



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 13<sup>th</sup> December, 2024

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**DIVISION BENCH : THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE**  
**THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
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## Writ Appeal No.09 of 2023

**Appellant** : Zydus Wellness Products Limited

**versus**

**Respondents** : Union of India and Others

Writ Appeal under Rule 148 of the Sikkim High Court (Practice and Procedure) Rules, 2011

### Appearance

Mr. J. P. Khaitan, Senior Advocate with Mr. Mayank Jain, Mr. Marmik Kamdar and Mr. Hissey Gyaltsen, Advocates for the appellant.

Ms. Sangita Pradhan, Deputy Solicitor General of India assisted by Ms. Natasha Pradhan and Ms. Sittal Balmiki, Advocates for the respondents.

and

## Writ Appeal No.10 of 2023

**Appellant** : Alkem Laboratories Limited

**versus**

**Respondents** : Union of India and Others

Writ Appeal under Rule 148 of the Sikkim High Court (Practice and Procedure) Rules, 2011

### Appearance


Mr. Jishnu Saha, Senior Advocate with Mr. Arun Siwach, Mr. Ishann Saha, Ms. Divya Kumar and Mr. Hissey Gyaltsen, Advocates for the appellant.

Ms. Sangita Pradhan, Deputy Solicitor General of India assisted by Ms. Natasha Pradhan and Ms. Sittal Balmiki, Advocates for the respondents.

## JUDGMENT

Meenakshi Madan Rai, J.


- The findings of the learned Single Judge in Writ Petition (C) No.20 of 2022 [*Zydus Wellness Products Limited vs. Union of India and Others*] and Writ Petition (C) No.27 of 2022 [*Alkem*



*Laboratories Limited vs. Union of India and Others*], vide a common judgment, dated 12-09-2023, are being called into question in these appeals, being Writ Appeal No.09 of 2023 [*Zydus Wellness Products Limited vs. Union of India and Others*] and Writ Appeal No.10 of 2023 [*Alkem Laboratories Limited vs. Union of India and Others*]. The appeals are being disposed of by this common judgment.

**2.** To comprehend the matter in its proper perspective, it is imperative to briefly consider the genesis of the dispute. The appellant, in Writ Appeal No.09 of 2023, incorporated under the Companies Act, 2013, on 23-04-2010, is engaged in the manufacture and sale of pharmaceuticals, cosmetics, food and beverages, falling under Chapters 21 and 33 of the GST Tariff of India. It has two manufacturing Units, both located in Namchi, Sikkim. The appellant in Writ Appeal No.10 of 2023 has five manufacturing Units, all located in Namthang, Sikkim and are engaged in manufacturing medicaments and food, falling under Chapters 30 and 21 of the GST Tariff of India.

**3.** The respondent no.1, the Department of Revenue, Ministry of Finance, issued notification no.20/2007-CE, dated 25-04-2007, as amended by the notification no.20/2008-CE, dated 27-03-2008, applicable to the North Eastern States, including Sikkim, exempting goods specified therein, from excise duty leviable, under the Central Excise Tariff Act, 1985 (5 of 1986). This "area-based" tax benefit was applicable to manufacturing Units, for a period of ten years, from the date of commercial production, if such production commenced any time between 01-04-2007 to 31-03-2017. These notifications were rescinded with effect from 01-07-



2017, vide notification no.21/2017, dated 18-07-2017. Consequent thereto, the scheme under the GST regime being the Budgetary Support Scheme (hereinafter, "BSS") was approved for *eligible Units*, located in Jammu & Kashmir, Uttarakhand, Himachal Pradesh and the North Eastern States, including Sikkim and notified on 05-10-2017, which provided budgetary support for the *residual period* to the existing manufacturing Units operating in the above States.

**(i)** Unit-I and Unit-II of *Zydus Wellness – Sikkim* being eligible, applied on 11-12-2017 for registration for both the Units under the scheme of BSS. Two separate Unique ID (UID) were approved with exemption benefit, for Unit-I available upto the period 05-04-2021 and for Unit-II upto the period 17-03-2027, vide letters dated 18-01-2018 and 09-04-2018, respectively.

