

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. 55 of 2023

M/s Torrent Pharmaceuticals Ltd. (Unit-III),
(Erstwhile Unichem Laboratories Ltd.),
Represented by Assistant Manager Finance,
Sanjay Singh,
N.H. No.10, Bagheykhola,
Majhitar, East Sikkim, 737136.

..... **Petitioner**

Versus

1. Union of India,
Through Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110001.
2. Commissioner of CGST, Siliguri,
Gangtok Division,
C.R. Building, Haren Mukherjee Road,
Hakimpara, Siliguri,
West Bengal-734001.
3. Under Secretary, Department for Promotion
of Industry and Internal Trade,
(DPIIT), Udyog Bhawan, New Delhi-110001.
4. Assistant Commissioner, CGST,
Gangtok Division, Indira Bypass,
Near District Court,
Sichey, Gangtok, East Sikkim-7371001.

..... **Respondents**

Application under Article 226 of the Constitution of India.

Appearance:

Mr. V. Sridharan, Senior Advocate with Mr. Rahul
Tangi, Advocate. (*through V.C.*). Ms. Gita Bista, Ms. Anu

Sharma, Ms. Udit Saraf and Ms. Anusha Basnet,
Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India
along with Ms. Natasha Pradhan, Advocate for the
Respondents.

Date of Hearing : 02.04.2025
Date of Order : 02.04.2025

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. M/s Torrent Pharmaceuticals Limited (Unit III) filed the present writ petition challenging order-in-original No.02/BS/GTK/Torrent Pharma-III/GTK-DIV/2023-24 dated 01.11.2023 passed by the learned Assistant Commissioner of CGST, Gangtok Division directing recovery of refund amounting to Rs.12,18,27,592/- along with interest @ 15% per annum in terms of paragraph 9 of the Budgetary Support Scheme read with affidavit-cum-indemnity bond dated 23.01.2018.

2. It was the case of the petitioner that they had entered into an agreement to acquire Unichem Laboratories business of India and Nepal, as a going concern on slump sale basis. On account of such

acquisition, GSTIN of the petitioner was amended and the Sikkim unit of Unichem Laboratories located at NH-31A (NH-10) Village Bhagheykhola, P.O. Majhitar, Rangpo, East District, Sikkim was added as additional place of business in petitioner's GST registration No.11AAACT5456A1ZY.

3. According to the petitioner this transfer of ownership was duly communicated to the Superintendent of CGST, Range II, Div, Gangtok vide letters dated 07.12.2017 and 14.12.2017.

4. Thereafter, on 19.01.2018 the petitioner submitted an application before the respondent no.4 for registration of Unit III under Budgetary Support Scheme along with Affidavit-cum-Indemnity bond for residual period i.e. 14.12.2017 to 28.05.2020.

5. Certain queries were raised by the respondent no.4 and after receipt of the answers from the petitioner, the petitioner was allotted Unique ID No.45/Gangtok/Siliguri/11AAACT5456A1ZY under BSS vide letter bearing No.C.No.V(19)50/BS/Torrent-III/GTK-Divn/2017-18/1077 dated 30.05.2018.

6. Eleven claims were filed thereafter for the period October 2017 to June 2021 for refund amounting to Rs.12,18,27,592/-. After verification the petitioner was sanctioned budgetary support amounting to Rs.12,18,27,592/- for the period October 2017 to June 2021 as claimed.

7. However, recovery notice bearing No.SBS/03/Torrent Unit-3/Gtk-Div/2022-23 vide letter bearing C. No. V(18)16/GST/SBS/Recovery/Torrent-III/Gtk-Div/2022-23/1582 dated 29.08.2022 was issued upon the petitioner, directing the petitioner to reverse entire budgetary support amounting to Rs.12,18,27,592/- along with interest @ 15% per annum in terms of paragraph 9.1 of the Budgetary Support Scheme and affidavit-cum-indemnity bond dated 23.01.2018 as affirmed by the petitioner.

8. The recovery notice was issued on the ground that since there is a change in ownership in respect of the concerned Unit, therefore, such Unit is not eligible under the Budgetary Support Scheme. Reliance was placed on the clarification issued by the Department for Promotion of Industry and Internal Trade (DPIIT) via

Office Memorandum bearing F.No.10/1/2021-GSTSS dated 31.03.2022 which referred to another Office Memorandum dated 20.10.2021.

9. After receipt of the response from the petitioner including details submissions and personal hearing the respondent no.4 passed the impugned order confirming the demand upon the petitioner on various findings, including that this Court's had vide Order dated 12.09.2023 dealt with identical issue in **W.P. (C) No.20 of 2022 Zydus Wellness Products Limited vs. Union of India & Ors.**; and **W.P. (C) No.27 of 2022 Alkem Laboratories Limited vs. Union of India & Ors.**; wherein it was held that the Unit which had undergone change of ownership would not be entitled to benefit under the Budgetary Support Scheme.

10. Heard Mr. V. Sridharan, learned Senior Counsel for the petitioner as well as learned Deputy Solicitor General of India for respondents. The learned Senior Counsel submits that the two judgments passed by this Court have been *set aside* by the Division Bench in Writ Appeal No. 09 of 2023 and Writ Appeal No. 10 of 2023 vide judgment dated 13.12.2024 and in

terms thereof the present writ petition ought to be allowed on this ground alone leaving all other questions open.

11. The learned Deputy Solicitor General of India does not distinguish the present case from the facts of the case in Writ Appeal No. 09 of 2023 and Writ Appeal No. 10 of 2023 decided by the Division Bench of this Court on 13.12.2024. She however, submits that the respondents is on the verge of filing a Special Leave Petition (SLP) before the Supreme Court against the above judgment dated 13.12.2024 in Writ Appeal No. 09 of 2023 and Writ Appeal No. 10 of 2023 and therefore, the matter could await the decision of the Supreme Court in the proposed SLP.

12. This Court is unable to agree to the submissions made by the learned Deputy Solicitor General of India. If the judgment dated 13.12.2024 passed by the Division Bench of this Court in Writ Appeal Nos. 09 of 2023 and 10 of 2023 squarely covers the present case it is binding on this Court.

13. In such view of the matter the writ petition is allowed, leaving other questions open as fairly suggested by the learned Senior Counsel for the

petitioner. The writ petition is accordingly disposed along with the interim application.

**(Bhaskar Raj Pradhan)
Judge**

Internet : **Yes**
to