

## **Amount paid under protest prior to assessment can be adjusted against pre-deposit for filing an appeal – SC**

**17 December 2021**



## Summary

The Supreme Court (SC) has held that the amount of tax paid under protest can be adjusted against the mandatory pre-deposit required for filing an appeal under the erstwhile VAT law. The SC stated that the provisions of a taxing statute must be construed as they stand, adopting the plain and grammatical meaning of the words used. In the absence of express restriction under the statute, the amount paid under protest cannot be excluded for the purpose of computing mandatory pre-deposit payable.

## Facts of the case

- The petitioner<sup>1</sup> is engaged in the manufacture and sale of oleo-chemicals and personal care products. Investigation was conducted at premises of appellant and a notice imposing tax, interest and penalty was issued. The petitioner had paid tax and interest under protest for assessment year 2013-14.
- An order of assessment was passed under the Maharashtra Tax on the Entry of Goods into Local Areas Act 2002. An appeal was filed against the order of assessment after adjustment of the amounts paid under protest by the appellant. The appeal was rejected by the appellate authority on the ground that the payments which were made under protest could not be considered towards pre-deposit<sup>2</sup>.
- A petition was instituted to challenge the said rejection before the Bombay High Court (HC). The Division bench of the HC dismissed the petition stating that once an order of assessment has been passed, any amounts which have been paid though under protest, would have to be adjusted against the total tax liability and the demand to follow. Hence, the view of the High Court was that the appellant was duty bound to deposit 10 per cent of the total tax demand after adjusting the amount which had already been paid under protest, prior to the order of assessment.
- Therefore, the petitioner filed present Special Leave Petition (SLP) before the SC<sup>3</sup>.

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<sup>1</sup> VVF (INDIA) LIMITED

<sup>2</sup> U/s 26(6A) of the Maharashtra Value Added Tax Act, 2002

<sup>3</sup> SLP(C) No 28607 of 2019

### SC observations and ruling<sup>4</sup>:

- **Taxing statute to be construed strictly and literally:** As per the relevant provision whole undisputed amount and 10% of disputed amount of tax is required to be deposited by appellant along with proof of payment. There is no express restriction under the law providing that amount paid under protest cannot be considered while computing pre-deposit payable. In absence of statutory language to that effect, the amount deposited by appellant prior to order of assessment cannot be excluded from consideration.
- **Provisions duly complied by appellant:** The provisions of a taxing statute must be construed as they stand, adopting the plain and grammatical meaning of the words used. The appellant was required to pay 10% of amount of tax disputed and there is no reason why amount paid under protest should not be taken into consideration. Therefore, as the provisions were duly complied by the appellant, rejection of appeal by the Bombay HC was not in order.
- **Appeal allowed:** The SC held that the rejection of the appeal was not in order and needs to be restored subject to verification of deposit of 10

per cent of disputed tax. Accordingly, the appeal filed by the petitioner was allowed and the order of the Bombay HC was set aside.

### Our comments

The Bombay HC had earlier held that when the appeal is against a tax liability, the petitioner cannot contend that because a part amount was deposited under protest that should be adjusted against the pre-deposit. Such adjustment shall mean that the appeal would be entertained even if there was no proof of payment of pre-deposit.

The Apex Court has set aside the order of the Bombay HC and held that the amount deposited under protest can be adjusted against the amount of mandatory pre-deposit under the erstwhile VAT law. Thus, this a landmark judgement and shall provide required relief to the taxpayers on similar issue. Further, an analogy can also be drawn under the GST regime since similar provisions exist even under the GST law.

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<sup>4</sup> Order dated 3 December 2021

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