments in Commissioner of Income-Tax, Delhi vs Bansil Dhar and sons (1986) 1 SCC 523; Government of Andhra Pradesh and others vs Smt. P.Laxmi Devi (2008) 4 SCC 720; Division Bench judgments of this Court in H. R. Steels Private Limited vs State of Haryana (2015) 77 VST 192; and CWP No. 2650 of 2022 – M/s Shiva TaxFabs Limited vs State of Punjab and others decided on 03.10.2023.

6. Learned counsel for the petitioner has also submitted that mere personal bond is also not acceptable to the authorities as they have issued a circular on 25.07.2014 directing that the assessing authority shall ensure the recovery of additional demand from the appellant company by demanding an



irrevocable bank guarantee equivalent to the additional demand that has been created as a result of assessment, which is under challenge in appeal and in case the appellant fails to furnish the irrevocable bank guarantee, then only securities in the form of surety bonds can be accepted with an undertaking that the property/ assets are free from all encumbrances.

7. Learned Senior counsel for the petitioner has further submitted that as the net worth of the petitioner company with all the liquidities and the properties is less than the demand raised, it is impossible for it to contest the impugned orders in appeal and in the circumstances she has prayed that the petition be entertained directly as the petitioner cannot be rendered remediless.

It is further stated that in the present case the notice under Section 15(2) HVAT Act has not been served on the petitioner, which is mandatory in terms of Circular dated 21.03.2016 (Annexure P-1) and in view of the judgment in **H. R. Steels Private Limited** (supra), the order deserves to be set aside, for which plea was taken before the first Appellate Authority but the same has not been considered.

8. The petitioners in CWP Nos.11250 and 11270 of 2019 have sought quashing of the orders dated 12.01.2018 passed by the Joint Excise and Taxation Commissioner (Appeals), Faridabad whereby the appeal of the petitioners was not entertained on account of non-furnishing of adequate security and order dated 15.01.2019 passed by the Haryana Tax Tribunal, Chandigarh, whereby their second appeal against the order dated 12.01.2018 was also dismissed. They have also sought quashing of assessment order as the same has been passed ex-parte by the assessing authority.



9. The petitioners in CWP Nos.19985, 19995 and 20385 of 2019 have sought quashing of orders dated 30.06.2016 passed by the Joint Excise and Taxation Commissioner (Appeals), Faridabad whereby the appeal of the petitioners was not entertained on account of non-furnishing of adequate security and order dated 21.05.2019 passed by the Haryana Tax Tribunal, Chandigarh, whereby their second appeal against the order dated 30.06.2016 was also dismissed.

10. The counsel appearing for the petitioners in other connected cases has also stated that the net worth of the petitioner-companies is much less than the demand raised and they would not be in a position to submit either the bank guarantee or security in the form of surety bonds in terms of the circular dated 25.07.2014. He adopted the arguments of learned senior counsel in CWP No. 20059 of 2019.

However, he does not press the prayer for challenging Section 33(5) of the HVAT Act keeping in view the law as laid down by the Apex Court in **M/s Tecnimont Private Limited** (supra).

11. In CWP No. 19985 of 2019, an affidavit has been filed by Ms. Asha Rani Jindal, Director of the petitioner-company- SKS Overseas Private Limited stating that she is house wife in old age and the business is lying closed since 15.06.2015. She has no financial position to stand or obtain surety or bank guarantee from extraneous sources.

12. In CWP No. 19995 of 2019, an affidavit has been filed by Sanjeev Jindal, Proprietor of the petitioner company Buniyad International, Gurugram stating that business is lying closed since 15.06.2015. He is working as an employee on salary basis and getting annual salary of ₹ 5,36,670/- only.



13. In CWP No. 20385 of 2019, an affidavit has been filed by Ms. Asha Rani Jindal, Director of the petitioner-company- SKS Overseas Private Limited to the same effect as in CWP No. 19985 of 2019.

14. Per contra, Ms. Mamta Singla Talwar, learned counsel for the State of Haryana has submitted her written submissions and pointed out that Section 33(5) of the HVAT Act is different from Section 62(5) of the Punjab VAT Act, 2005 (for short, 'the PVAT Act') which was under consideration in **M/s Tecnimont Private Limited** (supra). She further submitted that the relief as granted in **M/s Tecnimont Private Limited** (supra) does not require to be extended in cases relating to Section 33(5) of the HVAT Act.

