

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

Reserved on: 13.03.2023
Pronounced on: 23.05.2023

WRIT PETITION (CIVIL) NO. 1171 OF 2022

**M/s Best Crop Science Industrial Area,
Kathua.**

..... Petitioners.

Through: Mr. Rony O John, Advocate,
Ms. Suhani Kotwal. Advocate.

Vs.

Union of India and others.

..... Respondents.

Through: Mr. Jagpaul Singh, Advocate,
Ms. Pallavi Sharma, Advocate.

CORAM

**Hon'ble The Chief Justice
Hon'ble Mr. Justice Vinod Chatterji Koul**

JUDGMENT

(Per N. Kotiswar Singh, CJ)

1. The petitioner is a partnership firm registered under the Micro Small and Medium Enterprises Development Act 2006 (MSME Act) and is engaged in the manufacturing of chemical products namely emulsifiers, micronutrients/bio-zymes, water soluble/NPK fertilizers, pesticides, plant growth regulators, bio-pesticides and bio-pesticides fertilizers, etc.

2. This petition has been filed being aggrieved by the orders dated 03.09.2020 and the letter dt. 07.12.2020 issued by the respondent no.4, the office of the Assistant Commissioner Central Goods and

Services Tax Division rejecting the petitioner's claim for benefit of budgetary support under a scheme on the ground that the benefit thereunder can only be allowed on goods manufactured under an 8-digit HSN code and cleared prior to 01.07.2017, and thus the petitioner is not eligible for the refund.

3. The said claim was made by the petitioner under a scheme prepared by the Government of India in 2017 for providing budgetary support, in lieu of excise duty tax exemption granted earlier for manufacturing certain goods by the manufacturing units in the State of Jammu and Kashmir as per the exemption notification issued earlier in this regard in 2010.

4. The Central Government in exercise of powers conferred under Section 5A (1) of the Central Excise Act, 1944, issued a Notification bearing No. 1/2010-CE on 06.02.2010 (hereinafter referred to as the Exemption Notification) which exempted from payment of excise duty or additional excise duty leviable on such goods as specified in the First and Second Schedules to the Central Excise Tariff Act, 1985 for a period of 10 years when these goods were cleared from a unit located in the State (now UT) of Jammu and Kashmir to boost industrial growth in the State (now UT). This exemption was limited to the Central Excise duty actually paid by the manufacturer of goods other than by utilization of CENVAT credit and was available by way of refund mechanism.

The benefit of excise duty exemption was extended to goods described in the Table mentioned in the Notification falling within different Chapters of the Central Excise Tariff Act, 1985. In the present case we are concerned with goods covered under Chapter 38. As regards Chapter 38, all goods under the chapter were eligible for the exemption of excise duty as mentioned in the Table.

5. The petitioner set up a manufacturing unit at Kathua, Jammu & Kashmir for production of the permitted goods namely emulsifiers

micro nutrients/biozymes and water soluble/NPK fertilizers falling under the 4-digit HSN code 3808 under Chapter 38 of the Central Excise Tariff Act, 1985, which is described as *“insecticides rodenticides fungicides herbicides anti sprouting products and plant growth regulators common disinfectants and similar products put up in the forms or packing for retail sale or as preparations or articles (For example sulphur treated brands Wicks and the candles and the fly papers)”* under Chapter 38 of the Tariff Act. The petitioner, accordingly, made huge investments in terms of finance, capital, human resources, heavy machineries, equipment and raw materials required for setting up the plant and factory for the production of the permitted goods falling under the Broad Item of HSN Code 3808 under Chapter 38 of the Tariff Act.

The petitioner commenced the manufacturing of the aforesaid products on 22.08.2016 and was availing exemptions in Central Excise duty under the aforesaid Notification dt. 06.02.2010 and was eligible to receive this exemption benefit till 19 October 2026.

6. Things changed with the introduction of the Central Goods and Services Tax Act, 2017 (CGST Act) and Integrated Goods and Services Tax Act, 2017 (IGST Act), because of which several indirect tax statutes including Central Excise Act, 1944 were repealed. Consequently, the benefits given under the Excise Act was also withdrawn including the exemption granted under the aforesaid Act to the units under the Exemption Notification mentioned above.