**(ii)** On 05-10-2018, the Central Board of Indirect Taxes & Customs (CBIC), Department of Revenue, Ministry of Finance, issued a circular, mandating all eligible Units availing the budgetary benefit under the BSS, to re-apply for registration online, for the purpose of initiating the e-filing of claim applications, by the *eligible Units*, through ACES-GST portal. Applications were made accordingly for both the Units, pursuant to which, two new UIDs were allotted in November, 2021.

**(iii)** Meanwhile, *M/s. Zydus Wellness – Sikkim*, a Partnership Firm was converted into a Public Limited Company, namely, *Zydus Nutritions Limited*, on 28-02-2019. Subsequent thereto, GSTIN was allotted to the petitioner under the Central Goods and Services Act, 2017 (hereinafter, "CGST Act") under the name of "*Zydus Nutritions Limited*". On 04-06-2019, the name

*Zydus Nutritions Limited* was changed to "*Zydus Wellness Products Limited*". Thereafter, the petitioner on 02-07-2019 and 12-05-2021 applied for fresh UIDs for Unit-I and Unit-II, before the respondent no.3, which till date have not been granted.

**(iv)** The petitioner filed claim applications under the BSS for the period upto December, 2021 manually and as a matter of precaution after the allocation of UIDs, online as well, on the ACES-GST portal. The claim applications as detailed in the writ petition for Unit-I and Unit-II are still pending approval, except upto the period December, 2018, for which the budgetary reimbursement was allowed.

**4.** In the case of *Alkem Laboratories Limited*, reliance was placed on the same notifications *supra*. On 28-08-2019, *Cachet Pharmaceutical Private Limited* was acquired by the petitioner by way of slump sale. The said Unit under the notification of 2007, was entitled to exemption for a period of ten years, from the date of commercial production, i.e., upto 09-03-2027. On notification of the BSS on 05-10-2017, a new UID was allotted to the petitioner. On 05-12-2019, after the acquisition, the petitioner filed an application before the respondents no.3 and 4 seeking issuance of fresh UID for Unit-V, under the new GSTIN registration, this was denied, consequently, the petitioner could not file online claims for the budgetary support. The claims were thus filed manually for the said period.

**5.** The common prayers in the writ petitions *inter alia* were (i) to hold and declare the omission and withholding of the applications filed by the petitioners under the BSS as arbitrary, unreasonable and illegal, being violative of the scheme; (ii)

issuance of a writ, order or direction in the nature of mandamus, directing the respondent no.3 to issue fresh UIDs to the petitioners; and (iii) issuance of a writ, direction or order in the nature of mandamus, directing the respondent no.3 to allow the claim applications of the petitioners, for the periods claimed in accordance with the scheme of budgetary support.

**6.** The learned Single Judge while considering the writ petitions, settled the following question for determination;

*"Are the Petitioners entitled to the budgetary support under the Budgetary Support Scheme?"*

**7.** The petitioners (appellants herein), before the learned Single Judge contended that, the change of ownership and therefore the grant of fresh UID and registration number did not disentitle the 'Units' from availing the budgetary support as the BSS seeks to provide budgetary support to "*eligible Units*" and not to the 'owners' thereof. The respondents however insisted that because of the change in ownership, the petitioners as completely new legal entities were not entitled to the BSS. The learned Single Judge took into consideration paragraph 2.3 of the BSS, which referred to notification no.20/2007-CE, dated 25-04-2007, and its operation *inter alia* in Sikkim as amended from time to time; paragraph 4.1 which defined "*eligible Unit*"; paragraph 4.3 which defined "*residual period*"; paragraph 5.7 which requires the "*manufacturer*" to apply for the benefit under the BSS; paragraph 5.8 which defines '*manufacture*'; paragraphs 7 and 7.1 which provide for the manner of budgetary support, section 2(72) of the CGST Act which defines the word '*manufacture*', section 2(84) of the CGST Act which defined the word '*person*' and section 22 of the CGST Act which provides for registration of persons. After due

consideration of the provisions it was concluded *inter alia* that, it is evident that, *Zydus Wellness - Sikkim* and *Zydus Nutritions Limited* (later, *Zydus Wellness Products Limited*) and *Cachet Pharmaceutical Private Limited* as well as *Alkem Laboratories Limited* were all 'persons' as defined in section 2(84) of the CGST Act. The Court observed and concluded as follows;

