2026:PHHC:011677-DB

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

CWP-25460-2025
Date of Decision: January 28, 2026

M/S 1000 TREES HOUSING PVT LTD .....Petitioner

Versus

JOINT EXCISE AND TAXATION COMMISSIONER (APPEALS), GURUGRAM AND OTHERS
..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI

Present: Mr. Chetan Jain, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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LISA GILL, J.

1. Prayer in this writ petition is for directing respondent No. 4 to entertain the appeal filed by petitioner challenging order dated 08.04.2024, without insisting on statutory pre-deposit in terms of Section 33(5) of Haryana Value Added Tax Act, 2003 (for short – 'HVAT Act').

2. Learned counsel for petitioner submits that petitioner is a Company duly registered under Companies Act, 1956 besides being registered under Central Sales Tax Act, 1956 and Haryana Value Added Tax Act, 2003. Petitioner is a Developer within the meaning of Rule 49 of Haryana Value

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Added Tax Rules, 2003 (for short – ‘HVAT Rules’) and has been engaged in the development of Group Housing colony located at Sector 105, Gurugram, Haryana. It is further submitted that Composition scheme was notified by State of Haryana through Excise and Taxation Department on 12.08.2014. As per clause 4 of this notification, an assessee registered as Developer is eligible to pay one time lumpsum compounding sum at the rate of 1% of total value of development agreement. Petitioner vide communication dated 07.10.2014, opted to pay composition amount as lumpsum amount in terms of Composition scheme. This was accepted by respondent and petitioner was, thus, entitled to pay lumpsum amount w.e.f. 01.04.2014. Petitioner took necessary action in terms thereof. Petitioner’s case was selected for scrutiny. Deficiency notice dated 11.08.2017 was issued. Notice in form VAT N-2 under Section 15 of 2003 Act and under Section 9(2) of Central Sales Tax Act, 1956 was issued. Ex-parte assessment order for assessment year 2015-16 was passed on 06.03.2019 without affording any opportunity of hearing to petitioner. Demand of Rs.4,50,93,177/- was raised.

3. Petitioner filed statutory appeal on 28.02.2022. Surety bond of entire amount was submitted. However, surety bond was rejected by authorities on the ground that there could be no due verification of surety’s premises. Hearing notice was issued to petitioner for 02.04.2024. On the said date authorized representative of petitioner failed to appear and the matter was reserved by the authorities. Appeal was dismissed on 08.04.2024 on the ground that adequate security in compliance with provisions of Section 33(5) of 2003 Act was not deposited.

4. Petitioner preferred an appeal before Haryana VAT Tribunal on 21.08.2025 but without requisite surety. Present writ petition has been filed for seeking a direction to respondent No. 4 to entertain said appeal and decide it on merits without insisting on pre-deposit.

5. Learned counsel for petitioner vehemently argues that petitioner faces severe financial hardship and is unable to deposit the amount in question. Reference is made to certificate dated 22.08.2025 issued by one Mahesh Kumar and Company (Chartered Accountants) to submit that petitioner's financial health is weak. It is further submitted that no revenue has been received by petitioner since the past nearly seven years. Moreover, petitioner has a very good case on merits, therefore, it should not be put to peril and left remediless only on the ground that it is unable to deposit the requisite surety. It is, thus, prayed that this writ petition be allowed.

6. Learned counsel for respondents, on advance notice, has refuted the arguments as above. It was pointed out by learned counsel for respondents that financial health of petitioner is not as projected before this Court. Petitioner is a Developer and taxable turnover for the years 2024-25 and 2025-26 and tax paid under the GST is reflective of falsity of averments as made before this Court. Reference has been made to communication dated 03.10.2025 by Deputy Excise Taxation and Commissioner, Gurugram in this respect. Copy of this communication had been supplied to learned counsel for petitioner on 14.01.2026. Dismissal of writ petition is sought.

7. Learned counsel for petitioner in response to averment regarding taxable turnover and tax paid under GST submits that same cannot be taken to be revenue of petitioner. Turnover insofar as GST is concerned is not relevant.

70% of advances so received from prospective buyers are to be used for construction and 30% for discharging petitioner's statutory liabilities. He has relied upon judgment of Hon'ble the Supreme Court in **Indu Nissan Oxo Chemicals Ind. Ltd. vs. Union of India (UOI) and others (2007) 13 SCC 487** and judgments of this High Court in **M/s Anand Rathi Commodities International Private Limited vs. State of Haryana 2024 Vol-1017 (P&H)** and **CWP-17975-2020** titled as **M/s Kelmar (India) Exports vs. State of Punjab and others decided on 01.11.2020.**

8. We have heard learned counsel for parties and have perused the file with their able assistance.

9. Petitioner admittedly a Developer seeks a direction to respondent No. 4 i.e. Haryana VAT Tax Tribunal to entertain its appeal challenging order dated 08.04.2024, without insisting upon statutory pre-deposit in terms of Section 33(5) of HVAT Act. At this juncture, it is relevant to refer to Section 33(5) of HVAT Act which reads as under:-

> "(5) No appeal preferred by an assessee to an appellate authority shall be entertained, unless it is filed within sixty days from the date of 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."

