

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

WRIT PETITION NO.6488 OF 2014

Zoetis Pharmaceutical Research Private Limited .. Petitioner

vs

Union of India & ors .. Respondents

Mr.Darius B.Shroff Senior Counsel i/b Mr.M.M.Merchant
Advocates for the Petitioner

Mr.Vijay Kantharia Advocate for the Respondents

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**CORAM: S.C.DHARMADHIKARI &
G.S.KULKARNI, JJ**

DATED 15th JUNE, 2015

PC.

1. This writ petition under Article 226 of the Constitution of India seeks the following reliefs :

(a) “this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari under Article 226 of the Constitution of India calling for the records pertaining to the impugned Order-in-original NO.ST-II/Div/IV/269-R/2013-14 dated 31 January 2014 passed by the Respondent no.2 and the show cause notice No.ST-II/Div/Refund/Pfizer/Apr.June.12/13/3426 dated 7 June 2013 issued by the Respondent no.2 and after going into the validity and legality thereof to quash and set aside the same;

(b) this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction ordering and directing the Respondent no.2 by himself, his subordinates, servants

and agents to withdraw and/or cancel (I) the impugned order-in-original No.ST-II/Div.IV/269-R/2013-14 dated 31 January 2014 Exhibit L hereto and the orders at Exhibit 'L' and 'O' hereto passed by the respondent no.2 and (ii) Show cause notice No.ST-II/Div.IV/Refund/Pfizer/Apr-June 12/13/3426 dated 7 June 2013;

(c) this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction ordering and directing the Respondent no.2 to expeditiously process the rebate claim of the petitioner in a given time frame in terms of the settled law and the circular issued by the CBFC in this regard;

(d) Pending the hearing and final disposal of the writ petition, the respondents be directed by an interim order an injunction of this Hon'ble Court to forthwith deposit Rs.2,83,30,186/- Rs.53,25,840, Rs.68,69,904 and Rs.2,53,52,487/- in this Hon'ble Court with a liberty to the petitioner to withdraw the same;

(e) Alternatively, this Hon'ble Court be pleased to set aside the order in original and the show causer notices and direct the respondent no.2 to reconsider the rebate claim and refund claims of the petitioner in light of the statutory provisions and judicial precedents and circulars/instructions issued by the Government;

(f) for ad interim relief in terms of prayer (d) above;

(g) such other and further order or orders as may be deemed just and proper in the facts and circumstances of the present case.”

2. After the writ petition was heard for sometime Mr.Kantharia learned counsel for the respondents on instructions states that the respondents are agreeable to the order dated 31st January, 2014, 28th August, 2014 and 10th April, 2014 (Exhibits L, L-1 and O) and impugned

in this writ petition being quashed and set aside and the show cause notices shall be re-adjudicated on their own merits and in accordance with law.

3. In view of this statement made on instructions, by Mr.Kantharia, learned counsel for the respondents, Mr.Shroff learned senior counsel appearing on behalf of the petitioner submits that the adjudicating/competent authority should re-adjudicate these notices afresh on their own merits and in accordance with law uninfluenced by any observations and conclusions in earlier orders.

4. It is only on this specific aspect and apprehending that the parties like the petitioner may have to approach this Court repeatedly that we called upon Mr.Kantharia learned counsel for the respondents to take instructions. Mr.Kantharia on further instructions informs us that the respondent no.2-The Deputy Commissioner, Service Tax, Division-IV Mumbai-II will re-adjudicate these show cause notices on their own merits and in accordance with law afresh. While doing so and passing an order afresh he will not be influenced in any manner by the observations and

conclusions drawn earlier and in the order which we have just now set aside.

5. In the light of these added re-assurances while allowing the writ petition and quashing the impugned orders by consent, we direct that the petitioner shall appear before the respondent no.2 on 30th June, 2015 at 10.30 a.m. with all records and documents. The respondent no.2 shall give an oral hearing to the petitioner and shall deal with and consider all the documents and records relied upon by the petitioner. Thereafter, he shall pass a fresh order and in accordance with law uninfluenced by any earlier conclusions. The Court clarifies that it has not expressed any opinion on the rival contentions on merits of the petition.

Writ Petition is allowed in these terms.

G.S.KULKARNI, J.

S.C.DHARMADHIKARI, J.