Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7358 OF 2019
(Arising out of Special Leave Petition (Civil)No.27072 of 2016)

M/s Tecnimont Pvt. Ltd. …Appellant
(Formerly known as Tecnimont ICB Private Limited)

Versus

State of Punjab & Others …Respondents

WITH

CIVIL APPEAL NO.7359 OF 2019
SLP(C) No.8491/2016
CIVIL APPEAL NO.7360 OF 2019
SLP(C) No.26177/2016
CIVIL APPEAL NO.7379 OF 2019
SLP(C) No.2151/2017
CIVIL APPEAL NO.7373 OF 2019
SLP(C) No.1738/2017
CIVIL APPEAL NO.7378 OF 2019
SLP(C) No.967/2017
CIVIL APPEAL NO.7372 OF 2019
SLP(C) No.1737/2017
CIVIL APPEAL NO.7382 OF 2019
SLP(C) No.4405/2017
CIVIL APPEAL NO.7362 OF 2019
SLP(C) No.30829/2016
CIVIL APPEAL NO.7361 OF 2019
SLP(C) No.29203/2016
CIVIL APPEAL NO.7371 OF 2019
SLP(C) No.36303/2016
CIVIL APPEAL NO.7376 OF 2019
SLP(C) No.1742/2017
CIVIL APPEAL NO.7370 OF 2019
SLP(C) No.36300/2016
CIVIL APPEAL NO.7369 OF 2019
SLP(C) No.36305/2016
CIVIL APPEAL NO.7363 OF 2019
SLP(C) No.36306/2016

CIVIL APPEAL NO.7377 OF 2019
SLP(C) No. 1743/2017
CIVIL APPEAL NO.7364 OF 2019
SLP(C) No. 36302/2016
CIVIL APPEAL NO.7365 OF 2019
SLP(C) No. 36294/2016
CIVIL APPEAL NO.7366 OF 2019
SLP(C) No. 36297/2016
CIVIL APPEAL NO.7375 OF 2019
SLP(C) No. 1741/2017
CIVIL APPEAL NO.7381 OF 2019
SLP(C) No. 4406/2017
CIVIL APPEAL NO.7374 OF 2019
SLP(C) No. 1740/2017
CIVIL APPEAL NO.7367 OF 2019
SLP(C) No. 36292/2016
CIVIL APPEAL NO.7368 OF 2019
SLP(C) No. 36298/2016
CIVIL APPEAL NO.7380 OF 2019
SLP(C) No. 4383/2017
CIVIL APPEAL NO.7383 OF 2019
SLP(C) No. 6381/2019

J U D G M E N T

Uday Umesh Lalit, J.

1. Special leave to appeal granted.

2. These appeals challenge the judgment and order dated 23.12.2015 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.26920 of 2013 and all connected matters; and raise questions about the validity of Section 62(5) of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as “the PVAT Act”).

3. The text of Section 62 of the PVAT Act is as under:

> "62. **First Appeal** (1) An appeal against every original order passed under this Act or the rules made thereunder shall lie, -
>
> (a) if the order is made by a Excise and Taxation Officer or by an officer-in-charge of the information collection centre or check post or any other officer below the rank of Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner;
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> (b) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner;
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> (c) if the order is made by the Commissioner or any officer exercising the powers of the Commissioner, to the Tribunal.
>
> (2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Commissioner or any officer on whom the powers of the Commissioner are conferred, shall be further appealable to the Tribunal.
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> (3) Every order of the Tribunal and subject only to such order, the order of the Commissioner or any officer exercising the powers of the Commissioner or the order of the Deputy Excise and Taxation Commissioner or of the designated officer, if it was not challenged in appeal or revision, shall be final.
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> (4) No appeal shall be entertained, unless it is filed within a period of thirty days from the date of communication of the order appealed against.
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> (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.

> Explanation: For the purposes of this sub-section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central Sales Tax Act, 1956 (Act 74 of 1956).
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> (7) In deciding an appeal, the appellate authority, after affording an opportunity of being heard to the parties, shall make an order –
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> > (a) affirming or amending or cancelling the assessment or the order under appeal; or
> >
> > (b) may pass such order as it deems to be just and proper.
>
> (8) The appellate authority shall pass a speaking order while deciding an appeal and send copies of the order to the appellant and the officer whose order was a subject matter of appeal."

