

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 02 of 2023

Glenmark Pharmaceuticals Limited, represented
by Soumaya Dutt, Site Head (Attorney Holder)
for the petitioner,
Samlik- Marchak, Industrial Growth Centre,
Near Ranipool, East Sikkim,
Sikkim- Pin Code – 737 135

..... Petitioner

Versus

1. Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110 001.
2. Director, Department for Promotion of
Industry and Internal Trade,
Ministry of Commerce and Industry,
Udyog Bhawan, New Delhi-Pin Code 110 011.
3. The Assistant Commissioner, Central Goods &
Service Tax, Gangtok Division, Gangtok,
Indira By-Pass Road, Near District Court, Sichey,
East Sikkim, Gangtok-737 101.
4. The Commissioner of CGST,
Siliguri, Gangtok Division,
Gangtok II Range 737 102.

..... Respondents

**Application under Article 226 of the Constitution of
India.**

*(Order No.307/BS/GST/GTK-DIV/2021-22 dated 01.03.2022 issued
vide C.No. V(18) 229/GST/BS/Glenmark/Gtk-Div/2020-21/3000
passed by the Ld. Assistant Commissioner, Central Goods & Service
Tax, Gangtok Division, Gangtok).*

Appearance:

Mr. Rahul Tangri, Ms. Gita Bista, Ms. Pratikcha Gurung, Advocates. Ms. Tanya Roy (*through V.C.*) and Mr. Dipendra Chettri, Advocates (*through V.C.*) for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India (*through V.C.*) assisted by Ms.Natasha Pradhan, Advocates. Ms. Manasi Mukherjee Advocate (*through V.C.*) for the Respondents.

Date of Hearing : 28.03.2024 & 01.04.2024
Date of Judgment : 06.05.2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The rejection of the petitioner’s claim for budgetary support for the period July-September, 2017 even while its claim for October, 2017 to June, 2018 was allowed under the “Scheme of budgetary support under Goods and Services Tax Regime” to the units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim dated 05.10.2017 (the Budgetary Support Scheme) has led to the present litigation.

2. The question which seeks determination in the present writ petition is whether the budgetary support claimed by the petitioner for the month of July 2017 and August 2017 separately in their initial applications ought to have been favourably considered by the Assistant

Commissioner, Central Goods & Service Tax (respondent no.3) although as per the respondent no.3 the Budgetary Support Scheme envisaged working it out on a quarterly basis on claims to be filed on quarterly basis.

3. The learned counsel for the petitioner submits that there was a violation of principles of natural justice as the same has been passed without granting any opportunity of personal hearing to the petitioner. The Budgetary Support Scheme provides the manner in which the claims can be made and determined. The initial orders of rejection passed by the respondent no. 3 had been set aside by this Court and thereafter, the claims of the petitioner were re-examined. Pursuant thereto out of the four claims made by the petitioner for four quarters, three claims were accepted and budgetary support granted. The petitioner has no grievance against non grant of opportunity of hearing for those quarters for which their claims were accepted and budgetary support granted. In spite of the petitioner having not fulfilled the requirement of the Budgetary Support Scheme to make their claims for the quarter opportunity was granted to them to resubmit their applications for budgetary support. Pursuant thereto the petitioner claims to have submitted fresh applications for budgetary support for the four quarters out of which budgetary support was granted for three quarters. In the

circumstances this Court is of the view that there has been no violation of principles of natural justice.

4. The learned counsel for the petitioner also contends that the petitioner had satisfied all the conditions of the Budgetary Support Scheme but was denied on its erroneous interpretation and of the Circular dated 27.11.2017 and Circular dated 10.01.2019 issued by the Central Board of Excise and Customs. Attention was drawn to paragraph 5.1 and 5.6 of the Budgetary Support Scheme. The petitioner's contention that therefore, the petitioner claimed budgetary support for the month of July 2017 and August 2017 but did not claim for the month of September 2017 since no IGST was paid in cash for that month. It is their contention that the petitioner's separate claims for the months of July 2017 and August 2017 was in terms of Circular dated 10.01.2019. The petitioner contends that reliance placed on Circular dated 27.11.2017 is misplaced and incorrect. It is contended that Circular dated 27.11.2017 allows adjusting the balance of ITC against IGST paid in cash but does not allow aggregation of figures for the entire quarter. It is submitted that reliance placed on format and formula of the Circular dated 27.11.2017 is incorrect and cannot supersede the Budgetary Support Scheme. Relying upon the judgment of the Supreme Court in **Commissioner of Central Excise,**

