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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5769/2017

DR REDDY'S LABORATORIES LTD ..... Petitioner

Through: Mr S. Ganesh, Senior Advocates with Ms Neelima Tripathi, Advocate.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr Kirtiman Singh, CGSC, Mr Prateek Dhanda, Mr Waize Ali Noor, Advocates with Mr Suneel Chopra, Chief Legal Officer.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 13.07.2017

CM No.24095/2017

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 5769/2017& CM No.24094/2017

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "(i) Issue a writ in the nature of certiorari or a similar order or declaration thereby quashing the demand notices dated 28.04.2017, 11.05.2017, 20.04.2017, 11.05.2017, 08.05.2017, 11.05.2017, 19.04.2017, 11.05.2017, 28.04.2017, 19.04.2017 and 17.04.2017 issued by the respondent no.3 and received by the Petitioner and to thereafter also quash the Show-cause notices and the

> reminder notices issued by the respondent no.3 and received by the Petitioner."

4. The petitioner is a company engaged in the business of manufacturing pharmaceuticals and is aggrieved by the decision of the respondents to recover the amount overcharged alongwith interest as demanded in terms of the impugned orders. The petitioner does not dispute its liability to pay any amount charged in excess of the ceiling price (overcharged amount) of the drugs in question; it has confined the present writ petition to only three issues which were noticed in the order dated 12.07.2017. The said order is set out below:-

> "1. Mr S. Ganesh, learned senior counsel for the petitioner has confined the present petition to raising three issues: (i) that interest under Section 7A of the Essential Commodities Act, 1955 can only be charged from the date of the first demand and in the present case it is claimed that the interest is also being levied for a period prior to the date of the first demand: (ii) that the petitioner has not received the entire amount as it had sold the goods on principal to principal basis which includes a margin of more than 20% and, therefore, the petitioner would not be liable to pay the quantum of the margin involved as the same was not charged by it; and (iii) that the petitioner is entitled to an annual increase of 10% in the MRP and, therefore, adjustment to that extent is required to be considered while determining the quantum of amount over charged. He states that the aforesaid grounds were expressly stated in response to the Show Cause Notice but have not been considered by the respondents.
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> 2. The learned counsel for the respondent seeks time to take instructions.
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> 3. List on 13.07.2017."

5. A plain reading of the impugned orders indicates that the petitioner's contention regarding the date from which interest under Section 7A of the Essential Commodities Act, 1955 is to be charged, was not specifically dealt with. Further the petitioner had also claimed that the amount overcharged by it was is less than the amount alleged, because the petitioner sells its product to stockist/retailers on principal to principal basis and has not recovered the margin available to stockists and retailers. This has also not been considered in the impugned order.

6. The third issue raised by the petitioner is with regard to the annual increase of 10% in the MRP, which according to the petitioner ought to be accounted for. This contention has been rejected but the reasons for rejecting the same have not been articulated clearly.

7. In the circumstances, the impugned orders are set aside with a direction that the respondents shall examine the abovementioned three issues raised by the petitioner and after giving an opportunity to the petitioner to be heard, pass a speaking order within a period of two weeks from today. The authorized representative of the petitioner shall appear before the respondents on 21.07.2017. The exact time and venue shall be communicated by the respondents.

8. The petitioner shall also provide complete details as to the production, prices charged and the sales of products from October 2016 as well as the data regarding sale of pre-manufactured stock (stock manufactured before Jul, 2014) but sold to public at higher prices post NPPA notification.

9. The learned counsel for the petitioner also states on instructions that it

is now complying with the price ceiling and the products are being sold below the maximum ceiling fixed for those products.

10. The petitioner shall deposited the admitted amount – that is, the amount payable after making the adjustments as claimed by the petitioner – within a period of one week from date.

11. The petition and the pending application are disposed of with the aforesaid directions.

12. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

JULY 13, 2017
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