IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.340 OF 2025

Merck KGaA ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.5311 OF 2024

Merck KGaA ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.504 OF 2025

Merck KGaA ...Petitioner
Versus
State of Maharashtra & Ors. ...Respondents

Mr. Sushanth Murthy for the Petitioner.
Ms. Jyoti Chavan, Addl. G. P. for the Respondent-State in WP/340/2025 & WP/5311/2024.
Mr. Amar Mishra, AGP for Respondent Nos.1 & 3-State in WP/504/2025

CORAM : M. S. Sonak & Jitendra Jain, JJ.
DATED : 26 August 2025

ORAL ORDER:- *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. The learned counsel for the parties state that these three petitions can be disposed of by a common judgment and order. Accordingly, we issue a Rule in each of these petitions. With the consent of and at the request of learned counsel for the parties, we make the Rule returnable immediately.

3. These three petitions challenge assessment orders passed by the Deputy Commissioner of State Tax levying tax under the Maharashtra Value Added Tax Act, 2002 (hereafter "the MVAT Act") on payments of royalty made by the subsidiary company (Merck Life Science Pvt. Ltd.) to the Petitioner for the financial years FY 2015-16, FY 2016-17 and FY 2017-18 on the allegation that the said royalties amount to consideration for the transfer of right to use of trademarks.

4. These petitions have been filed invoking the writ jurisdiction of this Hon'ble Court despite an appeal being available in terms of Section 26(1)(b) of the MVAT Act to the Appellate Authority, viz. The Joint Commissioner.

5. A similar issue arose in the case of ***M/s. Mestra A. G. Switzerland Vs. The State of Maharashtra & Ors.***[1] wherein the petitioner, by a writ petition, called in question an assessment order passed by the Deputy Commissioner of Sales Tax levying tax under the MVAT Act on payments of royalty made by the subsidiary companies to the petitioner.

6. The Petitioner therein argued that the adjudication order impugned in the petition had been passed by relying upon a judgment of the Sales Tax Tribunal. As the issue in dispute had already been decided against the Assessee by the Tribunal, therefore exploring the remedy of first appeal provided by section 26(1) of the MVAT Act to the Joint Commissioner, being the first appellate authority, would be a mere ritual since the Joint Commissioner was bound by the aforesaid decision of the Tribunal.

7. By an order dated 16 February 2022, this Hon'ble Court did not entertain the petition on merits, holding that the Petitioner could

1 Writ Petition No.12297 of 2021 dated 16.02.2022

invoke Tribunal appellate jurisdiction under section 27 of the MVAT Act at the appropriate time. This Court nonetheless observed that it was inclined not to relegate the Petitioner to the first appellate remedy but to give it the opportunity to prefer an appeal before the Tribunal directly, if it so chooses, subject to making the requisite pre-deposit. This Court further held that in the event the Petitioner preferred an appeal before the Tribunal within six weeks from the date of the order, limitation would not be a bar for entertaining and trying such appeal on merits.

8. A Co-ordinate Bench of this Hon'ble Court in the case of ***Kellogg Company Vs. The State of Maharashtra & Ors.***[2] held that it was bound by the findings of the Judgment in ***M/s Mestra A. G. Switzerland (supra)***, and disposed of a group of petitions in terms of the directions as contained in paragraph Nos 27 and 28, which read as under:-

> *"27. However, in the peculiar facts and circumstances, viz. pendency of this writ petition on the file of this Court for quite some time and that a Constitutional issue touching Article 286 of the Constitution is sought to be raised, we are inclined not to relegate the Petitioner to the first appellate remedy but to give it opportunity to prefer an appeal before the Tribunal directly, if it so chooses, so that any infirmity in the impugned order can be brought to its notice, including he decision of this Court in the case of* ***Mahyco Monsanto Biotech (India) Pvt. Ltd. (supra)****, for its correction. It is ordered accordingly.*
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> *28. We make it clear that such appeal may not be entertained unless the requisite pre-deposit is made by the Petitioner for preferring an appeal before the Tribunal. There is a statement in the writ petition that the requisite pre-deposit for approaching the first appellate authority has already been made. If indeed that is so, it would constitute half of the pre-deposit for filing an appeal before the Tribunal. The balance pre-deposit together with an acknowledgment of the amount of pre-deposit that has been made, may be filed along with any appeal that the Petitioner may wish to prefer before the Tribunal. In the event the Petitioner prefers an appeal before the Tribunal within six weeks from today, as prayed*