**"38.** Under the *CGST Act, 2017*, it is the 'person' as defined under section 2(84) who is liable to the tax thereunder. Consequently, the *Budgetary Support Scheme* which is limited to the tax which accrues to the Central Government under the *CGST Act, 2017* and *IGST Act, 2017* is liable to be paid by the 'person'. Reading the definition of 'person' under section 2(84) and the requirement of registration under section 22 of such 'persons' makes it clear that *Zydus Nutritions Limited* (later *Zydus Wellness Products Limited*) and *Alkem Laboratories Limited* were required to be registered under section 22 after the change in ownership. Accordingly and admittedly, *Zydus Nutritions Limited* was registered under Rule 10(1) on 26.03.2019 and *Alkem Laboratories Limited* on 3.10.2019. **Consequently, both the petitioners who were separate and distinct legal entities from the previous 'persons', i.e., Zydus Wellness-Sikkim and Cachet Pharmaceuticals Private Limited, who were eligible under exemption notification 20/2007-CE could not have filed the application for budgetary support under paragraph 7 of the Budgetary Support Scheme. The petitioners, as rightly contended by the respondents, were not 'eligible units' as defined under paragraph 4.1 of the budgetary scheme.** The intention of the Government of India in providing the *Budgetary Support Scheme* was to support those 'eligible units' for the 'residual period' not exceeding ten years of commercial production during which they would have been eligible to avail exemption for the specified goods under exemption notification no. 20/2007-CE in recognition of the hardship arising due to its withdrawal. Clearly, the exemption under exemption notification no. 20/2007-CE was to those manufacturers who have made investments in the State of Sikkim. The untimely withdrawal of exemption notifications before the manufacturers could enjoy its benefits for its full term as the new GST regime came in, persuaded the Government of India to provide budgetary support to those 'eligible units' and not to those who have not made any investment to be able to enjoy the benefit of the exemption notification no. 20/2007-CE for the 'residual period'. **Neither *Zydus Wellness Products Limited* nor *Alkem Laboratories Limited* could legally claim that they were entitled to the exemption under the exemption Notification No. 20/2007-CE as they did not exist then."**

[emphasis supplied]

**8.** The appellants contend before this Court that the objective of the notification of 2007, was to encourage setting up of new Units or substantially expanding existing Units, *inter alia* in Sikkim, for the manufacture of specified goods, consequent upon which exemption from central excise duty was to be granted to such Units, for a period of ten years, on the commencement of commercial production and sale of the specified goods. That, there was no provision in the Central Excise notifications specifying that, the exemption would be discontinued if there was a change in the ownership of the Unit. Circular bearing no.960/03/2012-CX, dated 17-02-2012, of the Department of Revenue, Ministry of Finance, stood sentinel to such fact. On the commencement of the GST regime, the Central Excise notifications (*supra*), ceased to be operative, however, the GST Council was of the view that the decision to continue with any incentive given to specific industries, in existing industrial policies of States or the Central Government, would be with the concerned State or Central Government. Inviting the attention of this Court to paragraphs 4.1, 4.2, 4.3 and 5.3 of the BSS, it was emphasised that, the overall BSS was to be valid upto 30-06-2027 as provided in paragraph 5.3 of the BSS. That, in the assailed judgment reference was made to paragraphs 5.7, 7.1 and 7.2 of the said BSS, which are in fact procedural provisions for payments of the budgetary support and the word 'manufacturer' in paragraphs 5.7 and 7.1 of the BSS means the "eligible Unit". That, paragraphs 5.9.1, 8.1, 8.2, 8.5, 9.1, 9.3 and 9.5 of the BSS clarify this aspect. Thus, a person having a different GST registration is a mere matter of procedure and has no bearing to the eligibility for budgetary support when the 'Unit'

remains in the same location, the specified goods manufactured remain the same as also the date of commencement of commercial production. The learned Single Judge was of the view that the *manufacturer* must be a *person* and in case of change of ownership or expansion, the *person* (transferee) claiming budgetary support, becomes different from the *person*, who made the investment to set up the Unit. It was observed that a GST registered person, who is different from the GST registered person who invested and set up the Unit, is not entitled to the BSS benefit. Learned Senior Counsel urged that, the documents of the respondents reveal that the DPIIT (Department of Promotion of Industry and Internal Trade), proposed the insertion of an "exception clause" in the BSS, to exclude Units in case *inter alia* of change of ownership, which was disagreed to by the CBIC. In such circumstances, the non-speaking decision of the respondents in the instant matters, to discontinue the budgetary support, in case of change of ownership of the *eligible Unit* or expansion by way of purchase is not only sans support but is in fact contrary to the provisions of the said BSS. Hence, both the writ appeals be allowed.

