IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION WRIT PETITION NO. 1661 OF 2019

Kellogg CompanyPetitioner

Vs.

The State Of Maharashtra and Ors.

.....Respondents

WITH

WRIT PETITION NO. 463 OF 2022

WITH

WRIT PETITION NO. 257 OF 2021

WITH

WRIT PETITION NO. 895 OF 2020

WITH

WRIT PETITION NO. 370 OF 2021

WITH

WRIT PETITION NO. 946 OF 2022

WITH

WRIT PETITION NO. 944 OF 2022

WITH

WRIT PETITION NO. 929 OF 2022

WITH

WRIT PETITION NO. 859 OF 2022

WITH

WRIT PETITION NO. 864 OF 2022

WITH

WRIT PETITION NO. 2238 OF 2021

WITH

INTERIM APPLICATION NO. 1445 OF 2021

IN

WRIT PETITION NO. 2238 OF 2021

WITH

WRIT PETITION NO. 923 OF 2021

WITH

WRIT PETITION NO. 228 OF 2021

WITH

WRIT PETITION NO. 965 OF 2020

WITH

WRIT PETITION NO. 1123 OF 2021

WITH

WRIT PETITION NO. 1114 OF 2021

WITH

WRIT PETITION NO. 1115 OF 2021

WITH

WRIT PETITION (L) NO. 9563 OF 2022

WITH

WRIT PETITION (L) NO. 9565 OF 2022

WITH

WRIT PETITION NO. 62 OF 2022

WITH

WRIT PETITION NO. 105 OF 2022

WITH

SALES TAX REFERENCE NO. 54 OF 2016

WITH

WRIT PETITION (L) NO. 11694 OF 2022

WITH

WRIT PETITION (L) NO. 11712 OF 2022

WITH

WRIT PETITION NO. 1222 OF 2021

WITH

WRIT PETITION NO. 369 OF 2021

WITH

WRIT PETITION NO. 2008 OF 2019

WITH

INTERIM APPLICATION (L) NO. 15038 OF 2021

WITH

WRIT PETITION NO. 2158 OF 2022

WITH

WRIT PETITION NO. 3714 OF 2021

WITH

WRIT PETITION NO. 2029 OF 2019

WITH

WRIT PETITION NO. 1392 OF 2021

WITH

INTERIM APPLICATION NO. 1444 OF 2021

WITH

WRIT PETITION NO. 2292 OF 2022

WITH

WRIT PETITION NO. 2125 OF 2019

WITH

WRIT PETITION NO. 3062 OF 2022

WITH

WRIT PETITION NO. 116 OF 2022 WITH

WRIT PETITION NO. 2038 OF 2019

WITH

WRIT PETITION NO. 1640 OF 2021

WITH

WRIT PETITION NO. 2062 OF 2019

WITH

WRIT PETITION NO. 2078 OF 2019

WITH

WRIT PETITION NO. 2195 OF 2021

WITH

WRIT PETITION NO. 2051 OF 2019

WITH

WRIT PETITION (L) NO. 21334 OF 2022

WITH

WRIT PETITION (L) NO. 21368 OF 2022

WITH

WRIT PETITION NO. 2334 OF 2021

WITH

WRIT PETITION NO. 2226 OF 2021

WITH

WRIT PETITION NO. 2107 OF 2021

WITH

WRIT PETITION NO. 2089 OF 2021

WITH

WRIT PETITION NO. 2227 OF 2021

WITH

WRIT PETITION NO. 2106 OF 2021

WITH

WRIT PETITION NO. 2108 OF 2021

WITH

WRIT PETITION NO. 3464 OF 2021

WITH

WRIT PETITION NO. 2463 OF 2021

WITH

WRIT PETITION NO. 2496 OF 2021

WITH

WRIT PETITION NO. 2500 OF 2021

WITH

WRIT PETITION NO. 2465 OF 2021

WITH

WRIT PETITION NO. 3655 OF 2019

WITH WRIT PETITION NO. 3656 OF 2019 WITH WRIT PETITION NO. 3657 OF 2019 WITH WRIT PETITION NO. 3658 OF 2019 WITH WRIT PETITION NO. 3663 OF 2019 WITH WRIT PETITION NO. 2925 OF 2021 WITH WRIT PETITION NO. 2934 OF 2021 WITH WRIT PETITION (L) NO. 26583 OF 2021 WITH WRIT PETITION NO. 2920 OF 2021 WITH WRIT PETITION NO. 2832 OF 2021 WITH