2 Writ Petition No.1661 of 2019 dated 27.07.2022

> *by Mr. Sridharan, limitation shall not be a bar for entertaining and trying such appeal on merits."*

9. The said common order in the case of ***Kellogg Company (supra)*** disposes of 3 Writ Petitions No.2934, 2038 and 2925 of 2021 filed by the Petitioner (in the case of another subsidiary, Merck India).

10. Both the aforesaid orders were not interfered with by the Hon'ble Supreme Court in ***M/s. Mestra A. G. Switzerland Vs. The State of Maharashtra & Ors.***[3] wherein the Hon'ble Apex Court granted liberty to the petitioner(s) to approach the Tribunal as stated by this Hon'ble High Court. The Court further observed that if the Petitioner files appeals before the Tribunal within a period of eight weeks from the date of the order, the issue of limitation would not be raised by the Tribunal.

11. Mr. Murthy learned counsel for the Petitioner submits that this Court may consider following the same course of action as was adopted by the Co-ordinate Bench of this Court in the case of ***Kellogg Company (supra)***. He states that pursuant to the decision of the Co-ordinate Bench of this Court in ***Kellogg Company (supra),*** appeals which were permitted to be instituted directly before the Tribunal are likely to be taken up for final disposal on 10 September 2025. He states that if leave is granted, even the Petitioner will file appeals before the Tribunal and urge the disposal of such appeals along with the other appeals filed in pursuance to the orders in ***Kellogg Company (supra).***

12. Mr. Murthy states that the Petitioner, if permitted, will institute the appeals as soon as possible after complying with the requirement of pre-deposit, so that such appeals are heard along with the other appeals by the Tribunal.

3 Special Leave to Appeal (C) No(s).10336/2022 dated 04.11.2024

13. Ms. Chavan, learned counsel for the Respondent, does not oppose adoption of the course indicated by the Co-ordinate Bench of this Court in ***Kellogg Company (supra)***, however, she submits that there ought to be compliance with the requirement of pre-deposit, and further she states that all contentions of all parties will have to be explicitly kept open for consideration by the Tribunal.

14. Accordingly, by adopting the same course of action as was adopted in the case of ***Kellogg Company (supra)***, we dispose of these petitions by allowing the Petitioner to institute appeals directly before the Tribunal within three weeks from today, after complying with the requirement of pre-deposit and other prescribed formalities. If such appeals are indeed instituted, the Tribunal is directed to dispose of such appeals on their own merits along with the other appeals without adverting to the issue of limitation. Such a direction is consistent not only with the directions in ***Kellogg Company (supra)*** but also ***M/s. Mestra A. G. Switzerland (supra).***

15. These Petitions are disposed of in the above terms by leaving open all contentions of all parties on merits to the decision of the Tribunal in the first instance. Needless to add that upon the institution of the appeals within three weeks after making the pre-deposit, the Respondent will not enforce their demands during the pendency of the appeals before the Tribunal. Since the learned counsel for the Petitioner, on instructions, stated that the appeals would be instituted within three weeks after making the necessary pre-deposit, we direct that no coercive action should be taken for enforcing the demand even during this period of three weeks. However, if no appeals are instituted within this period after making the necessary pre-deposit, the Respondent would be at liberty to recover their demands in accordance with the law.

16. The Rule in these petitions is disposed of in the above terms without any costs order. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**