7. However, the Central Government in order to offset the losses that may have been incurred by the manufacturing units which were granted certain exemptions under the Excise Act, notified a “Budgetary Support Scheme” under the Goods and Services Tax regime to units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and the Northeast States including Sikkim (hereinafter referred

as the “Scheme”). Under the Scheme, budgetary support was granted with effect from 01.07.2017 to all eligible units for the residual period in respect of the specified goods as defined in the new scheme. The eligible unit was to be provided reimbursement of the Central Government share of the cash component of the CGST and IGST, at 58% of CGST and 29% of IGST, in lieu of exemption provided earlier under the erstwhile Exemption Notification.

8. The mechanism for this support as offered in the Scheme was that a specified amount of budgetary support shall be provided in respect of “specified goods” manufactured and cleared by an eligible manufacturing unit for the residual period covered under the Exemption Notification.

9. Thus, what is contemplated under the new Scheme is that, those manufacturing units which were getting certain exemption of Central excise duty under the earlier Exemption Notification, would no longer get such exemption after the withdrawal of the said Exemption Notification on introduction of the new GST regime, but by virtue of the new Scheme, such manufacturing units would continue to get certain benefit by way of budgetary support for the remaining period under the Exemption Notification provided these units continue to manufacture goods covered under Chapter 38 of the First Schedule of the Central Excise Tariff Act 1985 which they were producing and were availing Excise Duty exemption for, under the Exemption Notification.

10. It is, therefore, the case of the petitioners that since the petitioner’s manufacturing unit was producing goods covered under Chapter 38 of the Excise Tariff Act and was availing exemption of Central excise duty in terms of the Exemption Notification dated 06.02.2010, and it continued to produce goods covered under Chapter 38 of the First Schedule of the Central Excise Tariff Act, 1985, the petitioner unit would be entitled to budgetary support for the goods

manufactured and which were covered under Chapter 38 of the Tariff Act.

11. According to the petitioner, the Exemption Notification specifies “**all goods**” covered under Chapter 38 as being eligible for exemption from Central excise duty and there is no distinction made by the Central Government between groups identifiable under different sub-headings or sub-items within Chapter 38 for the purpose of grant of excise exemption. Therefore, for the purpose of the Exemption Notification, “*specified goods*” can be read to mean any goods covered under Chapter 38 and not only the goods under any particular sub-heading or entry.

12. However, the respondents rejected the claim of the petitioner on the ground that the goods manufactured by the petitioner under the Exemption Notification were different from those manufactured during the operation of the new Scheme.

The respondents held that the goods manufactured by the petitioner under the Exemption Notification, i.e., goods under entry 38081099, were different from those manufactured by the petitioner after commencement of the Scheme, i.e., Goods under entry 38089113, 3808 9199, 38089290, 38089340, 38089350, 38089390, 38089910, 38089990. As such, these goods would not be covered for the purpose of budgetary support under the new Scheme.

13. The petitioner, accordingly, has assailed the stand of the respondents primarily on two grounds:

- i) *Firstly*, it has been submitted that under the Exemption Notification, “all goods” covered under Chapter 38 of the Tariff Act were eligible for exemption from Central Excise Duty and the said notification did not distinguish the goods classified under different sub-headings and sub-items within Chapter 38 for the purpose of grant of excise duty exemption.

ii) *Secondly*, for the purpose of the Scheme, the “specified goods” can be read to mean *any* goods covered under Chapter 38 and not only goods under any particular sub-heading or entry as the respondents are seeking to restrict to.

14. The contention of the petitioner is that the petitioner’s unit was manufacturing goods covered under Tariff Heading No. 3808 of Chapter 38 of the Tariff Act for which the petitioner was granted exemption of excise duty under the Exemption Notification and since the petitioner continued to manufacture goods which are covered under Tariff Heading No. 3808 after the Scheme came into operation, the petitioner will be entitled to budgetary support under the new Scheme in respect of any item falling under HSN Code 3808. According to the petitioner, the requirement is that the goods so manufactured after the Scheme came into operation, must be covered by Tariff Heading no. 3808 of Chapter 38 to avail this benefit of budgetary support and that, it is not necessary that the manufacturing unit must continue to produce only the good which the unit was producing for which Excise duty was exempted under the earlier Exemption Notification.

According to the petitioner, the contention of the respondents that certain items of 8-digit HSN code manufactured by the petitioner for which budgetary support was claimed were not produced earlier and exemption of Central excise not availed, are not eligible for budgetary support, is not correct as there is no such stipulation under the new Scheme.