4. The questions involved in the matters were framed by the High Court as under:-

> "(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?"

5. Since number of petitions were filed challenging the validity of aforesaid Section 62(5), the High Court had considered CWP No.26920 of 2013 as the lead matter and the facts pertaining to said petition were set out by the High Court in detail in para 2 of its decision as under:-

> "The petitioner – Punjab State Power Corporation Limited is a statutory body constituted under the Electricity (Supply) Act, 1948. It is engaged in generation, distribution and supply of electric energy/electricity power and other allied material to the consumers viz. domestic, commercial and industrial consumers in the State of Punjab and for that purpose, it is governed by the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 as well as the Rules and Regulations framed thereunder. The petitioner had been filing returns as prescribed and whatever tax was payable in terms of Section 15 of the Punjab Value Added Tax, 2005 (in short, "the PVAT Act") was being deposited. For the year 2007-08, returns for the period from 1.4.2007 to 31.3.2008 under the PVAT Act alongwith requisite information in prescribed form had been filed with the authority. Thereafter, annual statement in Form VAT 20 had been filed before the last date as prescribed under section 26 of the PVAT Act and Rule 40(1) of the Punjab Value Added Tax Rules, 2005 (in short, "the Rules"). Similarly, for the years 2008-09 and 2009-10, returns were filed in time and annual statements in Form VAT 20 were also filed before the last dates. The Excise and Taxation Officer cum Designated Officer (ETO) – respondent No.2 initiated assessment proceedings for the years 2007-08, 2008-09 and 2009-10 by issuing notice under section 29 of the PVAT Act. The representatives of the petitioner attended the proceedings and tendered explanation. Assessments had been framed under the PVAT Act vide orders dated 19.9.2011, 31.10.2012 and 31.11.2012 for the assessment years 2007-08, 2008-09 and 2009-10, Annexures P.1, P.1/A and P.1/B respectively. The

officer made following additions to the taxable turnover declared in the returns:-

i) the receipts in respect of charges from the customers as meter rent had been brought to tax;
ii) the receipts in respect of charges from the customers as service line rental had been bought to tax while treating these as meter rent.

In addition to the above tax, the ETO imposed penalties under section 53 and interest under section 32 of the PVAT Act, resulting in raising demand of Rs.26,52,79,716/-, Rs.27,64,73,245/- and Rs.22,18,31,454/- respectively for the aforesaid years. The petitioner challenged the order before this court by filing CWP No.21127 of 2011. Vide order dated 7.11.2012, Annexure P.2, this Court relegated the petitioner to the remedy of appeal. The petitioner approached the appellate authority i.e. the Deputy Excise and Taxation Commissioner (Appeals) by filing appeals under Section 62 of the PVAT Act for all the aforesaid assessment years. Alongwith the appeals, applications under Section 62 of the PVAT Act for stay of recovery of tax and entertainment of the appeals by dispensing with the requirement of pre-deposits had also been filed on the ground that financial position of the petitioner was very tight and there were no liquid assets so as to make payment of demand involved. Vide order dated 13.2.2013, the appellate authority directed the petitioner to make deposit of 25% of the additional demand in the government treasury by 27.2.2013 failing which the appeals would be dismissed in limine. Aggrieved by the order, the petitioner filed appeals before the Punjab VAT Tribunal (in short, “the Tribunal”). It was pleaded by the petitioner that its financial position was very poor and it was not in a condition to make payment of 25% and the losses incurred by the petitioner had been duly explained to the appellate authority. Since the petitioner had already paid voluntarily tax of Rs.1,97,05,910/-, Rs.1,88,34,187/- and Rs.1,94,93,597/- for the assessment years in

> question, the same should be adjusted against the additional demand created by the assessing authority. The Tribunal agreed with the contentions raised by the petitioner to the extent that the amount of voluntarily tax was required to be adjusted against the additional demand created by the assessing authority. However, the Tribunal while disposing of the appeals had observed that the petitioner was required to deposit 25% of the amount of tax, penalty and interest in terms of the order in the case of Ahulwalia Contracts India Pvt. Limited. Aggrieved by the order, the petitioner filed CWP Nos.17370 of 2013, 17031 and 17053 of 2013 which were disposed of vide order dated 31.10.2013, Annexure P.8. The petitioner was allowed to withdraw the writ petition so as to enable it to challenge the vires of Section 62(5) of the PVAT Act alongwith challenge to the orders passed by the Tribunal. Hence the instant writ petitions by the petitioner(s)."

