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

+ **W.P.(C) 4213/2019**

ABBOTT HEALTHCARE PRIVATE LIMITED & ANR..... Petitioners

Through: Mr.Mukul Rohatagi, Sr.Advocate
with Mr.Rohan Shadi, Ms.Vanita
Bhargava & Ms.Shweta Kabra,
Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr.Akash Mohan, Advocate for R1.
Mr.Amit Bansal, Sr.Standing
Counsel with Mr.Aman Rewaria,
Advocate for R2 & R3.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
24.04.2019

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CM APPL.18876/2019 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 4213/2019 & CM APPL.18875/2019 (Stay)

2. Notice. Mr. Akash Mohan, Advocate, for Respondent No.1 and Mr.Amit Bansal, Sr. Standing Counsel, for Respondent Nos.2 & 3 accepts notice.

3. At the oral request of Mr. Mukul Rohatagi, learned Senior counsel for the Petitioners, Mr. R.K. Gupta, the Complainant before the National Anti-Profiteering Authority ('NAPA') is impleaded as Respondent No.4. The

amended memo of parties be filed within a week. Notice is issued to Respondent No.4 as well.

4. The present petition by Abbott Healthcare Pvt. Ltd. (Petitioner No.1) and its Director Mr. Susheel Umesh (Petitioner No.2) challenges an order dated 5th March 2019 passed by the NAPA in Case No.15 of 2019 which was registered on a complaint dated 22nd January 2018 preferred by Respondent No.4 Mr. R.K. Gupta. The complaint was regarding the maximum retail price of one of the products manufactured by Petitioner No.1 viz., 'Melaglow Rich'. The complaint was that the benefit of the variation in the GST rates after 1st July 2017 was not being passed on to the consumer.

5. By the impugned order dated 5th March 2019 the NAPA held that the Petitioner No.1 acted in contravention to the provisions of the Central GST by issuing incorrect invoices thereby committing an offence under Section 122(1)(i) of the Central Goods and Services Tax Act, 2017 ('CGST Act) and would, therefore, also be liable for penalty under the said provision read with Rule 133 (3) (d) of the CGST Rules, 2017.

6. The challenge to the impugned order is on various grounds. The Petitioners also question the constitutional validity of Section 171 of the CGST Act and Chapter 15 of the CGST Rules and in particular Rule 126, 127 and 133.

7. A further ground urged is that on the basis of the impugned order, the NAPA has proposed to investigate the pricing of all of the products of the

Petitioner No.1 not limited to the single product for which the complaint was made. It is contended that this was beyond the powers of the NAPA under rules 128, 129 and 133 of the CGST Rules.

8. The Court at this stage would like to note that there are other petitions pending in this court which have raised a similar challenge of the constitutional validity of the above provisions apart from challenging the orders of the NAPA. These include WP (C) 378 of 2019 (*Hindustan Unilever Ltd. v. Union of India*) and WP (C) 2347 of 2019 (*Jubilant Foodworks Ltd. v. Union of India*).

9. As far as the impugned order is concerned, Mr. Rohatagi points out that the Petitioners have before the NAPA undertaken to pay the demanded amount of Rs.9659716.26 along with the applicable interest as per the CGST Act within 10 days of the impugned order. Mr. Rohatagi explains that this was offered on the basis that there would be no further investigation by the NAPA and no further penalty. Mr. Rohatagi states that without prejudice to the rights of the contentions of the Petitioners the above undertaking would be abided by and the payment of the aforementioned sum would be made within 10 days from today the Central Consumer Welfare Fund subject to further orders of this Court. The said statement is placed on record.

10. In that view of the matter, it is directed that there shall be a stay of further proceedings against the Petitioners pursuant to the impugned order dated 5th March 2019.

11. Replies be filed within 6 weeks. Rejoinder thereto, if any, be filed before the next date.

12. List on 22nd August 2019.

13. Order *dasti* under signature of the Court Master.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 24, 2019

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