15. Therefore, to understand the claim of the petitioner qua the stand of the respondent, we have to examine the nature of exemption of excise duty which was granted earlier under the Exemption Notification and the kind of benefit being granted under the new Scheme.

16. Under the Exemption Notification the exempted goods are described in the Table in different chapters as appended thereto, which includes Chapter 38, amongst others, of the First Schedule as follows:

Sl. no.	Chapter of the First Schedule	Description of goods	Rate	Description of inputs for manufacture of goods in column (3)
10.	38	All goods	34	Any goods

Thus, all goods falling under Chapter 38 would be eligible for exemption.

17. As to the kinds of good covered under Chapter 38 under the First Schedule of the Central Excise Tariff Act, 1985, these are categorised as follows:

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
3808	INSECTICIDES, RODENTICIDES, FUNGICIDES, HERBICIDES, ANTI-SPROUTING PRODUCTS AND PLANT-GROWTH REGULATORS, DISINFECTANTS AND SIMILAR PRODUCTS, PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE OR AS PREPARATIONS OR ARTICLES (FOR EXAMPLE, SULPHUR-TREATED BANDS, WICKS AND CANDLES, AND FLY-PAPERS) - Goods specified in Sub-heading Note 1 to this Chapter:		
380852 00	--DDT (ISO) (clofenotane (INN)), in packings of a net weight content not exceeding 300 g	Kg.	12.5%
3808 59 00	-- Other	Kg.	12.5%
	-Goods specified in Sub-heading Note 2 to this Chapter:		
3808 61 00	--In packings of a net weight content not exceeding 300 g	Kg.	12.5%
3808 62 00	--In packings of a net weight content exceeding 300 g but not exceeding 7.5 kg	Kg.	12.5%

3808 69 00	-- Other	Kg.	12.5%
	- Other:		
3808 91	-- Insecticides:		
3808 91 11	----Aluminium phosphate (for example phostoxin)	Kg.	12.5%
3808 91 12	---- Calcium cyanide	Kg.	12.5%
3808 91 13	----D.D.V.P. (Dimethyle-dichloro-vinyl- phosphate)	Kg.	12.5%
3808 91 21	---- Diagonal	Kg.	12.5%
3808 91 22	---- Methyl bromide	Kg.	12.5%
3808 91 23	---- Dimethoate, technical grade	Kg.	12.5%
3808 91 24	---- Melathion	Kg.	12.5%
3808 91 31	---- Endosulphan, technical grade	Kg.	12.5%
3808 91 32	---- Quinalphos	Kg.	12.5%
3808 91 33	---- Isoproturon	Kg.	12.5%
3808 91 34	---- Fenthion	Kg.	12.5%
3808 91 35	---- Cipermethrin, technical grade	Kg.	12.5%
3808 91 36	---- Allethrin	Kg.	12.5%
3808 91 37	---- Synthetic pyrethrum	Kg.	12.5%
	--- Other		
3808 91 91	----Repellants for insects such as flies, mosquito	Kg.	12.5%
3808 91 92	----Paper impregnated or coated with insecticides such as D.D.T. coated paper	Kg.	12.5%
3808 91 99	---- Other	Kg.	12.5%
3808 92	-- Fungicides:		
3808 92 10	--- Maneb	Kg.	12.5%
3808 92 20	---Sodium pentachlorophenate (santrobrite)	Kg.	12.5%
3808 92 30	---Thiram (tetra methyl thiuram disulphide)	Kg.	12.5%
3808 92 40	--- Zineb	Kg.	12.5%
3808 92 50	--- Copper oxychloride	Kg.	12.5%
3808 92 90	--- Other	Kg.	12.5%
3808 93	-- Herbicides, anti-sprouting products and plantgrowth regulators		
3808 93 10	---Chloromethyl phenozy acetic acid (M.C.P.A)	Kg.	12.5%
3808 93 20	--- 2:4 Dichlorophenozy acetic acid its and esters	Kg.	12.5%
3808 93 30	--- Gibberellic acid	Kg.	12.5%
3808 93 40	--- Plant growth regulators	Kg.	12.5%
3808 93 50	--- Weedicides and weed killing agents	Kg.	12.5%
3808 93 90	--- Other	Kg.	12.5%
3808 94 00	-- Disinfectants	Kg.	12.5%
3808 99	-- Other:		
3808 99 10	--- Pesticides, not elsewhere specified or included	Kg.	12.5%
3808 99 90	--- Other	Kg.	12.5%
3809	FINISHING AGENTS, DYE CARRIERS TO ACCELERATE THE DYEING OR FIXING OF DYESTUFFS AND OTHER PRODUCTS AND		

