

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.2437 of 2020
Reserved on:22.05.2024
Pronounced on: 13.06.2024

Ultra Tech Cement Ltd.

.....Petitioner

Versus

Union of India & Others

.....Respondents

Coram:

Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?

For the petitioner : Mr. Amrinder Singh and Mr. Goverdhan Sharma, Advocates.

For the respondents : Mr. Balram Sharma, Deputy Solicitor General of India, for respondents no.1&2/Union of India.

Mr. Vijay Arora, Advocate, for respondents no.3 & 4.

M.S. Ramachandra Rao, Chief Justice.

The petitioner is a Company engaged in the manufacture of cement falling under Chapter 25 of the GST Tariff.

2. It has two manufacturing Units in the State of Himachal Pradesh- one at Village Baga and the other at Village Pandiyana (Tikri) (also referred to as 'Bagheri').

3. These two manufacturing Units and a Marketing Office are duly registered in the State of Himachal Pradesh under the same GST bearing GSTIN no.02AAACL6442L2ZL.

4. The CGST Act, 2017 came into effect on 01.07.2017. The petitioner registered the aforesaid Units and its marketing office under the same GSTIN.

Notification on 05.10.2017 called “Scheme of Budgetary Support”

5. Three months after coming into force of the GST regime, the Central Government issued a Notification on 05.10.2017 called “*Scheme of Budgetary Support*” under the Goods and Services Tax Regime to the Units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim, through the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion.

6. Prior to the introduction of the said scheme, there was in force the Central Excise Regime and under the said regime, Units located in the State of Himachal Pradesh were eligible to avail exemption from payment of Central Excise Duty in terms of area based exemptions under certain Excise Notifications issued under the Central Excise Act, 1944; and eligible Units were exempted from paying Central Excise Duty for a period of 10 years from the date of commencement of commercial production, provided such commercial production had commenced on or before 31.03.2010.

7. After coming into force of the GST Regime on 01.07.2017, there were some Units in the State of Himachal Pradesh which had residual period of

exemption available under the Central Excise Regime, but due to introduction of GST they became liable to pay GST.

8. In order to obviate the hardship faced by such Units, the Central Government decided to provide budgetary support to such Units by way of reimbursement of the Goods and Services Tax in a particular manner.

9. Under the scheme introduced vide Notification dt. 05.10.2017, 58% & 29% of Central Tax and Integrated Tax can be paid in cash after utilizing the entire input tax credit and integrated tax. The scheme provided that if the eligible Unit had not utilized the input tax credit as indicated supra, the Sanctioning Officer was required to reduce the amount of budgetary support to the extent of the credit not utilized for payment of tax; and the reduction of budgetary support was to be by a percentage of inputs procured from composition dealers.

10. However, in the instant case, there was no procurement from composition dealers.

Circular dt. 27.11.2017

11. Almost five months after the introduction of the GST Regime w.e.f. 01.07.2017, the respondents had issued a Circular dt. 27.11.2017 prescribing the procedure for registration and manual disbursement of the budgetary support. Para 8 of the said Circular, states as under:-

“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 supported 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 alongwith 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 Central Tax Division/ name of 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 complied 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 a copy of Inspection report would be forwarded to the Assistant/Deputy Commissioner having jurisdiction over the eligible Unit.”

12. The said Circular in Para 9 (iii), also provided for the procedure to be followed in case an entity is carrying out its operations from multiple locations in a State under the same GSTIN as the eligible Unit. The said provision states as under:-

“9(iii). In case where an entity is carrying out its operations 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 Unit and the quantity of specified goods manufactured by the eligible Unit vis-à-vis the inputs, inputs 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 that 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.”

13. It is not in dispute that the Unit of the petitioner-Company located at Village Pandiyana (Bagheri Unit) and the other Unit located in Village Baga, filed separate applications for registration under the Budgetary Support Scheme with CGST Division Baddi and CGST Division Shimla, respectively.

14. The CGST Division Baddi, granted registration to the petitioner and Unique ID no.05/GST Baddi/GST Shimla/02AAACL6642L2ZL on 23.01.2018 (Annexure P-4).

15. However, in respect of the Baga Unit, application for registration was rejected.

16. The instant Writ petition relates only to the issue of budgetary support claimed by Bagheri Unit and not the Baga Unit.

Application dt.6.4.2018 seeking budgetary support for period from 01.07.2017 to 30.09.2017.

