IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.34086 to 34089 of 2015
and M.P.Nos.1 of 2015

Hindustan Unilever Ltd.
Rep by its Regional Indirect Taxation Manager
Y.Mani
Ponds House 101
Santhome High Road
Chennai 28 [Petitioner in all the petitions]

Vs

1 The Deputy Commissioner (CT)-II
Large Tax Payers Unit 34
Marshalls Road, Egmore,
Chennai - 600 008

2 The Joint Commissioner (CT)
Appeals CT Annexe Building III Floor
Greams Road, Chennai - 600 006
[Respondents in all the petitions]

Petitions filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the 1st respondent to forbear from initiating any recovery action pursuant to the proceedings in TNGST.0802250/2003-04, 2004-05 dated 14.8.2014 and 11.8.2014, TIN.33410802250/2006-07 and 2011-12 dated 29.04.2014 and 30.10.2014 respectively pending disposal of A.P. No.156, 155, 83 of 2014 and 12 of 2015 respectively by the 2nd respondent herein.

For Petitioner in all the petitions : Mr.N.Inbarajan

For Respondents in all the petitions : Mr.S.Kanmani Annamalai, AGP(T)

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleaader (Taxes), who took notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed for the issuance of a writ of mandamus to direct the 1st respondent to forbear from initiating any recovery action pursuant to the proceedings dated 14.8.2014, 11.8.2014, 29.04.2014 and 30.10.2014 respectively, pending disposal of A.P. Nos.156, 155, 83 of 2014 and 12 of 2015 by the 2nd respondent herein.

3. According to the learned counsel for the petitioner, originally, challenging the assessment orders of the 1st respondent for the years TNGST.0802250/2003-04 and 2004-05 and TIN 33410802250/2006-07 and 2011-12 respectively, appeals were filed along with stay applications by the petitioner by remitting mandatory deposit of 25% of the tax demanded for all the assessment years before the Joint Commissioner (CT) Appeals, Chennai. The appeals were taken on file along with stay petitions filed by the petitioner. The appellate authority was pleased to grant an order of stay in all the petitions, directing the petitioner to pay another 25% of the disputed amount of tax before the Assessing Authority. The appellate authority has also imposed a further condition directing the petitioner to furnish bank guarantees in respect of balance amount of tax and penalty wherever applicable in all the stay petitions. Accordingly, both the conditions imposed by the appellate authority had been complied with by the petitioner and the bank guarantees so furnished are also in force upto 16.03.2016 for the years 2003-04, 2004-05 and 2005-06 and in force till 03.03.2016 for the year 2011-12.

4. It is the submission of the learned counsel for the petitioner that the appellate authority though heard the matters in part, inspite of readiness of the petitioner to complete the appeals, the same have not been disposed of. In the meantime, since the stay orders granted were in operation only for a period of six months, the petitioner filed stay extension applications, on which the 2nd respondent had extended the stay orders upto 23.10.2015. On 06.10.2015, the appeals were taken up for final hearing, heard and orders reserved. However, a notice dated 08.10.2015 was issued by the 1st respondent mentioning the expiry of stay on 23.10.2015 and directing to pay the balance tax on 24.10.2015, failing which, either realisation of bank guarantee will take place or garnishee order will be issued to the Bankers to recover the balance of tax. The petitioner has filed again stay extension applications in all the aforesaid appeals on 14.10.2015. On 19.10.2015, the petitioner addressed the 1st respondent, drawing his attention to the fact that the 2nd respondent had already reserved orders in the appeals and they have also filed extension of stay

applications on 14.10.2015 itself. However, the same are yet to be heard and disposed of.

5. According to the learned counsel for the petitioner, the petitioner requested the 1st respondent not to initiative any coercive steps, since they have filed stay extension applications, however, the 1st respondent has orally informed the petitioner that unless final orders in the appeals or stay extension orders are produced, recovery proceedings would be initiated. It is his further submission that upon filing the stay extension applications on 14.10.2015, though the petitioner drew the attention of the 2nd respondent the threat of recovery by the 1st respondent as contained in the notice dated 08.10.2015, the 2nd respondent has made it very clear that no further extension of stay will be granted as orders have already been reserved on 06.10.2015 itself. It is the grievance of the petitioner, according to the learned counsel for the petitioner that as on date the 2nd respondent has yet to pass final orders in the aforesaid appeals nor the stay extension applications were taken up for hearing. Apprehending recovery action would be initiated, the petitioner is before this Court.

6. The petitioner has paid 25% of the disputed tax for the respective assessment years at the time of filing the appeals. Further, as directed by the Appellate authority, the petitioner also made payment of another 25% of the disputed amount. Further, the petitioner has also furnished bank guarantees for the balance tax amount and penalty wherever applicable for all the assessment years and they are still in force till March 2016. However, according to the learned counsel for the petitioner, the extension of stay petitions filed by the petitioner were not heard. In the meantime, on 08.10.2015, the 1st respondent herein issued a notice directing the petitioner to produce stay orders for the assessment years in question, in the absence of which, recovery action will be initiated. Since the revenue of the department is very much safeguarded by remitting 50% of the disputed tax for all the assessment years as well as furnishing bank guarantee for the remaining 50% of the disputed tax and penalty wherever applicable, which are still in force till March 2016, this Court is of the view that till final orders are passed in the appeals, the recovery proceedings shall be kept in abeyance.

7. Accordingly, these writ petitions are disposed of by directing the 1st respondent not to proceed with the recovery proceedings till orders are passed by the 2nd respondent/appellate

authority in A.P. No.156 of 2014(TNGST 2003-04), A.P.No.155 of 2014 (TNGST 2004-05), A.P.No.83 of 2014 (TNVAT/2006-07) and A.P.No.12 of 2015 (TNVAT/2011-12) respectively. It is made clear that the stay of assessment orders shall be in force till the disposal of the appeals. No costs. Connected miscellaneous petitions are closed.
rg

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

1 The Deputy Commissioner, (CT)-II
Large Tax Payers Unit 34
Marshalls Road, Egmore,
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2 The Joint Commissioner (CT)
Appeals CT Annexe Building III Floor
Greams Road, Chennai - 600 006

+1 C.C. to MR.N.Inbarajan, Advocate in Sr.No.58153

+1 C.C. to The Special Government Pleader (Tasex) in Sr.No.58371

W.P.Nos.34086 to 34089 of 2015

PA(CO)
sd : 30/10/2015