Before Ajay Kumar Mittal & Ramendra Jain, JJ.

PUNJAB STATE POWER CORPORATION LIMITED — ***Petitioner***

versus

THE STATE OF PUNJAB AND OTHERS — ***Respondents***

CWP No. 26920 of 2013

December 23, 2015

A. Constitution of India, 1950 — Arts. 14 & 226 — Punjab Value Added Tax Act, 2005 — S. 62(5) — Appeal on pre-deposit — Vires — Right to appeal is a statutory right — It can be circumscribed by conditions in the grant — Legislature can impose conditions for exercise of such a right — No constitutional or legal impediment to imposition of such a condition — Requirement of pre-deposit does not nullify the right of appeal — Right of appeal being a statutory right, it is for the legislature to decide whether to make the right subject to any condition or not — State empowered to enact Section 62(5) — Condition of 25% pre-deposit for hearing the appeal is not onerous, harsh, unreasonable or violative of Article 14 of the Constitution of India.

Held, that the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed. 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. In other words, while granting this right, the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the provision is to keep balance between the right of appeal and the right of the revenue to speedy recovery of the amount. The conditions imposed including prescription of a pre-deposit are meant to regulate the right of appeal and the same cannot be held to be violative of Article 14 of the Constitution of India unless demonstrated to be onerous or

unreasonable. To put it differently, right of appeal being a statutory right, it is for the legislature to decide whether to make the right subject to any condition or not.

(Para 25)

Further held, that 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.

(Para 25)

B. Punjab Value Added Tax Act, 2005 — S. 62(5) - Statutory appeal requiring 25% pre-deposit — Waiver — Interim protection — Provision is directory in nature — By necessary implication and intendment, power to grant interim injunction/protection is embedded in the provision — Appellate Authority empowered to partially or completely waive the condition of pre-deposit in given facts and circumstances — Such power is not to be exercised in a routine way or as a matter of course — Only when a strong prima facie case is made out — Partial or complete waiver will be granted 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.

Held, that 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 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.

(Para 35)

K.L.Goyal, Senior Advocate with
Sandeep Goyal, Dr. Naveen Rattan, Rohit Gupta, Rishabh Singla, J.S.Bedi, Amit Bajaj, G.R.Sethi, Varun Chadha, Advocates,

Inderpal Singh Parmar, Advocate
in CWP Nos.16820 to 16824 of 2015.

S.P. Garg, Advocate in CWP No.7994 of 2015.

Divya Suri, Advocate with
Sachin Bhardwaj, Advocate and
Madhur Sharma, Advocate
in CWP No.8361 of 2015.

Aman Bansal, Advocate
in CWPNo.10920, 10994 and 11004 of 2015.

Gaurav Dhull, Advocate
(in CWP Nos.9675 and 10032 of 2015)

Avneesh Jhingan, Advocate with
Tanvi Gupta, Advocate
for the petitioners.

Radhika Suri, A.A.G. Punjab with
Anita Gupta, A.A.G, Punjab.

IPS Doabia, Advocate
for the respondent-UT Chandigarh
in CWP No.8361 of 2015.

AJAY KUMAR MITTAL,J.

(1) This order shall dispose of a bunch of 386 petitions viz. CWP Nos. 26920, 22437, 27788, 27789 of2013, 10554, 10560, 19587, 2343, 3297, 6844, 21260, 21774, 23041, 21860, 23397, 23454, 25146,

26316, 26323, 26371, 26559, 26589, 11405, 22928, 22947, 24389, 24390, 24391 of 2014, 28, 149, 319, 315, 423, 456, 478, 1105,1118, 1119, 1142, 1253, 1254, 1299, 1393, 1813, 1817,1998, 2059, 2090, 2184, 2334, 2345, 2346, 2406, 2407, 2409, 2412, 2416, 2628, 2483, 2633, 2635, 2858, 2944, 3043, 3073, 3096, 3099, 3561, 3605, 3615, 3573, 3196, 3132, 3038, 3302, 3462, 3501, 3504, 3526, 3554, 3567, 3649, 1932, 5337, 5338, 5341, 5471, 4791, 4860, 1931, 4100, 4101, 4104, 4106, 4167, 4245, 4407, 4426, 4429, 4697, 4704, 4707, 4874, 4906, 4907, 4919, 4949, 4970, 4992, 5043, 5074, 5084, 5098, 5168, 5229, 5520, 5522, 5547, 5076, 5548, 5551, 5736, 5758, 5772, 5790, 5803, 5910, 5918, 5920, 5926, 5937, 5943, 5967, 5986, 6065, 6097, 6104, 6123, 6209, 6407, 6408, 6522, 6847, 7036, 7185, 7188, 7205, 7216, 7242, 7447, 7498, 7520, 7526, 7537, 7576, 7779, 7882, 7883, 7884, 7886, 7887, 7888, 7891, 7893, 10118, 10142, 10144, 10878, 10915, 10920, 10956, 10960, 10990, 10991, 10993, 10994, 11246, 11755, 11757, 11828, 11852, 11884, 11903, 11938, 11952, 12001, 12020, 11537, 11660, 7994, 11307, 11322, 11352, 4578, 8120, 8482, 8600, 8707, 8804, 8814, 8835, 8880, 8893, 8896, 9007, 9008, 9014, 9023, 9026, 9028, 9113, 9250, 9269, 9270, 9346, 9468, 9625, 9641, 9675, 9744, 10020, 10029, 10032, 10034, 10035, 10100, 10264, 10295, 10302, 10456, 10457, 10532, 10555, 10575, 10738, 10723, 11158, 112947, 11351, 12316, 12852, 12885, 12925, 12932, 12934, 12991, 12993, 12996, 13000, 13021, 13027, 13031, 13041, 13043, 13075, 13195, 13217, 13227, 13237, 13355, 13357, 13466, 13772, 13787, 13884, 13918, 14024, 4675, 11004, 10998, 7491, 11763, 13894, 14510, 14183, 13003, 15373, 15374, 15377, 15254, 15270, 15903, 16141, 16158, 16532, 16820, 16824, 16848, 16869, 16871, 16880, 15261, 15522, 15523, 15536, 15550, 15553, 15653, 15664, 15677, 16101, 16165, 16190, 16202, 16203, 16189, 16988, 17073, 17075, 17038, 17303, 15915, 17849, 16382, 17561, 17568, 17584, 17595, 18097, 18104, 18108, 18109, 18127, 18128, 18136, 18148, 18166, 18174, 18246, 18730, 18733, 18914, 18915, 19012, 19290, 19292, 19295, 19390, 19233, 19421, 19543, 20660, 20686, 20691, 20840, 21451, 21539, 21561, 21584, 21644, 22058, 22263, 22278, 22414, 22426, 22432, 22560, 22544, 22692, 22812, 22813, 22814, 22821, 23416, 23658, 23936, 2340, 24099, 24509, 24598, 24681, 24689, 24692, 24695, 24701, 24799, 24803, 24842, 24851, 24946, 24954, 24999, 25012, 25015, 25200, 25064 and 22829 of 2015, as according to the learned counsel for the parties, the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No. 26920 of 2013.

(2) 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 brought to tax while treating these as meter rent.

(3) 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.2,18,31,454/- 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 he 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 No.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).

(4) We have heard learned counsel for the parties.

(5) From the submissions made by learned counsel for the parties, the following questions emerge for our consideration:-

(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?

(6) Examining questions No.(a) and (b) as noticed above, these are being taken up together as the issue involved therein is overlapping. It may be noticed that vide sub section (5) of Section 62 of the PVAT Act, the State has imposed a condition of 25% of the tax etc. to be deposited as a condition precedent for hearing of an appeal.

(7) It would be expedient to notice Section 62 of the PVAT Act which reads thus:-

"62. (1) An appeal against every original order passed under thisAct or the rules made thereunder shall lie, -

a. if the order is made by a Excise and Taxation Officer or by an officer-Incharge 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; or

b. if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner; or

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.

(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.

(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.

(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 tax, penalty and interest, if any.

(6) In deciding an appeal, the appellate authority, after affording an opportunity of being heard to the parties, shall make an order -

(a) affirming or amending or canceling the assessment or the order under appeal; or

(b) may pass such order, as it deems to be just and proper.

(7) 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."

(8) The issues relating to validity of Section 62(5) of the PVAT Act embedded in Questions (a) and (b) have been subject matter of judicial interpretation under different statutes incorporating similar provisions in several pronouncements of the Apex Court and also various High Courts. Examining the legal proposition, reference is made to the catena of decisions as noticed hereinafter.