Bolpur vs. Ratan Melting and Wire Industries¹ it is submitted that any circular which is contrary to the statutory provisions has no existence in law. The petitioner also contends that the interpretation of the Budgetary Support Scheme by the authorities expects the petitioner to perform an impossibility and thereby in violation of the GST law. The petitioner contends that the balance of ITC at the end of September 2017 was carried forward to October 2017, November 2017 and 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 2017, November 2017 and December 2017. It is the petitioner's case that the petitioner is entitled to interest on account of delay in sanction of budgetary claim as well.

5. The learned Deputy Solicitor General of India appearing for the respondents draws attention of this Court to paragraphs 3.2, 5.1, 5.4 of the Budgetary Support Scheme as well as paragraph 9(ii) of the Circular dated 27.11.2017 and submits that a combined reading of these provisions requires that as per the formula, whatever balance of ITC of CGST/IGST is available at the end of quarter, the same is to be deducted from the cash payment

¹ (2008) 13 SCC 1

for calculation of budgetary support claim for the quarter. It is pointed out that the petitioner has not challenged the Circular dated 27.11.2017 and Circular dated 10.01.2019. It is submitted that since the petitioner themselves had claimed budgetary support in the negative there was no need for any personal hearing. It is also submitted that the Budgetary Support Scheme does not envisage grant of any interest as claimed by the petitioner. It is the submission of the respondents that the budgetary support under the Budgetary Support Scheme is in the nature of grant and not refund of duty under taxation law.

6. The writ petition does neither challenge the Budgetary Support Scheme and specifically the mandate of paragraph 5.4 thereof nor the two circulars i.e. circular dated 27.11.2017 and Circular dated 10.01.2019 issued by the Central Board of Excise and Customs. In fact it is contended that respondent no.3 has rejected the claim for budgetary support in contravention of the Budgetary Support Scheme and the two circulars. Let us therefore examine the Budgetary Support Scheme and the Circular dated 27.11.2017 and Circular dated 10.01.2019.

7. Determination of the amount of the budgetary support under the Budgetary Support Scheme was to be done in the manner provided under paragraph 5 thereof.

8. Paragraph 5 of the Budgetary Support Scheme has several sub-paragraphs from 5.1 to 5.9.2. The relevant sub-paragraphs as pointed out by the learned counsel for the parties are reproduced below:

“5.1 The amount of budgetary support under the scheme for specified goods manufactured by the eligible unit shall be sum total of-

(i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section (1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax.

(ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax of the Central Tax and Integrated Tax.

Provided where inputs are procured from a registered person operating under the Composition Scheme under Section 10 of the Central Goods and Services Act, 2017 the amount i.e. sum total of (i) & (ii) above shall be reduced by the same percentage as is the percentage value of inputs procured under Composition scheme out of total value of inputs procured.

Explanation:-

Explanation-I.

Explanation-II

(a) Calculation of (ii) shall be followed by calculation of (i)

(b) To avail benefit of this scheme, eligible unit shall first utilize input tax credit of Central tax and Integrated tax and balance of liability, if any, shall be paid in cash and where this condition is not fulfilled, the reimbursement sanctioning officer shall reduce the amount of budgetary support payable to the extent credit of Central tax and integrated tax, is not utilized for payment of tax.

5.2.

5.3. Notwithstanding, the rescinding of the exemption notifications listed under para 2 above, the limitations, conditions and prohibitions under the respective notifications issued by Department of Revenue as they existed immediately before 01.07.2017 would continue to be applicable under this

W.P. (C) No.02 of 2023
Glenmark Pharmaceuticals Limited vs. Union of India & Ors.

scheme. However, the provisions relating to facility of determination of special rate under the respective exemption notifications would not apply under this scheme.