**9.** Resisting the arguments advanced by the learned Senior Counsel for the appellants, learned Deputy Solicitor General of India, for the respondents, while supporting the impugned judgment contended that, it accurately encapsulates the legislative intent behind the budgetary support. That, the BSS is a policy driven initiative floated as a measure of goodwill, resting at the discretion of the Government and is a grant-in-aid from the Central Government and not the refund of duty under taxation law. The appellants subsequent to the changes mentioned, attained a

completely different entity and therefore ceased to be an existing *Unit*. The eligibility criteria as mentioned in paragraph 4.1(a) of the BSS was not fulfilled due to the changes described as it was not registered under the Central Excise era, nor did it exist prior to migration to GST. These appeals thereby deserve a dismissal.

**10.** The verbal arguments advanced before this Court by the learned Counsel for the parties were heard *in extenso* and written submissions made on behalf of the appellants and respondents meticulously perused. All pleadings, documents on record, citations made at the Bar and the impugned judgment have also been perused.

**11.** The question that arises for determination before this Court in both the appeals is, whether the benefit under the BSS is 'owner' specific or 'Unit' specific.

**12.** While disagreeing with the findings and conclusion of the learned Single Judge that the appellants pursuant to the change in name in the case of *Zydus Wellness - Sikkim* and acquisition of Cachet Pharmaceutical Limited in the case of *Alkem Laboratories Limited*, assumed different legal entities from their previous ones, rendering them ineligible for budgetary support, it is imperative to first navigate the contents of the notification no.20/2007-CE, dated 25-04-2007, which was rescinded vide notification no.21/2017-CE, dated 18-07-2017. The relevant paragraph of the notification provides as follows;

“.....

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, **being satisfied that it is necessary in the public interest so to do**, hereby exempts the goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) other than those mentioned in the Annexure and **cleared from a unit located in the States of Assam or Tripura**

and



**or Meghalaya or Mizoram or Manipur or Nagaland or Arunachal Pradesh or Sikkim, as the case may be, from so much of the duty of excise leviable thereon under the said Act as is equivalent to the duty payable on value addition undertaken in the manufacture of the said goods by the said unit.**

.....” [emphasis supplied]

**13.** The notification of 2007 was issued with the specific purpose of (i) exempting the goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (ii) which was cleared from a Unit located in the areas detailed in the petition, including Sikkim (iii) from so much of the duty of excise leviable thereon, under the said Act as is equivalent to the duty payable on value addition, undertaken in the manufacture of the said goods by the said Unit. The contents extracted *supra*, are self-explanatory, suffice it to elucidate that the Government has exercised its power in public interest. Certain amendments were inserted in the aforementioned notification by notification no.20/2008-CE, dated 27-03-2008. A purposive interpretation is to be given to the object of the notification of 2007 which ought to be considered holistically and not interpreted in a narrow ambit. It was undoubtedly a concerted effort on the part of the Central Government to bring the areas mentioned in the notifications, which are in difficult terrain, at par with the rest of the country, in terms of industrialisation and investment. This can also be culled out from agenda item no.3 of “Agenda for 2<sup>nd</sup> GST Council Meeting” dated 30-09-2016 [Annexure P2 (colly) of the Writ Petition (C) No.20 of 2022]. Consequently, it emanates that the object of the notification of 2007 was premised on development of the area by encouraging industrialisation and investment in geographical locations which are difficult to access on account of their terrain.

and

**14.** Pursuant to the GST regime, the notification, dated 05-10-2017, was issued, the provisions relevant for the present purposes are extracted hereinbelow;

**“MINISTRY OF COMMERCE AND INDUSTRY  
(Department of Industrial Policy and Promotion)**

**NOTIFICATION**

New Delhi, the 5th October, 2017

**Subject : Scheme of budgetary support under Goods and Service Tax Regime to the units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim.**

