

HIGH COURT OF GUJARAT (D.B.)**NKP ENTERPRISE LLP***Versus***STATE OF GUJARAT****Date of Decision:** 23 June 2016**Citation:** 2016 LawSuit(Guj) 2425**Hon'ble Judges:** [Akil Kureshi](#), [A J Shastri](#)**Eq. Citations:** 2017 99 VST 308**Case Type:** Special Civil Application**Case No:** 8956 of 2016**Advocates:** [Nanavati Associates](#), [Hardik Vora](#)**Akil Kureshi, J.**

[1] The petition arises in the following background. The petitioner was assessed by the Assessing Officer for the year 2011-2012 in which the petitioner had claimed input tax credit for the purchases made from registered dealers. With respect to nine such dealers, the Assessing Officer disallowed input tax credit, totalling to Rs. 10.85 crores (rounded off). Resultantly in the order of assessment dated 2.3.2016, state authority raised tax demand of Rs. 10.85 crores with interest of Rs. 7.85 crores and penalty of Rs. 3.26 crores. Thus, total demand came to Rs. 21.97 crores.

[2] Against such order, the petitioner had preferred an appeal before first appellate authority. First appellate authority insisted that the petitioner deposits 20 per cent of the entire amount by pre-deposit and simultaneously provides bank guarantee for the rest of the amount. Since the petitioner failed to do so, the appellate authority by an order dated 24.2.2016 dismissed the appeal only on the ground of non-fulfilling the pre-conditions. Against said order, the petitioner approached Value Added Tax Tribunal. The Tribunal by impugned order dated 28.4.2016 required the petitioner to deposit 20% of the tax demand latest before 10.6.2016 but relieved the petitioner from the responsibility of providing bank guarantee for the remaining 80 per cent. Under these circumstances, the petitioner has approached the High Court.

[3] Learned counsel Mr. Soparkar for the petitioner submitted that the disallowance of the input tax credit was solely on account of what the authority believed was nonconciliation of input tax credit. However, the authorities never brought such materials to the notice of the petitioner enabling the petitioner to point out the reasons for the discrepancies if at all. Thus, the adverse material which was used against the petitioner was never provided enabling the petitioner to meet with the same. Counsel submitted that even the Tribunal agreed that such data was not available and that therefore, the petitioner's case appeared to be genuine despite which the Tribunal required the petitioner to deposit 20% of the total tax demand of more than Rs. 21 crores.

[4] Learned Assistant Government Pleader Mr. Vora opposed the petition contending that at this stage of predeposit requirement, the Court should not interfere in exercise of the writ jurisdiction.

[5] In the impugned order the Tribunal with respect to the petitioner's contention of adverse material not being made available, had observed as under:

"4. We have considered the rival submissions and facts of the case. We have also gone through the orders passed by the authorities below. In absence of the copy of reverse report given to the appellant, it is not possible for the appellant to offer any explanation. Even today the reverse report is not placed before this Tribunal. It is true that the hearing of this appeal is fixed today for the first time and the record may not be available with the learned Government Representative. However, considering the nature of transactions which appears to be genuine, we direct the appellant to make payment of 20% of the tax demand on or before 10.6.2016. Since we have given the direction of the appellant to pay 20% of the tax demand by way of pre-deposit, the appellant is not required to furnish any bank guarantee for the remaining amount. On payment of this amount, the stay will come into operation."

[6] Thus, before the Tribunal also, the report was not placed on record, obviously it was not made available to the petitioner. If that be so, a serious question would arise how such materials could have been utilised to make such substantial additions. The Tribunal was also of the opinion that the transactions of the petitioner appeared to be genuine. If that be so, the question would be why was the petitioner required to deposit 20 per cent of the tax demand by way of pre-deposit to enable the petitioner to pursue the Appeal. This appeal itself was directed against the order of the first appellate authority dismissing the petitioner's appeal for failing to meet with pre-deposit requirements.

[7] In the facts and circumstances of the case, we would place the entire proceedings back before first appellate authority to be decided on merits. For such purpose, the orders dated 22.4.2016 passed by the first appellate authority and 28.4.2016 passed by the Tribunal are set aside. The petitioner's appeal is restored and placed before first appellate authority for decision on merits and disposal in accordance with law. In the facts of the case noted and highlight1ed above, the pre-deposit requirement is waived till this appeal is decided by the appellate authority.