(9) In ***Anant Mills Co. Limited*** versus ***State of Gujarat and others***[1], the Apex Court while considering the issue of right of appeal and pre-deposit held as under:-

"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

[1] (1975) 2 SCC 175

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 on 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 a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment 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."

(10) Following judgment in ***Anant Mills Limited's case*** (supra), the Supreme Court in ***Seth Nand Lal and others*** versus ***State of Haryana and others***[2] dealing with the validity of Section 18(7) of the Haryana Ceiling on Land Holdings Act, 1972 imposing a condition of making a deposit of a sum equal to 30 times the land holdings tax

[2] (1980) (Supp.) SCC 574

payable in respect of the disputed area before any appeal or revision was entertained by the appellate or revisional authority, upheld the same with the following observations:-

> "21. The next provision challenged as unconstitutional is the one contained in Section 18(7) imposing a condition of making a deposit of a sum equal to 30 times the land holdings tax payable in respect of the disputed area before any appeal or revision is entertained by the appellate or revisional authority-a provision inserted in the Act by Amending Act 40 of 1976. Section 18(1) and (2) provide for an appeal, review and revision of the orders of the prescribed authority and the position was that prior to 1976 there was no fetter placed on the appellate/revisional remedy by the statute. However, by the amendments made by Haryana Act No. 40 of 1976, sub sections (7) and (8) were added and the newly inserted sub section (7) for the first time imposed a condition that all appeals under sub section (1) or sub section (2) and revisions under sub section (4) would be entertained only on the appellant or the petitioner depositing with the appellate or the revisional authority a sum equal to 30 times the land holdings tax payable in respect of the disputed surplus area. Under sub section (8) it was provided that if the appellant or the petitioner coming against the order declaring the land surplus failed in his appeal or revision, he shall be liable to pay for the period he has at any time been in possession of the land declared surplus to which he was not entitled under the law, a licence fee equal to 30 times the landholdings tax recoverable in respect of this area. On 6th June, 1978, the Act was further amended by Amending Act 18 of 1978 whereby the rigour of the condition imposed under sub section (7) was reduced by permitting the appellant or the petitioner to furnish a bank guarantee for the requisite amount as an alternative to making cash deposit and while retaining sub section (8) in its original form, a new sub section (9) was inserted under which it has been provided that if the appeal or revision succeeds, the amount deposited or the bank guarantee furnished shall be refunded or released, as the case may be, but if the appeal or revision fails the deposit or the guarantee shall be adjusted against the licence fee recoverable under sub section (8). In the High Court, two contentions were

urged: first, that section 18(1) and (2), as originally enacted in 1972, gave an unrestricted and unconditional right of appeal and revision against the orders of the prescribed authority or the appellate authority but by inserting sub sections (7) and (8) by Act 40 of 1976, a fetter was put on this unrestricted right which was unconstitutional; secondly, even the mellowing down of the condition by Act 18 of 1978 did not have the effect of removing the vice of unconstitutionality, inasmuch as even the conditions imposed under the amended sub section (7) were so onerous in nature that they either virtually took away the vested right of appeal or in any event rendered it illusory. Both these contentions were rejected by the High Court and in our view rightly.

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.*** versus ***State of Gujarat***. Counsel for the appellants, however, urged that the conditions imposed should be regarded as 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 co-related 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 these aspects, particularly the 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 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."

(11) In ***Vijay Prakash D.Mehta and another*** versus ***Collector of Customs (Preventive) Bombay***[3], the Apex Court while considering identical issue held that right to appeal was 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. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant. It was recorded as under:-

> "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.
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> Xx xx xx xx xx xx xx xx xx
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> 13. It is not the law that adjudication by itself following the rules of natural justice would be violative of any right-constitutional or statutory, without any right of appeal, as such. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant. The proviso to Section l29E of the Act gives a discretion to the Tribunal in cases of undue hardships to condone the obligation to deposit or to reduce. It is a discretion vested in an obligation to act judicially and properly."

(12) The Full Bench of the Delhi High Court in ***Shyam Kishore***

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[3] AIR 1988 SC 2010

versus ***Municipal Corporation of Delhi***[4] was adjudicating the issue as to whether the deposit of tax amount under Section 170(b) of the Delhi Municipal Corporation Act, 1937 as a condition precedent for hearing or determination of the appeal was ultra vires. The question was answered by the majority in the negative holding as under:-

> "43. We may also refer to the case ***Chatter Singh Baid v. Corporation of Calcutta*** and others, AIR 1984 Calcutta 283. It was a case relating to the payment of house-tax and the right of the aggrieved party who filed an appeal. Petitioners in the said case were the owners of Premises No. 11, Indra Kumar Karnani Street. and with effect from 4th quarter, 1978-79 the Corporation of Calcutta had determined the annual value of the said premises at Rs. 4,30,606/ -. Objections filed by the owners were disposed of by Special Officer of the Corporation and the value was fixed at Rs. 3,61,135/-.
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> 44. owners were not satisfied by the assessment and so an appeal was filed in the Court of Small Causes, Calcutta.
>
> 45. Sub-section (3-A) added to S. 183 reads as under:-
>
> "No appeal under this section shall be entertained unless the consolidated rate payable up to the date of presentation of the appeal on the valuation determined
>
> (a) by an order under S. 182, in the case of an appeal to the Court of Small Causes,
>
> (b) by the decision of the Court of Small Causes, in the case of an appeal to the High Court, has been deposited in the municipal office and -such consolidated rate is continued to be deposited until the appeal is finally decided."
>
> 46. This provision is similar to the provision contained in S. 170 of Delhi Municipal Corporation Act.
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> 47. An argument was advanced by learned counsel for the petitioners that unless the appellate authority is given discretionary powers to relax or modify such condition for deposit of the disputed amount, the condition precedent ought to be pronounced as unreasonable. This argument was not accepted by observing that the observations made in para

[4] AIR 1991 Delhi 104

40 of the Supreme Court decision in ***Anant Mills'case*** (supra) are directly against the above submission of the petitioners. Reliance was also placed on the case of ***Nand Lal*** versus ***State of Haryana*** (supra) holding that condition of prepayment before appeal could be heard is not onerous on account of there being no discretion left to the appellate and revisional authority so relax or waive the said condition. This case fully supports the view we are taking.

48. The proviso to S. 170 of the Delhi Municipal Corporation Act does not make the right of appeal nugatory or illusory because it is only on account of his own default to comply with the condition for deposit, the appellant himself may fail to avail of the remedy by way of appeal. We are clearly of the view that the ratio of the decision in ***Anant Mills'*** case (supra) and ***Nand Lal's*** case (supra) is that the right of appeal is creature of statute and while granting the right of appeal the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition for deposit of tax.

49. Absence of a discretion in the appellate Court to exempt the deposit, of the amount of tax cause hardship in some cases but the Court cannot test the validity of the statutory provision on the touchstone of hardship or stringency. If a provision made in a statute is not invalid, any person desirous of availing the right of appeal has no option but to comply with the condition under which this right of appeal can be exercised. A restriction is, undoubtedly, bound to be irksome and painful to the citizens even though it may be for public good. However, important the right of a citizen or an individual may be, it has to yield to the larger interest of the country or the community.,

50. Learned counsel for the petitioner submits that there may be cases where the assessing authority goes palpably wrong in the determination of the rateable value of the property and may even assess a person not even being the owner of the premises. He has also suggested that on account of clerical mistake the assessment is made ten times or hundred times more and in such like cases the aggrieved person may not be in a position to deposit the amount of tax and, thus, would be

deprived of his property even when no such tax was due from him. We do not agree with this submission. The law presumes that all authorities function properly and bona fide with due regard to the public interest, however, in case there is any such contingency a party can resort to the writ jurisdiction of the High Court under Art. 226 of the Constitution of India. The mere fact that an assessed might have to deposit the amount of the tax when filing an appeal could not in every case justify his by- passing the remedies provided by the Act. There must be some thing more in a case to warrant the entertainment of the petition under Article 226 something going to the root of the jurisdiction of the officer or something to show that it would be a case of palpable injustice to the assessed to force him to take the remedy provided under the Act. Reference in this regard can be made to the case ***Sales Tax Officer, Jodhpur*** versus ***M/ s. Shiv Ratan G. Mohatta,*** **. In case 1.** ***T. C. Limited*** versus ***Union of-India,*** 1983 ELT I (Delhi) it has been held that as a matter of practice and procedure the Courts do not normally permit the aggrieved party to abandon the normal remedies of appeal etc. under the Act in favor of a petition under Art. 226 of the Constitution of India but if any action is taken without jurisdiction or if the Court comes to the conclusion that the alternative remedy provided under the Act is not adequate cannot inspire confidence inasmuch as it would amount to an appeal from 'Ceaser to Ceaser' then the existence of an alternative remedy is no bar to the exercise of writ jurisdiction under Art. 226 of the Constitution. These two judgments provide a complete answer to the argument of the assessing authority committing an illegality apparent on the face of the record or going beyond the jurisdiction. Except such like cases an individual has to comply with the provisions of deposit of the amount before he can be permitted to avail the right of appeal."