**F.No.10(1)/2017-DBA-II/NER.**—In pursuance of the decision of the Government of India to provide budgetary support to the existing eligible manufacturing units operating in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim under different Industrial Promotion Schemes of the Government of India, for a residual period for which each of the units is eligible, a new scheme is being introduced. **The new scheme is offered, as a measure of goodwill, only to the units which were eligible for drawing benefits under the earlier excise duty exemption/refund schemes but has otherwise no relation to the erstwhile schemes.**

**1.2 Units which were eligible under the erstwhile Schemes and were in operation through exemption notifications issued by the Department of Revenue in the Ministry of Finance, as listed under para 2 below would be considered eligible under this scheme.** All such notifications have ceased to apply w.e.f. 01.07.2017 and stands rescinded on 18.07.2017 vide notification no. 21/2017 dated 18.07.2017. The scheme shall be limited to the tax which accrues to the Central Government under Central Goods and Service Act, 2017 and Integrated Goods and Services Act, 2017, after devolution of the Central tax or the Integrated tax to the States, in terms of Article 270 of the Constitution.

**2.** The erstwhile Schemes which were in operation on 18.07.2017 were as follows:

**2.3 North East States including Sikkim-** Notification no. 20/2007-CE dated 25.04.2007 as amended from time to the time.

**3.2 OBJECTIVE**

The GST Council in its meeting held on 30.09.2016 had noted that exemption from payment of indirect tax under any existing tax incentive scheme of Central or State Governments shall not continue under the GST regime and the concerned units shall be required to pay tax in the GST regime. The Council left it to the discretion of Central and

and



State Governments to notify schemes of budgetary support to such units. **Accordingly, the Central Government in recognition of the hardships arising due to withdrawal of above exemption notifications has decided that it would provide budgetary support to the eligible units for the residual period by way of part reimbursement of the Goods and Services Tax, paid by the unit limited to the Central Government's share of CGST and/or IGST retained after devolution of a part of these taxes to the States.**

#### 4. DEFINITIONS

**4.1 'Eligible unit' means a unit which was eligible before 1<sup>st</sup> day of July, 2017 to avail the benefit of ab-initio exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may be, issued in this regard, listed in para 2 above and was availing the said exemption immediately before 1<sup>st</sup> day of July, 2017. The eligibility of the unit shall be on the basis of application filed for budgetary support under this scheme with reference to:**

(a) Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST; or

(b) GST registration for the premises as a place of business, where manufacturing activity under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 were being carried prior to 01.07.2017 and the unit was not registered under Central Excise.

**4.2 'Specified goods' means the goods specified under exemption notifications, listed in paragraph 2, which were eligible for exemption under the said notifications, and which were being manufactured and cleared by the eligible unit by availing the benefit of excise duty exemption, from:**

**(a) The premises under Central Excise with a registration number, as it existed prior to migration to GST; or**

(b) The manufacturing premises registered in GST as a place of business from where the said goods under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 were being cleared.

**4.3 'Residual period' means the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production, as specified under the relevant notification listed in paragraph 2, during which the eligible unit would have been eligible to avail exemption for the specified goods. The documentary evidence regarding the date of commercial production shall be submitted in terms of para 5.7.**

....." [emphasis supplied]

The notification thus clarifies that the BSS is a measure of goodwill, only for the *Units* which were eligible for drawing benefits under the earlier excise duty exemption. It was emphasised that it

otherwise had no relation to the erstwhile schemes. The notification further provided that such benefit would be provided to *eligible existing manufacturing* Unit as it existed prior to migration to GST, to a *manufacturer* that commences commercial production on or after 01-04-2007, but not later than 31-03-2017.

**15.** It is not in dispute that the *Zydus Wellness – Sikkim* was set up in Sikkim on 23-04-2010 and started its commercial production for Unit-I on 06-04-2011 and for Unit-II on 18-03-2017. *Cachet Pharmaceutical Private Limited*, as averred, started its commercial production on 10-03-2017. All Units were existing eligible Units in the State of Sikkim prior to the BSS and the manufacturing activity in the said Units were being carried on prior to 01-07-2017 as mandated by the BSS. At this juncture, it would be relevant to consider that in terms of paragraph 4.1 of the BSS an *eligible Unit* is one which was eligible before 01-07-2017, to avail the benefit of *ab initio* exemption or exemption by way of refund from the payment of central excise duty, under notifications issued in this regard, listed in paragraph 2 of the BSS and was availing the said exemption immediately before 01-07-2017. Subsequently, after the GST regime, *Zydus Wellness – Sikkim* having converted to *Zydus Nutritions Limited* on 28-02-2019 and *Cachet Pharmaceutical Limited* handed over rights to *Alkem Laboratories Limited* on 15-10-2019. *Alkem Laboratories Limited* was an existing Unit as well. In our considered view, the mere fact of expansion, acquisition or change of name did not do away with the primary requirement that these were existing Units, prior to migration to the GST and thereby eligible Units under the BSS.

