**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 2756 of 2017
Date of Decision : 04.12.2018

M/s Nestle India Limited

. . . Petitioner

versus

State of Punjab and another

. . . Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. M. L. Sarin, Senior Advocate with
Mr. Sandeep Goyal, Advocate
for the petitioner.

Mr. Pankaj Gupta, Addl. A.G., Punjab.

AJAY KUMAR MITTAL, J. (ORAL)

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing the order dated 18.11.2016 along with Demand notice dated 16.01.2017 (Annexure P-7) and (Annexure P-8), respectively, passed by the Assistant Excise and Taxation Commissioner, Moga-respondent No.2.

2. It has been claimed that respondent No.2 has imposed tax on stock transfers made in the course of inter-state trade and commerce which is not within the domain of State Legislature and is in violation of Entry 98A of List-I read with Article 269(3) and Section 3(a) of Central Sales Tax Act, 1956.

3. Learned State counsel on instructions received from Mr. H. S. Dimple, ETO, Moga, who is present in Court, has submitted that the assessment order, which is impugned herein be treated as withdrawn. However, he prayed that liberty be granted to the Assessing Officer to pass a fresh assessment order after affording an opportunity of hearing to the petitioner in accordance with law.

4. In view of the above, order dated 18.11.2016 and consequential demand notice dated 16.01.2017 (appended as Annexures P-7 and P-8, respectively) are ordered to be *non est* . It shall however be open to the Assessing Officer to pass a fresh assessment order after affording an opportunity of hearing to the petitioner and also to issue fresh demand notice, if any, in accordance with law.

6. Learned counsel for the petitioner submitted that in compliance to the order dated 14.02.2017 passed by this Court, the petitioner had deposited 25% of the demanded amount, which was ordered to be kept in the fixed deposit of a nationalized bank initially for a period of six months and thereafter for like periods of six months each, by the Registrar (Judicial) of this Court. Prayer for return of the aforesaid amount was made by learned counsel for the petitioner together with interest accrued thereon.

7. The said claim was not opposed by learned State Counsel.

8. Accordingly, in such circumstances, we direct that the Registrar (Judicial) of this Court shall refund the amount which had been kept in the shape of Fixed Deposit Receipt along with interest,

accrued thereon to the petitioner forthwith. Needless to say, as observed earlier, in case any fresh demand is raised, the same shall be dealt with by the State in accordance with law.

9. The petition stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

December 04, 2018
rittu

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No