(13) An appeal was filed against the decision of the Full Bench of Delhi High Court in ***Shyam Kishore and others*** versus ***Municipal Corporation of Delhi***[5]. The Apex Court hearing appeal in ***Shyam Kishore's*** case (supra) concurred with the majority view taken by the Full Bench.

[5] (1993) 1 SCC 22

(14) In ***Gujarat Agro Industries Co. Limited*** versus ***Municipal Corporation of City of Ahmedabad and others***[6], it was held by the Apex Court as under:-

> "8. By the Amending Act 1 of 1979 discretion of the Court in granting interim relief has now been limited to the extent of 25% of the tax required to be deposited. It is, therefore, contended that earlier decision of this Court in ***Anant Mills*** case may not have full application. We, however, do not think that such a contention can be raised in view of the law laid by this Court in ***Anant Mills*** case. This Court said that right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. Right of appeal which is statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute. However, in regard to an appeal, position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well {see ***Smt. Ganga Bai*** versus ***Vijay Kumar & Ors.*** **[(1974) 2 SCC 393]}.**
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> 9. ***In M/s. Elora Construction Company*** versus ***Municipal Corporation of Greater Bombay & Ors*****.** **(**AIR 1980 Bom.162), the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Corporation Act. This Section provided for filing of appeal against any rateable value or tax fixed or charged under that Act but no such appeal could be entertained unless :
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> (d) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value the amount of the disputed tax claimed from the appellant, or the amount of the

[6] (1999) 4 SCC 468

tax chargeable on the basis of the disputed rateable value, up to the date of filing of the appeal, has been deposited by the appellant with the Commissioner.

It will be seen that clause (d) aforesaid was in similar terms as clause (e) of Section 406(2) as it originally existed. Bombay High Court upheld the constitutional validity of Section 217 of the Bombay Municipal Corporation Act. Calcutta High Court in ***Chhatter Singh Baid & Ors.*** versus ***Corporation of Calcutta & Ors.*** (AIR 1984 Cal. 283) also took the same view. There it was sub-section (3A) of Section 183 of the Calcutta Municipal Act, 1951 which provided:

"No appeal under this section shall be entertained unless the consolidated rate payable up to the date of presentation of the appeal on the valuation determined

(a) by an order under Section 182, in the case of an appeal to the Court of Small Causes,

(b) by the decision of the Court of Small Causes, in the case of an appeal to the High Court, has been deposited in the municipal office and such consolidated rate is continued to be deposited until the appeal is finally decided."

Similar provisions existed in the Delhi Municipal Corporation Act, 1957. There it is Section 170 which is as under :

170. Conditions of right to appeal - No appeal shall be heard or determined under Section 169 unless

(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under Section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under Section 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof :

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within that period;

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

A Full Bench of the Delhi High Court, by majority, upheld the constitutional validity of the aforesaid provision though there was also challenge to the same based on Article 14 of the Constitution. Appeal against the judgment of the Delhi High Court was taken to this Court which upheld the view of the Delhi High Court. The decision of this Court is reported as ***Shyam Kishore and Ors.*** versus ***Municipal Corporation of Delhi & Anr***. [(1993) 1 SCC 22]. This Court relied on its earlier decisions in ***Ganga Bai*** case and ***Anant Mills*** case. Reference was also made to another decision of this Court in ***Vijay Prakash D. Mehta/Shri Jawahar D. Mehta*** versus ***Collector of Customs (Preventive), Bombay*** [(1988) 4 SCC 402] where Justice Sabyasachi Mukharji, J., speaking for the Court, said :

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.

10. It is not necessary for us to refer to other decisions asserting the same principle time and again. When the statement of law is so clear, we find no difficulty in upholding the vires of clause (e) of sub-section (2) of Section 406 read with proviso thereto. Any challenge to its constitutional validity on the ground that onerous conditions have been imposed and right to appeal has become illusory must be negatived.

11. We also note that under clause (c) of sub-section (2) of Section 406, a complaint lies to the Municipal Commissioner against imposition of any property tax and only after that when the complaint is disposed of that appeal can be filed. Appeal to the Court as provided in clause (e) may appear to be rather a second appeal. Then under Section

> 408 of the Act provisions exist for referring the matter to arbitration. Under sub-section (1) of Section 408 where any person aggrieved by any order fixing or charging any rateable value or tax under the Act desires that any matter in difference between him and the other parties interested in such order should be referred to arbitration, then, if all such parties agree to do so, they may apply to the Court for an order of reference on such matter and when such an order is made provisions relating to arbitration in suits shall apply. That apart, if a person cannot avail of the right of appeal under Section 406 of the Act, other remedies are available to him under the law. In that case, it may not be possible for the Municipal Corporation to contend that an alternative remedy of appeal exist under Section 406 of the Act.
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> 12. When leave was granted in these appeals by order dated December 12, 1980 this Court granted stay on the condition that seventy-five per cent of the tax is deposited with the Municipal Commissioner within two months from that date and on such deposit being made, the appeals be heard and disposed of (by the Judge) and we believe by this time the appeals filed before the Judge under Section 406 must have been disposed of."

(15) In ***Government of Andhra Pradesh and others*** versus ***P.Laxmi Devi***[7], the Apex Court was considering the matter relating to pre-deposit of 50% of the stamp duty for the purpose of making a reference to the Collector under Section 47A of the Indian Stamp Act, 1899. After considering its earlier pronouncements on the subject under different statutes interpreting similar provision, it was recorded as under:-

> "22. In this connection we may also mention that just as the reference under Section 47A 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***. versus ***Municipal Corporation of the city of Ahmedabad and Ors.*** (1999) 4

[7] (2008) 4 SCC 720

SCC 468, this Court referred to its earlier decision in ***Vijay Prakash D. Mehta*** versus ***Collector of Customs (Preventive)*** (1968) 4 SCC 402 wherein this Court observed : "The 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."

24. ***In Anant Mills Ltd***. versus ***State of Gujarat*** **(1975) 2** SCC 175 this Court held that the right of appeal is a creature of the statute and it is for the Legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.

25. In ***M/s. Elora Construction Company*** versus ***The Municipal Corporation of Gr. Bombay and Ors.*** AIR 1980 Bombay 162**,** the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre-deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of this Court in ***Gujarat Agro Industries Co. Ltd.*** versus ***Municipal Corporation*** of the city of ***Ahmedabad and Ors***. (supra). This Court has also referred to its decision in ***Shyam Kishore and Ors.*** versus ***Municipal Corporation of Delhi and Anr***. (1993) 1 SCC 22 in which a similar provision was upheld.

26. It may be noted that in ***Gujarat Agro Industries Co. Ltd.*** versus ***Municipal Corporation*** of the city of Ahmedabad and Ors. (supra) the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax. In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.

27. In view of the above, we are clearly of the opinion that Section 47A of the Indian Stamp Act as amended by A.P. Act 8 of 1998 is constitutionally valid and the judgment of the High Court declaring it unconstitutional is not correct."

(16) In ***Smt.Har Devi Asnani*** versus ***State of Rajasthan and others***[8], Proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 requiring deposit of 50% of demand as precondition for filing revision against the order to pay deficit stamp duty was held to be within legislative powers of the State. It was recorded as under:-

"5. For appreciating the contentions of the learned counsel for the parties, we must refer to Section 65 of the Act.

Section 65 of the Act is quoted hereinbelow:

"65. Revision by the Chief Controlling Revenue Authority (1) Any person aggrieved by an order made by the Collector under Chapter IV and V and under clause (a) of the first proviso to section 29 and under section 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order:

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount.

