

(2021) 11 SIK CK 0012
In the Sikkim High Court
Case No : Writ Petition (Civil) No. 48 Of 2020

Glenmark Pharmaceuticals Limited	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

Citation : (2021) 11 SIK CK 0012

Hon'ble Judges : Meenakshi Madan Rai, J; Bhaskar Raj Pradhan, J

Bench : Division Bench

Advocate : Rahul Tangri, Aditya Makkhim, Ajay Rathi, Dilip Kumar Agarwal

Final Decision : Allowed

Judgement

Bhaskar Raj Pradhan, J

(Civil Extra Ordinary Jurisdiction)

1. The dispute in the present writ petition lies in a narrow compass and relates to the rejection of the petitioners claims for budgetary support under a "Scheme of Budgetary Support under Goods and Service Tax" regime on the ground that the claims were made for the period prior to the registration which is impermissible.

2. The writ petitioner is engaged in the manufacture and supply of pharmaceutical products at their unit situated in Sikkim. They seek to challenge four orders, all dated 05.12.2019 (the impugned orders), passed by the Assistant Commissioner, Central Goods and Service Tax, Gangtok Division, Gangtok rejecting the four claims for budgetary support for four quarters filed by the petitioner under Notification No. 10(1)/2017-DBA-II/NER dated 05.10.2017 (notification dated 05.10.2017) for the period July, 2017 to June, 2018.

3. The impugned orders record that the petitioner has been assigned with the unique ID (UID) registration number UNQSBS11AAACG2207L1Z50001 upon validating them to be eligible for "Scheme of Budgetary Support under GST" (the scheme) in terms of CBEC Circular No. 1060/9/2017-CX dated 27.11.2017

(Circular dated 27.11.2017) read with Notification dated 05.10.2017. Thus, as rightly contended by Mr. Rahul Tangri, Learned Counsel for the petitioner, that the petitioner was eligible under the scheme is not in controversy.

4. The impugned orders records that the petitioner filed an application dated 02.11.2018 in terms of paragraph 7.1 of the scheme in the prescribed format claiming budgetary support for the quarters ending September, 2017, December, 2017, March, 2018 and June, 2018 in relation to supply of specified goods. The petitioner had been issued UID on 31.10.2018 whereas they have claimed for budgetary support for the period prior to the issuance of UID in terms of Notification dated 05.10.2017 which mandatorily required pre-registration. Further, as per paragraph 7.1 claim for budgetary support is required to be submitted by the 15th of succeeding month after end of quarter after payment of tax relating to the quarter to which the claim relates. However, as per show-cause notice issued dated 28.06.2019 it has been alleged that the petitioner availed ineligible TRAN 1 credit which is yet to be proved otherwise by them. As per the impugned orders since the petitioner had not complied with the provision of the notification dated 05.10.2017 their claim for budgetary support under the scheme is liable to be rejected.

5. The respondents' counter affidavit takes a stand that the claim for budgetary support for the period July, 2017 to June, 2018 was filed belatedly in violation of Notification dated 05.10.2017. It is contended that as per the Notification dated 05.10.2017 to claim budgetary benefit, one must have UID number which as per records was allocated on 31.10.2018 against the online application filed by the petitioner. The respondents also clarify that although in annexure P-8 the date of approval of the UID is mentioned as 31.07.2018 it is in fact 31.10.2018. It is thus contended that despite getting UID number on 31.10.2018, the petitioners have made their claims only on 02.11.2018 for the period from July, 2017 to June, 2018 which period is prior to the allocation of UID to the petitioner.

6. Notification dated 05.10.2017 is a Scheme of Budgetary Support under Goods and Service Tax regime to the units located in the States of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim. In pursuance of the decision of the Government of India to provide budgetary support to the existing eligible manufacturing units operating in the above named states under different industrial promotion schemes of the Government of India, for a residual period for which each of the units is eligible, a scheme was introduced as a measure of good will. To the extent of the present controversy clause 7 and 8 are the relevant clauses of the Notification dated 05.10.2017 dealing with manner of budgetary support. It is quoted below:-

"7. MANNER OF BUDGETARY SUPPORT

7.1 The manufacturer shall file an application for payment of budgetary support for the Tax paid in cash, other than the amount of Tax paid by utilization of Input Tax credit under the Input Tax Credit Rule, 2017, to the Assistant Commissioner

or Deputy Commissioner of Central Taxes, as the case may be, by the 15th day of the succeeding month after end of quarter after payment of tax relating to the quarter to which the claim relates.