6. After framing the questions as aforesaid, the High Court considered the relevant decisions of this Court as well as some of the High Courts and observed as under:-

> "It is, thus, concluded that the State is empowered to enact Section 62(5) of the Act and the said provision is legal and valid. The condition of 25% pre-deposit for hearing first appeal is not onerous, harsh, unreasonable and violative of the provisions of Article 14 of the Constitution of India."

While considering question (c), the High Court principally relied upon the decision of this Court in ***Income Tax Officer*** v. ***M. K.***

Mohammed Kunhi[1] and various judgments of the High Courts which had followed said decision. The relevant passages from the decision in ***Kunhi***[1] are:-

> "The argument advanced on behalf of the Appellant before us that in the absence of any express provisions in Sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity inasmuch as it assumes and proceeds on the premise that the statute confers such a power on the Income tax Officer who can give the necessary relief to an Assessee. The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the appellate tribunal. Indeed the tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay or recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The Assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the appellate tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland *Statutory*

1(1969) 2 SCR 65

> *Construction*, Third Edition, Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective…….
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> … … …
>
> ….. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory."

The High Court also referred to the decision of this Court in ***Commissioner of Income Tax*** v. ***Bansi Dhar & Sons and Others***[2]. Finally the High Court concluded :-

> "It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim

2 (1986) 157 ITR 665 (SC) = (1986) 1 SCC 523

> injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly."

7. The appellant in appeal arising out of SLP(C) No.27072 of 2016, though not party to the original proceedings, was granted permission to challenge the instant decision of the High Court. The appellant as well as those who are similarly placed are aggrieved by the decision of the High court as regards first two questions while challenge has been raised on behalf of the State[3] to the conclusion of the High Court in relation to

3 In appeals arising out of SLP(C)Nos. 1742, 1743 and 4383 of 2017

question (c). All these matters were listed along with petitions raising challenge with regard to the validity of Section 48(4) of the Chhattisgarh Value Added Tax Act, 2005. The matters from Chhattisgarh were disposed of by this Court by order dated 16.04.2019 passed in Writ Petition (Civil) No.212 of 2014 and connected matters. The provisions of the PVAT Act being somewhat different, the matters from the State of Punjab were directed to be dealt with separately. We heard learned counsel for the parties

8. In ***The Anant Mills Co. Ltd.*** v. ***State of Gujarat and Others***[4], a Bench of four Judges of this Court considered *inter alia*, challenge to the validity of Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 as amended by Gujarat Act No.5 of 1970. As per the relevant provision, no appeal against the ratable value or tax would be entertained unless the amount claimed was deposited with the Commissioner. The proviso to said Section however empowered the Judge considering the appeal to relieve the appellant from the rigour of pre-deposit if in the opinion of the Judge it would cause undue hardship to the appellant. The discussion in that behalf was as under:-

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4 (1975) 2 SCC 175

"40. After hearing the learned counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406(2)(e) as amended states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a rateable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate Judge to relieve the appellant from the rigour of the above provision in case the Judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate Judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves

unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by Section 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them; it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that ". . . no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the

> enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission."