	PREPARATIONS (FOR EXAMPLE, DRESSINGS AND MORDANTS), OF A KIND USED IN THE TEXTILE, PAPER, LEATHER OR LIKE INDUSTRIES, NOT ELSEWHERE SPECIFIED OR INCLUDED		
3809 10 00	- With a basis of amylaceous substances	Kg.	12.5%
	- Other :		
3809 91	--Of a kind used in the textile or like industries:		
3809 91 10	--- Textile assistants mordanting agents	Kg.	12.5%
3809 91 20	--- Textile assistants desizing agents	Kg.	12.5%
3809 91 30	--- Textile assistants dispersing agents	Kg.	12.5%
3809 91 40	--- Textile assistants emulsifying agents	Kg.	12.5%
3809 91 50	---Textile assistants hydro sulphite - formaldehyde compound (rongalite or formusul)	Kg.	12.5%
3809 91 60	---Textile assistants—textile preservatives	Kg.	12.5%
3809 91 70	---Textile assistants water proofing agents	Kg.	12.5%
3809 91 80	--- Prepared textile glazings, dressings and mordants	Kg.	12.5%
3809 91 90	--- Other	Kg.	12.5%
3809 92 00	-- Of a kind used in the paper or like industries	Kg.	12.5%
3809 93	--Of a kind used in the leather or like industries :		
3809 93 10	---Fatty oil or pull up oil	Kg.	12.5%
3809 93 90	--- Other	Kg.	12.5%

18. From the above, it is evident that goods covered under the generic head of the Tariff item HSN code 3808 under Chapter 38 are further classified under sub-heads and sub-items with 6-digit HSN code and 8-digit HSN code. Thus, HSN Code 3808 is the broad classification of different goods enumerated in the Table of the different goods/items with 6-digit and 8-digit HSN codes.

Under the broad category of 4-digit Tariff Item HSN Code 3808 under Chapter 38, all such goods with 8-digit HSN code falling under it would be eligible for the exemption from excise duty in the manner provided under the Exemption Notification. Thus, if the petitioner's

unit manufactured any of the items with 8-digit code mentioned in the sub-items or sub-heads under the broad Tariff Item 3808, exemption could be sought under the aforesaid Notification in respect of the item with 8-digit HSN code.

19. It is also to be noted that the rate of tariff is not specified under the broad item of HSN Code 3808 code but against the individual sub-heads/ sub-items given with 8-digit. Broad Classification under 3808 code includes "*Insecticide*" as a sub-head with 6-digit HSN code 3808 91, yet no tariff rate is shown against 6-digit HSN code 3808 91. Under this sub-head of "*Insecticide*" with 6-digit HSN code 3808 91, there are several items with 8-digit HSN code against which the tariff rates are shown. Similarly, it is with "*Fungicide*", which is a sub-head with 6-digit HSN code 3808 92, against which no tariff rate is shown, but against other items under it with 8-digit HSN code where tariff rates are shown.

20. This classification structure would indicate that Tariff item HSN code 3808 is the umbrella covering all the sub-heads and sub-items under which these items with 6-digit and 8-digit HSN codes are categorised. But, there is no tariff rate mentioned against the broad items of 6-digit items like insecticides, or rodenticides, or fungicides etc. mentioned under the broad Tariff Head of 4-digit HSN code 3808. The different items under the aforesaid broad items with 6-digit HSN code (like insecticides) are further categorised with 8-digit HSN code items like Aluminium phosphite (3808 91 11), Calcium cyanide (3808 91 12), D.D.V.P. (Dimethyl-dichloro-vinyl-phosphate, 3808 91 13), Diagonal (3808 91 21) etc. and tariff rates are shown against each of these sub-items with 8-digit HSN code.

21. As to how exemption of excise duty has to be availed, the same has been provided under Para 4 of the Exemption Notification. It has been mentioned that exemption under this Notification shall be given effect to in the following manner, namely:-

“(a) the manufacturer shall submit a statement of the total duty paid and that paid by utilization of CENVAT credit, on *each category of goods* specified in the said Table and cleared under this notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th day of the next month in which the duty has been paid;
(b).....