15. Learned State counsel further submitted that while the Punjab VAT Act provided for pre-deposit of minimum of 25% of the total due amount as a condition for entertainment of an appeal, however, Section 33(5) of the HVAT Act does not impose the condition of pre-deposit of any amount for entertainment of an appeal. It only stipulates that the assessee-appellant should furnish bank guarantee or adequate security for the disputed amount for entertainment of an appeal. This condition has been stipulated to secure the interest of the Revenue regarding recovery of the outstanding amount in case the assessee-appellant does not succeed in appeal particularly when the assessee-appellant pleads that he is unable to even furnish bank guarantee or adequate security for the disputed amount much less pre-deposit thereof in whole or in part. She submitted that there is fundamental difference between the two provisions of Section 33(5) of the HVAT Act and Section 62(5) of the PVAT Act. Hence, the judgment of the Supreme Court would not be applicable in the present case.



16. Learned counsel for the respondent State has quoted the provisions and submitted that a discretion is provided to the Appellate Authority to entertain the appeal without pre-deposit of the disputed amount but even the same could be done only on furnishing of bank guarantee or adequate security to the satisfaction of the Appellate Authority. It is submitted that the provision is very reasonable and the object is to protect the interest of the assessee and also safeguard the revenue of the State.

With regard to the department notification dated 25.07.2014, learned State counsel submitted that although it was mentioned that irrevocable bank guarantee equivalent to the additional demand preferably to be demanded, which means it is not mandatory. Otherwise, the securities in the form of surety bonds can be accepted. Further, the instructions do not have precedence over the provisions of the Act.

17. We have considered the submissions.

Section 33(5) of the HVAT Act provides as under:-

"No appeal preferred by an assessee to an appellate authority shall be entertained unless it is filed within sixty days from the date of the order appealed against. The appellate authority shall ensure before entertaining the appeal that the appellant has paid the amount of tax admitted to be due and interest thereon, and a bank guarantee or adequate security to the satisfaction of the assessing authority, in the manner, as may be prescribed, for the amount in dispute has also been furnished."

18. Rule 70 of the Haryana Value Added Tax rules, 2003 deals with security provisions, which reads as under:-

"70. Furnishing of Security



(1) The security required to be furnished under the Act, may be in the following forms namely –

(a) cash deposit in the Government Treasury under head "0040-Tax on Sales, Trade etc."

(b) post office saving bank account, the account being pledged to the Commissioner or any officer authorised by him in writing in this behalf,

(c) bank guarantee from a Scheduled Bank agreeing to pay to the State Government on demand the amount of security:

(d) personal bond with solvent surety/sureties for the amount of security to the satisfaction of the authority before whom it is required to be furnished under these rules, which shall be judicial; paper of the appropriate value; and

(e) such saving certificates or bonds or fixed deposit receipts as are issued by the Government of In India, the State Government, or Reserve Bank of India or Scheduled Bank, from time to time, to be pledged to the Commissioner or any other officer authorised by him in this behalf.

(2) The security furnished under sub-sections (1), (2), (4) and (6) of section 12 shall be maintained in full so long as the registration certificates continues to be in force.

(3) In the event of default in the payment of any tax, interest, penalty or any other amount due, the security furnished by the dealer shall be liable to adjustment towards such amount, after intimation to him and the short fall in the amount of security shall unless ordered otherwise be made up by him within a period of fifteen days from the date of intimation in any of the ways specified in sub- rule (1).

(4) The security furnished under sub-section (6) of section 31 shall be forfeited, if the payment of the amount



due on account of advance tax, penalty or interest imposed is not made within the time allowed for the payment thereof."

19. Section 62 (5) of the PVAT Act provides as under:-

"62 (5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total additional demand created, penalty and interest, if any."

20. Haryana General Sales Tax Act, 1973 was in force till HVAT Act, 2003 came into force. Proviso to Section 39(5) of the Haryana General Sales Tax Act, 1973 reads as under:-

"Provided that the said authority, if satisfied that the person is unable to pay the whole of the amount of tax assessed, or the penalty imposed, or the interest due, he may, if the amount of tax and interest admitted by the appellant to be due has been paid, for reasons to be recorded in writing, entertain the appeal and may stay the recovery of the balance amount subject to the furnishing of a bank guarantee or adequate security in the prescribed manner to the satisfaction of the appellant authority."