(2) The Chief Controlling Revenue Authority may suo moto or on information received from the registering officer or otherwise call for and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

10. We need not refer to all the decisions cited by the learned counsel for the parties because we find that in ***Government of Andhra Pradesh and Others*** versus ***P. Laxmi Devi*** (supra) this Court has examined a similar provision of Section 47-A of the Stamp Act, 1899,

[8] AIR 2011 SC 3748

introduced by the Indian Stamp Act (A.P. Amendment Act 8 of 1998). Sub- section (1) of Section 47-A, introduced by Andhra Pradesh Act 8 of 1998 in the Indian Stamp Act, is extracted hereinbelow:

"47-A. Instruments of conveyance, etc. how to be dealt with-(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon.

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."

Under sub-section (1) of Section 47-A quoted above, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon where the registering officer has reason to believe that the market value of the property which is the subject-matter of the instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties. The proviso of sub-section (1) of Section 47-A, however, states that no such 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. This proviso of sub-section (1) of Section 47-A was challenged before the Andhra Pradesh High Court by ***P. Laxmi Devi*** and the Andhra Pradesh High Court held that this proviso was arbitrary and violative of Article 14 of the Constitution and was unconstitutional. The Government of

Andhra Pradesh, however, filed an appeal by special leave before this Court against the judgment of the Andhra Pradesh High Court and this Court held in para 18 at page 735 of [(2008) 4 SCC 720] that there was no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by the Andhra Pradesh Amendment Act 8 of 1998 and that the amendment was only for plugging the loopholes and for quick realisation of the stamp duty and was 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. While coming to the aforesaid conclusions, this Court has relied on ***The Anant Mills Co. Ltd.*** versus ***State of Gujarat and others*** (supra), ***Vijay Prakash D. Mehta and Another*** versus ***Collector of Customs (Preventive), Bombay*** (supra) and ***Gujarat Agro Industries Co. Ltd.*** versus ***Municipal Corporation of the City of Ahmedabad and Others*** (supra) in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Section 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State legislature.

11. We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in ***M/s Choksi Heraeus Pvt. Ltd., Udaipur*** versus ***State & Ors.*** (supra) for rejecting the challenge to the proviso to Section 65(1) of the Act. We have perused the decision of the Division Bench of the High Court in ***M/s Choksi Heraeus Pvt. Ltd., Udaipur*** versus ***State & Ors.*** (supra) and we find that the Division Bench has rightly taken the view that the decision of this Court in the case of ***Mardia Chemical Ltd. and Others*** versus ***Union of India and Others*** (supra) is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive. In our considered opinion, therefore, the proviso to Section 65(1) of the Act is constitutionally valid and we are therefore not inclined to interfere with the order dated 16.11.2009 in D.B.CWP No.14220 of 2009. The Civil Appeal arising out of S.L.P. (C) No.20964 of 2010 is therefore dismissed."

(17) A full Bench of this Court in ***M/s Emerald International Limited*** versus ***State of Punjab and others***[9], summed up the legal position in the following terms:-

"22. In addition to the law laid down by the honourable Supreme Court in various judicial pronouncements noticed above, two judgments of Calcutta and Punjab and Haryana High Court which have got direct bearing can be quoted with advantage. The Calcutta High Court in **Chatter Singh Baid's** case AIR 1984 Cal 283 was discussing Section 183 (3-A)' of the Calcutta Municipal Act, 1951, which reads as under :

"No appeal under this section shall be entertained unless the consolidated rate payable up to the date of presentation of the appeal on the valuation determined--

a. by an order under Section 182, in the case of an appeal to the Court of Small Causes,

b. by the decision of the Court of Small Causes, in the case of an appeal to the High Court, has been deposited in the municipal office and such consolidated rate is continued to be deposited until the appeal is finally decided."

While dealing with the aforementioned section, it was held that right of appeal was not a natural or inherent right attaching to every litigation and that such a right does not

[9] (2001)122 STC 382

exist and cannot be assumed unless expressly given by the statute. Relying upon the ratio of ***Anant Mill's*** case AIR 1975 SC 1234 it was observed that right of appeal was a creature of statute and Legislature could impose conditions for the exercise of such right and there is no constitutional or legal impediment to imposition of such a condition for deposit of tax. Reference was made to other judicial pronouncements as well. The following observations of the Calcutta High Court deserve reproduction :

"A right of appeal is not a natural or inherent right attaching to every litigation and the right of appeal does not exist and cannot be assumed unless expressly given by statute (See ***Rangoon Botatung Co. Ltd.*** versus ***Collector, Rangoon*** **(1903) 30 Ind. App. 197 : ILR 40 Cal. 21,** ***Soorajmull Nagarmull*** versus ***State of West Bengal,*** AIR 1963 SC 393, ***Smt. Ganga Bai*** versus ***Vijay Kumar*** AIR 1974 SC 1126. Therefore, the provision, viz., Section 183 which conferred upon the petitioners right to prefer appeal against the order disposing of their objection under Section 181 of the Calcutta Municipal Act, could be lawfully amended by inserting a provision imposing the above condition for deposit for entertaining their appeal.

The condition laid down by Sub-section (3-A) of Section 183 of the Calcutta Municipal Act is not something which is without any parallel. Both Mr. Dipankar Ghosh, learned Advocate for the petitioner, and Mr. Pradip Kumar Ghosh, learned Advocate for the respondents, has drawn my attention to nearly similar provisions for deposit of disputed tax duty and rates contained in various other taxing, municipal and fiscal laws. Mr. Dipankar Ghosh, however, submitted that unless the appellate authority is given discretionary powers to relax or modify such condition for deposit of the disputed amount, the condition precedent ought to be pronounced as unreasonable. In my view, the observations made in para 40 of the Supreme Court decision in ***Anant Mills*** versus ***State of Gujarat*** AIR 1975 SC 1234, are directly against the above submission of the petitioners. With reference to Section 406(2) of the Bombay Provincial Municipal Act, the Supreme Court upheld the power of the Legislature to impose similar

condition for deposit while granting right of appeal. According to the Supreme Court, there was no legal or constitutional impediment to imposition of such a condition. I respectfully agree and apply the aforesaid observations in upholding the validity of Section 183(3-A) of the Calcutta Municipal Act, I am unable to accept Mr. Dipankar Ghosh's submission, that, the court's power under Section 406(2) of the Bombay Provincial Municipal Act to relax the condition for deposit the tax due had at all weighed with the Supreme Court in making the aforesaid observations in ***Anant Mills*** versus ***State of Gujarat*** AIR 1975 SC 1234. The ratio of the said decision is that the right of appeal is a creature of statute and while granting the right of appeal the Legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition for deposit of tax. The Supreme Court in their subsequent decision in the case of ***Nand Lal*** versus ***State of Haryana*** AIR 1980 SC 2097, had followed their earlier decision in ***Anant Mills*** versus ***State of Gujarat*** AIR 1975 SC 1234. The Supreme Court in ***Nand Lal*** versus ***State of Haryana*** AIR 1980 SC 2097 had rejected similar argument that conditions imposed on right of appeal were onerous because no discretion had been given to the appellate or revisional authority to relax or waive the said condition in view of subjects for imposing such a condition."

24. As a sequal to our discussion on the question of law referred to us the following conclusions can be deduced :

(a) The appeal is a creation of a statute and in case a person wants to avail of the right of appeal, he has to accept the conditions imposed by the statute.

(b) The right of appeal being a creature of statute, the Legislature could impose conditions for exercise of such a right. Neither there is a constitutional nor legal impediment for imposition of such a condition.

(c) The right of appeal is neither natural nor inherent attaching to a litigation and such a right neither exists nor can be assumed unless expressly given by the statute.

(d) Even if, this Court was to interpret the bare provisions of

two statutes, i.e., the Punjab General Sales Tax Act, 1948 and the Haryana General Sales Tax Act, 1973, it could safely be held that there is a complete bar to the entertainment of an appeal by the appellate authority without the payment of tax amount unless the authority is satisfied that the dealer is unable to pay the amount so assessed and only in that situation the appellate authority for the reasons to be recorded in writing can entertain the appeal without deposit of the payment of such amount.

(e) Neither on the wording nor in view of the spirit of the Punjab and Haryana Acts it is possible to hold that the appellate authority should see the prima facie nature of the case while hearing the stay matter.

(f) The factum of tax assessed being illegal cannot be a relevant consideration for grant of stay by an Appellate Authority.

(g) The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India in rarest of the rare cases in the given facts and circumstances, can grant stay and waive the condition of pre-deposit of tax and the existing alternative remedy in such circumstances would be no ground to refuse interference."