(emphasis added)

“*Each category of goods*” referred to above cannot obviously refer only to the 4-digit and 6-digit code items as the tariff rate cannot be ascertained merely referring to these only, but by referring to the 8-digit items. In other words, the exemption claimed can be only with reference to the 8-digit items and not with reference to the 4-digit or 6-digit code items.

22. As mentioned above, upon introduction of the new GST regime, all the notifications issued earlier under the Central Excise Act, including the Exemption Notification were rescinded. However, the Government of India took a policy decision 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 the residual period for which each of the units is eligible, and introduced and notified a new scheme on 5.10.2017 vide Notification dated 05.10.2017, (hereinafter referred to as the “Scheme”).

This new Scheme was 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.

23. Under the new Scheme, all units which were eligible under the erstwhile schemes and were in operation through notifications issued by the Department of Revenue in the Ministry of Finance, including

Exemption Notification for the State (now UT) of Jammu & Kashmir were considered eligible. Under this new Scheme, the benefit is 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.

24. The new Scheme of budgetary support under Goods and Services Tax (GST) Regime to the units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim was notified on 05.10.2017 which came into operation w.e.f. 01.07.2017 for the eligible unit (as defined in para 4.1 of the Scheme) and is to remain in operation for the residual period (as defined in para 4.3 of the Scheme) for each of the eligible units in respect of “specified goods” (as defined in para 4.2 of the Scheme). The scheme is to remain valid upto 30.06.2027.

25. Under this Scheme, ‘eligible unit’ has been defined as a unit which was eligible before 1st 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, issued in this regard, and was availing the said exemption immediately before 1st day of July, 2017.

26. Under the Scheme, the benefit is to be extended only to the “specified goods”, which has been defined in Para 4.2 of the Scheme Notification.

27. From the above, it is evident that the new Scheme provides certain benefit by way of budgetary support to such units which were being granted excise duty exemption under earlier tax regime prior to introduction of GST regime. However, such budgetary support is conditional and not a blanket support. The conditions are clearly provided in the new Scheme itself as mentioned above.

The benefit under the Scheme is:

- i) confined to the eligible unit (as defined in para 4.1)
- ii) and in respect of “specified goods” (as defined in para 4.2)

28. We may not examine whether the petitioner’s unit is an eligible unit or not, as it is not an issue here, since the petitioner’s manufacturing unit was availing exemption of duty under the earlier Exemption Notification, and it is also not disputed by the respondents that the petitioner’s manufacturing unit is an eligible unit for claiming the benefit under the new Scheme.

29. In view of the above, we will proceed to examine if the petitioner’s unit is eligible, is it entitled to the benefit of budgetary support?

For this purpose, we have to examine whether the petitioner’s unit fulfils the conditions for the benefit of budgetary support.

30. As mentioned above, the eligible unit must be manufacturing the “specified goods” as mentioned in Para 4.2 as quoted above.

31. “Specified goods” has been defined under para 4.2 of the Scheme notification, as to mean the goods specified under exemption notifications, 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 the premises under Central Excise with a registration number, as it existed prior to migration to GST etc., which is reproduced herein below.

“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.”

(emphasis added)

Thus, “specified goods” means those ***which were being manufactured and cleared by the eligible unit by availing the benefit of excise duty exemption.***

32. From the above, what one can conclude is that, in order to qualify for the budgetary support, the eligible unit must fulfil the following:

- (i) continue to manufacture the item covered by HSN 3808 which was manufactured earlier and,
- (ii) the manufacturing unit must have availed the benefit of the excise duty exemption under the Exemption Notification and,
- (iii) the said item must have been cleared by the manufacturing unit by availing the excise duty exemption upto 01.07.2017.

Consequently, if the unit had not been manufacturing the item and had not been availing excise duty exemption under the Exemption Notification by clearing the same, the unit cannot avail the benefit of budgetary support in respect of the said item under the new Scheme.

33. The exemption of excise duty was given for manufacturing the particular item (with 8-digit HSN code) falling under 4-digit HSN code 3808 and 6-digit HSN code, for the excise duty is leviable in respect of the items under 8-digit code for which exemption is claimed. No rate of excise duty is mentioned under the broad Tariff head of HSN code 3808 or the sub-head with 6-digit HSN code as discussed above, but only under the sub-items with 8-digit HSN code numbers. The manufacturing unit thus can avail the benefit of budgetary benefit only if the unit had been manufacturing the same item with 8-digit HSN

code and had availed the excise duty exemption by clearing the same under the earlier Exemption Notification.