and

**16.** The minutes of the meeting dated 05-11-2019, which was forwarded by the DPIIT to the concerned persons, vide Office memorandum dated 18-11-2019, on the amendment proposed by the CBIC in the BSS to Units located in the States of Jammu & Kashmir, Himachal Pradesh, Uttarakhand and North Eastern States including Sikkim, under the Goods and Services Tax, held as follows;

“.....

2. The following discussion and decision took place in the meeting;

Point No.	Point of discussion	Decision
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	Eligibility of unit in case of expansion, relocation and change of ownership	Secretary, DPIIT instructed that the issue shall again be examined by providing an <b>exception clause</b> for such units so as to avoid any misuse.  (Action: CBIC)

.....” [emphasis supplied]

Insertion of such an exception clause subsequently, to deny the *eligible Unit* from the benefit of the BSS has not been brought to the notice of this Court by the respondents, presumably as no such insertion materialised.

**17.** Paragraph 1.2 of the BSS, dated 05-10-2017, provides as follows;

**“1.2 Units which were eligible under the erstwhile Schemes and were in operation through exemption notifications issued by the Department of Revenue in the Ministry of Finance, as listed under para 2 below would be considered eligible under this scheme.** All such notifications have ceased to apply w.e.f. 01.07.2017 and stands rescinded on 18.07.2017 vide notification no. 21/2017 dated 18.07.2017. The scheme shall be limited to the tax which accrues to the Central Government under Central Goods and Service Act, 2017 and Integrated Goods and Services Act, 2017, after devolution of the Central tax or the

and



Integrated tax to the States, in terms of Article 270 of the Constitution.” [emphasis supplied]

**18.** Paragraph 4.1 of the BSS defines “*eligible Unit*” which is as follows;

**“4.1 ‘Eligible unit’ means a unit which was eligible before 1<sup>st</sup> day of July, 2017 to avail the benefit of ab-initio exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may be, issued in this regard, listed in para 2 above and was availing the said exemption immediately before 1<sup>st</sup> day of July, 2017. The eligibility of the unit shall be on the basis of application filed for budgetary support under this scheme with reference to:**

(a) Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST; or

(b) GST registration for the premises as a place of business, where manufacturing activity under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 were being carried prior to 01.07.2017 and the unit was not registered under Central Excise.” [emphasis supplied]

**(i)** The definition of *eligible Unit* nowhere contemplates that if there is a change in ownership or expansion of a particular Unit, then the Unit would cease to be an *eligible Unit*. Indeed, the notification prescribes no other requirements or caveats for a manufacturer to qualify as an eligible Unit, save what is specified in paragraph 4.1 above to avail the benefit of the BSS. It is now no more *res integra* that if a statute provides for a thing to be done in a particular manner then it has to be done in that manner alone and in no other manner. [See, **Chandra Kishore Jha vs. Mahavir Prasad and Others**<sup>1</sup>]

**(ii)** In **Opto Circuit India Limited vs. Axis Bank and Others**<sup>2</sup> the Supreme Court observed that;

**“12.** The action sought to be sustained should be with reference to the contents of the impugned order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court. This has been

<sup>1</sup> (1999) 8 SCC 266

<sup>2</sup> (2021) 6 SCC 707

and



succinctly laid down by this Court in *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405] as follows : (SCC p. 417, para 8)

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji* [*Commr. of Police v. Gordhandas Bhanji*, 1951 SCC 1088] : (SCC p. 1095, para 9)

'9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

Orders are not like old wine becoming better as they grow older."

