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

\+ **W.P.(C) 8749/2018 & C.M. No. 33617/2018**

B. BRAUN MEDICAL (INDIA) PVT. LTD. ..... Petitioner

Through Mr S. Ganesh, Senior Advocate with Dr B.K. Dash, Mr Manoj, Ms Aparna Sinha, Advocates.

versus

UNION OF INDIA AND ANR. ..... Respondents

Through Ms Manindra Acharya, Senior Advocate (ASG) with Mr Ravi Prakash, CGSC , Ms Ramanna Goyal, Mr Sahil Sood, Mr Harshul Choudhary, Mr Viplav Acharya, Advocates for R1 and R2.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**O R D E R**

**% 07.09.2018**

1. Mr Ganesh, learned Senior Counsel appearing for the petitioner submits that the petitioner had examined the calculation submitted by the respondents and the same was erroneous. He has handed over a tabular statement, which indicates that no amount is payable if the petitioner is given credit for the amount that the petitioner could have charged during the years May 2014 to 2015, May 2016 - 2017 and May, 2017 to December, 2017. He submits that the price of the product was increased in the year October, 2012 (prior to the DPCO of the year 2014) and, thereafter, in May,

2015 to ₹222/-. He points out that the last increase was after the period of more than approximately two-and-a-half years. He submits that if an annual increase of 10% is factored, the petitioner would have been entitled to charge ₹217.80/- in May, 2015. This would indicate that the petitioner had overcharged an amount of ₹4.20/- per unit. He also points out that since the petitioner has not raised the price since May, 2015, the petitioner has, in fact, charged less than what the petitioner was entitled to and, therefore, should be given credit for the same. In addition, it is submitted that the calculation is made on the basis that during the period May, 2015 to April, 2016, the petitioner had charged ₹222 for all the consignments. He submits that 25 consignments were imported out of which only five consignments were sold at the price of ₹222 and the balance were sold at ₹180/-. He states that if this is taken into account, no amount would be payable as per the calculation submitted by the respondents.

2. Ms Manindra Acharya, learned ASG appearing for the respondents has contested the aforesaid calculation. She submits that no credit could be given for the hypothetical increase for the year May, 2014 to April, 2016. She submits that only 10% increase would be permissible from the last price provided the same increase is beyond the period of 12 months. She, accordingly, submits that at best the petitioner could have raised the price in May, 2015 to ₹198/- per unit even though he had not raised the prices during the previous two years and, therefore, the over charged amount is ₹24 per unit and the petitioner is liable to pay the same for sales made during the period May 2015 to April 2016. She submits that even if a hypothetical increase of 10 % is provided to the next year (2016-17), the petitioner could

charge a price of ₹217. 80 per unit and, therefore, the sales made in the year 2016-17 have also been made at a price which is higher by ₹4.20/-. She also submits that the dispute regarding the quantity cannot be entertained at this stage since the amount demanded has been computed on the data provide by the petitioner.

3. I have heard the learned counsel on the limited issue of quantum of amount to be deposited at this interim stage.

4. This Court is of the view that the petitioner ought to deposit an amount calculated at the rate of ₹24 per unit for the products sold at the price of ₹222 during the year May, 2015 to April, 2016 and a further amount calculated at the rate of ₹4.20 per unit for the units sold in the year May, 2016 to April, 2017 at the price of ₹222/-. Although, the petitioner was entitled to raise the prices by 10% annually, the petitioner has not done so and, therefore, it may not be apposite (at this interim stage) to allow a cumulative increase of 21% (10 % plus 10% of the increased price) in the succeeding year. This aspect would also be considered at the stage of final hearing.

5. Insofar as the error as to quantity is concerned, *prima facie*, this Court is of the view that if there is an error that has crept into the calculation, the petitioner is not be precluded from correcting the same particularly so since the levy is in the nature of penalty. However, the presumption would be that the data as provided by the petitioner at the initial stage is correct. In this view, it would be open for the petitioner to provide material and evidence to convince the concerned authorities that the quantity that in the year May 2015 to April 2016 only five batches out of twenty five were sold at the rate

of ₹222. If the petitioner is able to substantiate this claim to the satisfaction of the concerned authorities, the concerned authorities shall carry out the necessary correction in their records.

6. Let the said material/evidence to substantiate the quantities sold during the period May 2015 to April 2016 be provided to the concerned officers within a period of one week from today and the concerned officer shall communicate their decision to the petitioner within a period of one week thereafter. The petitioner shall deposit the sum as calculated on those quantities as per the rates indicated above. This is, notwithstanding, that the petitioner may dispute the quantities as so indicated.

7. Ms Acharya, also states that since the petitioner has not cured the default in the next year, the petitioner would not be entitled to any increase in the price. *Prima facie*, the contention seems unmerited.

8. It is clarified that the amount directed to be paid by the petitioner is subject to all rights and contentions of the parties which shall be finally determined. If the petitioner prevails in its contention, the said amount shall be refunded with interest computed at the rate of 10% p.a.

9. List for hearing on 15.10.2018.

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

**VIBHU BAKHRU, J**

**SEPTEMBER 07, 2018**

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