IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2098 OF 2016

Dabur India Limited, Mumbai …. Petitioner

V/s.

The State of Maharashtra & Ors. …. Respondents

Mr. Rahul Thakar a/w. Mr. Jas Sanghavi, i/by M/s. PDS Legal, for the Petitioner.

Mr. V.A. Sonpal, Special Counsel, a/w. Ms. Gauri Rao, A.G.P., for Respondent Nos.1 to 4.

CORAM : S.C. DHARMADHIKARI & DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 14TH JUNE, 2016.

P.C. :

1. We have heard the learned advocate appearing for the Petitioner.

2. The Tribunal has yet to determine as to whether the product in question, namely, "Dabur Lal Tail" is a Drug, as understood by the relevant Entry, namely, the one reproduced at Page 21 of the paper-book. It is stated that "Dabur Lal Tail" ought to be classified under Entry 29 of Schedule "C" of Maharashtra Value Added Tax Act, 2002 as an Ayurvedic Drug. The argument is that this is not a product as understood by the Authorities till date. One cannot classify it as a Perfume. Whether every Massage Oil would be a Drug necessarily and following under Entry 29 of Schedule "C" of MVAT Act, 2002, is the question that is involved.

3. As against a confirmed tax liability of Rs.3 Crores and odd, the Tribunal has determined, as a precondition, deposit of a sum of Rs.90 Lacs. The prima facie and tentative observations of the Tribunal enabled it to issue such a direction. We are not inclined to interfere with the order passed by the Tribunal at such a stage, simply because wherever the Tribunal has found that the products sold by the Petitioner-Appellant may not attract the liability, need not attract tax @ 12.5%, but could be considered as ayurvedic medicines taxable @ 5%, the relief has been granted. The part payment of Rs.90 Lacs, in the present case, pending the determination, as above, does not call for interference in our writ jurisdiction. The condition imposed does not appear to be unreasonable, excessive, arbitrary and rendering the remedy of appeal completely illusory.

4. It is for the Appellate Authority to determine as to whether any assistance can be derived by the Petitioner from the Judgment of the Hon'ble Supreme Court in its own case, namely, ***Dabur India Vs. CCE***, reported in ***(2005) 4 SCC 9***.

5. There the goods were being classified for the purpose of levy of central excise. The Schedule Entries and to be found in the Central Excise Tariff Act were discussed and considered for the purpose of levy of central excise. That is a levy on manufacture of goods. From the observations with regard to such a levy, can any assistance be derived so as to consider the present controversy, has to be determined by the Appellate Authority at length and on merits. For such determination, a reasonable precondition cannot be said to be defeating or frustrating the right of appeal.

6. There is no merit in the Petition and the same is dismissed.

7. The balance amount shall be deposited within a period of four weeks from the date of receipt of a copy of this order.

8. A benefit of deposit of part amount shall always be granted by the Revenue in determining the compliance with the Tribunal's order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]   [S.C. DHARMADHIKARI, J.]