9. In ***Seth Nand Lal and Another vs. State of Haryana and Others***[5], the Constitution Bench of this Court was called upon to consider whether the condition of pre-deposit for exercise of right of appeal was valid or not. A submission was raised that unlike the provision which was considered in ***The Anant Mills Co. Ltd.***[4], the Appellate Authority was not empowered to relieve the appellant of the requirement of pre-deposit. The submission was considered thus:-

> **"22.** It is well settled by several decisions of this Court that the right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory (vide : the latest decision in *Anant Mills Ltd.* v. *State of Gujarat*[4]). Counsel for the appellants, however, urged that the conditions imposed should be regarded as

5 1980 (Supp) SCC 574

> unreasonably onerous especially when no discretion has been left with the appellate or revisional authority to relax or waive the condition or grant exemption in respect thereof in fit and proper cases and, therefore, the fetter imposed must be regarded as unconstitutional and struck down. It is not possible to accept this contention for more than one reason. In the first place, the object of imposing the condition is obviously to prevent frivolous appeals and revision that impede the implementation of the ceiling policy; secondly, having regard to sub-sections (8) and (9) it is clear that the cash deposit or bank guarantee is not by way of any exaction but in the nature of securing mesne profits from the person who is ultimately found to be in unlawful possession of the land; thirdly, the deposit or the guarantee is correlated to the landholdings tax (30 times the tax) which, we are informed, varies in the State of Haryana around a paltry amount of Rs 8 per acre annually; fourthly, the deposit to be made or bank guarantee to be furnished is confined to the landholdings tax payable in respect of the disputed area i.e. the area or part thereof which is declared surplus after leaving the permissible area to the appellant or petitioner. Having regard to those aspects, particularly the meagre rate of the annual land-tax payable, the fetter imposed on the right of appea1/revision, even in the absence of a provision conferring discretion on the appellate/revisional authority to relax or waive the condition, cannot be regarded as onerous or unreasonable. The challenge to Section 18(7) must, therefore, fail."

10. The principles laid down in ***The Anant Mills Co. Ltd.***[4] and in ***Seth Nand Lal***[5] have consistently been followed, for instance in (i) ***Vijay Prakash D. Mehta and another vs. Collector of Customs (Preventive), Bombay***[6]; (ii) ***Shyam Kishore and others vs. Municipal Corporation***

6 (1988) 4 SCC 402

of Delhi and another[7]***;*** (iii) ***Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad and others***[8]; (iv) ***State of Haryana vs. Maruti Udyog Ltd. and others***[9]; (v) ***Government of Andhra Pradesh and others vs. P. Laxmi Devi (Smt.)***[10]; (vi) ***Har Devi Asnani vs. State of Rajasthan and others***[11]***;***and (vii) ***S.E. Graphites Private Limited vs. State of Telangana and Ors.***[12].

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11. The decisions of this Court can broadly be classified in two categories, going by the width and extent of the concerned provisions:-

a) Under the first category are the cases where, the concerned statutory provision, while insisting on pre-deposit, itself gives discretion to the Appellate Authority to grant relief against the requirement of pre-deposit if the Appellate Authority is satisfied that insistence on pre-deposit would cause undue hardship to the appellant. The decisions in this category are ***The Anant Mills Co. Ltd.***[4]***, Vijay Prakash D. Mehta***[6]***, Gujarat Agro Industries***[8] *and* ***Maruti Udyog***[9]

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7 (1993) 1 SCC 22
8 (1999) 4 SCC 468
9 (2000) 7 SCC 348
10 (2008) 4 SCC 720
11 (2011) 14 SCC 160
12 (2019) SCC Online SC 842

b) On the other hand, the decisions in said ***Seth Nand Lal***[5]***, Shyam Kishore***[7]***, P. Laxmi Devi***[10]***, Har Devi Asnani***[11] and ***S.E. Graphites***[12] dealt with cases where the statute did not confer any such discretion on the Appellate Authority and yet the challenge to the validity of such provisions was rejected.

12. The decision of the Constitution Bench of this Court in ***Seth Nand Lal***[5] did consider whether the requirement of pre-deposit would cause undue hardship. However considering that the liability in question and consequential requirement of pre-deposit was *a meagre rate of the annual land-tax payable, the fetter imposed on the right of appeal/revision, even in the absence of a provision conferring the discretion on the appellant/revisional authority to relax or waive the condition* was not found to be onerous or unreasonable.

13. In ***Shyam Kishore***[7], the provision that came up for consideration was Section 170(b) of the Delhi Municipal Corporation Act, 1957 under which the amount in dispute relating to property tax is required to be deposited before the appeal can be entertained. Said Section 170(b) is as under:

> "S.170 **Conditions of right to appeal –** No appeal shall be heard or determined under Section 169 unless-

> (a) …..
> (b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation."

