IN THE HIGH COURT OF SIKKIM

CIVIL EXTRA ORDINARY JURISDICTION

W. P. (C) No. 41 OF 2015

Sun Pharma Laboratories Limited,
(Formally known as Sun Pharma
Drugs Pvt. Ltd./Sun Pharma Sikkim),
Plot NO. 754, Setipool,
P. O. Ranipool,
East Sikkim,
Sikkim – 737 135. ------------------------ Petitioner.

-VERSUS-

1. The Union of India & Ors.,
   Through the Secretary, Ministry
   Of Finance Department of Revenue,
   North Block,
   New Delhi.

2. The Commissioner, Central Excise,
   Customs and Service Tax, Siliguri,
   Commissionerate, Central Avenue Building,
   4th Floor, Haren Mukherjee Road,
   Hakimpara,
   Siliguri – 734 001. ------------------------ Respondents.

PETITIONER
ADVOCATE (S)
FOR ------------------- Ms. Sangita Pradhan.

RESPONDENT
ADVOCATE (S)
FOR ----------------------

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WP (C) No. 41/2015

Sun Pharma Laboratories Ltd. vs. Union of India & Ors.

BEFORE

MR. JUSTICE SATISH K. AGNIHOTRI, ACJ. &

MRS. JUSTICE MEENAKSHI MADAN RAI, J.

11. **28.07.16** **(Agnihotri, ACJ)**

Present: Mr. Naresh Thacker and Ms. Sangita Pradhan, Advocates for the Petitioner.

Mr. Jigmi P. Bhutia, Advocate for the Respondents.

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Assailing the Notifications bearing No. 21/2008-C.E. dated 27.03.2008 and No. 36/2008-C.E. dated 10.06.2008, issued by the first respondent, the instant Petition is filed, seeking permission to avail the benefit of exemption from payment of excise duty as provided in terms of Notification No. 56/2003-C.E. dated 25.06.2003 by the first respondent.

2. Briefly stated facts, germane to the adjudication of the *lis,* involved in the writ petition are that the petitioner is stated to be a partnership firm engaged in manufacturer of P & P Medicament, falling under Chapter Heading No. 3004. It is further stated that the petitioner is holding Central Excise Registration No. AARCS9750KEM003. According to the petitioner, the Ministry of Commerce and Industry announced a special package of incentives vide Memorandum/Notification No. 14(2)/2002-SPS dated

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		23.12.2002 (Annexure P-1) with intent to develop the industries in the State of Sikkim. On the basis of said incentive scheme, exemption Notification No. 56/2003 dated 25.06.2003 (Annexure P-2) was announced granting exemption to the goods specified thereto manufactured in the industries located in the State of Sikkim, from so much of the duty of excise leviable thereon under any of the said Acts as is equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2002. **3.** As posited by the petitioner, pursuant thereto, the petitioner invested a sum of Rs.39,26,34,897/- during the period from 2005 to 2008 till the date of impugned notification and, thereafter, the investment continued till 31.03.2014 is of Rs.253,89,64,817/-. According to the petitioner, the industrial production commenced from 20.04.2009. The petitioner being the manufacturer of P & P Medicaments, is entitled to exemption, as stated, falling under Sl. No. 11 of the Schedule to Notification No. 56/2003 dated 25.06.2003. **4.** In the course of arguments, it is submitted by Mr. Naresh Thacker, learned counsel appearing for the

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		petitioner that the Commissioner, Customs, Central Excise & Service Tax, Siliguri, has passed several orders confirming the show cause –cum- demand notice approving the eligibility for the credit @ 56% of the duty payable on the value addition in the manufacture of the final product, on the basis of the impugned amended notifications dated 27.03.2008 and 10.06.2008. It is further submitted that assailing the order passed by the Commissioner, Customs, Central Excise & Service Tax, Siliguri, several appeals being (i) Appeal No. E/75930/2014-DB; (ii) Appeal No. E/76003/2015; (iii) Appeal No. E/76004/2016 and (iv) Appeal No. E/75290/2016, are filed and pending consideration before the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata. **5.** Learned counsel appearing for the petitioner seeks a direction to the Appellate Tribunal to dispose of the said appeals on its own merit, pending the instant writ petition in the Court. **6.** Concurring with above request, Mr. Jigmi P. Bhutia, learned counsel appearing for the respondents, submits and reiterate that the Appellate Tribunal be directed to

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		dispose of the pending appeals to settle the disputed facts as well as law. **7.** In view of the aforestated factual matrix and question of law involved herein, we are inclined to direct the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata to examine the appeals, being (i) Appeal No. E/75930/2014-DB; (ii) Appeal No. E/76003/2015; (iii) Appeal No. E/76004/2016 and (iv) Appeal No. E/75290/2016, filed by the petitioner herein and take a decision by a reasoned order on its own merit, in accordance with law, at the earliest, preferably within a period of two months, hence. **8.** List the writ petition on receipt of order rendered by the Appellate Tribunal on 26.10.2016. **9.** A copy of this order be transmitted forthwith to the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata for information and necessary compliance. Judge 28.07.2016 Acting Chief Justice 28.07.2016

ds/jk **Index : ~~Yes~~ / No**
Internet : Yes / ~~No~~