21. In **M/s Tecnimont Private Limited (formerly known as Technimont ICB Private Limited) vs State of Punjab and others** (2021) 12 SCC 477, the Supreme Court was examining the powers of the appellate authority in granting relaxation of pre-deposit and held that such power was not available with the appellate authority, however, it observed as under:-

"20. It is true that in cases falling in second category as set out in para 12.2 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 provision concerned in each of those cases was rejected. But the



decision of the Constitution Bench of this Court in Seth Nand Lall was in the backdrop of what this Court considered to be meager rate of the annual land-tax payable. The decision in Shyam Kishore 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 and in Har Devi Asnani and it was stated that in cases of extreme 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 Kunhi.”

22. In **Smt.P.Laxmi Devi** (supra), the Supreme Court was examining the provisions of Section 47-A of the Indian Stamp Act, 1899 which require a party to deposit 50% of the deficient stamp duty as a condition precedent for reference to the Collector and after considering the law it held as under:-

“27. In view of the above, we are clearly of the opinion that Section 47-A of the Stamp Act as amended by A.P. Act 8 of 1998 is constitutionally valid and the judgment of the High Court declaring it unconstitutional is not correct.

28. We may, however, consider a hypothetical case. Supposing the correct value of a property is Rs 10 lakhs and that is the value stated in the sale deed, but the registering officer erroneously determines it to be, say, Rs 2 crores. In that case while making a reference to the Collector under Section 47-A, the registering officer will demand duty on 50% of Rs 2 crores i.e. duty on Rs 1 crore instead of demanding duty on Rs 10 lakhs. A party may not be able to pay this exorbitant duty demanded



under the proviso to Section 47-A by the registering officer in such a case. What can be done in this situation?

29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering b officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide Maneka Gandhi v. Union of India". Hence, the party is not remediless in this situation."

23. In view of the above, we hold that while power does not lie with the appellate authority to waive the condition of pre-deposit of surety bond or bank guarantee in terms of Section 33(5) of the HVAT Act, however, this Court is not precluded under Article 226 of the Constitution of India to direct the appeal to be heard without insisting upon the pre-condition.

24. It is true that the Supreme Court in **M/s Tecnimont Private Limited** (supra) considered a separate set of provisions, however, we do not agree with the learned State counsel that merely because under Section 33(5) of the HVAT Act the requirement is not of actual deposit but submitting a bank guarantee or adequate security to the satisfaction of the assessing officer. The provision has to be read differently. We are of the firm view that while such a provision may exist on the statute, the circular issued asking for



irrevocable bank guarantee or security in the form of surety bond is too onerous a condition.

25. Considering the affidavits placed on record, the net worth and the documents, as mentioned above, this Court is satisfied that the petitioners before us would not be in a position to submit security in the nature of surety bond as in all the cases the company or the concerned Directors would be required to have property worth the said amount which they do not possess. A person cannot be left remediless, and in view thereto, as opined in *M/s Tecnimont Private Limited* and *Smt.P.Laxmi Devi* (supra), we direct the Joint Excise and Taxation Commissioner (Appeals), Faridabad, to hear the appeals without insisting upon the pre-condition required under Section 33(5) of the HVAT Act and decide the appeals on merits.

26. Since we have held that concerned appellate authority would not have the power to waive off the pre-deposit as required under Section 33(5) of the HVAT Act, the order passed by the Haryana Tax Tribunal, Chandigarh, upholding the order of the Joint Excise and Taxation Commissioner (Appeals), Faridabad, in refusing to entertain the appeal without submitting surety bonds or pre-deposit cannot be said to be illegal, but keeping in view our directions to the Joint Excise and Taxation Commissioner (Appeals), Faridabad, to hear the appeal on merit, as above, the present writ petitions bearing CWP No. 20059, 11250, 11270, 19985, 19995 and 20385 of 2019 are allowed. The matter is remanded to the Joint Excise and Taxation Commissioner (Appeals), Faridabad to decide the appeals expeditiously, preferably within a period of three months.

27. The other prayer made by the petitioners for setting aside the ex-parte assessment order does not require to be looked into as it would



always be open for the petitioners to raise all arguments before the appellate authority.

- 28. All pending applications shall stand disposed of.
- 29. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

16.09.2024
vs

(SANJAY VASHISHT)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No