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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4171 of 2015

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Heinz India Private Limited, a Company incorporate under the Companies Act, 1956, having its registered office at D-Shivsagar, 7th Floor, Dr Annie Besant Road, Worli, Mumbai - 400018, P.O. Worly Colony., P.S. Worli., and local Operating office at Zakriyapur, Behind Ganga Petrol Pump, Zero Mile, P.O. Pahari, P.S. Agamkuan, Patna 800007 through its Manager-Branch Commercials, Chandan Sarkar, son of Rabindranath Sarkar, resident of 81, Izazatulla Lane, P.O.Tollygunj, P.S.Charu Market, Kolkata 700033.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Appeals) Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Patna Circle, Patna.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.4127 of 2015

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Heinz India Private Limited, a Company incorporate under the Companies Act, 1956, having its registered office at D-Shivsagar, 7th Floor, Dr Annie Besant Road, Worli, Mumbai - 400018, P.O. Worly Colony., P.S. Worli., and local Operating office at Zakriyapur, Behind Ganga Petrol Pump, Zero Mile, P.O. Pahari, P.S. Agamkuan, Patna 800007 through its Manager-Branch Commercials, Chandan Sarkar, son of Rabindranath Sarkar., resident of 81, Izazatulla Lane, P.O.Tollygunj, P.S.Charu Market, Kolkata 700033.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Appeals) Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Patna Circle, Patna.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.4172 of 2015

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Heinz India Private Limited, a Company incorporate under the Companies Act, 1956, having its registered office at D-Shivsagar, 7th Floor, Dr Annie Besant Road, Worli, Mumbai - 400018, P.O. Worly Colony., P.S. Worli., and local Operating office at Zakriyapur, Behind Ganga Petrol Pump, Zero Mile, P.O. Pahari, P.S. Agamkuan, Patna 800007 through its Manager-Branch Commercials, Chandan Sarkar, son of Rabindranath Sarkar., resident of 81, Izazatulla Lane, P.O.Tollygunj, P.S.Charu Market, Kolkata 700033.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Appeals) Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Patna Circle, Patna.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.4135 of 2015

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Heinz India Private Limited, a Company incorporated under the Companies Act, 1956, having its registered office at D-Shivsagar, 7th Floor , Dr Annie Besant Road, Worli, Mumbai - 400018, P.O. Worly Colony., P.S. Worli., and local operating Office at Zakriyapur, Behind Ganga Petrol Pump, Zero Mile, P.O.Pahari, P.S.Agamkuan, Patna 800007 through its Manager-Branch Commercials, Chandan Sarkar, son of Rabindranath Sarkar., resident of 81, Izazatulla lane , P.O.Tollygunj, P.S.Charu Market, Kolkata 700033.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Appeals) Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Patna Circle, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.4171 of 2015)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Lalit Kishore, PAAG
(In CWJC No.4127 of 2015)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Lalit Kishore, PAAG
(In CWJC No.4172 of 2015)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Lalit Kishore, PAAG
(In CWJC No.4135 of 2015)
For the Petitioner/s : Mr. D.V.Pathy, Advocate.
For the Respondent/s : Mr. Lalit Kishore, PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 19-03-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the orders dated 11.3.2015 passed by the Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna in Appeal Case Nos.ST/SL-273/2014-15, ST/SL-274/2014-15, ST/SL-272/2014-15 and ST/SL-275/2014-15. By the aforesaid orders, the Joint Commissioner has directed that in case the petitioner deposits 40% of the disputed amount of tax for the periods 2011-12, 2010-11, 2012-13, 2009-10, respectively, by 21.3.2015, no recovery shall be made till the hearing of the appeals.

Learned counsel for the petitioner relying on Entry 77 of Schedule III of the Bihar Value Added Tax, 2005, which says that maize starch, glucose, maize gluten, maize germ and oil are exigible to tax at the rate of 4% and subsequently 5% for the periods in question, submits that the Assessing Officer has held glucose in powder form, which has been sold by the petitioner with the brand name of Glucon-D, as a beverage and imposed tax at the rate of 12.5%, for which four appeals have been filed for four years i.e., 2009-10 to 2012-13 with an application of stay after depositing 20% of the disputed amount with prayer for stay of the balance amount, pursuant to which aforesaid impugned orders dated 11.3.2015 have been passed.

It is submitted by the learned counsel for the petitioner that even in the assessment order, it is noted that 100 grams of Glucon-D contained Calcium-170 mg., Phosphorus-100 mg. and Vitamin D-300 IU, which is as per the packet itself, which would show that the same is less than even 1 gram in 100 grams packet. Thus, it cannot be said that the packet contained beverage other than glucose and, as a matter of fact, documents (packets) were produced before the Assessing Officer to show that it discloses that the goods in question retained the character of glucose and is thus covered by Entry 77 of Schedule-III of the said Act.

Be that as it may, on a consideration of the entire facts and circumstances of the case, we are of the view that the petitioner, having deposited 20% of the disputed amounts, has strong *prima facie* case in the matter and, as such, no order for further deposit ought to have been directed.

The impugned orders dated 11.3.2015 passed in the aforesaid four appeals are, accordingly, quashed and it is directed that during the pendency of the appeals, the rest of the tax demanded shall remain stayed.

These writ applications are, thus, allowed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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