THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.Nos.27354 and 27291 of 2017

Date: 20.11.2017

Between:

M/s. Cholayi Private Limited,
(previously known as Patra Integrated
Pharmaceuticals Private Limited),
rep. by its Manager-Legal,
Mr.M.S.Heeroon Rasheed,
8, J-Block, 6th Avenue,
Anna Nagar East, Chennai-600 102. … Petitioner

And

State of Andhra Pradesh,
Rep. by its Principal Secretary to Government,
Revenue (CT-II) Department,
Secretariat, Velagapudi, Amaravathi,
Guntur district and 3 others … Respondents

Counsel for the Petitioner : Mr.S.Ravi, senior counsel for
Mr.S.Dwarakanath

Counsel for the Respondents: Mr. S.Suri Babu,
Special Standing Counsel for
Commercial Taxes (AP).

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These two writ petitions are filed by the same assessee, feeling aggrieved by final assessment order dated 17.08.2004 passed by respondent No.3 for the assessment years 2001-02 and 2002-03 respectively. The impugned orders were preceded by provisional assessment orders dated 10.12.2002. The petitioner has questioned the said orders by filing W.P.Nos.25119 of 2002 for the assessment year 2001-02 and W.P.No.25127 of 2002 for the assessment year 2002-03. By interim orders granted on 31.12.2002, this Court granted stay of recovery. As observed above, on 17.08.2004, final assessment orders were passed by respondent No.2, confirming the provisional assessment order.

2. Mr.S.Ravi, learned senior counsel submitted that as the writ petitions filed questioning final assessment orders were pending, his client did not file appeals against the final assessment orders and that, respondent No.3 has also not demanded any amounts, evidently due to the fact of pendency of writ petitions, till 04.10.2010, when demand notice was issued by the respondent No.3. He has invited our attention to the footnotes in the impugned orders, wherein it was observed that the entire balance amount of tax is covered by the stay in the two writ petitions filed, questioning the provisional assessment orders.

3. Further, on 04.10.2010, the respondent No.3 has issued a demand notice for payment of balance disputed tax. On 30.12.2010,

the petitioner has filed miscellaneous applications in W.P.Nos.25119 of 2002 and 25127 of 2002, seeking amendment of prayer in the writ petitions and also for stay of collection of disputed tax. On 05.01.2011, this Court has granted stay of collection of disputed tax, subject to payment of Rs.50 lakhs for both years. The learned senior counsel submitted and it is not disputed by the learned Standing Counsel that the said interim order was complied with. On 27.07.2017, both the writ petitions were dismissed as infructuous, giving liberty to the petitioners to question the final assessment orders. Assailing these final assessment orders, the petitioner has filed the present writ petitions.

4. During the hearing, the learned senior counsel for the petitioner submitted that due to the various circumstances referred to above, his client could not file appeals within the limitation period and that it may be put to reasonable terms as a condition, for permission to file appeals, questioning the final assessment orders.

5. The Commercial Tax Officer, Gudur, has filed detailed counter affidavits, wherein he has specifically pleaded that the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution, in order to question the final assessment orders which are passed as far back as the year 2004, in the year 2017.

6. We have carefully considered the respective submissions of the learned counsel for both the parties and perused the record. The facts

in the present case as narrated herein before, are somewhat peculiar. The petitioner has questioned provisional assessment orders within a few days of passing of the same, by filing two writ petitions. Both parties evidently presumed that the interim stay granted on 07.01.2003 continued. However, respondent No.3 obviously realised that the interim stay was granted only for a limited period and raised a demand on 04.10.2010, for payment of balance tax due under the final assessment orders dated 17.08.2004. The petitioner questioned the final assessment orders by filing amendment petitions, within less than two months of passing of the final assessment orders. This Court has granted interim stay of collection of the disputed tax under the final assessment orders by order dated 05.01.2011, which was continued till the writ petitions were dismissed on 27.07.2017. From these facts, it cannot be said that the petitioner was not diligent in pursuing his cause. However, he has availed inappropriate legal remedies by filing writ petitions and applications for amendment of the prayer in the said writ petitions, questioning the final assessment orders. Under these facts of the case, no negligence or laches could be attributed to the petitioner. The petitioner, instead of pursuing these writ petitions, wants to avail the remedy of appeals. In our opinion, if the writ petitions do not suffer from laches, the same reasoning would hold good for permitting the petitioner to file appeals, though the limitation for filing appeals has expired long time back. As the *lis* was kept alive all through, and in the facts and circumstances of the case, we are of the opinion that it would result in failure of justice if the petitioner is not permitted to pursue the remedy of appeal, merely on the ground of limitation. However, at the same time, we are not inclined to allow the petitioner to avail those remedies without fastening on it, reasonable liability arising under the impugned final assessment orders. Accordingly, the petitioner is permitted to avail the remedy of appeal against the final assessment orders within four weeks from today. As a condition for entertaining the appeals, the petitioner must deposit 50% of the balance tax due under each of the impugned final assessment orders, within the above stipulated time. On proof of payment of such tax, the appellate authority shall entertain the appeals and adjudicate the same on merits.

7. Subject to the above directions, both the writ petitions are disposed of. As a sequel to the disposal of the writ petitions, W.M.P.M.P.Nos.33994 of 2017 and 33906 of 2017 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 20th November, 2017

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