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.

5.5.

5.6. The grant of budgetary support under the scheme shall be subject to compliance of provisions relating to any other law in force.

...”

9. Paragraph 5.4 of the Budgetary Support Scheme provided that the budgetary support 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 and October to December.

10. When the petitioner made the claims for the four quarters as above, four Orders dated 05.12.2019 were passed rejecting all the claims of the petitioner on the ground that claims made for the period prior to the issuance of unique ID (UID) is not maintainable. This was challenged by the petitioner in Writ Petition (C) No. 48 of 2020 **Glenmark Pharmaceuticals Ltd. vs. Union of India & Ors.**². The Division Bench of this Court vide Judgment dated 24.11.2021 set aside those Orders with the direction to the authorities to process the four claims made by the petitioner for budgetary support and sanction

² 2021 SCC OnLine Sikk 176

reimbursements as found eligible within three months from the date of the judgment. Pursuant thereto the respondent no.3 vide three orders, all dated 01.03.2022 sanctioned various amounts as budgetary support for three quarters i.e. October, 2017 to December, 2017, January 2018 to March, 2018, April 2018 to June, 2018.

11. However, the respondent no.3 vide Order No.307/BS/GST/GTK-DIV/2021-22 dated 01.03.2022 (impugned order) informed the petitioner that he had sanctioned Rs.0/-(Rupees zero) only to the petitioner as budgetary support for goods cleared by the petitioner during the quarter - July 2017 to September, 2017 in terms of paragraph 7.2 read with paragraph 6.1 of the Budgetary Support Scheme read with Circular dated 27.11.2017 as the petitioner has claimed budgetary support of Rs.(-)9,24,99,472/- (Rupees Nine Crores Twenty Four Lakhs Ninety Nine Thousand Four Hundred and Seventy Two) in the negative. According to the impugned Order the computation of the budgetary support had been made as per the data in statutory documents submitted by the petitioner.

12. The Budgetary Support Scheme was introduced on 05.10.2017.

13. On 27.11.2017 Circular No.1060/9/2017-CX was issued by the Central Board of Excise and Customs

W.P. (C) No.02 of 2023
Glenmark Pharmaceuticals Limited vs. Union of India & Ors.

regarding procedure for manual disbursal of budgetary support under Goods and Service Tax Regime to the units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim. It mentioned that budgetary support under the Budgetary Support Scheme shall be worked out on quarterly basis and claims for the same shall also be filed on a quarterly basis viz. April to June, July to September, October to December and January to March. It was also stated that the manner and method of determination of amount of budgetary support, recovery procedure thereof etc. has been enumerated in the Budgetary Support Scheme. It was pointed out in paragraph 6 of the circular dated 27.11.2017 that the claim for quarter ending September, 2017 has already become due. In order to mitigate the difficulties of the eligible units, it has been decided that units would be registered on the basis of application filed by them manually and application for claim of budgetary support for the quarter would also be filed and processed manually. It was further pointed out that the approval of the registration for the Budgetary Support Scheme and processing of the application for budgetary support for the quarter shall also be undertaken manually by the jurisdiction Deputy Commissioner/Assistant Commission of the Central Tax. The circular dated 27.11.2017 also

provided forms for registration of eligible units for budgetary support and application for budgetary support. The form for application for budgetary support inter alia sought information from the petitioner of the amount of total tax paid during the quarter in respect of Goods and Services Tax Identification Number (GSTIN).

