



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

Dated : 15th May, 2025

DIVISION BENCH : THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WA No.02 of 2024

Appellant : Glenmark Pharmaceuticals Limited

versus

Respondents : Union of India and Others

Appeal under Rule 148 of the Sikkim High Court
(Practice and Procedure) Rules, 2011

Appearance

Mr. Rahul Tangri, Ms. Gita Bista, Ms. Pratikcha Gurung, Ms. Anusha Basnett, Ms. Anu Sharma and Mr. Dipendra Chettri, Advocates for the Appellant.

Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Sittal Balmiki and Natasha Pradhan, Advocates for the Respondents No.1 and 2.


Mr. Manish Kumar Jain, Advocate for the Respondents No.3 and 4.

JUDGMENT

Meenakshi Madan Rai, J.


1. The appellant is aggrieved by the judgment of the learned single Judge in WP(C) No.02 of 2023 (*Glenmark Pharmaceuticals Limited vs. Union of India and Others*), dated 06-05-2024, vide which, the order dated 01-03-2022 of the respondent no.3, was upheld and the writ petition dismissed.

2. The respondent no.3, in the order of 01-03-2022, impugned before the learned single Judge *inter alia* observed that the procedure of sanctioning budgetary support was enunciated in the Circulars dated 27-11-2017, of the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India and 10-01-2019 of the Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, Government of India. The

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petitioner's claim for budgetary support for the period July, 2017 to September, 2017, was rejected by respondent no.3 while allowing its claims for October, 2017 to June, 2018, reasoning that in terms of the computation prescribed in Circular, dated 27-11-2017, the appellant's claim for budgetary support, after aggregating the tax liabilities and input tax credit and considering that the balance of input tax credit was in the negative, the appellant was not entitled to any budgetary support for the said period.

3. The learned single Judge, by the order dated 06-05-2024, in WP(C) No.02 of 2023, observed *inter alia* that, the petitioner admittedly did not follow the budgetary scheme or the instructions of the two Circulars, dated 27-11-2017 and 10-01-2019, to file claim application on a quarterly basis, instead of which, the petitioner filed separate claims for the months of July and August, 2017, under one covering letter. By this process, the petitioner claimed separate amounts for April 2017 and August, 2017. No claim for budgetary support was made for September, 2017. Referring to the Circular dated 27-11-2017, it was observed that, the claim for budgetary support was required to be calculated in the manner provided therein, as it was issued in furtherance of the budgetary support scheme. The learned Court observed that the petitioner intended to make the authorities work out the budgetary support on the basis of monthly claims, filed by them earlier and not on a quarterly basis as required under the budgetary support scheme. Although the Circular dated 27-11-2017, permitted manual application for budgetary support for the quarter ending September, 2017, it did not digress from the mandate of paragraph 5.4 of the budgetary support scheme. The Circular dated 10-01-2019, permitted the assessee to provide month-wise details in

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the table annexed to the refund application to enable speedier and accurate verification of the refund claims and to make the process of verification refund claims easier. The assessee would fill monthly returns under the Goods and Services Tax (GST), whereas the refund application was for the quarter. Therefore, when the petitioner was required by the authorities to modify their initial application to a quarterly basis as required under the law, they had no choice but to reflect the balance of input tax credit of Central Goods and Service Tax (CGST) for the month of September, 2017 as well. Rationalising thus, the Court dismissed the writ petition.

4. The petitioner's claim is that despite all conditions of Notification dated 05-10-2017 being fulfilled, the claim for budgetary support for the period mentioned was denied, by misinterpreting the Notification and the Circular of the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India, dated 27-11-2017. The respondents have also acted in contravention to their own Circular, dated 10-01-2019 (Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, Government of India), where the issue regarding difficulty in verification of refund claim having been raised, it was decided that in the table annexed to the refund application month-wise details may be attached.