17. Annexure P-7 application dt. 06.04.2018 was filed by the petitioner in terms of the Circular dt. 27.11.2017 read with Notification dt. 05.10.2017, seeking budgetary support for the 2nd quarter, i.e. the period from 01.07.2017 to 30.09.2017, of Rs.5,89,96,942/- in the office of the Deputy Commissioner, CGST, Boileauganj, Shimla (H.P.).

18. The petitioner clarified that the credit balance of Rs.10,25,02,596/- lying in the Credit Ledger at the end of the quarter July to September, 2017, related to its sister Unit Baga Cement Works and not to its Bagheri Unit and that the petitioner was eligible for budgetary support of CGST/IGST paid

through cash ledger as per the prescribed format (Annexure P-9 dt. 16.07.2018).

19. Vide Order-in-Original no.10/DC/R/UTC/SML/2018 dt. 27.07.2018 (Annexure P-2) issued by the Deputy Commissioner, CGST, Boileauganj (respondent no.4), the Department, however, denied the benefit of budgetary support scheme to the petitioner on the ground that there is a credit balance of Rs.10,25,02,596/- lying in the credit ledger at the end of the quarter July to September, 2017. The 4th respondent rejected the entire claim of Rs.5,89,96,942/- in terms of Para 5.1(b) of the Notification on the ground that there was closing CGST balance of Rs.10,25,03,817/- in the credit ledger which could have been utilized for payment of taxes for the eligible Unit and so the amount of budgetary support allowable to the petitioner was zero.

20. Challenging the same, the petitioner filed an appeal before the Commissioner (Appeals), CGST, Chandigarh (Annexure P-10).

Application dt.6.4.2018 filed seeking budgetary support for period from 01.10.2017 to 31.12.2017

21. The petitioner had also filed a budgetary support claim of Rs.9,98,70,695/- in the office of the 4th respondent (Annexure P-11 dt. 06.04.2018) for the 3rd quarter, i.e. period from 01.10.2017 to 31.12.2017.

22. Vide Annexure P-3 Order-in-Original dt. 20.08.2018, the 4th respondent sanctioned budgetary support claim only to the extent of Rs.5,84,84,877/- and

without any notice or reason rejected the claim of the petitioner for the balance amount of Rs.4,13,85,818/-.

23. Petitioner challenged this before the Commissioner (Appeals), CGST, Chandigarh, vide Annexure P-12 dt. 28.11.2018.

The orders dt.27.9.2019 of the Appellate Authority

24. By a common order in appeal dt. 27.09.2019 (Annexure P-13), the said Appellate Authority dismissed both appeals filed by the petitioner without going into the merits of the case. He simply relied upon a Circular dt. 10.01.2019 (Annexure P-14) and held that the support under the scheme is in the nature of a grant and not a refund and that he had no jurisdiction to decide the same on the merits of the issue.

25. The order dt. 27.07.2018 and the order dt.20.08.2018 (to the extent it was against the petitioner), as also the order in appeal dt. 29.07.2019 passed by the Additional Commissioner (Appeals), CGST, Chandigarh are challenged by the petitioner had filed this Writ petition seeking the following reliefs:-

“i) *For the issuance of writ in the nature of mandamus/certiorari, quashing para-9 of Board Circular No.1068/1/2019-CX dated 10.1.2019 providing for no appellate remedy in case of budgetary support scheme and consequently also quash Order-In-Appeal No.CHD CGST-001-APPL-ADC-5-6-2019-20 dated 29.07.2019 passed by Additional Commissioner (Appeals), Chandigarh;*

AND/OR

ii) *for the issuance of writ in the nature of mandamus/certiorari, quashing the orders dated 27.7.2018 and 20.8.2018 (to the extent it is against the petitioners) passed by the Respondent no.4 whereby the*

Budgetary support applications under budgetary support scheme filed by the petitioner have been fully/partially rejected in contravention of the Circular No.1060/09/2017-CX dated 27.11.2017 read with Notification F. No.10(1)/2017-DBA-II/NER dated 5.10.2017 issued by the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion;

AND/OR

- iii) For issuance of a writ in the nature of mandamus directing the Respondent No.4 to allow the Budgetary support claimed by petitioner along with interest in view of budgetary support scheme dated 5.10.2017.”*

26. Though counsel for the petitioner raised contentions on merits in view of the order which we are proposing to pass, i.e. remit the matter back to the 4th respondent, we do not wish to go into the merits of the claim of the petitioner.