**(iii)** Reading more into the definition of "*eligible Unit*" by the learned Single Judge and interpreting it to mean that change in the person filing the claims would no longer qualify the manufacturers as *eligible Units*, appears to be a misreading/misinterpretation of the provision by including dimensions and facets which the provision itself does not envision or even contemplate. It is a settled principle of law that the Courts should not read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent and the intention of the legislation must be found in the words used by the legislature itself. [See *Ranjan Kumar Chadha vs. State of Himachal Pradesh*<sup>3</sup>]

<sup>3</sup> 2023 SCC OnLine SC 1262

and



**19.** Paragraph 4.3 defines "*residual period*" which is extracted hereinbelow;

**4.3 'Residual period' means the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production, as specified under the relevant notification listed in paragraph 2, during which the eligible unit would have been eligible to avail exemption for the specified goods. The documentary evidence regarding the date of commercial production shall be submitted in terms of para 5.7.**

[emphasis supplied]

As manifest from the provision, "*residual period*" is the period remaining for the tax exemption, which was rendered incomplete on account of the BSS being notified on 05-10-2017. As the 2017 notification came into force in the midst of the ten year period of commercial production by the appellants as already discussed hereinabove, it is reiterated that the ten year period was not complete when the GST regime came to be enforced.

**(i)** As correctly argued by the learned Senior Counsel for the appellants paragraph 5.7 of the BSS deals with procedural aspect as also paragraph 5.8 and paragraph 7.1 and its consideration is extraneous to the circumstances in issue. We opine that there is no necessity to delve into a prolix discussion on these paragraphs, dealing as they do with procedure prescribed.

**20.** From the "office memorandum", dated **03-03-2022**, issued by the Under Secretary, CBIC, addressed to the Deputy Secretary (GSTSS), DPIIT, it emerges that the issue of eligibility in case of expansion, relocation of the existing Unit or change of ownership/constitution was duly considered and observed as follows;

"....."

2. This office vide aforesaid OM dated 19.02.2021 has sent views of CBIC in respect of proposals sent by your office vide OM F.No.10(1)/2017(Vol.II)-GSTSS dated 18.11.2019. **The proposal on issue of**

and



**eligibility of the units that are already availing benefit of the Scheme in the event of their undergoing an expansion, relocation and change of ownership was not found possible to be agreed** (Point no.5 of DPIIT's O.M. dated 18.11.2019) and the same was also communicated vide this office aforesaid OM dated 19.02.2021. The action/decision taken by the DPIIT on the same has not yet been communicated to this office. However, the DPIIT vide OM F.No. 10/1/2021-GSTSS dated 20.10.2021 in the matter of eligibility of M/s. Pritika Autocast Ltd. following amalgamation with M/s. Pritika Auto Industries Ltd. has decided that **"after due examination and discussion with CBIC and as per the Scheme guidelines, if any unit undergoes for relocation, expansion and change of ownership, is not eligible under the Scheme of Budgetary Support"**.

3. Since, the Scheme of Budgetary Support is introduced by the Department of Industrial Policy & Promotion, therefore, **DPIIT is also requested take a call on the subject issue of change of constitution/ ownership in respect of the following units referred to this office by field formations and DPIIT respectively.**

....." [emphasis supplied]

This observation vide the office memorandum, apparently remained uncommunicated to the appellants. It was further noted in the office memorandum (*supra*), that, in a case of change of ownership, *M/s. Alkem Laboratories Limited* did not appear to be eligible for the benefit under BSS as held by DPIIT in the similar case of *M/s. Pritika Auto Industries Limited*. For *Zydus Wellness - Sikkim* it was observed that on the same reasoning as in the case of *Alkem Laboratories Limited*, *Zydus Nutritions Limited* also did not appear to be eligible for the BSS. However, it was requested that the eligibility of the above-mentioned Units be intimated to the Office of the Under Secretary (CX-8) of the Department of Revenue, Central Board of Indirect Taxes and Customs, Ministry of Finance, as has been done in the case of *M/s. Pritika Autocast Limited*. This communication evidently was not carried forward to the appellants herein, as there is no communication in this context on the records of the case, nor were submissions advanced by the learned Deputy Solicitor General of India on this aspect.

and

**21.** It is noticed in the office memorandum, dated **19-02-2021**, referred to in the communication dated **03-03-2022** *supra*, that it was dealing with the implementation of the BSS to the *eligible industrial Units* located in Himalayan States and North-Eastern States, including Sikkim – technical/operational issues. It was observed therein that it has not been found possible to agree to the following points;

“2.2. It has not been found possible to agree to following points:-

(i) .....