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After considering relevant decisions on the point, a modality was suggested under which some relief could be granted to the concerned appellant but finally a Bench of three Judges of this Court suggested that the solution lay in having the statute itself amended. The discussion in that behalf was as under:-

> "44. …… The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate court's calendar of hearings. His powers, however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax, if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: "no appeal shall be disposed of

> *until* the tax is paid". Short of this, however, there is no reason to restrict the powers unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read clause (*b*) of Section 170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself.
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> **46.** We only wish that the statute itself is soon amended to make this position clear. After all, under the D.M.C. Act, the appellate authority is a high judicial officer, being the District Judge, and there is no reason why the Legislature should not trust such a high judicial officer to exercise his discretion in such a way as to safeguard the interests of both the Revenue and the assessees. We think that, until this is done, the provision requires a liberal interpretation so as to preserve such interests and should not be so rigidly construed as to warrant the throwing out of an appeal in limine merely because the tax is not paid before the appeal is filed."

14. In ***P. Laxmi Devi***[10]**,** validity of the proviso to Section 47A of the Indian Stamp Act, 1899 was in issue. The High Court had held said provision to be unconstitutional, which view was reversed by this Court. The proviso to said Section 47A reads:-

> "Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned."

The relevant discussion was as under:-

> "18. In our opinion, there is no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by A.P.

Amendment Act 8 of 1998. This amendment was only for plugging the loopholes and for quick realisation of the stamp duty. Hence it is well within the power of the State Legislature vide Entry 63 of List II read with Entry 44 of List III of the Seventh Schedule to the Constitution.

19. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide *CIT* v. *V.MR.P. Firm Muar*[13]. If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.

20. In *Partington* v. *Attorney General*[14] Lord Cairns observed as under:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind. On the other hand if the court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be."

The above observation has often been quoted with approval by this Court, and we endorse it again. In *Bengal Immunity Co. Ltd.* v. *State of Bihar*[15] this Court held that if there is hardship in a statute it is for the legislature to amend the law, but the court cannot be called upon to discard the cardinal rule of interpretation for mitigating a hardship.

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13 AIR 1965 SC 1216
14 (1869) LR 4 HL 100
15 AIR 1955 SC 661

> 21. It has been held by a Constitution Bench of this Court in *ITO* v. *T.S. Devinatha Nadar*[16] (vide AIR paras 23 to 28) that where the language of a taxing provision is plain, the court cannot concern itself with the intention of the legislature. Hence, in our opinion the High Court erred in its approach of trying to find out the intention of the legislature in enacting the impugned amendment to the Stamp Act.
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> 22. In this connection we may also mention that just as the reference under Section 47-A has been made subject to deposit of 50% of the deficit duty, similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions which are noted below.
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> 23. In *Gujarat Agro Industries Co. Ltd.* v. *Municipal Corpn. of the City of Ahmedabad*[8] this Court referred to its earlier decision in *Vijay Prakash D. Mehta* v. *Collector of Customs*[6] wherein this Court observed: (*Vijay Prakash case*, SCC p. 406, para 9)
>
> > "*9.* Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant."

While dealing with the submission that in terms of said proviso, no relief could be granted even in cases where the requirement of pre-deposit may result in great prejudice, this Court went on to observe:-

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16 AIR 1968 SC 623

> "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 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*[17]. Hence, the party is not remediless in this situation."

15. In ***Har Devi Asnani***[11] the validity of proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 came up for consideration in terms of which no revision application could be entertained unless it was accompanied by a satisfactory proof of the payment of 50% of the recoverable amount. Relying on the earlier decisions of this Court including in ***P. Laxmi Devi***[10],

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17 (1978) 1 SCC 248 = AIR 1978 SC 597

the challenge was rejected and the thought expressed in ***P. Laxmi Devi***[10] was repeated in ***Har Devi Asnani***[11] as under:-

> "27. In *Govt. of A.P.* v. *P. Laxmi Devi*[10] this Court, while upholding the proviso to sub-section (1) of Section 47-A of the Stamp Act introduced by Andhra Pradesh Amendment Act 8 of 1998, observed: (SCC p. 737, para 29)
>
> > "*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 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*[17]). Hence, the party is not remediless in this situation."
>
> 28. In our view, therefore, the learned Single Judge should have examined the facts of the present case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made from the appellant by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution.

