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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 14 OF 2015

M/s. Johnson & Johnson Ltd. … Petitioners

Versus

The State of Maharashtra and Ors. … Respondents

Mr. Janak Dwarkadas, Sr. Counsel along with Mr. Rohan Shah along with Mr. Anay Banhatti i/by Economic Law Practice for petitioners.

Mr. B.B. Sharma, A.G.P. for State-Respondent.

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : JANUARY 14, 2015

P.C.

1. This petition filed under Article 226 of the Constitution of India assails the assessment orders both dated 5th November, 2014 passed in respect of Years 2005-06 and 2008-09 respectively and also the consequent demand notices dated 5th November, 2014.

2. At the very outset, we asked the petitioner to satisfy us as to why we should exercise our extraordinary writ jurisdiction when an efficacious alternative remedy of a statutory appeal from the impugned order is available under the Maharashtra Value Added Tax, 2002 (VAT Act). At this stage, Mr. Dwarkadas, learned senior counsel appearing for the petitioners, submits that the impugned orders although best judgment assessments are yet arbitrary in nature raising a demand of Rs.216.15 Crores, this by itself warrants interference by this court. Moreover, it is submitted that the

alternative remedy may not be efficacious in view of proviso to section 26(6) of the VAT Act which requires deposit of 100% of the demand attributable to the petitioner's failure to produce declarations/certificates necessary for claiming deductions in case of orders passed after 1st July, 2014 of the amounts relating to period prior to 2 years from the end of the year to which the claim relates. It is stated that the amount attributable on the above ground would be approximately Rs. 3 Crores. Moreover, the petitioners are apprehensive that the authorities may adopt coercive proceedings for recovery even before its appeal or stay application is heard by the Appellate Authority. It is submitted that in these circumstances this court should exercise its extra ordinary writ jurisdiction and entertain this petition.

3. Mr. Sharma, learned A.G.P. submits that there is no reason why the court should exercise its extra ordinary writ jurisdiction in the facts of this case, perhaps when an efficacious alternative remedy is available under the VAT Act as is evident from section 26(6) of the VAT Act. In terms of the above, the appellate authorities have powers to stay not only the impugned orders before it but also to dispense with the deposit of the whole or the disputed amount till the disposal of the appeal. In these circumstances, if the petitioners move the appellate authority, its grievance would be considered by the appellate authority including dispensation of the deposit of the whole or disputed amount. It is submitted that the anxiety of the petitioners that coercive proceedings would be adopted by the State is unfounded, if the petitioners invoke the appropriate stay proceedings. In particular attention is invited to the proviso to section 33(1) of the VAT Act, that no coercive proceedings would be taken against the assessee consequent to the order passed by the authority in case the assessee makes an application before the Commissioner within thirty days from the date of communication of notice of demand, intimating that the assessee is proposing to challenge the

order raising the demand, before the Appellate Authority.

4. At this stage, Mr. Dwarkadas, learned senior counsel for the petitioners states that the petitioners are willing to avail of the alternative remedy and apply for stay before the appellate authority. On instructions he further states that the petitioners will file an intimation with the Commissioner in terms of the proviso to Section 33(1) of the VAT Act, during the course of the day, as today the 30 days period provided therein from receipt of the notice expires. On instructions, it is further stated that the petitioner will file an appeal and stay application with the appellate authority within two weeks from today.

5. We are of the view that in case the petitioners do both i.e. file necessary intimation and appeal informing the respondent of the same, no coercive proceedings be taken by the respondents till the disposal of the stay application by the appellate authority in the present facts. It is made clear that this protection is available to the petitioners only so long as they cooperate for the early disposal of the stay application filed by it before the appellate authority.

6. It is made clear that we have not heard the petitioners on its grievance against the impugned orders and demand notice. This is so as we refused to consider the merits in view of an efficacious alternative remedy under the VAT Act being available.

7. Accordingly petition is disposed of with the above directions. No order as to costs.

(G.S. KULKARNI,J.) **(M.S. SANKLECHA, J.)**