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

WRIT PETITION (LODG.)NO. 995 OF 2015

M/s Paradise Nutrition Inc ..Petitioner
Vs.
The State of Maharashtra & Ors. ..Respondents.

Mr. V. Sridharan, Senior Counsel with Mr. C.B. Thakar, Mr. Rahul Thakar and Puneeth Ganapathy for Petitioner.
Mr. B.B. Sharma, AGP for Respondent-State.

CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.

DATE : 7th April 2015.

P.C.:

1 The Petition arises out of the order passed by the learned Maharashtra Sales Tax Tribunal, Mumbai dated 2nd March 2015 whereby partly allowing the appeal filed by the present Petitioner which was filed challenging the interim stay order passed by the Deputy Commissioner of Sales Tax, Mumbai.

2 Being aggrieved by the order passed by the Revenue Authority, an appeal came to be preferred before the Appellate Authority.

An application for grant of stay to the demand was also filed. The First Appellate Authority rejected the application for stay. Being aggrieved thereby, further appeal came to be filed before the learned Tribunal. The learned Tribunal partly allowed the appeal and directed 50% of the demanded amount to be deposited on the condition for hearing the appeal. Being aggrieved thereby, the present Writ Petition is filed.

3 Shri Shridharan, the learned Senior Counsel appearing for the Petitioner submits that the product of the Petitioner is squarely covered by the Entry C-107(11)(g), inasmuch as basically the product of the Petitioner is a powder from which non-alcoholic beverages are prepared. The learned Senior Counsel submits that what is beverage is squarely considered by the Apex Court in the case of ***Hamdard (Wakf) Laboratories Vs. Collector of C. Ex., Meerut, reported in 1999 (113) E.L.T. 20***. The learned Senior Counsel further submits that the said view has been clarified in another judgment of the Apex Court in the case of ***Katrala Produces Ltd. Vs CCE, reported in 1999 (113) ELT 381.*** The learned Senior Counsel therefore submits that when the specific entry covers the product of the Petitioner, the approach of the Authority in treating the Petitioner's product in residual entry is not at all sustainable. The learned Senior Counsel, therefore, submits that the Petition deserves to be allowed. He further submits that the Petitioner has already paid tax as per said Entry C-107(11)(g) and therefore in the interest of justice, this Court should direct the First Appellate Authority to decide the appeal on merits without insisting pre-condition of deposit. He further submits that there is no question of unjust entry.

4 Shri Sharma, the learned AGP for the Revenue on the contrary submits that the view taken by the learned Tribunal is taken after considering all the relevant material. The learned AGP submits that in any case the Petition arises out of purely interlocutory order, and as such the Petition is not maintainable. He further submits that an interference by this Court should not be warranted.

5 Though Shri Shridharan, the learned Senior Counsel has relied on the aforesaid two judgments of the Apex Court, we do not find it appropriate to consider the contention raised by Shri Shridharan in that regard. Any observations made by us on merits, would unnecessarily prejudice the Authorities before which the issue is pending.

6 An interference of this Court in the order of predeposit warranted only if the view taken by the Authorities found to be either perverse or impartial.

7 Perusal of the judgment of the learned Tribunal would reveals that the learned Tribunal has considered all the aspect of the matter which are necessary for considering the question of pre-deposit. The learned Tribunal by exercising discretion vested in it has modified the order of the First Appellate Authority. The First Appellate Authority has rejected the stay application in entirety. However, the said order is modified and the required 10% deposit is redued by 50%.

8 Upon perusal of the order passed by the Tribunal, it cannot be said that the view taken by the learned Tribunal is either perverse or impossible and such which warrants interference in the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. The Writ Petition is accordingly dismissed.

9 At this stage, Shri Shridharan requests for grant of 8 weeks' time to deposit the amount. The Petitioner is granted 8 weeks' time to comply with the order passed by the learned Tribunal. It is, further, made clear that in the event if the order of the Tribunal is complied with within a period of 8 weeks, the First Appellate Authority shall decide the appeal on its own merits after taking into consideration the issue involved. The appeal shall be decided as expeditiously as possible.

(A.S. GADKARI, J.) **(B.R. GAVAI, J.)**