Mr. V Sridharan, Senior Advocate a/w Mr. Sriram Sridharan for Petitioners. Mr. A. A. Kumbhakoni, Learned Advocate General with Mr. F. B. Lolge, 'A' Panel Counsel, Ms. P. H. Kantharia, Govt. Pleader, Ms. Jyoti Chavan, AGP and Mr. Himanshu Takke, AGP for Respondent Nos.1 to 3 – State of Maharashtra in all Petitions.

WRIT PETITION NO. 796 OF 2022

Mr. Vaibhav Kamble i/b Mr. Girish Paryani for Respondent No. 4 in Writ Petition No.228 of 2021.

Ms. Shilpa Kapil for Respondent No.4 in Writ Petition No.2029 of 2019.

Mr. Sham Walve with Mr. Ram Ochani for Respondent Nos.4 & 5 in Writ Petition No.257 of 2021, Writ Petition No.369 of 2021 and Writ Petition No.2062 of 2019.

Mr. P. S. Jetly, Senior Advocate with Ram Ochani for Respondent Nos.2, 3 and 5 in Writ Petition No.228 of 2021 and for Respondent Nos.4 and 5 in Writ Petition Nos.1114 of 2021, 1115 of 2021, 3714 of 2021, 2038 of 2019, 2226 of 2021, 2107 of 2021, 2089 of 2021, 2227 of 2021, 2106 of 2021, 2108 of 2021, 2925 of 2021, 2934 of 2021, Writ Petition (L) No.26583 of 2021, 2920 of 2021 and Writ Petition No.2832 of 2021.

Mr. P. S. Jetly, Senior Advocate a/w Mr. Siddharth Chandrashekhar for Respondent Nos.4 & 5 in Writ Petition No.370 of 2021.

Mr. P. S. Jetly, Senior Advocate a/w Mr. Satyaprakash Sharma for Respondent No.5 in Writ Petition No.62 of 2022.

Mr. P. S. Jetly, Senior Advocate a/w Mr. Jitendra Mishra, Mr. Dhananjay B. Deshmukh and Ms. Sangeeta Yadav for Respondent No 4 in Writ Petition No.2008 of 2019; Respondent Nos.4 and 5 in Writ Petition Nos.1661 of 2019, 463 of 2022, 2125 of 2019, 895 of 2020, 946 of 2022, 944 of 2022, 929 of 2022, 859 of 2022, 864 of 2022, 923 of 2021, 965 of 2020, 1123 of 2021, Writ Petition (L)Nos.9563 of 2022, 9565 of 2022, 11694 of 2022, 11712 of 2022, Writ Petition Nos.1222 of 2021, 2158 of 2022, 1392 of 2021, 2292 of 2022, 1640 of 2021, 2078 of 2019, 2195 of 2021, Writ Petition (L) Nos.21334 of 2022, 21368 of 2022, Writ Petition Nos.2334 of 2021, 3464 of 2021, 2463 of 2021, 2496 of 2021, 2500 of 2021, 2465 of 2021, 796 of 2022 and for Respondent No. 5 in Writ Petition No.2029 of 2019.

Mr. Rohan P. Shah a/w Mr. Srisabari Rajan and Mr. Udayan Choksi i/by Vox Law for Petitioner/s in Writ Petition No.2051 of 2019 with Writ Petition No.3655 of 2019, Writ Petition Nos.3656 of 2019, 3657 of 2019, 3658 of 2019 and 3663 of 2019.