27. The following are the reasons for the said remand.

28. As far as the Order-in-Original dt. 27.07.2018 passed by the 4th respondent is concerned, the petitioner's contention was that the budgetary scheme is *qua* the eligible Unit and not *qua* the GSTIN number; that the petitioner had two manufacturing Units registered under the same GSTIN, i.e. Bagheri Unit and Baga Unit, whereas, only one Bagheri Unit was an eligible Unit registered under the budgetary support scheme; and in spite of the petitioner's specifically pointing out to the 4th respondent vide Annexure P-9 dt. 16.07.2018 that the credit balance of Rs.10,25,03,817/- lying in the electronic credit ledger account related to the petitioner's other Unit of Baga

Cement Works and that no part of such credit balance pertains to the eligible Bagheri Unit, the 4th respondent ignored the same and incorrectly held that the said input tax credit could have been utilized for payment of taxes for eligible Unit. He thus failed to notice that if the credit balance pertains to a non-eligible Unit like the Baga Unit though operating under the same GSTIN, such credit balance should be ignored for the purpose of computation of budgetary support claim.

29. Counsel for the petitioner also contended that Para 9 (iii) of the Circular dt. 27.11.2017, makes this clear, and that the 4th respondent also failed to consider Paras 5.9.1 of the Notification as well as Paras 4 to 6, 8 & 9 of the Circular before determining the budgetary support for the petitioner.

30. The Appellate Authority while dealing with the appeal against the Order-in-Original dt. 27.07.2018, in its order in appeal dt. 29.07.2019, took the view that there was no mechanism providing for appeal against orders of Sanctioning Authority and that the scheme is in the nature of a grant and not refund of duty and, therefore, held that it cannot grant any relief to the appellant.

31. Having regard to the fact that there appears to be non-consideration of the petitioner's plea as to its entitlement for full budgetary support for its Bagheri Unit for the 2nd quarter from 01.07.2017 to 30.09.2017, we set aside the Order-in-Original dt. 27.07.2018 of the 4th respondent as well as the order in appeal dt. 29.07.2019 of the Commissioner (Appeals), CGST, Chandigarh,

and remit the matter back to the 4th respondent to decide afresh after giving a personal hearing to the petitioner.

32. Coming to the Order-in-Original dt. 20.08.2018 passed by the 4th respondent for the 3rd quarter, i.e. from 01.10.2017 to 30.12.2017(insofar as he held against the petitioner is concerned), a reading of his order does not show that any notice of hearing was given by the 4th respondent.

33. When he had issued a notice of hearing while dealing with the claim for budgetary support for the previous quarter, i.e. from 01.07.2017 to 30.09.2017, we see no reason why he could not have issued a notice of hearing while deciding the claim for budgetary support for the 3rd quarter from 01.10.2017 to 31.12.2017.

34. The Jammu & Kashmir High Court in ***Dabur India Limited vs. Union of India & Anr.***¹, had held that the budgetary support scheme is governed by principles of natural justice and one such principle is the necessity of providing opportunity of hearing to the party who would suffer civil consequences. It held that principles of natural justice have to be read into the law considering the nature of duty to be performed by the respondent and that the scheme does not bar application of principles of natural justice.

35. Since the 4th respondent not only did not give any personal hearing to the petitioner but he also did not assign reasons for rejecting a portion of the claim for budgetary support, and appears to have adopted certain figures

¹ 2019 (90 MI) 1573

without putting them to the petitioner, the Order-in-Original dt. 20.08.2018 passed by the 4th respondent is also set aside and the matter is remitted back to the 4th respondent to the extent he had rejected the claim of the petitioner for grant of budgetary support for the 3rd quarter from 01.10.2017 to 31.12.2017. Consequently, we also set aside the order in appeal dt. 29.07.2019 of the Commissioner Appeals), CGST, Chandigarh, who had confirmed the Order-in-Original passed by the 4th respondent on the ground that he had no jurisdiction in the absence of a provision for appeal.

36. The 4th respondent shall reconsider the claim of the petitioner for budgetary support for the period from (i) 01.07.2017 to 30.09.2017 and (ii) 01.10.2017 to 31.12.2017 afresh, after giving a personal hearing to the petitioner and pass orders in accordance with law within three months from the date of receipt of a copy of this order.

37. The Writ petition is disposed of accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Satyen Vaidya)
Judge

June 13, 2024
(Yashwant)