(ii) Eligibility of the units that are already availing benefit of the Scheme in the event of their undergoing and expansion, relocation and change of ownership. ....”

This disagreement was not communicated to the appellants.

**22.** A letter dated **09-02-2022** of the Assistant Commissioner, Gangtok Division, Siliguri CGST and CX Commissionerate, addressed to Zydus Wellness Products Limited, revealed that the former have been informed by the Assistant Commissioner, Hq Technical, Siliguri Commissionerate, that communication submitted by the Zydus Wellness Products Limited for obtaining UID under the BSS, was forwarded to its Delhi Office, for examining and resolving the matter as per applicable provisions. The matter appears to have remained unresolved.

**23.** Another letter dated **06-04-2022** of the CBIC addressed to the CGST & CX, Central Excise, Siliguri, West Bengal, dealt with the *"Representation of the Budgetary Support Scheme – Issue of eligibility in case of expansion, relocation of the existing Unit or change of ownership/constitution – reg."* wherein it was stated *inter alia* as follows;

“ .....

and



2. In this regard, I am directed to inform that the reply on the issue of M/s Cipla Ltd. has already been sent to your office vide this office letter of even no. dated 21.12.2021 (copy enclosed)

**3. Further, the matter related to eligibility of unit under the Budgetary Support Scheme in case of expansion, relocation of existing unit or change of ownership/constitution was referred to DPIIT for clarification vide this office OM of even no. dated 03.03.2022 (copy enclosed).**

4. In this regard, the DPIIT vide their OM F.No.10/1/2021-GSTSS dated 31.03.2022 has referred to their letter dated 20.10.2021 (copy enclosed) wherein the matter of eligibility of M/s. Pritika Autocast Ltd. following amalgamation with M/s. Pritika Auto Industries Ltd. has been decided that **"after due examination and discussion with CBIC and as per the Scheme guidelines, if any unit undergoes for relocation, expansion and change of ownership, is not eligible under the Scheme of Budgetary Support".**

**5. In view of the decision taken by DPIIT vide their above referred OM dated 20.10.2021, the issues of M/s Alkem Laboratories Ltd. and M/s. Zydus Wellness may be decided accordingly.**

....." [emphasis supplied]

Pausing here momentarily, the office memorandum dated **31-03-2022** referred to in paragraph 4 *supra* was also regarding the issue of eligibility, in case of expansion, relocation of the existing Unit or change of ownership, wherein reference was made to the communication, dated **20-10-2021**.

**24.** In the instant cases as seen from the litany of correspondence and office memoranda *supra*, the anxiety of the appellants have remained unaddressed. There is no information regarding rejection or for that matter, any decision taken by the DPIIT regarding the eligibility or otherwise of the appellants. As is evident, paragraph 5 of the communication dated **06-04-2022** (*supra*) leaves the decision concerning the eligibility of the appellants to be taken by the CGST & CX, Central Excise, Siliguri, West Bengal.

**25.** Having given due consideration to the entire gamut, the facts and circumstances of the case and documentary evidence placed before us, we are inclined to agree with the argument of the

appellants that to avail of the BSS, the concerned Unit is to be located in the areas specified in the notifications of 2007 and 2017, producing specified goods which were to be cleared from the self same Units. The intent of the BSS, pivoted around the geographical location of the Unit and the benefit that was to accrue to the said *Units* for the *residual period*, as already discussed. We are constrained to observe that by change of names or acquisition of a new Unit within the State of Sikkim, there is no change in respect of the geographical location of the Unit, which were in existence in Sikkim prior to the GST regime.

**26.** On the anvil of the foregoing detailed discussion, the impugned judgment rendered by the learned Single Judge in the two writ petitions is liable to be set aside and is hereby set aside.

**27.** The two writ appeals are disposed of with a direction to the concerned respondent authorities to adjudicate the claims of the appellants in accordance with the foregoing observations of this Court and after affording an opportunity of hearing to the appellants, within a period of twelve weeks from date.

**( Meenakshi Madan Rai )  
Judge**

**( Biswanath Somadder )  
Chief Justice**

Approved for reporting : **Yes**