

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 2nd NOVEMBER, 2020

**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

I.A. No.03 of 2020 in WP(C) No.47 of 2018

Petitioner : M/s. Sun Pharma Laboratories Limited

versus

Respondent : Union of India and Others

Application under Order VI Rule 17 read with
Section 151 of the Code of Civil Procedure, 1908

Appearance

Ms. Gita Bista and Mr. Karan Sachdev, Advocates for the Petitioner.

Mr. B. K. Gupta, Advocate for Respondents No.1 and 2.

Mr. Santosh Kumar Chettri, Government Advocate for Respondent No.3.

O R D E R

Meenakshi Madan Rai, J.

1. The Petitioner has filed an application under Order VI Rule 17 read with section 151 of the Code of Civil Procedure, 1908 (in short, "CPC"), seeking to insert amendments in the Writ Petition.

The proposed amendments are as follows;

Insertion of Paragraph 4.1 and 4.2 after the existing Paragraph 4:

"4.1. The Petitioner is also challenging the proviso to Section 174(2)(c) of the Central Goods and Services Tax Act, 2017 which provides that tax exemption granted as an incentive through a notification would not continue if such notification is rescinded.

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4.2 *Further, the Petitioner is also challenging the Notification No.21/2017-C.E. dated 18.07.2017 vide which the exemption notifications issued under the erstwhile regime (including Notification No.20/2007-C.E. dated 25.04.2007) were rescinded."*

Replacing the contents of the existing Paragraph 32 with the following:

"32. *Thus, aggrieved by the impugned proviso to Section 174(2)(c) of the CGST Act, the impugned Notification No.21/2017-C.E. dated 18.07.2017 and the Budgetary Support Scheme which have resulted in denial of vested right to the Petitioner to continue to enjoy the benefits promised to it, the Petitioner is filing the present petition based on the following grounds. Each ground is independent and without prejudice to one another."*

Incorporating Paragraph A18 after the existing paragraph A17:

"A.18 *It is submitted that the proviso to Section 174(2)(c) of the CGST Act and the impugned Notification No.21/2017-C.E. dated 18.07.2017 are in effect taking away the vested rights of the Petitioner by reducing the exemptions/benefits promised to the Petitioner. Thus, the impugned proviso to Section 174(2)(c) of the CGST Act and the impugned Notification No.21/2017-C.E. dated 18.07.2017 are contrary to the established principles of promissory estoppel and legitimate expectation as submitted in foregoing Grounds. For this reason, the impugned proviso to Section 174(2)(c) of the CGST Act and the impugned Notification No.21/2017-C.E. dated 18.07.2017 are liable to be struck down being violative of Article 14 of the Constitution of India and the vested rights of the Petitioner. It may be noted that this submission is without prejudice to Petitioner's contention that the exemptions promised to the Petitioner is a vested right."*

Incorporating the following clauses in place of existing clauses (c) to (e):

"(c) *strike down the proviso to Section 174(2)(c) of the Central Goods and Services Tax Act, 2017 as unconstitutional being contrary to Article 14 of the Constitution of India;*

- (d) *strike down the Notification No.21/2017-C.E. dated 18.07.2017 issued by the Respondent No.1 as unconstitutional being contrary to Article 14 of the Constitution of India*
- (e) *Hold that proviso to Section 174(2)(c) of the Central Goods and Services Tax Act, 2017; Notification No.21/2017-C.E. dated 18.07.2017 and the Scheme of Budgetary support under Goods and Service Tax regime to the units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North-East including Sikkim to Article 14 and the vested rights of the Petitioner;*
- (f) *Issue any other writ, order or direction as this Hon'ble Court may deem just and fair and circumstances of the case;*
- (g) *For such further and other reliefs as the nature and circumstances of the case may require."*

3. Learned Counsel for the Petitioner submits that the proposed amendments are necessary for an effective adjudication of the main Writ Petition and will under no circumstance cause any harm, loss or prejudice to the Respondents. The proposed amendments do not change the nature and character of the Writ Petition and are being sought *bona fide* in the interest of justice. The proposed amendments hence be considered and allowed.

4. *Per contra*, the Learned Counsel for the Respondents No.1 and 2 filed his reply to the I.A. and in the averments thereof objected to the proposed amendments. Learned Counsel contended that post the Judgment of the Hon'ble Supreme Court in Civil Appeal Nos.2256-2263 of 2020 arising out of S.L.P.(C) Nos.28194-28201/2010 dated 22-04-2020 in the matter of the **Union of India & Another Etc. Etc.** vs. **M/s. V.V.F. Ltd. & Another Etc. Etc.**, the Hon'ble Supreme Court in Paragraph 14.3 has observed as follows;

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“14.3 As observed hereinabove, the subsequent notifications/industrial policies do not take away any vested right conferred under the earlier notifications/industrial policies. Under the subsequent notifications/industrial policies, the persons who establish the new undertakings shall be continue to get the refund of the excise duty. However, it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities. Therefore, it cannot be said that subsequent notifications/industrial policies are hit by the doctrine of promissory estoppel. The respective High Courts have committed grave error in holding that the subsequent notifications/industrial policies impugned before the respective High Courts were hit by the doctrine of promissory estoppel. As observed and held hereinabove, the subsequent notifications/industrial policies which were impugned before the respective High Court can be said to be clarificatory in nature and the same have been issued in the larger public interest and in the interest of the Revenue, the same can be made applicable retrospectively, otherwise the object and purpose and the intention of the Government to provide excise duty exemption only in respect of genuine manufacturing activities carried out in the concerned areas shall be frustrated.”

