

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 11th August, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.10 of 2024

Petitioner : Zydus Wellness-Sikkim

versus

Respondents : The Assistant Commissioner,
Central Goods and Service Tax and Others

Application under Article 226
of the Constitution of India

Appearance

Mr. Mayank Jain, Mr. Mukesh M. Patel and Mr. Hissay Gyaltsen,
Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India for the
Respondents.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner is aggrieved by the Order dated 27-06-2022, of the Assistant Commissioner, Central Goods and Service Tax, Gangtok Division, vide which it was *inter alia* ordered that the taxpayer had claimed budgetary support of Rs.59,44,977/- (Rupees fifty nine lakhs, forty four thousand, nine hundred and seventy seven) only, however, on verification it is found that the eligible budgetary support payable is in the negative and hence, the taxpayer is not eligible for the budgetary support claim amount.

2. Learned Counsel for the Petitioner invited the attention of this Court to the Judgment of the Division Bench of this High Court in WA No.02 of 2024 (*Glenmark Pharmaceuticals Limited vs. Union of India and Others*). It was contended that the Division Bench had discussed and disposed of the same issue in the matter and

had directed the Respondent to consider the claims of the Petitioner from July, 2017 to September, 2017 on the same terms as was considered by the concerned authority in light of the Order of the High Court of Jammu & Kashmir and Ladakh dated 28-02-2023, rendered in **Coromandel International Ltd. vs. Union of India and Others**¹. Hence this Petition be disposed of in terms of the Judgment of this Court (*supra*).

3. Learned Deputy Solicitor General of India submits that she has no objection to the submissions advanced by Learned Counsel for the Petitioner in view of the above cited Judgment of this High Court.

4. Considered submissions.

5. The Division Bench of this High Court, in WA No.02 of 2024 (*Glenmark Pharmaceuticals Limited vs. Union of India and Others*), dated 15-05-2025 was considering 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. The attention of the Division Bench had been drawn to the Judgment of **Coromandel International Ltd.** (*supra*).

6. Having given due consideration to the submissions advanced, this Court in the WA (*supra*), observed *inter alia* as follows;

"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

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

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;

"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 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.** [(2007) 5 SCC 510] 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.”

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.** [(2009) 2 CHN 306 = (2009) 2 Cal LT 367 = 2009 SCC OnLine Cal 619]

(i) In ***Yashita Sahu vs. State of Rajasthan and Others*** [(2020) 3 SCC 67] 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.”

7. In view of the Judgment of the Division Bench of this Court (*supra*) and considering that the challenge in the instant Appeal is on the exact same issue, as already extracted hereinabove, the position of this Court is no more *res integra* thereto. No further discussion need ensue on this matter. The Order dated 27-06-2022, of the Assistant Commissioner, Central Goods and Service Tax, Gangtok Division, is consequently set aside.

8. Writ Petition accordingly stands disposed of in terms of the decision of this Court in WA No.02 of 2024 (*Glenmark Pharmaceuticals Limited vs. Union of India and Others*).

(**Meenakshi Madan Rai**)
Judge

11-08-2025

Approved for reporting : **Yes**