14. On 10.01.2019 Circular No.1068/1/2019-CX dated 10.01.2019 was issued by the Central Board of Indirect Taxes and Customs regarding review of progress of implementation of Budgetary Support Scheme to eligible industrial units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim. Paragraph 5 of the circular dated 10.01.2019 sought to meet the issue regarding difficulty in verification of the refund claim raised by the Chief Commissioner (Shillong). It was pointed out that as per the procedure in place an assessee files monthly returns under the GST whereas refund application is for the quarter. Accordingly, as per the circular dated 10.01.2019, it was decided that in the table annexed to the refund application month wise details may be attached. This, according to the circular dated 10.01.2019, would enable speedier and more accurate verification of the refund claims. Admittedly, the petitioner filed the claims for budgetary support in both

offline and thereafter online mode between the period 02.11.2018 and 22.08.2019.

15. The Budgetary Support Scheme clearly mandated that it should be worked out on quarterly basis for which claims shall be filed on a quarterly basis. 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 requiring the filing of the claim on quarterly basis and working the same out also on quarterly basis. The Circular dated 10.01.2019 permitted the assessee to provide month wise details in the table annexed to the refund application to enable speedier and accurate verification of the refunds claims. This circular was also issued to resolve, inter alia, an issue regarding difficulty in verification of the refund claim as raised by the Chief Commissioner (Shillong). It is evident that the circular dated 10.01.2019 was issued to make easier the process of verification of refund claim by the authorities as an assessee would file monthly returns under the GST whereas the refund application is for the quarter. It did not permit the assessee to make monthly claims as opposed to the mandate of paragraph 5.4 of the Budgetary Support Scheme.

16. The petitioner however, admittedly did not follow the budgetary scheme or the instructions of the two Circulars dated 27.11.2017 and 10.01.2019 and file the claim application on a quarterly basis. Instead the petitioner filed separate claims for the month of July 2017 and August 2017 under one covering letter. By this process the petitioner claimed budgetary support of Rs.16,88,693/- (Rupees Sixteen Lakhs Eighty Eight Thousand Six Hundred and Ninety Three) for July 2017 and Rs.1,54,00,360/- (Rupees One Crore Fifty Four Lakhs Three Hundred and Sixty) for August, 2017. No claim for budgetary support was made for September 2017.

17. The Circular dated 27.11.2017 required that the claim for budgetary support to be calculated in the manner provided therein. This Circular dated 27.11.2017 is not contrary to the Budgetary Support Scheme but in furtherance thereof. Claim for budgetary support was to be calculated in the following order:

*“(a) Budgetary support in respect of intra-state supplies + {(CGST in cash Balance of (ITC of CGST + ITC of IGST)) * 58%} * (1-Value under (G))/ Value under (F)*

*(b) Budgetary support in respect of inter-state supplies {(IGST in cash - balance # of (ITC of IGST + ITC of CGST)) * 29%} * (1-Value under (G))/ Value under (F).*

Balance to be taken under (b) after excluding amount considered under (a) above

W.P. (C) No.02 of 2023
Glenmark Pharmaceuticals Limited vs. Union of India & Ors.

(c) *Total Budgetary Support (a) + (b)”*

18. According to the petitioner after the submission of the initial applications for budgetary support the department orally directed the petitioner to resubmit the applications for claiming budgetary support through the online portal pursuant to which the petitioner filed four separate online applications claiming budgetary support for the four quarters i.e. July 2017 to June 2018 on 22.08.2019. For the quarter July 2017 to September 2017 the application provided the following details:-

8. Claim of Budgetary Support based on S. No. above to be calculated in following order

- (a) *Budgetary Support in respect of Intra-State supplies=*
*{CGST in cash-Balance of (ITC of CGST + ITC of IGST)) * 58%} * (1-Value under (G)/ Value under (F))*
*{0-(125963822+0))*58%*(1-0/ 110896468)*
= -7,30,59,017
- (b) *Budgetary Support in respect of Inter-State supplies=*
*{IGST in cash-Balance of (ITC of IGST + ITC of CGST)) * 29%} * (1-Value under (G)/ Value under (F))*
*{58927769-(0+125963822))*29%*(1-0/ 110896468)*
= -1,94,40,455
- (c) *Total Budgetary Support = (a) + (b):- -9,24,99,472*

19. In the impugned Order dated 01.03.2022 the same calculation made by the petitioner in its application has been approved as verified from the data in statutory documents submitted by the petitioner.