7.2 The Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be, after such examination of the application as may be necessary, shall sanction reimbursement of the budgetary support. The sanctioned amount shall be conveyed to the applicant electronically. The PAO, CBEC will sanction and disburse the recommended reimbursement of budgetary support.

8. BUDGETARY PROVISION AND PAYMENT OF AMOUNT OF BUDGETARY SUPPORT

8.1 The budgetary support shall be disbursed from budgetary allocation of Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce & Industry. DIPP shall keep such budgetary allocations on the disposal of PAO, CBEC. The eligible units shall obtain one time registration on the ACES-GST portal and obtain a unique ID which is to be used for all processing of claims under the scheme. The application by the eligible unit for reimbursement of budgetary support shall be filed on the ACES-GST portal with reference to unique ID obtained and shall be processed by the Deputy Commissioner or Assistant Commissioner of the Central Tax for sanction of the admissible amount of budgetary support.

8.2 The application for reimbursement of budgetary support shall be made by the eligible unit after the payment of CGST/IGST has been made for the quarter to which the claim relates, in cash in respect of specified goods after utilization of Input Tax credit, if any."

7. Reading clause 7 and 8 together it is clear that the petitioner was required to obtain one time registration on the ACES-GST portal and obtain UID which is to be used for processing of all claims under the scheme.

8. On 27.11.2017 the Central Board of Excise and Customs issued a communication prescribing the procedure for manual disbursement of budgetary support under the Goods and Service Tax regime to the eligible units. It was stated that the Department of Industrial Policy and Promotion (DIPP), the administrative department, had issued Notification dated 05.10.2017 which had come into operation with effect from 01.07.2017 and shall remain in operation for the residual period. Budgetary support under the scheme shall be worked out on quarterly basis and claims for the same shall also be filed on a quarterly basis. It was also specified that the eligible units was required to obtain one time registration and file an application for payment of budgetary support which shall be processed by the Deputy/Assistant Commissioner of the Central Taxes for sanction of the admissible amount. The sanction amount shall be credited into bank accounts of the beneficiaries through PFMS platform of the Central Government. Paragraph 6 thereof, which is pressed by the petitioner, states that the claim for the 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 of claim for budgetary support for the said quarter would also be filed and processed manually. The approval of the registration for the scheme and processing of the application for budgetary support for the quarter shall also be undertaken manually by the jurisdictional Deputy Commissioner/Assistant Commissioner of the Central Tax. The sanctioned amount shall be credited to the bank accounts of the beneficiaries through the PFMS platform in a manner fully compliant with the direct transfer of the benefit to the account of the assessee.

9. The communication dated 27.11.2017 also provided the Standard Operating Procedure for the claims relating to the first quarter ending September, 2017 in paragraph 8 and 9 thereof.

They are quoted below:-

"8. Registration of the eligible units under the scheme

(i) The application for registration under the scheme by the eligible units shall be submitted in triplicate in the format attached to this circular. The application shall be signed by the proprietor/partner/managing director of the eligible unit or by the person authorized by him in this behalf and support by the self-authenticated copies of the documents in support of information as per the application. The registration under GST is a necessary pre-requisite for the scheme.

(ii) In case more than one eligible unit is operating under the same GSTIN, separate registration is required to be obtained for each of the eligible units.

(iii) The jurisdictional Deputy Commissioner/Assistant Commissioner of the Central Taxes would examine the application in terms of the scheme as notified on the basis of documents submitted along with the application for registration.

(iv) A unique ID for each of the eligible units shall be allotted after registration and ID shall be indicated in the following manner:- sl.no/ name of the Central Tax Division/name of the Commissionerate/GSTIN. The ID shall be endorsed on all the three copies of the application.

(v) It shall be ensured by the jurisdictional Divisional Officer that record of registration is maintained against the sl. no. which is part of the unique ID.

(vi) The second copy of the application after registration of the eligible unit under an official communication shall be forwarded to the DDO of the Division for registration of the unit under PFMS. This would ensure validation of the Bank Account details of the beneficiary. This exercise should be completed within 3 days of receipt of the copy of application by the DDO.

