THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH : THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE

WP(C) No.43 of 2025

M/S. Zuventus Healthcare Limited,
3rd, Rangpo-Rorathang Road,
Kamarey Bhasmey, Pakyong,
Sikkim.

... **Petitioner**

versus

1. **Union of India,**
   Through the Secretary,
   Department of Revenue,
   Ministry of Finance,
   North Block, New Delhi.

2. **Assistant/Deputy Commissioner,**
   Central Goods & Services Division,
   Near District Court, Indira Bye Pass Road,
   Sichey, East Sikkim, Gangtok.

3. **The Director, (DPIIT)**
   Department for Promotion of Industry
   and Internal Trade, Ministry of Commerce
   and Industry, Udyog Bhawan, New Delhi.

4. **The Commissioner of CGST,**
   Siliguri, Gangtok Division,
   Gangtok II Range.

... **Respondents**

Petition under Articles 226 and 227 of the Constitution of India

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Appearance:

Mr. Gautam Chugh with Ms. Gita Bista and Ms. Pratikcha Gurung, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Natasha Pradhan and Mr. Amit Kumar Sharma, Advocates for the Respondents.

Date of Judgment : 18.11.2026
Date of Judgment Uploaded : 24.11.2026

JUDGMENT

(A. Muhamed Mustaque, C.J.)

1. The Petitioner, a pharmaceutical company, has its manufacturing unit located in Pakyong District in the State of Sikkim. The Petitioner's unit was eligible for the Budgetary Support Scheme under Notification dated 05.10.2017 as it was an eligible unit under exemption Notification No.20/2007 dated 25.04.2007, issued by the Department of Revenue, Ministry of Finance, Government of India. The Company commenced the production in the year 2017 and was eligible for the scheme until 16.02.2027.

2. As per the Notification issued by the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion dated 05.10.2017, a procedure has been prescribed for claiming benefits under the Budgetary Support Scheme. It provides that a manufacturer shall file an application for payment of Budgetary Support in respect of the tax paid in cash, excluding the amount of tax paid through utilization of Input Tax Credit under the Input Tax Credit Rules, 2017, before the designated officer by the 15th day of the succeeding month after end of quarter, after payment of tax relating to the quarter to which the claim relates.

3. The eligibility of Petitioner is not under dispute. There is no dispute that the Petitioner was granted Budgetary Support for all periods since the commencement of its production in the year 2017, except to the disputed period from July 2023 to September 2023. It is also admitted at the BAR that Budgetary Support was given to the Petitioner for the subsequent period as well.

4. The Petitioner was denied Budgetary support for the period in question, that is, July 2023 to September 2023 vide order dated

28.04.2025 on the ground that the Petitioner had submitted its claim after a delay of 107 days, in violation of para 7.1 of the DIPP Notification dated 05.10.2017. The designated officer, namely, the Assistant Commissioner, CGST, Gangtok Division, was of the view that any application for Budgetary Support submitted beyond the 15th day of succeeding month after end of quarter was liable to be rejected and the refund claim of ₹1,12,51,974/- filed by the Petitioner was held to be inadmissible.

5. The Notification or the Scheme does not prescribe any period of limitation, nor does it provide that an application submitted after the 15th day of the succeeding month after the end of quarter shall necessarily be rejected. The question that arises for consideration is whether, in the absence of any statutory prescription, the Court can permit the consideration of a belated claim.

6. In the present case, as noted by the designated officer, the Petitioner had put forward an explanation for the delay. The reason assigned as seen from the records in Annexure P-1, Reply to Notice was that, on 04.10.2023, there was a sudden surge in the flow of the Teesta River. Sikkim, particularly certain areas of the State, including Pakyong, where the unit is located was severely affected by it. It was submitted that the entire functioning of the unit had been disrupted as that its place of business was severely affected, thereby interrupting its normal business operations. The unit was not in a position to submit its return immediately after the flood. Further, the CBIC website, which was required to be accessed for filing the application, was experiencing numerous technical issues, which also contributed to the delay. It was only on 31.02.2024 that the application for the said quarter could be

successfully submitted. The consequences of the same had affected not only the functioning of the unit but also the lives of its employees.

7. There is no serious dispute regarding the fact that Sikkim was severely affected by the Glacial Lake Outburst Flood (GLOF), particularly the area in which the industrial unit of the Petitioner is located.

8. Mr. Gautam Chugh, the Learned Counsel appearing for the Petitioner, would submit that a procedural prescription cannot override the substantive rights of the parties and that, in the facts and circumstances of the present case, the Petitioner has made out a case for condonation of delay. It is submitted that an act of God ought not to deprive the Petitioner of its legitimate entitlement. It is further submitted that the delay occurred only in respect of the particular period in question and that there was no express prohibition preventing the designated officer from entertaining the application beyond the prescribed period. The Learned Counsel has also pointed out that the officer in Jammu and Kashmir had accepted a similar application submitted beyond the prescribed period. In support of this submission, reliance has been placed on a copy of the application for Budgetary Support dated 02.04.2021 and the sanction order passed by the Assistant Commissioner, Jammu and Kashmir, dated 04.01.2022.