5. Learned counsel for the appellant contended that the Circular dated 27-11-2017 is to be interpreted in accordance with the provisions outlined in the Notification dated 05-10-2017, specifically as mentioned in Explanation II(b) of paragraph 5.1 and in the Circular dated 10-01-2019. Reliance placed by the respondent no.3 on the Circular, leading to disallowance of the claim of the petitioner is

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misplaced and legally erroneous and denying the budgetary support claim based solely on the formula of the Circulars for refund filing, is unjustified as rights vested by a statutory Notification cannot be amended by a Circular. That, even if the interpretation adopted in the impugned order is sustained, the situation would be revenue neutral. It was urged that the balance of input tax credit at the end of September, 2017, was carried forward to October, 2017, November, 2017 to December, 2017, thereby being utilized for payment of taxes in the said months, which in turn reduced the claim for budgetary support for the months of October, November and December, 2017. If the workings for both the quarters are combined (July, 2017 to December, 2017), the petitioner in totality still gets the same amount as it has claimed for both quarters. That, even if computation is done on an annual basis the petitioner would still be eligible for the same amount as differential claim on annual working in terms of paragraph 5.3 of the Notification, dated 05-10-2017. The attention of this Court was drawn to the decision of the High Court of Jammu & Kashmir and Ladakh in ***Coromandel International Ltd. vs. Union of India and Others***¹ and it was canvassed that, in respect of an identical scheme for budgetary support, granted by the State of Jammu & Kashmir, for payment of the balance of 42% of the central tax in cash (SRO 521 dated 21-12-2017) and entire State tax paid in cash (SRO 519 dated 21-12-2017), also required the working out of the benefit and filing of claims on a quarterly basis. The adjudicating authority had rejected the claim of the petitioner therein as calculations of budgetary support on quarterly basis was adopted by the adjudicating authority instead of on a monthly basis. The Government of Jammu and Kashmir vide

¹ 2023(74) GSTL 208 (J & K and Ladakh) = MANU/JK/0166/2023

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"clarification No.FD-ST/29/2022-03", dated 26-04-2022, explicitly clarified that, though the claims are to be filed quarterly, however the amount of reimbursement of budgetary support has to be calculated on a monthly basis in line with the discharge of GST liability. Relying on the said clarification, the Hon'ble High Court of Jammu & Kashmir and Ladakh in the case of ***Coromandel International Ltd.*** (*supra*) directed the adjudicating authority to determine the refund claim based on monthly figures in line with the said clarification. That, the judgment being in relation to the *pari materia* benefit, under an identical scheme should be applied in the petitioner's case as well.

6. *Per contra*, learned Deputy Solicitor General of India contended that there was no error in the finding of the learned single Judge in the impugned judgment. That, for the quarter in dispute, i.e., July, 2017, to September, 2017, the appellant had made their claim in the negative which was not disclosed in the writ petition, but has been reflected in paragraphs 20 and 21 of the impugned judgment. That, the Department for Promotion of Industry and Internal Trade (DPIIT) in their letter dated 21-09-2023, has categorically stated that in view of paragraphs 5 and 7 of the budgetary support scheme, Notification dated 05-10-2017, the manufacturer shall file an application for budgetary support on a quarterly basis only. This clarification was issued by a decision of the Deputy Commissionerate as per learned Deputy Solicitor General of India subsequent to the order in ***Coromandel International Ltd.*** (*supra*) case. The scheme also does not provide for interest to the assessee as it is a grant in the form of financial support, to the eligible units. Learned single Judge has correctly observed that when a certain procedure was prescribed, it was for the petitioner to have complied

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with it and not worked out a different procedure. Hence, the concurrent findings of the respondent No.3 and the learned single Judge ought not to be disturbed.