(vii) The third copy of the application after registration shall be forwarded to the ADG, DG Audit, Delhi who in turn would be providing the details to programme division (PD) of DIPP in a compiled manner. The DIPP on the basis of these details shall draw a programme for inspection of the eligible unit by a team constituted by them. Jurisdictional Commissionerate of CGST shall provide

necessary assistance in carrying out the inspection. Immediately after completion of inspection copy of Inspection report would be forwarded to the Assistant/Deputy Commissioner having jurisdiction over the eligible unit.

9. Submission of application for budgetary support by the eligible unit for quarter ending September, 2017 and its sanction

(i) An eligible unit after allotment of the Unique Id may file an application for claiming budgetary support under the provisions of para 5.7 of the scheme in the format attached to this circular. The application shall be filed by the eligible unit only after return for the quarter has been filed and tax as per return is paid.

(ii) Once application is filed, duly supported by the prescribed document, the same shall be processed for sanction. The claim shall be sanctioned after verification of the tax paid by the eligible unit. The details relating to tax payment in cash and input tax credit availed, utilized including purchases made from a composition dealer during the quarter shall be available in the GST returns of the taxpayer, which are available on the CBEC GST application for verification of the application for the budgetary support filed by the unit. The closing of the credit after end of the quarter shall also be provided for verification by the Assistant/Deputy Commissioner.

(iii) In cases where an entity is carrying out its operation in a State from multiple business premises, in addition to manufacture of specified goods by the eligible unit, under the same GSTIN as that of the eligible unit, the application for budgetary support shall be supported by additional information duly certified by a Chartered Accountant, relating to receipt of inputs (receipt from composition dealer to be indicated separately), input tax credit involved on the inputs or capital goods received by the eligible units vis-à-vis the inputs, input tax credit availed and specified goods supplied by the registrant under the given GSTIN.

In such case, on the basis of additional information and the refund application the jurisdictional Deputy Commissioner/Assistant Commissioner shall ensure the budgetary support is limited to the tax paid in cash after utilization of the input tax credit on the specified goods manufactured by the eligible unit. The return filed by the unit may be covering the entire transactions taking place outside the eligible unit in the same GSTIN.

(iv) Further, in cases where the other units operating under same GSTIN, is supplying the inputs to the eligible unit as such or after manufacture, the credit availed by supplying unit on the inputs would have to be factored for determining the input tax credit of the eligible unit. The information in terms of para 5.9.2 of the scheme is required to be submitted by the eligible unit duly certified by a Chartered Accountant. The jurisdictional Deputy/ Assistant Commissioner in such cases shall sanction the budgetary support after reducing input tax credit relatable to inputs used by the supplying unit under same GSTIN without payment of tax as certified by a Chartered Accountant.

(v) Para 5.8 of the scheme defines the scope of manufacture by the eligible unit. The eligible unit shall also indicate the value addition achieved by it in respect of each category of specified goods and where the value addition is higher than the limit provided in the table under the said para, the sanction of the claim shall be after verification of the value addition.

(vi) Para 6 of the scheme provides for inspection of the eligible unit by a team constituted by DIPP and the findings of the team shall be provided to the Deputy/ Assistant Commissioner before sanction of the claim of budgetary support. However, in cases where inspection cannot be conducted the budgetary support amount may be sanctioned provisionally for a period of six months."

10. From the circular dated 27.11.2017 it is clear that although the claim for the quarter ending September, 2017 had already become due "In order to mitigate the difficulties of the eligible units" it was decided that those eligible units would be registered on the basis of application filed by them manually and application for claim for budgetary support for the said quarter (i.e., quarter ending September, 2017) would also be filed and processed manually. Reading the Standard Operating Procedure even for the first quarter ending September, 2017 it is clear that registration under the GST is a necessary prerequisite for the scheme and the UID would be issued only after registration. It is also seen that an eligible unit could file an application for claiming budgetary support for the quarter ending September, 2017 only after allotment of the UID. On 12.12.2017 the petitioner made a manual application for registration under the scheme to the Respondent No. 3. The application is marked as annexure P-7 by the petitioner. According to the petitioner this application was filed by relevant documents for obtaining registration and UID under the scheme. It is seen that there is a stamp of the authority along with the date "12.12.2017" and signature thereon. The respondents in their counter affidavit do not specifically deny receipt of the application. However, an argument is sought to be made that if such an application is presumed to have been made even then the petitioner failed to follow up the application. Quite evidently, the manual application 12.12.2017, although permitted under the circular dated 27.11.2017, was not processed for registration by the respondents.