(18) In M/s Elora Construction Company vs. The Municipal Corporation of Gr. Bombay and others, AIR 1980 Bombay 162, the validity of the provisions of amended Section 217 of the Bombay Municipal Corporation Act, 1888 (as amended in 1975) was challenged on the ground that it was violative of Articles 19, 31 and 265 of the Constitution of India. The payments of property tax sought as preconditions to hearing of an appeal under Section 217 was held to be validly leviable and recoverable at the time when appeal was filed. Requirement of such payment was not held to be violative of Article 31 or 265 of the Constitution of India.

(19) In Chatter Singh Baid and others vs. Corporation of Calcutta and others, AIR 1984 Calcutta 283, challenge to the validity of Section 183(3-A), 182, 183(1), 191 and 207 of the Calcutta Municipal Act, 1951 came before the Calcutta High Court. The right of appeal under Section 183(1) of the Act was not held to be nugatory or illusory by requiring to deposit consolidated rate payable before filing appeal. It was observed thus:-

"15. The condition laid down by Sub-section (3-A) of Section 183 of the Calcutta Municipal Act is not something which is without any parallel. Both Mr. Dipankar Ghosh, learned advocate for the petitioner, and Mr. Pradip Kumar Ghosh, learned advocate for the respondents, has drawn my attention to nearly similar provisions for deposit of disputed tax duty and rates contained in various other taxing, municipal and fiscal laws. Mr. Dipankar Ghosh, however, submitted that unless the appellate authority is given discretionary powers to relax or modify such condition for deposit of the disputed amount, the condition precedent ought to be pronounced as unreasonable. In my view, the observations made in para 40 of the Supreme Court decision in ***Anant Mills*** versus ***State of Gujarat. ,*** are directly against the above submission of the petitioners. With reference to Section 406 (2) of the Bombay Provincial Municipal Act, the Supreme Court upheld the power of the legislature to impose similar condition for deposit while granting right of appeal. According to the Supreme Court, there was no legal or constitutional impediment to imposition of such a condition. I respectfully agree and apply the aforesaid observations in upholding the validity of **Section 183** (3-A) of the Calcutta Municipal Act. I am unable to accept Mr. Dipankar Gbosh's submission, that, the Court's power under Section 406 (2) of the Bombay Provincial Municipal Act to relax the condition for deposit the tax due had at all weighed with the Supreme Court in making the aforesaid observations in ***Anant Mills*** versus ***State of Gujarat*** (supra). The ratio of the said decision is that the right of appeal is a creature of statute and while granting the right of appeal the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition for deposit of tax. The Supreme Court in their subsequent decision in the case of Nandalal v. State of Haryana, , had followed their earlier decision in ***Anant Mills*** versus ***State of Gujarat*** (supra). The Supreme Court in ***Nandlal*** versus ***State of Haryana*** (supra), had rejected similar argument that conditions imposed on right of appeal were onerous because no discretion had been given to the appellate or revisional authority to relax or waive the said condition in view of subjects for imposing

such a condition.

16. The Sub-section (3-A) of Section 183 of the Act does not make the appellate provision under Section 183 (1) nugatory or illusory but by his own default to comply with the condition for deposit the appellant himself may fail to avail of the remedy by way of appeal under Section 183 (1) of the Act. A law cannot be declared unconstitutional because an alleged possibility which may occur in future. Therefore, I find no substance in the petitioner's apprehension that in a given case the consolidated rate determined according to the new valuation may be so high that it might be impossible for the appellant under Section 183 (1) to deposit the consolidated rate according to the said new valuation is not a relevant point for deciding the validity of the statute. It is presumed that the power to determine valuation and to assess consolidated rate would be reasonably exercised and in case said powers arbitrarily or capriciously exercised, the person aggrieved without availing of the remedy under Section 183 (i) of the Act, may seek redress in other appropriate forum."

(20) In ***Syed Mahfooz Hussain*** versus ***State of UP and others***[10], constitutional validity of first proviso to Section 56(1-A) as inserted by Indian Stamp (U.P. Second Amendment) Act, 2001 into the Indian Stamp Act, 1899 was under challenge before the Allahabad High Court which provided that no application or stay recovery of any disputed amount of stamp duty including interest thereon or penalty shall be entertained unless the applicant had furnished satisfactory proof of the payment of not less than one third of such disputed amount. The provision was held to be valid.

(21) ***In Sujana Metal Products Limited and another*** versus ***State of Andhra Pradesh***[11]**,** the Andhra Pradesh High Court was considering the constitutional validity of second proviso to Section 19 of the Andhra Pradesh General Sales Tax Act, 1957 which provided deposit of 12.5 percent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant as precondition for the admission of the appeal. The provision was held to be valid piece of legislation. It was recorded thus:-

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[10] AIR 2004 Allahabad 299

[11] 2005 Law Suit (AP) 1157

"2. Shorn of all the details, the petitioners challenge the constitutional validity of the second proviso to Section 19 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"). Section 19 of the Act provides for an appeal to the prescribed authority against any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner under Sub-section (4C) of Section 14 of the Act. The second proviso further provides that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such instalments as have been granted, and the proof of payment of 12.5 per cent of the difference of tax assessed by the assessing authority and the tax admitted by the appellant, for the relevant assessment year, in respect of which the appeal is preferred.

3. That a fair reading of the proviso makes it clear that deposit of 12.5 per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant is the pre-condition for the admission of the appeal. The proviso mandates that the appellate authority shall not admit the appeal preferred by the appellant in the absence of proof of payment of 12% per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant. The pre-condition of deposit as provided for under the proviso is an integral part of Section 19, which provides for an appeal against any order or proceeding recorded by the authority under the provisions of the Act other than the one excluded under Section 19 of the Act itself.

4. It is fairly well-settled and needs no restatement at our hands that right of appeal is creature of statute and such right can be conditioned in any manner as the Legislature may consider in its wisdom to be appropriate. Right of appeal is not a fundamental right guaranteed as such either by Article 14 or by Article 19 as is sought to be contended by the petitioners in the instant case. That being the legal position, an appeal provided subject to complying with certain conditions cannot be characterised or held to be

unconstitutional. It is unnecessary to burden this order with various pronouncements of the apex court whereunder the similar provisions under various enactments such as the Workmen's Compensation Act, 1923 and the Payment of Wages Act, 1936 requiring the pre-deposit as a condition precedent for entertaining the appeal have been upheld.

5. In ***Anant Mills Co. Ltd***. versus ***State of Gujarat*** the apex court in clear and categorical terms held that the Legislature while granting right of appeal can 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". In ***Shyam Kishore*** versus ***Municipal Corporation of Delhi***, the Supreme Court upheld the condition of deposit of tax amount under Section 170B of the Delhi Municipal Corporation Act, 1957 which is a condition precedent for hearing or determining of the appeal where the appellate authority has no discretion to grant any stay of the disputed amount or dispense with the requirement of pre-deposit of the amount in appeal with or without conditions.

6. ***In Penguin Textiles Ltd.*** versus ***State of A.P.*** [2000] 117 STC 378 : [1999] 29 6 APSTJ 244 a Full Bench of this court having exhaustively referred to the scheme of the Act relating to appeals, revisions and stay applications in relation thereto and certain well-settled principles relevant to the passing of interim order emerging from various pronouncements of the Supreme Court held that pending a revision under Section 22(1) of the Act, the High Court has no power to grant stay of recovery of tax and penalty "but the High Court may in its discretion permit the petitioner to pay the tax in specified instalments or give such other directions of limited nature, as explained above, so long as such directions do not tantamount to granting stay".

7. In view of the authoritative pronouncement of the Supreme Court in ***Anant Mills's* case** that it is permissible to enact a law to the effect that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid, nothing remains for us to decide as to whether the impugned proviso suffers from any constitutional infirmities. The law is so well-settled that the Legislature in

its wisdom may impose accompanying liability upon a party upon whom a legal right of appeal is conferred or to prescribe conditions for the exercise of the right."

(22) In ***R.V. Saxena*** versus ***Union of India and others***[12], Proviso to Section 18(1) of the Securitization and reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 requiring borrower to deposit 50% of the amount of debt before hearing of appeal was held to be legal by the Delhi High Court with the following observations:-

"16. The right of appeal is not an inherent right but is a creature of the statute. The Legislature can impose conditions under which this is to be exercised. Moreover, the proviso to Section 18 does not require the entire amount to be deposited, but only 50% thereof which can be reduced to a minimum of 25% of the sum. We see no illegality in this proviso. There are similar provisions in many enactments and they are being upheld by the Supreme Court. For example, in the second proviso under Section 15 (1) of the Foreign Trade (Development and Regulation) Act, 1992, it is provided that the appeal against an order imposing a penalty or redemption charges shall not be entertained unless the amount of the penalty or redemption charges have been deposited by the appellant. Similarly in many other statutes, there are such similar provisions.