16. These decisions show that the following statements of law in ***The Anant Mills Co. Ltd.***[4] have guided subsequent decisions of this Court:

> "…The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal.
>
> …It is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid.
>
> ….It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation."

17. In the light of these principles, the High Court rightly held Section 62(5) of the PVAT Act to be legal and valid and the condition of 25% of pre-deposit not to be onerous, harsh, unreasonable and violative of Article 14 of the Constitution of India. Now we turn to question (c) as framed by the High Court and consider whether the conclusions drawn by the High Court while answering said question were correct or not.

18. It is true that in cases falling in second category as set out in paragraph 11 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 concerned provision in each of those cases was rejected. But the decision of the Constitution Bench of this Court in ***Seth Nand Lal***[5] was in the backdrop of what this Court considered to be *meagre rate of the annual land-tax payable*. The decision in ***Shyam***

Kishore[7] 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***[10] and in ***Har Devi Asnani***[11] 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***[1]**.**

19. ***Kunhi***[1] undoubtedly laid down that an express grant of statutory power carries with it, by necessary implication, the authority to use all reasonable means to make such grant effective. But can such incidental or implied power be drawn and invoked to grant relief against requirement of pre-deposit when the statute in clear mandate says – no appeal be entertained unless 25% of the amount in question is deposited? Would not any such exercise make the mandate of the provision of pre-deposit nugatory and meaningless?

20. While dealing with the scope and width of implied powers, the Constitution Bench of this Court in ***Matajog Dubey*** v. ***H. C. Bhari***[18] also touched upon the issue whether exercise of such power can permit going against the express statutory provision inhibiting the exercise of such power. The discussion was as under:-

> "Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. The true position is neatly stated thus in Broom's Legal Maxims, 10th Ed., at page 312 : "It is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command." (Emphasis added)

21. The same principle was adverted to in ***Shyam Kishore***[7]. What is noteworthy is that the decision in ***Kunhi***[1] was also considered and it was observed :-

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18 1955 (2) SCR 925

"40. We have set out the terms of Section 170(*b*) earlier. This has been interpreted by the Corporation to mean that an appeal preferred by an assessee has to be dismissed in limine unless the tax in dispute has been paid and that there is no scope for the appellate authority exercising any powers of stay pending disposal of the appeal. *Prima facie*, the contention of the Corporation that to read a power in the District Judge to grant stay of collection of the disputed tax pending disposal of the appeal will run counter to Section 170(*b*) appears to be well founded. Though the normal rule is that the incidental and ancillary powers of an appellate authority will include a power to grant stay of the order under appeal — vide, *ITO* v. *M.K. Mohammed Kunhi*[1] - that power cannot be read into Section 170(*b*) for such an interpretation would render Section 170(*b*) totally unworkable. An argument was addressed before us that such a power can be ascribed to the District Judge in view of the provisions of Section 457 of the Act reproduced earlier. Reliance was placed on the Single Bench's decision of the Delhi High Court in *Punj Sons (P) Ltd.* v. *Municipal Corporation of Delhi*[19] where a learned Single Judge of the Delhi High Court took the view that the District Judge, in view of Section 457 of the Act, has powers to take recourse to Order 41 Rule 5 of the Code of Civil Procedure in the appeal under Section 169 of the Act. With all due respect we do not agree with the reasoning of the learned Single Judge in the said case. In fact in the judgment under appeal all the three Judges have also dissented from this view of the learned Single Judge in the matter of *Punj Sons*[19]. The reason is simple as Section 457 itself states that the procedure provided in the Code of Civil Procedure in regard to suits are to be followed "as far as it can be made applicable". The other provisions of the statute totally bar the grant of such relief. The other provisions have to be harmoniously read with it and not in derogation thereto. Section 457 itself, therefore, does not help the assessee whose case depends entirely on the construction to be placed on Section 170(*b*). But still one has to examine Section

19 1982 Rajdhani LR 247: (1982) 21 DLT 182 (Del HC)