7. We have heard learned counsel for the parties at length. We have also perused the documents placed before us. We find that the 'clarification' issued by the Government of Jammu and Kashmir, Finance Department, bearing No.FD-ST/29/2022-03, dated 26-04-2022, pertains to clarification with respect to determination of amount of reimbursement under (i) SRO 519 dated 21-12-2017 (ii) SRO 521 dated 21-12-2017 and (iii) SRO 63 dated 05-02-2018. All the said SROs pertain to the provision for budgetary support to the existing eligible manufacturing units, operating in the then State of Jammu and Kashmir. The SROs detailed the scheme for such budgetary support, in the shape of reimbursement of State taxes paid under the Jammu & Kashmir Goods and Services Tax Act, 2017. The scheme, it specified, shall be limited to the tax which accrues to the State Government under the Jammu and Kashmir Goods and Services Tax Act, 2017, after adjustment of the input tax credit paid by the manufacturing units. Clause 3.2 of the SRO 519 is similar to clause 5.4 of the Notification dated 05-10-2017. Clause 3.2 reads as follows;

"3.2 Reimbursement under this scheme shall be worked out on quarterly basis for which claims shall be filed on a quarterly basis namely for January to March, April to June, July to September & October to December. The reimbursement will be made only after verification and clearance of the claim for 58% under Central Scheme and 42% under State Scheme to the Industrial Unit."

Vide the 'clarification' dated 26-04-2022 of the Government of Jammu and Kashmir, Finance Department, referred to *supra* it was clarified as follows;

"Since the eligible industrial units are paying taxes on monthly basis by filing monthly GSTR - 3B

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returns, as such, the reimbursement amount shall be calculated on monthly basis as per the notified formula based on the amount of cash deposited by the industrial units after adjustment of input tax credit in the same month only. However, the reimbursement to the eligible industrial units shall be made on quarterly basis as defined in clause 3.2 of the notifications."

In other words, the reimbursement amount was to be calculated **on a monthly basis**, although the reimbursement would be made on a quarterly basis.

8. In *Coromandel International Ltd.* (*supra*) the order dated 02-02-2021, passed by respondent no.3 therein (the adjudicating authority), rejecting the claim of the concerned petitioner, under budgetary support scheme, notified vide Notifications no. F.No.10(1)/2017-DBA-II/NER, dated 05-10-2017, SRO 519 dated 21-12-2017 and SRO 521 dated 21-12-2017 was assailed. The petitioner sought for a writ of mandamus directing the respondents to allow the budgetary support to it, by calculating the same on the quantum of cash tax paid through cash ledger account, on monthly basis, instead of adopting the calculations on quarterly basis. The petitioner had applied for reimbursement by way of budgetary support for the period, January 2020 to March 2020 and April 2020 to June 2020 before the Central Tax Authorities. The petitioner contended that, the adjudicating authority illegally and arbitrarily rejected the reimbursement under budgetary support, on the ground, that the petitioner had closing balance of input tax credit lying unutilized at the end of quarter and had reduced the budgetary support arbitrarily to the extent of the closing balance of input tax credit that remained unutilized at the end of the quarter. The petitioner dissatisfied with the order of rejection was before the High Court. The High Court took into consideration the departmental clarification dated 26-04-2022 (*supra*) and *inter alia* ordered as follows;



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"6. Having heard Learned Counsel for the parties and perused the material on record, we are of the view that, issuance of clarification by the Finance Department, UT of Jammu and Kashmir, has necessitated revisiting of claim of the petitioner by the Adjudicating Authority.

7. In view of the above, these petitions are disposed of by providing as under:

The impugned order passed by respondent No.3 is quashed and the matter remanded to respondent No.3 to reconsider the entire issue having regard to the clarification issued by the Department of Finance, UT of Jammu and Kashmir Bearing No.FD-ST/29/2022-03, dated 26-4-2022 and pass appropriate orders on merits."

(i) In this context for the purposes of this appeal, we may relevantly refer to clause 5.4 of the Notification dated 05-10-2017, of the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, which reads as follows;

"5.4 Budgetary support under this scheme shall be worked out on quarterly basis for which claims shall be filed on a quarterly basis namely for January to March, April to June, July to September & October to December."