17. In ***Gujarat Agro Industries Co. Ltd.*** versus ***Municipal Corporation of the city of Ahmedabad and Ors***. , the Supreme Court referred to its earlier decision in ***Vijay Prakash D.Mehta*** versus ***Collector of Customs (Preventive)*** 1968 4 SCC 402 wherein the Supreme Court observed: "The 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.

18. In ***Anant Mills Ltd.*** versus ***State of Gujarat*** the Supreme Court held that the right of appeal is a creature of the statute and it is for the Legislature to decide whether the right of appeal should be unconditionally given to an

[12] AIR 2006 Delhi 96

aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.

19. In ***Elora Construction Company*** versus ***The Municipal Corporation of Gr.Bombay and Ors.*** , the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre- deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of Supreme Court in ***Gujarat Agro Industries Co. Ltd.*** versus ***Municipal Corporation of the city of Ahmedabad and Ors.*** (supra). The Supreme Court has also referred to its decision in ***Shyam Kishore and Ors.*** v. ***Municipal Corporation of Delhi and Anr***. in which a similar provision was upheld.

20. It may be noted that in ***Gujarat Agro Industries Co. Ltd.*** versus ***Municipal Corporation of the city of Ahmedabad and Ors.***(supra) the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax . In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution."

(23) In ***Walchandnagar Industries Limited Mumbai*** versus ***Municipal Corporation of the City of Pune and others***[13], the Bombay High Court was considering the constitutional validity of Section 406(2)(e) of the Bombay Provincial Municipal Corporations Act, 1949 which provided that no appeal shall be entertained unless the amount was deposited by the appellant with the Commissioner. It was noticed as under:-

"4) Mr. S. G. Aney, the Senior Advocate appearing for the Petitioner made the following submissions in support of the Petition:

[13] AIR 2014 Bombay 47

(A) That styling the proceedings under Section 406 of the said Act as an 'Appeal' is misnomer, since the said proceedings are in fact 'original proceedings before a judicial authority'. The imposition of any precondition of deposit of entire disputed tax claimed for entertainment of said proceedings is ex facie arbitrary, unreasonable, unconstitutional, null and void;

(B) The provisions contained in Section 406 (2)(e) of the said Act impose an onerous and unreasonable condition of depositing the entire disputed tax claimed as a precondition for entertainment of the appeal. The very imposition of such an onerous and unreasonable condition renders the right of appeal illusory. There is no provision contained in Section 406 empowering the judicial authority to waive this condition in case of genuine and undue hardships. For these reasons, the provisions contained in Section 406(2)(e) are ex facie illegal, arbitrary, unconstitutional, null and void.

5) to 17) xxxxxxxxxxxxxxxxx

18) In upholding constitutional validity of clauses which provide for pre-deposit of disputed amount as a pre-condition for entertainment of an appeal, various courts have applied the position established in law, that the right of appeal is a creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. If the statute does not create any right of appeal then no appeal can be filed. The right of appeal is neither an absolute right nor an ingredient of the principles of natural justice. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of civil nature unless the suit is barred by statute, in regard to an appeal, the position is opposite. The right to appeal inheres in no one and therefore, for maintainability of an appeal there must be authority of law. When such a law authorizes filing of an appeal, it can impose conditions as well. The object of such provisions is to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and the right of the Corporation to speedy recovery of the tax. A disability or disadvantage arising out of parties own default or omission cannot be taken to be

> tantamount to the creation of two classes offensive to Article 14 of the Constitution of India, especially when that disability or disadvantage operates upon all persons who make the default or omission.
>
> 19) In this case, we are concerned with a statute which deals with recovery of tax upon lands and buildings in Municipal areas. In this sense, we are concerned with a statute dealing with an economic matter. There is always a presumption in favour of the constitutionality of a statute. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call-trial and error method. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot be converted into tribunals for relief from such crudities and inequities. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary."

(24) In ***Ganesh Yadav*** versus ***Union of India and others***[14], the Allahabad High Court was considering the provisions of section 35F of the Central Excise Act, 1944 requiring the deposit of 10% of the duty or penalty in case of an appeal to the Tribunal against the order passed by the Commissioner (Appeals). The said requirement was not held to be arbitrary or violative of Article 14 of the Constitution. It was recorded thus:-

> "9. Parliament while amending the provisions of Section 35F of the Act has required the payment of 7.5 percent of the duty in case the duty and penalty are in dispute or the penalty where such penalty is in dispute. In the case of an appeal to the Tribunal against an order passed by the Commissioner (Appeals), the requirement of deposit is 10% of the duty or as the case may be, the duty or penalty or of the penalty where the penalty is in dispute. The first proviso

[14] 2015 Law Suit (Allahabad) 1541

> restricts the amount to be deposited to a maximum of Rs. 10 crores. Prior to the amendment, the Commissioner (Appeals) or the Appellate Tribunal were permitted to dispense with such deposit in a case of undue hardship subject to such conditions as may be imposed so as to safeguard the interest of the revenue. Stay applications and the issue of whether a case of undue hardship was made out, gave rise to endless litigation. There would be orders of remand in the litigative proceedings. All this was liable to result in a situation where the disposal of stay applications would consume the adjudicatory time and resources of the Tribunal or, as the case may be, of the Commissioner (Appeals). Parliament has stepped in by providing a requirement of a deposit of 7.5% in the case of a First Appellate remedy before the Commissioner (Appeals) or to the Tribunal. The requirement of a deposit of 10% is in the case of an appeal to the Tribunal against an order of the Commissioner (Appeals). This requirement cannot be regarded or held as being arbitrary or as violative of Article 14.xxxxxxx"

(25) From the reading of the judicial pronouncements noticed above, the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed. 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. In other words, while granting this right, the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the provision is to keep balance between the right of appeal and the right of the revenue to speedy recovery of the amount. The conditions imposed including prescription of a pre-deposit are meant to regulate the right of appeal and the same cannot be held to be violative of Article 14 of the Constitution of India unless demonstrated to be onerous or unreasonable. To put it differently, right of appeal being a statutory right, it is for the legislature to decide whether to make the right subject to any condition or not. In the light of the above

enunciation, we proceed to examine Section 62(5) of the PVAT Act. A perusal of sub section (5) of Section 62 of the PVAT Act shows that pre-deposit of twenty five percent of the total amount of tax, interest and penalty is a condition precedent for hearing an appeal before the first appellate authority. Any challenge to the constitutional validity of this provision for pre-deposit before entertaining an appeal on the ground that onerous condition has been imposed and right to appeal has become illusory must be negatived and such a provision cannot be said to be ultra vires Article 14 of the Constitution of India. The object of the provision is to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and the right of the revenue to speedy recovery of the tax. 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.

(26) Now question (c) remains to be answered. With regard to the said question whether the first appellate authority in its right to hear appeal has powers to grant interim protection against imposition of such a condition for hearing of appeals on merits, the following facets of the argument would arise for our consideration:-

a. Inherent powers of the Court to grant interim protection;

b. Whether the expression “shall” used in Section 62(5) of the PVAT Act is mandatory or by implication would be read as directory meaning thereby whether the first appellate authority can grant partial or complete waiver of condition of pre-deposit;

The legal position in this regard is being discussed hereinafter.