10. Insofar as argument raised by petitioner that appellate Authority and learned Tribunal should have entertained the appeal without insisting upon statutory pre-deposit is devoid of any merit. Gainful reference in this respect can be made to judgment of Hon'ble the Supreme Court in **M/s Tecnimont Pvt.**

Ltd. (formerly known as Tecnimont ICB Private Limited) vs. State of Punjab and others 2021(12) SCC 477. Hon'ble the Supreme Court in the case of **M/s Tecnimont Pvt. Ltd.** (supra), which involved a matter under Punjab VAT Act, considered the following three questions:-

> "(a) Whether the State is empowered to enact Section 62(5) of the PVAT Act?
> (b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?
> (c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?"

11. It was held by Hon'ble the Supreme Court that State was empowered to enact Section 62(5) of Punjab VAT Act, which provided for statutory pre-deposit for entertaining an appeal by appellate Authority/Tribunal and that condition of pre-deposit for hearing first appeal was not onerous, harsh, unreasonable or violative of Article 14 of Constitution of India. Section 62(5) of Punjab VAT Act reads as under:-

> "(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 amount of additional demand created, penalty and interest, if any."

13. In respect to question No. (c), Hon'ble the Supreme Court held that appellate Authority did not have any discretion to grant relief against requirement of pre-deposit. In the instant case, petitioner pleads financial

hardship to submit that this Court in exercise of jurisdiction under Article 226 of Constitution of India should direct waiver of amount of pre-deposit.

14. At this stage, it is pertinent to note that in terms of Section 33(5) of Act 2003, it is open to the assessee to submit even a bank guarantee or adequate security to the satisfaction of assessing Authority in the manner prescribed for the amount in dispute. Petitioner had earlier deposited security before First Appellate Authority but the same could not be verified.

15. Learned counsel for State, in respect to fiscal health of petitioner has specifically relied upon report dated 03.10.2025 by Excise and Taxation Officer, Gurugram (East), which reads as under:-

> "**Subject: Report regarding Financial Status in respect of M/s 1000 Trees Pvt. Ltd. as required in CWP No. 25460 of 2025**
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> On the subject cited above it is submitted that as discussed with Ms. Mamta Singla, DAG, the comments on the Financial Status of the company, M/s 1000 Trees Pvt. Ltd., are required to be sent by this office, in related CWP No. 25460 Of 2025. The report I respect of the same is as under:
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> M/S 1000 TREES PVT LTD is non active at the GSTIN vide which it migrated into the GST regime but is active on other GSTIN (06AAFCP7179R2ZG) with same PAN and under same name. The jurisdictional administrative authority of the said GSTIN is Ward no. 07, Gurugram (North). The Taxable Turnover for last year i.e. 2024-25 and in the current year Le. 2025-26 (uptoAugust 25) is tabulated below:

ASSESSMENT YEAR	TAXABLE TURNOVER	TAX PAID
2024-25	118,25,82,168	8,87,88,770
2025-26	28,09,52,572	2,12,13,798

> Moreover, it has come to the knowledge of the undersigned that the company also holds significant stakes in the projects of M/s ATS Infrastructure Limited which is a renowned Developer in the field of Real Estate.

In view of the above, it is evident that the financial status of the company is very sound."

16. In the given factual matrix, it is not possible to conclusively hold in present proceedings that financial status of the petitioner is not sound to the extent that it is even unable to furnish requisite security in terms of Section 33(5) of Act 2003. Reliance by learned counsel for petitioner on judgments of Hon'ble the Supreme Court in **Indu Nissan Oxo Chemicals Ind. Ltd.** (supra) is of no avail as it is specifically held therein that there has to be due consideration of facts and circumstances of each individual case.

17. Similarly reliance upon judgments of this High Court in the cases of **M/s Anand Rathee Commodities International Private Limited** (supra) and **M/s Kelmar (India) Exports** (supra) is of no use to petitioner. In the case of **M/s Anand Rathee Commodities International Private Limited** (supra) the Court after considering the material on record had expressed satisfaction that petitioner therein would not be in a position to submit the security in the nature of surety bond. In the case of **M/s Kelmar (India) Exports** (supra), appellate Authority had directed petitioner therein to deposit 10% of pre-deposit amount under Punjab VAT Act. Petitioner had challenged the said order in the writ petition, however, it expressed readiness before the writ Court to deposit said 10%. It is recorded in order dated 01.11.2020, that petitioner was then ready to deposit 10% of total demand in terms of order of appellate Authority. Accordingly, writ petition was disposed of while giving liberty to petitioner to file an appeal within a period of two weeks with deposit of 10% of total demand. In the present case, as has been noted in the foregoing paras, we are unable to record a satisfaction in respect to undue financial hardship being faced by

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petitioner in the given factual matrix. We also do not find any merit in the argument raised by learned counsel for petitioner that merits of the matters should be considered which indicate that pre-deposit in this matter is uncalled for.

18. No other argument has been addressed.

19. Writ petition is, accordingly, dismissed with liberty to petitioner to take necessary steps as may be permissible in accordance with law for compliance of Section 33(5) of HVAT Act and Rule 70 of HVAT Rules.

(LISA GILL)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

January 28, 2026
Rts

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