

GIB/SK/SUN PHARMA/02.10.2020/HC-171

High Court Category : SCOPE OF AMENDMENTS

State : Sikkim

Order No.: GIB/SK/SUN PHARMA/02.10.2020/HC-171

Name of Entry :

M/S. SUN PHARMA LABORATORIES LIMITED

Date : 02-10-2020

Breif Issue :

FACTS OF THE CASE

M/s. Sun Pharma Laboratories Ltd. ("the Petitioner") has filed an Interlocutory Application ("I.A.") No. 03 of 2020 on June 06, 2020, seeking to insert amendments in the Writ Petition and 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 ("CGST Act") and Notification No.21/2017-C.E., dated July 18, 2017 vide which the exemption notifications were issued under the erstwhile(former) regime, on the ground that it takes away the vested rights of the Petitioner by reducing the exemption/benefits to the Petitioner.

The Petition prayed to issue an appropriate Writ reading down Clause 5.1 & 5.2 of the Notification F.No.10(1)/2017-DBA-II/NER dated October 5, 2017, notifying 'Scheme of Budgetary support under Goods and Services Tax regime to the units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North-East including Sikkim' ("BSS") so as to enable the Petitioner to claim full refund of the CGST and 50% of IGST paid through the electronic cash ledger or in alternative to fix a special rate of refund eligible to the Petitioner so that under the BSS, the Petitioner is entitled to refund equivalent to that under the erstwhile(former) regime. Writ Petition was finally heard on September 3, 2019 and judgment was reserved.

ISSUE OF THE CASE

Whether amendment by way of I.A. No. 03 of 2020 dated June 06, 2020 can be allowed.

Decision of Advance Ruling Authority :

DECISION

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.

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