9. The Learned Deputy Solicitor General of India submits that there is a specific purpose behind prescribing an outer time limit and that the Petitioner ought to have been vigilant in submitting the application within the stipulated period. It is submitted that the entire relevant data was available with the Petitioner and that there was no difficulty in accessing the GST portal to submit the application within time. It is further submitted that the Petitioner was afforded an opportunity of personal hearing to substantiate its explanation for the prolonged delay;

however, the explanation was found to be unsatisfactory. It is a settled principle of law that the benefit under an incentive or exemption scheme can be availed of only upon fulfillment of the conditions stipulated therein. The Learned DSGI also relied upon the judgment of the Hon'ble Supreme Court in ***Commissioner of Customs (Import), Mumbai* v. *Dilip Kumar and Company and Others***[1] wherein it was held that exemption notifications are to be construed strictly and that the burden lies upon the claimant to establish strict compliance with the conditions governing the exemption. Further reliance was placed on ***M/s VJ Jindal Cocoa Private Limited* v. *Union of India and Others***[2] contending that the benefits under the Budgetary Support Scheme cannot be claimed as a matter of right and are available only subject to the terms and conditions of the Scheme.

10. This is a case of the silence of rules. If the regulatory framework does not expressly provide for condonation of delay in submitting an application for Budgetary Support, it does not necessarily follow that the authority lacks the power to consider such an application where the circumstances demonstrate that submission within the prescribed period was beyond the control of the applicant. The absence of an express statutory provision or any specific provision in the Notification or the Scheme does not, by itself, prevent the designated officer from exercising the discretion vested in him. The officer has the power to consider or reject a claim in accordance with the eligibility criteria. That power, however, must be exercised in conformity with the Notification and the object of the Scheme. The procedure prescribed is intended to facilitate the exercise of such power. Where the Notification or the Scheme is silent, the officer must interpret and exercise his authority as

[1] (2018) 9 SCC 1.
[2] 2023 SCC OnLine J&K 1350.

part of a coherent system of rules and principles, keeping in view the larger framework within which such power has been conferred.

11. Ronald Dworkin, in his works on legal philosophy, particularly, "Taking Rights Seriously Chapter: Hard Cases" and "Law's Empire", emphasised that legal reasoning is not confined to the application of rules but also involves principles, policies and other standards. According to him, legal principles constitute an integral part of the legal system and ought to be applied in hard cases where the existing rules do not furnish a complete answer. It observes that:

> "……
> But if the case at hand is a hard case, when no settled rule dictates a decision either way, then it might seem that a proper decision could be generated by either policy or principle.[3]
>
> Very hard cases will force him to develop his conception of law and his political morality together in a mutually supporting way.[4]
> ……"

These principles emphasize the importance of interpreting and applying legal provisions in a manner consistent with the underlying principles and objectives of the legal framework, rather than resorting to a mechanical application of procedural requirements.

12. Taking a cue from the aforesaid principles, the present is not a case where the delay can be attributed to any negligence or lack of diligence on the part of the Petitioner. Nor is this a case where the rule-makers could reasonably have foreseen an event of such magnitude that would prevent an applicant from submitting an application within the prescribed period. Keeping in mind the larger framework and the intention of the Union Government to support and encourage entrepreneurs and manufacturers, any action that defeats the very purpose of such a Scheme would be contrary to its objectives. The

[3] Ronald Dworkin, *Taking Rights Seriously* "Hard Cases" *available at*: https://www.law.nyu.edu/sites/default/files/Ronald%20Dworkin%20-%20Hard%20Cases.pdf
[4] Ronald Dworkin, *Law's Empire*, *available at*: https://www.filosoficas.unam.mx/~cruzparc/empire.pdf

designated officer cannot act mechanically. He must keep in mind the very object of the Budgetary Support Scheme, which is to encourage manufacturers and investors to establish their units in challenging geographical locations such as Sikkim and thereby contribute to the development of the region. It appears that the officer failed to appreciate these ground realities and the very essence of the Scheme and proceeded to decide the matter mechanically.

13. In view of the fact that there is no express prohibition preventing the designated officer from entertaining applications submitted beyond the 15th day of the month succeeding the end of the quarter, the principles discussed hereinabove compel this Court to hold that the application ought to be accepted for consideration under the Budgetary Support Scheme.

14. Accordingly, the impugned order is set aside.

15. The designated officer is directed to reconsider the matter afresh, treating the application as validly filed, and pass appropriate orders on the merits of the claim within a period of one month from the date of receipt of a copy of this Judgment.

16. With the aforesaid directions, the Writ Petition stands allowed and disposed of.

Chief Justice

Approve for Reporting : Yes

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