(ii) Reverting to the clarification dated 26-04-2022, indeed we are fully aware and conscious of the fact that it was in relation to budgetary support scheme for the then State of Jammu and Kashmir under the Jammu and Kashmir Goods and Services Tax Act, 2017. Nonetheless, the matter pertained to a similar issue as in the instant petition, concerning budgetary support and claims to be filed. The rationale for the clarification was that the industrial units were paying taxes on monthly basis, by filing monthly GSTR – 3B returns; consequently the reimbursement amount should be calculated on monthly basis although reimbursement would be on a quarterly basis. The petitioner herein also canvassed that the returns under the GST are filed on monthly basis, therefore, the same rationale ought to be applied in the instant matter. We are inclined to agree with the arguments advanced by the petitioner, while also taking into consideration the Circular dated 10-01-2019 of the Central Board of

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Indirect Taxes and Customs, Ministry of Finance, Department of Revenue, Government of India, wherein it was *inter alia* considered at paragraphs 5 and 6 as follows;

"5.

An issue regarding difficulty in verification for the refund claim was raised by Chief Commissioner (Shillong). As per the procedure in place, an assessed files monthly returns under the GST whereas the refund application is for the quarter.

6. Accordingly, it was decided that in the table annexed to the refund application month wise details may be attached. This would enable speedier and more accurate verification of the refund claims."

As the Circular (*supra*) also envisages month-wise details it stands to reason that claims could be raised accordingly.

9. We are not in agreement with the submissions of Deputy Solicitor of India for the respondents no.1 and 2, who was of the view that even though there was compliance of the order of the High Court of Jammu & Kashmir and Ladakh directing the adjudicating authority to take steps in terms of the clarification dated 26-04-2022, yet clarification issued subsequently by the DPIIT, Nodal Central Agency, dated 21-09-2023, is to be given more weightage over and above the order of the High Court, which proposition by itself is preposterous and untenable.

10. It is relevant also to notice that the doctrine of judicial comity or amity, requires the Court not to pass an order which would be in conflict with another order passed by a competent court of law.

In ***India Household and Healthcare Ltd. vs. LG Household and Healthcare Ltd.***² the Supreme Court observed that;

"19. A court while exercising its judicial function would ordinarily not pass an order which would make one of the parties to the lis violate a lawful order passed by another court."

² (2007) 5 SCC 510

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The above judgment was taken note of and considered by one of us (Biswanath Somadder) in ***Nirendra Kumar Saha & Ors. vs. Steel Authority of India Ltd. and Ors.***³.

(i) In ***Yashita Sahu vs. State of Rajasthan and Others***⁴ the Supreme Court observed as follows;

"19. We are of the considered view that the doctrine of comity of courts is a very healthy doctrine. If courts in different jurisdictions do not respect the orders passed by each other it will lead to contradictory orders being passed in different jurisdictions. No hard-and-fast guidelines can be laid down in this regard and each case has to be decided on its own facts. We may, however, again reiterate that the welfare of the child will always remain the paramount consideration."

11. In light of the foregoing discussions, the impugned judgment dated 06-05-2024 of the learned single Judge of this Court as also the order dated 01-03-2022 passed by the respondent no.3 are set aside.

12. The respondent no.3 is directed to consider the claims of the petitioner from July, 2017 to September, 2017, on the same terms as was considered by the concerned authorities in the light of the order of the High Court of Jammu & Kashmir and Ladakh dated 28-02-2023, rendered in ***Coromandel International Ltd. (supra)***.

13. Writ appeal is disposed of accordingly.

**(Meenakshi Madan Rai)
Judge**

**(Biswanath Somadder)
Chief Justice**

Approved for reporting : **Yes**

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³ (2009) 2 CHN 306 = (2009) 2 Cal LT 367 = 2009 SCC OnLine Cal 619

⁴ (2020) 3 SCC 67