(27) Taking up the issue of 'inherent powers of the Court', it may be observed that Constitution of India and the statutes confer different jurisdiction on the Court whereas “inherent powers” of the court are those necessary for ordinary and efficient exercise of jurisdiction already conferred. They are as such result of the very nature of its organization and are essential to its existence and protection and for the due administration of justice. The inherent power of a court is the power to do all things that are reasonably necessary for administration of justice within the scope of court's jurisdiction. The basic principal is to be found in **Maxwell On Interpretation of Statutes, eleventh Edition at page 350.** The statement contained therein is that “where an Act

confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution." Learned counsel for the petitioners vehemently argued that the provision has to be read down to include the right to waive the condition by the appellate authority in an appropriate case. Main emphasis was laid by the learned counsel for the petitioners on the judgment of the Apex Court in ***Income Tax Officer, Cannanore*** versus ***M.K. Mohamad Kunhi***[15], wherein the question was whether the Income Tax Appellate Tribunal had the power under the relevant provisions of the Income Tax Act, 1961 to stay recovery of the realization of the penalty imposed by the departmental authorities on an assessee during the pendency of an appeal before it. After considering the matter, the Apex court held that the Appellate Tribunal has power to grant stay as incidental or ancillary to its appellate jurisdiction subject to there being a strong prima facie case and satisfaction that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal. The relevant observations read as under:-

> "4. There can be no manner of doubt that by the provisions of the Act or the Income-tax Appellate Tribunal Rules, 1963 powers have not been expressly conferred upon the Appellate Tribunal to stay proceedings relating to the recovery of penalty or tax due from an assessee. At the same time it is significant that under s. 220 (6) the power of stay by treating the assessee as not being in default during the pendency of an appeal has been given to the Income-tax Officer only when an appeal has been presented under s. 246 which will be to the Appellate Assistant Commissioner and not to the Appellate Tribunal. There is no provision in s. 220 under which the Income-tax Officer or any of his superior departmental officers can be moved for granting stay in the recovery of penalty or tax. It may be that under s. 225 notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax (the position will be the same with regard to penalty) the Income tax Officer may grant time for the payment of the tax. In this manner he can probably keep on granting extensions until the

[15] AIR 1969 SC 430

disposal of the appeal by the Tribunal. It may also be that as a matter of practice prevailing in the department the Commissioner or the Inspecting Assistant Commissioner in exercise of administrative powers can give the necessary relief of staying recovery to the assessee but that can hardly be put at par with a statutory power as is contained in section 220(6) which is confined only to the stage of pendency of an appeal before the Appellate Assistant Commissioner. 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 Construction, Third Edition, Arts. 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. In Domat's Civil Law Cushing's Edition, Vol. 1 at page 88, it has been stated:

"It is the duty of the Judges to apply the laws, not only to what appears-to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

Maxwell on Interpretation of Statutes, Eleventh Edition, contains a statement at p. 350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdiction data est, ea quoqe concessa esse vindentur, sine quibus jurisdictio explicari non potuit." An instance is given based on Ex. parte Martin that "where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced."

5. xxxxxxxxxxxx

6. It is well known that an Income-tax Appellate Tribunal is not a court but it exercises judicial powers. The Tribunal's powers in dealing with appeals are of the widest amplitude and have in some cases been held similar to and identical with the powers of an appellate court under the Civil Procedure Code. (See ***Commissioner of Income tax, Bombay City*** versus ***Hazarimal Nagji & Co*****. (1962) 46 ITR 1168 (Bom.) and** ***New India Assurance Co. Ltd.*** versus ***Commissioner of Income*** **tax, Excess Profits, Bombay City, (1957) 31 ITR 844 (Bom.).** In ***Polini*** versus ***Grey,*** (1879) 12 Ch D 438, this is what Jessel M.R. said about the powers of the Court of Appeal to grant stay at page 443:

"It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this, that the successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, applies as much to the Court of first instance before the first trial, and to the Court of Appeal before the second trial, as to. the Court of last instance before the hearing of the final appeal".

There are certain decisions, however, in which difficulty was felt that the Appellate Tribunal did not possess the power to stay recovery during the pendency of an appeal. In ***Vetcha Sreeramamurthy*** versus ***The Income Tax Officer Vizianagram & Another,*** (1956) 30 ITR 252, the assessee had to file a writ petition because the realisation of the tax assessed had not been stayed during the pendency of an appeal before the Tribunal. The controversy centred in that case mainly on the scope of the discretionary power conferred by section 45 of the Indian Income-tax Act, 1922, on the Income-tax Officer. It was held that a writ petition to compel the Income-tax Officer to exercise his discretion under section 45 or to exercise it honestly and, objectively was not barred. But on the merits the Court declined issue a writ. Viswanatha Sastri J., in his separate judgment made the following observations at page 271:

"Lastly it has to 'be observed that section 45 of the Income-tax Act is somewhat cryptic in its terms and merely gives the Income-tax Officer power to declare a person to be not in default pending the appeal. There is no provision for stay similar to Order XLI, Rules 5 & 6, of the Civil Procedure Code. There is no conferment of an express power of granting a stay of realisation of the tax, though the effect of an order in favour of the assessee under section 45 of the Act is a stay. Nor is there a provision for allowing the tax to be paid in instalments or for taking security for deferred payment. Neither the Appellate Assistant Commissioner nor the Appellate Tribunal is given the power to stay the colletion of tax. Whether the law should not be made more, liberal so as to enable an assessee who has preferred an appeal, to obtain from the appellate forum, a stay of

collection of the tax, either in whole or in part, on furnishing suitable security, is a matter for the legislature to consider."

It is interesting that in another case ***Pollisetti Narayana Rao*** versus ***Commissioner of Income-tax, Hyderabad,*** (1956) 29 ITR 222**,** the same High Court held that stay could be granted by it pending reference of a case by the Appellate Tribunal to the High Court. This power the High Court had under s. 151 of the Civil Procedure Code and under Art. 227 of the Constitution.

7. xxxxxxxxxxxxxx

8. Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. 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.

9. A certain apprehension may legitimately arise in the minds of the authorities administering the Act that if the Appellate Tribunals proceed to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunals. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue. laws. It will only be when a strong prima facie case is made out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most

deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."

(28) In ***Bharat Heavy Electricals Limited*** versus ***The State of Karnataka***[16], a Full bench of the Karnataka High Court extensively considered the scope of "inherent powers" of a Court. It would be advantageous to notice the relevant observations which read as under:-

"8. This takes us to the question as to what is 'inherent power'. Words and Phrases. (Permanent Edition, volume 21 A, pages 16 and 17) defines inherent power as follows: "Jurisdiction" is conferred on Court by constitutions and statutes, whereas "inherent powers" of Court are those necessary to ordinary and efficient exercise of jurisdiction already conferred.... The "inherent powers" of a Court are such as result of the very nature of its organization and are essential to its existence and protection and to the due administration of justice, and the "inherent power" of a Court is the power to do all things that are reasonably necessary for administration of justice within scope of Court's jurisdiction ..The "inherent powers" of a Court are an unexpressed quantity and undefinable term, and Courts have indulged in more or less loose explanations concerning it. It must necessarily be that the Court has inherent power to preserve its existence, and to fully protect itself in the orderly administration of its business. Its inherent power will not carry it beyond this.

That Courts possess certain "inherent powers" means that when the constitution declares that the legislative, judicial and executive powers shall remain separate, it thereby invests those officials charged with the duty of administering justice according to law with all necessary authority to efficiently and completely discharge those duties and to maintain the dignity and independence of the Courts.

9. xxxxxxxxxx

10. Therefore the Courts have the inherent power in addition to and complementary to the powers expressly

[16] (2006) 147 STC 638

conferred under a statute, to make incidental orders necessary to make the exercise of express power effective for the ends of justice. Inherent power does not create 'jurisdiction' nor increases the 'jurisdiction' of a Court. Inherent power merely enables the orderly and efficient exercise of the jurisdiction conferred on, or possessed by, the Court. When a statute specifies how a jurisdiction should be exercised or restricts the jurisdiction of a Court, the inherent power of the Court cannot be invoked either to expand the jurisdiction or alter the manner of exercise of jurisdiction. Consequently exercise of inherent power cannot in any way conflict with what has been expressly provided in a statute, nor go against the intention of the Legislature.

11. The Supreme Court in ***Income Tax Officer*** versus ***Mohammed Kunhi,*** (1969) 71 ITR 815, considered the question whether power to grant stay of recovery, pending an appeal, was incidental and ancillary to the power to hear and dispose of appeals. The question was considered with reference to Section 254 of Income Tax Act, 1961 which at the relevant point of time read thus:

"The Appellate Tribunal may, after giving both the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit."

The Supreme Court quoted with approval the following passage from Maxwell on Interpretation of Statutes [XI Edition, page 350]:

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means, as are essentially necessary to its execution."

The Supreme Court answered the question raised before it in the affirmative in **MOHAMMED KUNHI** (supra) on the following reasoning:

"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 he exercised by the Tribunal, suffers from a fundamental infirmity 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 of recovery, the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside.... 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. 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 dully effective "

(emphasis supplied)

12. In ***Commissioner Of Income Tax, Delhi*** versus ***Bansi Dhar***, (1986) 157 ITR 665 (SC), the Supreme Court considered whether the incidental or inherent power to grant stay in appellate jurisdiction will extend to reference jurisdiction also. It referred to the following passage from ***Hukum Chand Boid*** versus **Kamalanand Singh,** ILR 33 (1906) CAL 927 :

"It may be added that the exercise by Courts, of what are called their inherent powers or "incidental powers' is familiar in other systems of law, and such exercise is justified on the ground that it is necessary to make its ordinary exercise of jurisdiction effectual, because, 'when jurisdiction has once attached, it continues necessarily and all the powers requisite to give it full and complete effect can be exercised, until the end of the law shall be attained."

