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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

W.P.No.43200 of 2016

Date: 18.12.2017

Between:

M/s.Nestle India Limited,
32/1, Survey No.260,
C/o.Aries Enterprises,
Kandlakol village, Medchal mandal,
Ranga Reddy district, Telangana State,
rep. by its Manager-Administration,
Sri R.Narayanan … Petitioner

And

Assistant Commissioner (CT) (LTU),
Vijayawada – Division,
Vijayawada and two others … Respondents

Counsel for the Petitioner : Mr. C.Umakanth Sarma for Mr.S.Krishna Murthy

Counsel for the Respondents : Mr. Shaik Jeelani Basha Special Standing Counsel for Commercial Taxes(AP)

The Court made the following:

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

This writ petition is filed for the following substantial relief:

> "to issue a writ, order or direction, particularly one in the nature of writ of mandamus, directing the second respondent to refund the tax of Rs.1,46,206/-, penalty of Rs.2,92,412/- and compounding fee of Rs.3000/-, thus totalling to Rs.4,41,618/-, collected by the second respondent, for release of vehicle bearing No.TN 15V 9448 along with goods detained by the second respondent covered by release order dated 05.10.2016 in Case No.217/2-16-17, as without authority of law, without jurisdiction and contrary to Section 45 of the A.P.V.A.T. Act, 2005".

2. From the admitted facts of the case, it is evident that after the goods were detained, the petitioner got them released on payment of tax of Rs.1,46,206/- along with penalty of Rs.2,92,412/- and compounding fee of Rs.3000/-, totallying Rs.4,41,618/-. The order in Case.No.217/2-16-17 dated 05.10.2016, was passed by respondent No.2, wherein it is stated that the driver/person-in-charge of the goods who received notice dated 30.09.2016, filed his consent letter dated 05.10.2016, offering to pay Rs.3000/- towards compounding fee and requested to drop further action. Respondent No.2 has accordingly accepted the offer and dropped further action.

3. At the hearing, it has also been noticed by this Court that by a separate order passed on 25.09.2016, in pursuance of show cause notice of even date, respondent No.2 has confirmed proposed tax of Rs.1,46,206/-, on the goods.

4. The respondent No.2 filed a counter affidavit along with copy of another order passed on 05.10.2016, wherein he has confirmed the

penalty indicated in the show cause notice dated 25.09.2016, based on the purported willingness letter of the driver/person-in-charge of the goods.

5. The petitioner has not specifically questioned the aforementioned orders dated 25.09.2016 and 05.10.2016. Unless the petitioner questions these orders and succeeds in getting them invalidated by the appropriate forum, the relief of refund of the amounts paid by the petitioner, cannot be granted.

6. In this view of the matter, without expressing any opinion on the merits of the case, the writ petition is dismissed with liberty to the petitioner to file an appeal before the appropriate forum. If such appeal is filed within four weeks from the date of receipt of this order, the appellate forum shall entertain and decided the same on merits and in accordance with law.

7. As a sequel, W.P.M.P.No.53307 of 2016 filed by the petitioner, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Date: 18th December, 2017

msb