

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CJ Court

Case: WP(C) No. 1859 of 2020

M/S Lupin Ltd. Epip Kartholi Sidco
Industrial Complex, Bari Barahmana

.....Appellant/Petitioner(s)

Through :- Sh. Bharat Raichandani, Advocate.

v/s

Union of India and others

.....Respondent(s)

Through :- Sh. Jagpaul Singh, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

01. Heard Sh. Bharat Raichandani, learned counsel for the petitioner and Sh. Jagpaul Singh, learned counsel for the respondents.

02. The petitioner has invoked the extraordinary discretionary jurisdiction of this Court for quashing of the order dated 26.08.2020 whereby the respondents have declined part of his claim for budgetary support for the period January to March, 2020.

03. Admittedly, the petitioner was entitled to exemption in Tax/Central Excise for a period of 10 years from the date of commencement of business/commercial production as per the earlier scheme in vogue before the enforcement of the GST. After the GST was enforced, the dealers/manufacturers were permitted to avail the tax exemption by way of budgetary support.

04. The petitioner alleges that he was entitled to tax exemption up to the year 2023 and, therefore, under the new tax regime, respondents are liable to extend the budgetary support up to that period. Accordingly, the petitioner applied for the grant of budgetary support for the period January to March, 2020 for a sum of Rs.

93,29,509/-. The respondents accepted the claim for the grant of Rs. 68,67,539/- but rejected the claim for budgetary support for the balance amount of Rs. 24,61,920/-.

05. The argument of learned counsel for the petitioner is that no reason has been assigned for rejecting the part of the claim for the budgetary support for the above period and that no notice or opportunity of hearing was given before doing so.

06. Sh. Jagpaul Singh, learned counsel has filed counter affidavit/objections to the writ petition and has heavily relied upon paragraph 4 of the same. He submits that initially, the petitioner was declared to be eligible for exemption/budgetary support till 05.02.2023 but after the subsequent investigation, in view of the order dated 26.07.2021, the petitioner's unit was found eligible for such benefit only upto 06.11.2017. Therefore, the claim of the petitioner for the budgetary support for February to March, 2020 was rejected.

07. The petitioner has been duly granted exemption/budgetary support till the beginning of the year 2020. Even, for the period January to March, 2020 part of the claim for budgetary support has been accepted meaning thereby that the petitioner is eligible for the grant of such benefits.

08. No reason has been assigned anywhere as to why the claim in respect of the balance amount has been rejected.

09. In addition to the above, the ineligibility of the petitioner to receive the budgetary support has been decided on the basis of the office memorandum dated 26.07.2021. The said office memorandum was not in existence on the date on which the impugned order was passed i.e. on 26.08.2020. Therefore, it is misconceived to allege that the petitioner was denied benefit of budgetary support on account of ineligibility.

10. It is well settled that the validity of an order has to be adjudged on the basis of the reasoning contained therein and not otherwise.

11. In "*Mohinder Singh Gill & anr. Vs. The Chief Election Commissioner, New Delhi & ors. AIR 1978 SC 851*", the Hon'ble Supreme Court has clearly ruled that

reasoning to the orders cannot be supplemented by means of a counter affidavit or any other affidavit filed before the Court.

12. In view of the above facts and circumstances, we are of the opinion that the impugned order dated 26.08.2020 is unsustainable in law and that the respondents fell clearly in error in declining the budgetary support for part of the amount for the period January to March, 2020.

13. It is made clear that the Court has not adjudicated about the eligibility of the petitioner for the benefits of budgetary support and the period for which the same is available to the petitioner.

14. The writ petition is disposed of.

(SINDHU SHARMA)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

JAMMU
10.03.2022
Eva