Mr. Prakash Shah with Mr. Jas Sanghavi i/by PDS Legal for Petitioners in Writ Petition Nos.105 of 2022, 3062 of 2022 and 116 of 2022.

Mr. A. A. Kumbhakoni, Learned Advocate General with Mr. F B Lolge, 'A' Panel Counsel, Ms. P. H. Kantharia, Govt. Pleader, Ms. Jyoti Chavan, AGP and Mr. Himanshu Takke, AGP for Respondent Nos.2 and 4 – State of Maharashtra in Writ Petition No.2051 of 2019 with 3655 of 2019, Writ Petition Nos.3656 of 2019, 3657 of 2019, 3658 of 2019 and 3663 of 2019; for Respondent Nos.3 to 5 in Writ Petition Nos.105 of 2022 and 116 of 2022 and for all Respondents in Writ Petition No.3062 of 2022.

Ms. P. S. Cardozo for Respondent No.3 in Writ Petition Nos.2051 of 2019, 3655 of 2019, 3656 of 2019, 3657 of 2019, 3658 of 2019 and 3663 of 2019.

Mr. P. S. Jetly a/w Mr. Jitendra Mishra, Mr. Dhananjay B. Deshmukh and Ms. Sangeeta Yadav for Respondent Nos 1 and 2 in WP/105/2022 and WP/116/2022.

Mr. Himanshu Takke, AGP for Applicant and Mr. Rishabh Jain i/by UBR Legal Advocates for Respondent in STR No.54 of 2016.

CORAM: K. R. SHRIRAM &

A. S. DOCTOR, JJ.

DATE: 27th July, 2022.

<u>P.C.</u>:-

1. Learned Advocate General appearing for Respondent-State submitted that the issues raised in these Petitions on the maintainability of

the Petitions were considered by the co-ordinate Bench of this Court of the Hon'ble the Chief Justice and Mr. Justice N. B. Suryawanshi in *M/s Mestra A. G. Switzerland Vs. The State of Maharashtra & Ors.*¹. The learned Advocate General submitted that the Court felt that Petitioner should approach Appellate Authority under Section 27 of the MVAT Act.

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- 2. We are bound by the findings in the said Judgment. Mr. Shridharan states that a Special Leave Petition has been preferred against the Judgment in *M/s Mestra A. G. Switzerland (supra)* and the Hon'ble Apex Court has, on 13th July, 2022, issued notice to Respondents returnable in 6 weeks.
- 3. In the circumstances, we dispose these Petitions with the directions as contained in paragraph Nos.27 and 28 of the Judgment in *M/s Mestra A. G. Switzerland (supra)*, 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 the decision of this Court in the case of Mahyco Monsanto Biotech (India) Pvt. Ltd. (supra), for its correction. It is ordered accordingly.
 - 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

^{1.} Writ Petition No.12297 of 2021, Judgment dated 16th February, 2022.

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

- 4. In view of the intervening holidays in the next month, we grant 8 weeks to these Petitioners, instead of 6 weeks as mentioned in *M/s Mestra A. G. Switzerland (supra)*, from the date of uploading of this order on the official website of the High Court of Bombay. Liberty is given to Petitioners to approach this Court for reviving these Petitions should Petitioners succeed before the Hon'ble Apex Court.
- 5. Learned Advocate General assures the Court that as and when the matter is listed, the State will also appear and will not seek any adjournment.
- 6. Mr. Shah states, though tagged with the other Petitions, following Petitions will not be covered by the Judgment of this Court in *M/s Mestra A. G. Switzerland (supra)*. The following Petitions, therefore, be detagged and listed on 5th September, 2022:

Writ Petition No.2051 of 2019, Writ Petition No.3655 of 2019, Writ Petition No.3656 of 2019, Writ Petition No.3657 of 2019, Writ Petition No.3658 of 2019, Writ Petition No.3663 of 2019, Writ Petition No.105 of 2022, Writ Petition No.3062 of 2022, Writ Petition No.116 of 2022 and Sales Tax Reference No.54 of 2016.

(A. S. DOCTOR, J.)

(K. R. SHRIRAM, J.)