

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

COPC No.2 of 2020

Decided on: 10th November, 2020

Macleods Pharmaceutical Ltd.

.....**Petitioner**

Versus

Prakash Kumar and another

.....**Respondents**

Coram

Ms. Jyotsna Rewal Dua, Judge

Whether approved for reporting?¹

For the Petitioner: Mr. Vivek Singh Attri, Advocate.

For the Respondent: Mr. Rajiv Jiwan, Senior Advocate
with Mr. Prashant Sharma, Advocate,
for respondent No.2.

(Through Video Conference)

Jyotsna Rewal Dua, Judge (Oral)

The petitioner asserts that the judgment dated 20.11.2019 passed by a Division Bench of this Court in CWP No.1551 of 2018, titled *Macleods Pharmaceuticals Ltd. Versus Union of India & others*, has been wilfully disobeyed by the respondents, hence, instant contempt petition has been preferred.

2. The aforementioned writ petition was filed by the petitioner with the submissions that in June, 2017, the

¹ Whether reporters of print and electronic media may be allowed to see the order?

petitioner-company had CENVAT Credit balance of Central Taxes amounting to Rs.7,51,33,423/-. Petitioner had filed another TRAN-1 form for CENVAT Credit of Rs.14,71,031/-, which was made admissible and credited to its Electronic Credit Ledger account on 26.10.2017. It was further submitted that the company could not amend TRAN-1 form as per the provisions of Goods and Services Tax Act (in short 'GST Act'). Therefore, direction was sought to be issued to the respondents to consider the case of the petitioner-company for amendment of TRAN-1 form. In support of the prayer, learned counsel for the petitioner had relied upon the judgment of Punjab & Haryana High Court delivered in **CWP No.30949 of 2018 (O&M), titled Adfert Technologies Pvt. Ltd. Versus Union of India & Ors.**

During hearing of the writ petition, learned Senior Counsel for respondents No.1 to 4 had placed on record a communication dated 09.05.2019, informing the Court that consideration of TRAN-1 form of the petitioner-company was under process and it was to be considered as per the provisions of amended GST Act. Considering the submissions of the parties, the writ petition was disposed of with the following directions:-

“5. In the light of the judgment and the communication referred to above, the writ petition is disposed of with a direction to the respondents to consider the case of the petitioner-Company for amendment of TRAN-1 form and pass appropriate orders within a period of three weeks from today.”

Alleging that the case of the petitioner for amendment of TRAN-1 form was not considered and no orders were passed in the case of petitioner, this contempt petition was instituted.

3. In their reply, the respondents submitted that pursuant to the directions issued in judgment dated 20.11.2019, the petitioner's case was discussed in the 9th IT Grievance Redressal Committee meeting held on 02.12.2019. The minutes of this meeting have been placed on record as Annexure C-1. In respect of case of the petitioner, following has been observed therein:-

“iv. M/s Macleods Pharmaceuticals Ltd GSTIN-02AAACM4100C1ZL, CWP 1551/2018: Filed TRAN 1 on 09.11.2017 but as per taxpayer the CENVAT Credit of 7.51 Cr did not reflect in TRAN-1. It was mentioned in the letter of jurisdictional tax authority letter that GSTN vide mail dated 06.08.2018 had communicated to the Commissionerate that TRAN-1 was successfully submitted on 26.10.2017 and 27.11.2017 but as per logs taxpayer had filed 0 (zero) in the disputed field instead of 7.51 Cr and no logs of error evidencing any technical glitch faced by taxpayer were found. Therefore, the Committee observed that the case was not as per the mechanism/process approved in 8th ITGRC for non-technical cases.

After the discussion and deliberation committee found that these cases did not seem to be qualified within the parameters recommended for considering reopening of the portal as per extended scope of ITGRC in 32nd GST Council and subsequently the mechanism/process approved in 8th ITGRC.”

The committee thus found that petitioner's case did not qualify the parameters for considering reopening of the portal and that as per the logs, taxpayer had filed 0 (zero) in the disputed field and no logs of error evidencing any technical glitch faced by taxpayer were found. On the basis of these minutes of meeting, order was passed on 06.01.2020 to the effect that the case of the petitioner for amendment of TRAN-1 form could not be accepted due to the fact that as per the logs, taxpayer had filed 0 (zero) in the disputed field and no logs of error evidencing any technical glitch faced by taxpayer were found.

4. Learned counsel for the petitioner contended that the respondents were directed to consider the case in light of the judgment delivered by the Punjab & Haryana High Court in *Adfert Technologies Pvt. Ltd's case, supra*, as well as in light of communication dated 09.05.2019 placed on record of the writ petition by the respondents themselves. The consideration order is not in conformity with the directions, hence, the respondents are liable to be proceeded for contempt. Whereas learned Senior Counsel for the respondents contended that the directions passed by the Court stands complied with. Case of the petitioner has

been considered in accordance with law and rejected.

Hence, no contempt is made out.

5. A perusal of the judgment clearly indicates that the respondents were directed to 'consider' the case of the petitioner for amendment of TRAN-1 form and to pass appropriate orders thereupon keeping in view the judgment in *Adfert Technologies Pvt. Ltd's case, supra* and the communication dated 09.05.2019. The respondents considered the judgment, the communication and other related aspects as per their wisdom and took a decision on 02.12.2019 as communicated vide letter dated 06.01.2020 for not permitting the petitioner to amend the TRAN-1 form. Whether the decision is in consonance with law or not is not to be gone into while deciding the contempt petition. It will be appropriate to refer here **(2006) 3 SCC 674**, titled ***A.P. SRTC and others Versus G. Srinivas Reddy and others***, elaborating the implication of directions given by the Court to 'consider' a case. Relevant paras are extracted hereunder:-

"14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to "consider", it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to

“consider” the claim/ case/ representation of the petitioner(s) in the writ petitions.

16. *The High Courts also direct the authorities to “consider”, in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to “consider” and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs “consideration” without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to “consider” afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.*
17. *Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to “consider” the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to “consider” the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.*
20. *Therefore, while disposing of the writ petitions with a direction to “consider”, there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.”*

The direction issued to the respondents in the writ petition was to ‘consider’ the case of the petitioner and to decide it in light of the judgment and communication referred to above. Pursuant to the directions, the

respondents 'considered' and decided the case of the petitioner. The decision has been taken, therefore, it cannot be said the respondents have flouted the judgment passed by this Court. Consequently, no contempt is made out and the same is dismissed. Notice discharged. However, liberty is reserved to the petitioner to seek appropriate remedy in accordance with law in case it still feels aggrieved by the order passed by the respondents pursuant to the judgment in CWP No.1551 of 2018. ◇

With these observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

Jyotsna Rewal Dua
Judge

November 10, 2020
Mukesh