The Supreme Court explained the said observations in Hukum Chand thus:

"These observations, however, will have to be understood in the context in which the same were made. If there was jurisdiction to do certain matters then all powers to make

that jurisdiction effective must be implied to the authority unless expressly prohibited. But in references under the 1922 Act as well as the 1961 Act, the Courts merely exercised an advisory or consultative jurisdiction while the appeals are kept pending before the Tribunal. Therefore, nothing should be implied as detracting from the jurisdiction of the Tribunal. Power to grant stay is incidental and ancillary to the appellate jurisdiction. What was true of the appellate jurisdiction could not be predicated of the referential jurisdiction.

13. to 18. xxxxxxxxx

19. The State expressed an apprehension that granting of stay will impede collection of tax. The answer is found in the case of ***Mohammed Kunhi*** where the Supreme Court observed;

"A Certain apprehension may legitimately arise in the minds of the authorities administering the Act that, if the Appellate Tribunal proceeded to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course, the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunal. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions, and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."

One another aspect may be noticed at this juncture. When the appeal is filed under Section 20, the assessee is required to pay the admitted tax in full. He may obtain a stay of the disputed tax subject to furnishing security to the satisfaction of the Appellate Authority in respect of the disputed tax. When he files a second appeal to the Tribunal, Section 22 provides for stay of 50% of the disputed tax on payment of 50% of the disputed tax. Thus, by the time the matter comes

up before the High Court under Section 23, admitted tax would have been paid, 50% of the disputed tax would have been paid and remaining 50% of the disputed tax would be covered by adequate security. Further, the High Court will not grant stay in a routine way. It will grant stay only when a strong prima facie is made out. The High Court may also make the grant of stay subject to conditions in appropriate cases.

20. In view of the above, we answer the question as follows:

> "High Court has the power to grant stay during the pendency of a Revision Petition under Section 23 or appeal under Section 24 of the Karnataka Sales Tax Act, 1957.

It is needless to say that the High Court shall exercise such power of stay only in appropriate cases, if need be, by imposing appropriate terms and conditions depending on the facts of the case."

(29) In ***ITC*** versus ***Commissioner of Central Excise***[17], the Madras High Court following the law laid down in ***Mohamad Kunhi***'s case (supra) held as under:-

> "43. Even if there is no particular provision for grant of stay, it is by now well settled that the Appellate Authority who has got the power to set aside, modify or reverse the orders of the Original Authority has also the incidental power to grant stay of order appealed against. In this respect, it is useful to refer to the decision of the Apex Court in ***Income Tax Officer, Cannanore*** versus ***M.K. Mohammed Kunhi*** reported in AIR 1969 Supreme Court 430. The Apex Court held that the Tribunal has got power to grant stay as it is an incidental or ancillary to its appellate jurisdiction and also expressed a view that the appellate jurisdiction implies 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 proceeding as will prevent the appeal if successful from being rendered nugatory.

[17] 2001 (127) ELT 338 Mad

44. Their Lordships of the Apex Court in this respect held thus :

"Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. 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 proceeding as will prevent the appeal if successful from being rendered nugatory.

A certain apprehension may legitimately arise in the minds of the authorities administering the Act that if the Appellate Tribunals proceed to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course the Revenue will be put to great loss because of the inordinate delay in disposal of appeals by the Appellate Tribunals. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is made out that the tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."

(30) In ***Debasish Moulik N.*** versus ***Dy. Commissioner Of Income Tax***[18], the Calcutta High Court observed as under:-

[18] (1998) 150 CTR Cal 387

"4. Admittedly an appeal has been preferred by the petitioner and the same is pending adjudication. The power to grant stay of collection of tax, as has been held in a decision of the Supreme Court in the case of ***ITO*** versus ***M.K. Mohammed Kunhi*** (1969) 71 ITR 815 (SC) is an inherent and incidental power of the appellate authority for the effective exercise of the appellate powers. The appellate authority, i.e., the Commissioner (Appeals), thus has an inherent power to grant stay of collection of tax in appropriate cases. Merely because power has been conferred upon the assessing authority under section 220(6) of the Income Tax Act to treat an assessee as not in default, the same will not in any way militate against the power of the appellate authority to grant stay. I am fortified by a judgment of the Kerala High Court in the case of ***V.N. Purushothaman*** versus ***Agrl. ITO*** (1984) 149 ITR 120 (Ker) and also by the judgment of the Allahabad High Court in the case of ***Prem Prakash Tripathi*** versus ***CIT*** (1994) 208 ITR 461 (All).

5. The appellate authority before whom the appeal is pending has the power to grant stay of the demand impugned in the appeal pending before him. It is appropriate that the petitioner-assessee should be relegated to availing of the said remedy before invoking the jurisdiction of this court under article 226 of the Constitution of India. I cannot accede to the contention of learned counsel for the petitioner that the petitioner has no other efficacious remedy except invoking the jurisdiction of this court in the light of the judgments of the Allahabad High Court and the Kerala High Court referred to above, which, in turn, are based upon the Supreme Court judgment in ***M.K. Mohammed Kunhis*** case (Supra)

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> invoking the jurisdiction of this court in the light of the judgments of the Allahabad High Court and the Kerala High Court referred to above, which, in turn, are based upon the Supreme Court judgment in ***M.K. Mohammed Kunhis*** case (Supra)."

(31) Adverting to the second facet of the argument as to whether a statute is mandatory or directory, the same depends upon the intent of the legislature and not upon the language in which the intent is clothed. The issue has been considered by a Full Bench of this Court in ***CIT*** versus ***Punjab Financial Corporation***[19] wherein it was noticed that the meaning and intention of the legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, design and the consequences which would follow from construing it one way or the other. The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense does not necessarily mean that in every case it shall have that effect, that is to say, unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non compliance with those provisions will not render the proceedings invalid. The relevant portion reads thus:-

> "6. Before proceeding further, we may notice some of the principles of interpretation of the statutes. These are :
>
> (1) The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other--Crawford on Statutory Construction (Edition 1940, art. 261, page 516).
>
> (2) The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the

[19] (2002) 254 ITR 6

> proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceedings invalid--***State of U. P.*** versus ***Manbodhan Lal Srivastava***, AIR 1957 SC 912 (headnote).
>
> (3) All the parts of a statute or sections must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction put to be on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd and anomalous results which could not have been intended by the Legislature.
>
> (4) The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions--***CIT*** versus ***National Taj Traders*** [1980] 121 ITR 535 (SC) (headnote)."

(32) In ***P.T.Rajan*** versus ***TPM Sahir and others***[20], it was recorded as under:-

> "45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" and "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve."

Reference may be made to quoting from **Domat's Civil Law Cushing's** Edition, Volume I at page 88 as under:-

> "It is the duty of the judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it".

(33) Further relying on the maxim "*Cui jurisdiction date est, ea quoque concessa essee videntur, sinequibus jurisdictio explicari non*

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[20] (2003) 8 SCC 498

potuit, which means 'where an inferior court is empowered to grant an injunction, the power of pushing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced. In **Principles of Statutory Interpretation by Justice G.P.Singh** (12th Edition, 2010), the learned author has stated as under:-

> "In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' ...A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."

(34) Before we record our conclusion on question No.(c), noticed hereinbefore, it would also be apposite to refer to a five Judges Full Bench of this Court in ***Ranjit Singh*** versus ***State of Haryana and others***[21] to which one of us (Ajay Kumar Mittal,J.) was a member which was dealing with similar provision i.e. Section 13B of the Punjab Village Common Lands (Regulation) 1961 wherein entertainment of appeal was subject to deposit of amount of penalty imposed under sub section (2) of Section 7 of the said Act with the Collector. This court after considering the entire case law on the point and by reading down the provision held that Section 13B of the said Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case by passing a speaking order even while normally insistence may be made on pre-deposit of the penalty. In such a case, the appellate authority would have to give reasons for granting interim relief of stay.

(35) 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 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

[21] (2012) 2 RCR (Civil) 353

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.

(36) In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and the matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the observations made above. All the cases stand disposed of in the above terms.

V.Suri