20. During the arguments the learned counsel for the petitioner sought to suggest that this application was filed on the persistence of the authorities and not

voluntarily. However, in the writ petition what has been stated is that the applications were filed on the oral direction of the authorities to resubmit the applications. The petitioner has not indicated that the application provided incorrect information or that it was involuntary. Further, although in paragraph 16 of the writ petition it is stated that *“Copy of the online applications for the quarters July 2017 to September 2017 (on a sample basis and which is the most relevant for the present proceedings) as well as the acknowledgement copy of corresponding ARN is annexed and marked as annexure P-4”* the application was not filed. Annexure P-4 as filed by the petitioner is a copy of the acknowledgement receipt only. The application was however, filed by the respondents in their counter affidavit. Although the petitioner has made an attempt to underplay this application by suggesting that the earlier applications filed by the petitioner were the correct applications it is quite clear that what the petitioner intended to do was to make the authorities to work out the budgetary support on the basis of the monthly claims filed by them earlier and not as per the quarter as required under the Budgetary Support Scheme. Had the details required to be provided in the form as mandated in the Budgetary Support Scheme and the two circulars were filled by the petitioner in the first instance there was no requirement for the authorities

to require the petitioner to resubmit the applications. The details provided in the subsequent application by the petitioner as per the Budgetary Support Scheme and the two circulars led to the calculation of the budgetary support in the negative as seen above by the petitioner itself. The budgetary support under the Budgetary Support Scheme is in the nature of grant and not refund of duty under taxation law. It was incumbent upon the petitioner to satisfy the requirements of the Budgetary Support Scheme and follow the procedure prescribed. When a procedure is prescribed, the petitioner while seeking the grant of budgetary support, is required to follow that procedure and not work out a different procedure for the authorities to follow. The fact that budgetary support was given to the petitioner for the other three quarters, it is evident that there was no malice on the part of the authorities while rejecting the claim for budgetary support for the quarter July 2017 to September 2017. It is to be noted that the petitioner makes no grievance about the applications filed by them for the other quarters for which budgetary support as sought for were granted.

21. In their initial separate applications for the month of July 2017 and August 2017 the IGST paid in cash was Rs.58,23,079/- (Rupees Fifty Eight Lakhs Twenty Three Thousand and Seventy Nine) and Rs.5,31,04,690/-

(Rupees Five Crores Thirty One Lakhs Four Thousand Six Hundred Ninety) respectively. As against that, the balance of ITC of CGST was 0 (zero) for both the months of July 2017 and August 2017. However, for the months of September the balance of ITC of CGST was Rs.12,59,63,822/- (Rupees Twelve Crores Fifty Nine Lakhs Sixty Three Thousand Eight Hundred Twenty Two). However, as the petitioner made separate applications for July 2017 and August 2017 without including the balance of ITC of CGST for the month of September 2017 they could attain positive budgetary support for each of the months separately and claim it. The petitioner did not make any claim for September 2017 in which the balance of ITC of CGST was Rs. 12,59,63,822/- (Rupees Twelve Crores Fifty Nine Lakhs Sixty Three Thousand Eight Hundred Twenty Two) as they would not be entitled to any budgetary support because of the balance of ITC of CGST for the month of September 2017. However, what was required to be done by the petitioner was to make the claim for the quarter July 2017 to September 2017. The Budgetary Support Scheme had envisaged the grant of budgetary support to be worked out quarterly on a claim made for the quarter and not for separate months. Therefore, when the petitioner was required by the authorities to modify their initial applications to a quarterly basis as required under

the law they had no choice but to reflect the balance of ITC of CGST for the month of September 2017 as well. This led the petitioner to calculate their own budgetary support in the negative correctly as done in the application mentioned by the petitioner in the writ petition but filed by the respondent in the counter affidavit.

22. Thus this Court is of the view that the petitioner is not entitled to any relief as sought for in the present writ petition which is accordingly dismissed.

23. The parties shall bear their respective costs.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

to/