11. Faced with this situation, the petitioner made an online application when the respondents provided the facility for filing application by activating the same in the GST portal. Admittedly, the registration and UID was allotted to petitioner on 31.10.2018.

12. On 05.10.2018 the Central Board of Excise and Customs issued another circular regarding online registration and online filing and processing of claims. It reiterated that eligible units were required to obtain one time registration on the ACES-GST portal and obtain an UID which should be used for filing application by the eligible units for reimbursement of budgetary support. It also stated that it had been decided that units may be registered for the scheme on the basis of manual application and claim for quarter ending September, 2017 was also

directed to be filed and processed and manually. As per the circular dated 05.10.2018 the same stand replicated and registration of units and filing of claims upto quarter ending June, 2018 is taking place manually.

13. Thus, all the four claims of the petitioner were to be made manually.

14. According to the petitioners pursuant to the circular 05.10.2018 the petitioner filed four applications all dated 02.11.2018 for the four quarters of the period July, 2017 to June, 2018 for claiming budgetary support before the Respondent No. 3 along with various documents in support thereof. On an oral direction the petitioner also filed the four claims electronically on the ACES-GST portal on 22.08.2019. The factum of the manual claims being made on 02.11.2018 and the electronic claims on 22.08.2019 are not disputed by the respondents.

15. The impugned orders was thereafter passed on 05.12.2019 rejecting the claim of the petitioner on the grounds that the claims made for the period prior to the issuance of UID is not maintainable.

16. Mr. Rahul Tangri's submission that the uncontroverted facts would reflect that the failure to register the admittedly eligible unit of the petitioner and issue the UID was the respondents' failure and for no fault of the petitioner is correct. Quite evidently although the application for registration and issuance of UID made by the petitioner had been received by the respondent No. 3 on 12.12.2017, the authority neither registered the petitioner nor rejected the application compelling the petitioner to reapply for the same electronically pursuant to which registration and UID was granted on 31.10.2018. The fact that registration and UID was granted makes it evident that the petitioner was eligible for the budgetary support under the scheme. Quite clearly the Respondent No. 3 failed to process the application for registration as required. Since, the Respondent No. 3 failed to grant the registration to the petitioner, although it was an eligible unit, the petitioner could not have made their claims for budgetary support before being allotted the UID. When the Respondent No. 3 registered the petitioner and allotted the UID on 31.10.2018, just two days after, on 02.11.2018, the petitioner made all the four claims for the four quarters. The impugned orders rejected the petitioner claim for budgetary support on that sole ground without examining the application as to how much of the amount claimed was liable to be sanctioned as admissible amount of budgetary support. The stand of the respondents is fallacious. It is not only without substance but clearly illegal in as much as it sought to take advantage of its own wrong and deprive the petitioner of its rights under the scheme. Once an unit is found to be an eligible unit the only question kept open to the authorities is the admissible amount of budgetary support from the claims made by the eligible unit on compliance of the requirement of the scheme. We are thus of the firm view that the impugned orders are liable to be set aside. It is accordingly so ordered. As the respondents have rejected the claims of the petitioner on the technical ground as stated above it is directed that the authorities shall process the four

claims made by the petitioner for budgetary support and sanction reimbursements as found eligible within three months from the date of this judgment. These claims have been made by the petitioner vide their four manual applications Exhibit-P10 (colly), Exhibit-P11 (colly), Exhibit-P12 (colly), Exhibit-P13 (colly) and 02.11.2018 and electronic applications Exhibit-P14 (colly), Exhibit-P15 (colly), Exhibit-P16 (colly), Exhibit-P17 (colly) for the quarter July, 2017 to September, 2017; October, 2017 to December, 2017; January, 2018 to March, 2018 and April, 2018 to June, 2018.

17. The writ petition is allowed to the above extent. The parties shall bear their respective cost.