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BEFORE JUSTICE M.M.S.BEDI, CHAIRMAN, VAT APPELLATE  
TRIBUNAL, PUNJAB. (Court held on V.C.)

Appeal No.146 of 2021  
Date of decision 25.01.2022  
Assessment year 2012-13

M/s Sunyana Sales Corporation, Guru Amar Dass Nagar, Jalandhar.

.....Appellant

Versus

State of Punjab.

.....Respondent

Present: Mr. Amit Bajaj, Advocate for the appellant.  
Mr. Daldeep Singh Sukarchakia, Deputy Advocate General for the State.

Order

Vide order dated 14.09.2021 Mr. A.S.Nanda, ETO, Jalandhar has sought time to submit a report if the amount of refund allowed for the assessment year 2012-13 could be permitted to adjustment towards pre deposit of 25% in accordance with law. No report has been submitted. The appeal u/s 62(1) of the PVAT Act has been dismissed on account of appellant having failed to make a pre deposit of 25% of the additional demand of Rs. 425690/- for the assessment year 2012-13. Vide order dated 14.09.2021 a report was sought from the ETO, Jalandhar whether the amount of ITC allowed vide order dated 20.11.2019 could be adjusted against the amount of pre deposit required to be made u/s 62(5) of the PVAT Act, 2005.

It has been informed by State Counsel on the instructions of concerned ETO that the appellant had filed an application u/s 39 for refund/adjustment of ITC available against the amount of pre deposit u/s 62(5), the application has not been finally decided.



Copy Agent  
VAT Tribunal, Punjab

Mr. Daldeep Singh Sukarchakia, DAG Punjab has submitted that this case pertains to the assessment year 2012-13 and as per the judgment of Hon'ble Supreme Court in M/s Tecnimont Pvt. Ltd. Vs. State of Punjab (2019)69 GSTR 193 SC, decided on 18.9.2019, the appellant will not be permitted to waiver of pre deposit u/s 62(5).

I have heard counsel for both the parties and I am of the opinion that in view of the Provision of Section 62(5) of the PVAT Act as amended, no waiver OR relaxation is permitted for pre deposit u/s 62(5) of the Act. However, the statutory provisions regarding adjustment of the ITC available while determining the output tax has not been considered and no bar has been created for application of Section 15 for adjusting the ITC towards the tax liability. The appellant in the present case failed to make a pre deposit approximately Rs.106423/-. The appellant has been held entitled to input tax credit to the extent of Rs.295553/-. It has been held in the M/s Surya Pharmaceutical Ltd. (2015) 1NTR423 (P&H) that adjustment of excess ITC towards payment of pre deposit can be adjusted. Mr. Daldeep Singh Sukarchakia, DAG for the State has submitted that the benefit of ITC towards tax has already been given and at present there is no excess ITC benefit which could be given.

I have considered the said contention and I am of the opinion that the excess ITC available to the assessee can be considered as an amount of tax for adjustment towards the tax liability. As such the appellant is entitled to the adjustment of ITC available towards the amount of pre deposit. The appeal can be heard by adjusting the amount of ITC available as it is more than the amount of pre deposit. This order is without prejudice to the decision. The applicant is not entitled to refund to the extent of liability of tax, pending application u/s 39 of the PVAT Act. The appeal is ordered to be heard. The impugned order is set aside for above said reasons. It is ordered that the appeal No. 2019 of 2019-20 PVAT will be



taken up by the First Appellate Authority on merits in the month of April, 2022  
and would be finally disposed of preferably in the period of three months.

Disposed off.

25.01.2022



*Musbedi*

Chairman  
VAT Appellate Tribunal

*[Signature]*  
Chairman  
VAT Appellate Tribunal  
Chandigarh

BEFORE JUSTICE M.M.S.BEDI, CHAIRMAN, VAT APPELLATE  
TRIBUNAL, PUNJAB.

(Court held on V.C.)

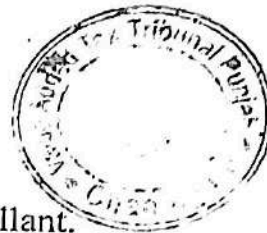
Appeal No.141 of 2021  
Date of decision 25.01.2022  
Assessment year 2012-13

M/s Sunyana Sales Corporation, Guru Amar Dass Nagar, Jalandhar.

.....Appellant

Versus

State of Punjab.



.....Respondent

Present: Mr. Amit Bajaj, Advocate for the appellant.  
Mr. Daldeep Singh Sukarchakia, Deputy Advocate General for the  
State.

Order

The first appeal u/s 62(1) of the PVAT Act and Section 9(2) of the CST Act was dismissed for failure on part of the appellant to make pre deposit for the additional demand of Rs. 254621/- for the assessment year 2012-13. The provision of Section 15 of the PVAT Act permit the adjustment of the ITC available to the appellant which is in the present case more than the amount of ITC which has already been adjusted. It is admitted fact that the appellant has made an application u/s 39 for refund of Rs.1004688/-. A similar application has been allowed so far as the pre deposit of additional demand of VAT for the assessment year 2012-13 is concerned in appeal No. 140 of 2021 on same ground. The appellant is entitled to be heard after permitting the adjustment of the application of the amount for which the appellant has already filed an application of refund. It is made clear that the appellant is not entitled to refund of the claim u/s 39 to the extent of tax liability u/s 62(5). It is directed the appeal will be heard on merits in the month of April, 2022. It will be appreciated in case the appeal is finally disposed off within a period of three months. Party is directed to appear before the

VAT Tribunal, Punjab  
Jalandhar

First Appellate Authority for consideration of the appeal without making the pre deposit.

Disposed off.



25.01.2022

*Harshada*  
Chairman  
VAT Appellate Tribunal

*Tu Singh*  
Superintendent (J)  
Value Added Tax Tribunal, Punjab  
Chandigarh