5. That, the Hon'ble Supreme Court has thereby rejected the original Petition of the Petitioner wherein they had sought benefits on the ground of promissory estoppel and hence this Petition deserves no consideration. It was further contended that the I.A. has been brought at a belated stage when the original Writ Petition has been heard in its entirety and the Judgment in the matter was reserved, indicating the *mala fides* of the Petitioner. It was next pointed out that with the Goods and Services Tax being rolled out a new Scheme has been offered as a measure of goodwill, only to the units which were eligible for drawing benefits under the earlier excise duty exemption/refund scheme, but has no relation to the erstwhile schemes, thus the Petitioner has been compensated for the benefits that they were drawing in the earlier excise regime. That, instead of the 56% that was fixed earlier, the amount to be refunded is fixed at 58% giving the Petitioner the benefit of an

additional 2%. Denying the statements of the Petitioner in Paragraphs 2 to 5 of the I.A. in totality it was contended that the proposed amendments change the entire nature and character of the suit besides the fact that nothing remains for adjudication in the Writ Petition in view of the above cited ratiocination of the Hon'ble Supreme Court and the proposed amendments merit no consideration and the petition ought to be dismissed.

6. We have heard Learned Counsel for the parties at length. We have also perused the Writ Petition and the amendments proposed as detailed in the I.A.

7. The prayers in the Writ Petition *inter alia* read as follows;

- “(a) Issue an appropriate Writ reading down Clause 5.1 & 5.2 of the Notification F.No.10(1)/2017-DBA-II/NER, notifying ‘Scheme of Budgetary support under Goods and Service Tax regime to the units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North-East including Sikkim’ so as to enable the Petitioner to claim full refund of the CGST and 50% of IGST paid through the electronic cash ledger;
- (b) Or, in the alternative, issue a writ of mandamus or any other writ/order/direction, to the Respondents No.1 to 3, directing them to fix a special rate of refund eligible to the Petitioner so that under the Budgetary Support Scheme, the Petitioner is entitled to refund equivalent to that under the erstwhile regime;
- (c) Hold that the Scheme of Budgetary support under Goods and Service Tax regime to the units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North-East including Sikkim is contrary to Article 14 and the vested rights of the Petitioner;
- (d) Issue any other writ, order or direction as this Hon'ble Court may deem just and fair and circumstances of the case;
- (e) For such further and other reliefs as the nature and circumstances of the case may require.”

8. The prayers, therefore, are confined to granting the Petitioner refund of the Central Goods and Services Tax and 50% of

the Integrated Goods and Services Tax paid through the electronic cash ledger. An alternative prayer ensues directing the Respondents to fix a special rate of refund eligible to the Petitioner to entitle them to refund equivalent to that available under the erstwhile regime which should also be granted under the budgetary support scheme.

9. Order VI Rule 17 of the CPC clothes the Court with powers to allow either party to alter or amend their pleadings at any stage of the proceedings on such terms as may be just. It also requires that all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties provided that no application for amendment should be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. Thus, the provisions in the first part is discretionary and in the second part is imperative inasmuch as amendments that are necessary for the purpose of determining the real question in controversy between the parties ought to be allowed.

10. In the matter at hand, the Writ Petition was finally heard on 03-09-2019 and Judgment reserved. In the interim, the Petitioner filed an application being I.A. No.02 of 2019, wherein it was averred that the Hon'ble Supreme Court took up the entire batch of appeals filed by the Respondent against the Judgments passed by the Hon'ble High Court of Gujarat, Jammu and Kashmir, Guwahati and Sikkim on the issue of curtailment of central excise duty exemption, on 04-09-2019 in the Miscellaneous List. The appeal filed by the Respondent against the Judgment of this High Court dated

21-11-2017 was heard on 05-09-2019 and Judgment reserved. This fresh development was brought to the notice of this Court. Evidently the Judgment then came to be pronounced by the Hon'ble Supreme Court on 22-04-2020 in *M/s. V.V.F. Ltd. (supra)*, the relevant Paragraph being 14.3 has already been extracted and reflected in the arguments of Learned Counsel for the Respondents No.1 and 2 hereinabove. Subsequent thereto, the amendment application being I.A. No.03 of 2020 was filed on 06-06-2020, seeking to incorporate amendments already extracted *supra*.

11. By the proposed amendments the Petitioner seeks to challenge the *vires* of Section 174(2)(c) of the Central Goods and Services Tax Act, 2017 and Notification No.21/2017-C.E., dated 18-07-2017, on the ground that it takes away the vested rights of the Petitioner by reducing the exemption/benefits to the Petitioner. The prayers in the Writ Petition are confined to enabling the Petitioner to claim full refund of the CGST and 50% of the IGST paid through the electronic cash ledger. It cannot be said that the Petitioner was unaware of the provision of the statute the *vires* of which they now seek to assail, nor was it inserted at some point later in time to the filing of the Writ Petition. The question of the Petitioner's inability to raise the matter in spite of due diligence, before the matter was heard or was taken up for hearing, therefore, does not arise. In view of the questions involved in the instant Writ Petition it cannot be said that the amendments are necessary for determining the real question in controversy between the parties considering the prayers of the Petitioner referred above. The proposed amendments if permitted would in fact change the very nature and character of the

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Writ Petition and introduce an entirely different Cause of action, which is not permissible.

12. Consequently, we are not inclined to exercise our discretion in favour of the Petitioner, hence the Petition stands rejected and dismissed.

(**Bhaskar Raj Pradhan**)
Judge
02-11-2020

(**Meenakshi Madan Rai**)
Judge
02-11-2020