> 170(*b*) carefully to see whether, short of dismissing an appeal for default of payment of tax, the District Judge has any latitude in the matter." (Emphasis added)

22. Similar limitation has always been read into the width of inherent powers acknowledged by provisions like Section 151 of the CPC[20] and Section 482 of the Cr.P.C.[21] In ***Vinod Sethi*** v. ***Devinder Bajaj***[22], the discussion was as under:-

> **"28.** As the provisions of the Code are not exhaustive, Section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognise rights, or to create liabilities and obligations not contemplated by any law.
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> **29.** Considering the scope of Section 151, in *Padam Sen* v. *State of U.P.*[23], this Court observed: (AIR p. 219, paras 8-9)

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20 Code of Civil Procedure, 1908
21 Code of Criminal Procedure, 1976
22 (2010) 8 SCC 1
23 (AIR 1961 SC 218)

> "*8.* … The inherent powers of the court are in addition to the powers specifically conferred on the court by the Code. They are complementary to those powers and therefore it must be held that *the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature*. …
>
> *9.* … The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. *These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the courts for passing such orders which would affect such rights of a party*."
>
> (emphasis supplied)

30. In *Manohar Lal Chopra* v. *Seth Hiralal*[24], this Court held: (AIR p. 533, para 21)

> "*21*. … that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the legislature."

31. In *Ram Chand and Sons Sugar Mills (P) Ltd.* v. *Kanhayalal Bhargava*[25] this Court reiterated that the inherent power of the court is in addition to and complementary to the powers expressly conferred under the Code but that power will not be exercised if its exercise is inconsistent with, or comes into conflict

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24 (AIR 1962 SC 527)
25 (AIR 1966 SC 1899)

> with any of the powers expressly or by necessary implication conferred by the other provisions of the Code. Section 151 however is not intended to create a new procedure or any new right or obligation.
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> **32.** In *Nain Singh* v. *Koonwarjee*[26] this Court observed: (SCC p. 735, para 4)
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> > "*4.* … Under the inherent power of courts recognised by Section 151 CPC, a court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked. In other words the court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code….""

23. In respect of powers exercisable under Section 482 of the Cr.P.C., it was observed in ***Sooraj Devi*** v. ***Pyare Lal and Another***[27], "*Now it is well settled that the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code*." The principle was followed in ***Simrikhia*** v. ***Dolley Mukherjee and Chhabi Mukherjee and Another***[28] and in ***State*** v. ***K. V. Rajendran and Others***[29]**.**

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26 (1970) 1 SCC 732
27 (1981) 1 SCC 500
28 (1990) 2 SCC 437
29 (2008) 8 SCC 673

24. If the inherent power the existence of which is specifically acknowledged by provisions such as Section 151 of the CPC and Section 482 of the Cr.P.C. is to be read with the limitation that exercise of such power cannot be undertaken for doing that which is specifically prohibited, same limitation must be read into the scope and width of implied power of an appellate authority under a statute. In any case the principle laid down in ***Matajog Dobey***[18] states with clarity that so long as there is no express inhibition, the implied power can extend to doing all such acts or employing such means as are reasonably necessary for such execution. The reliance on the principle laid down in ***Kunhi***[1] cannot go to the extent, as concluded by the High Court, of enabling the Appellate Authority to override the limitation prescribed by the statute and go against the requirement of pre-deposit. The High Court was clearly in error in answering question (c).

25. As stated in ***P. Laxmi Devi***[10] and ***Har Devi Asnani***[11], in genuine cases of hardship, recourse would still be open to the concerned person. However, it would be completely a different thing to say that the Appellate Authority itself can grant such relief. As stated in ***Shyam Kishore***[7] any such exercise would make the provision itself unworkable and render the statutory intendment nugatory.

26. In the premises, we accept the conclusions drawn by the High Court as regards questions (a) and (b) are concerned but set aside the view taken by the High Court as regards question (c). The appeals preferred by the assesses are therefore dismissed and those preferred by the State against the decision in respect of question (c) are allowed. No costs.

……..J.
[Uday Umesh Lalit]

……..…J.
[Indu Malhotra]

New Delhi;
September 18, 2019.