IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.34998 of 2015
and M.P.Nos.1 & 2 of 2015

M/s.Johnson & Johnson Limited
[Petitioner]
Rep by its Authorized Signatory
Centennial Square 8th Floor
Block No.6-A Dr.Ambedkar Road
Kodambakkam Chennai 24 ..Petitioner

Vs

1 The Joint Commissioner (CT) Appeals
CT Annexe Building III Floor
Greams Road Chennai 6

2 The Deputy Commissioner (CT)-II
Large Tax Payers Unit Chennai 8
..Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the impugned proceedings of the 1st respondent in S.P. No.136/2014 in A.P.No.161/2014 and quash the impugned order dt 12.10.2015 and further direct the 1st respondent to grant an absolute stay of collection of balance of disputed tax of Rs.45,80,369/- in respect of Assessment Year CST/815944/2012-2013 till the disposal of the appeal in A.P. No.161/2014 as the petitioner has already filed a bank guarantee for the above amount valid till 9th January 2016.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

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

2. This writ petition has been filed challenging the order of the 1st respondent dated 12.10.2015 and to direct the 1st respondent to grant an absolute stay of collection of balance of disputed tax of Rs.45,80,369/- in respect of Assessment Year CST/815944/2012-2013 till the disposal of the appeal in A.P. No.161/2014, as the petitioner has already filed a bank guarantee for the above amount, which is valid till 9th January 2016.

3. According to the learned counsel for the petitioner, originally, challenging the assessment order for the year 2012-13, an appeal was filed along with a stay application by the petitioner by remitting mandatory deposit of 25% of the tax demanded for the assessment year. The appeal was taken on file by the 1st respondent along with stay petition filed by the petitioner. The appellate authority was pleased to grant an order of stay in the petition, directing the petitioner to pay another 25% of the disputed amount of tax before the Assessing Authority on or before 09.01.2015. The Appellate Authority has also imposed a further condition directing the petitioner to furnish bank guarantee in respect of balance amount of tax in the stay petition on or before 09.01.2015 and stay was valid upto six months or till the disposal of the appeal. Accordingly, both the conditions imposed by the appellate authority had been complied with by the petitioner. Further, according to the learned counsel for the petitioner, after the expiry of the stay period, the petitioner filed an application for extending the stay for another six months, in and by which, the petitioner has brought to the notice of the 1st respondent that it had already remitted 50% of the disputed tax and also furnished bank guarantee for the balance 50% of the disputed tax. However, the appellate authority, without considering the said fact, by the impugned order dated 12.10.2015, rejected the application for extension of stay on the ground that the stay already granted had expired coupled with the reason that the petitioner had not collected declaration forms. Hence, the petitioner is before this Court.

4. The petitioner has paid 25% of the disputed tax for the assessment year at the time of filing of the appeal. 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 guarantee for the balance tax amount for the assessment year. which is valid upto 09.01.2016. The petition filed by the petitioner for extension of stay was rejected by the appellate authority vide order dated 12.10.2015 on the ground that the same was filed on 11.09.2015, i.e, after three months from the date of expiry of the stay order.

5. Since the revenue of the department is very much safeguarded by remitting 50% of the disputed tax for the assessment year as well as furnishing bank guarantee for the remaining 50% of the disputed tax which is valid upto 09.01.2016, this Court is of the view that there is no justifiable reason for proceeding with the recovery and hence this Court is of the considered view that the writ petition may be disposed of with a direction to the appellate authority to dispose of the appeal filed by the petitioner within a reasonable time and pending disposal of the appeal, the stay shall be in force.

6. In view of the above, the writ petition is disposed of by directing the appellate authority to dispose of the appeal filed by the petitioner within a reasonable time and the order of stay granted by the 1st respondent shall be in force till the disposal of the appeal. It is made clear that pending disposal of the appeal, no recovery shall be made. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To
1 The Joint Commissioner (CT) Appeals
CT Annexe Building III Floor
Greams Road Chennai 6

2 The Deputy Commissioner (CT)-II
Large Tax Payers Unit Chennai 8

+1cc to Mr.P. Rajkumar, Advocate, S.R.No.59701
+1cc to Mr.P.V. Ravikumar, Advocate, S.R.No.59754
+1cc to the Government Pleader, S.R.No.59914

SK(CO)
EU(6/11/2015)

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