34. This position appears to be in consonance with the expressions used in the Scheme of 2017, which is to continue to extend some benefit by way of budgetary support to those units which had been availing excise duty exemptions for manufacturing certain goods under the earlier tax regime. Thus, if the unit had been manufacturing certain good or item of which the unit was availing the benefit of excise exemption and by clearing it from the unit, the unit would continue to get the benefit of budgetary support in respect of the said good. As a corollary, if the unit had not been manufacturing certain good or item and thus was not availing the benefit of excise exemption and clearing it from the unit upto 01.07.2017, the unit would not get the benefit of budgetary support in respect of such items under the new Scheme.

35. Keeping the aforesaid position in mind, we will examine the case in hand.

36. In the speaking order dt. 07.12.2020 issued by the Assistant Commissioner, respondent no. 4, it has been mentioned in paragraph 10 thereof, that without having manufactured and availed area based exemption of a single rupee, in respect of goods falling under tariff headings 38089113, 38089290, 38089340, 38089350, 38089390, 38089910 and 38089990 prior to 01.07.2017, the petitioner cannot be presumed to be availing the said exemption in terms of the provision of Para 4.2 of the Exemption Notification. The stand of the respondents is very clear that since the petitioner did not manufacture the items falling under the aforesaid tariff headings and did not avail the excise duty exemption in terms of the earlier Exemption Notification, the petitioner cannot be granted budgetary support under the new Scheme.

37. On the other hand, it is the case of the petitioner that what is required to be fulfilled by the unit for the purpose of availing the budgetary support is that the unit must have manufactured and availed excise duty exemption under the broad Tariff heading of 3808 under Exemption Notification and if the unit continues to manufacture any of the items coming under the broad Tariff heading of 3808, the unit can avail the budgetary support under the new Scheme.

38. In our opinion, the aforesaid view of the petitioner is not in accordance with the Scheme of 2017. To avail the budgetary support under the new Scheme, the conditions stipulated under the scheme must be satisfied. As discussed above, the unit must manufacture only the “specified goods” to avail the budgetary support and the “specified goods” has been defined under Para of 4.2 of the Scheme as those goods ***which were being manufactured and cleared by the eligible unit by availing the benefit of excise duty exemption.*** Thus, the specified good in respect of which the budgetary support is sought, not only, must have been manufactured by the unit and cleared by the unit by availing the benefit of excise duty exemption. Thus, manufacturing the item and availing the benefit of excise duty exemption in respect of the said good by clearing it by the unit when the Exemption Notification was in operation are condition precedents for availing budgetary support under the new Scheme, when the unit continues to produce the same good. As a corollary, if the unit had not been manufacturing the particular item covered under Chapter 38, and had not been availing the benefit of excise duty exemption by clearing it, the unit cannot seek budgetary support in respect of the item under the new Scheme.

39. In our view, merely producing an item which is covered under the broad Tariff of 3808 will not suffice. The unit must have availed excise duty exemption by clearing it from the unit in respect of the said good

to come within the meaning of “*specified goods*”. As discussed above, the duty exemption granted under the earlier Exemption Notification was not in respect of goods broadly described under Tariff Head with 4-digit HSN code 3808 or 6-digit HSN code, but only in respect of the specific goods with 8-digit HSN code numbers classified under the broad Tariff Head of 3808 and sub-heads with 6-digit HSN code. Under the earlier Exemption Notification, it was not sufficient to manufacture any goods which may come under the definition of the broad Tariff Item with 4-digit HSN Code 3808 or 6-digit HSN code. The unit must manufacture only such items specifically mentioned with 8-digit HSN code under the broad Tariff Item with HSN Code 3808 and the sub-heads with 6-digit HSN code. It was only such item with 8-digit HSN code which was manufactured and eligible for excise duty exemption under the Exemption Notification. It will be only such items or goods in respect of which excise duty exemption was availed under the Exemption Notification, if continued to be manufactured after the Scheme of 2017 was notified, which would be eligible for claim of budgetary support under the new Scheme.

40. The aforesaid position is clearly indicated in Para 3.1, Para 4.1., Para 4.2, and Para 5 of the Scheme.

Para 3.1 of the Scheme provides that the scheme shall remain in operation for residual for each of the *eligible unit* in respect of *specified goods* as defined in Para 4.2.

Para 4.1 defines an “*eligible unit*”. Since there is no dispute about the eligibility of the petitioner’s unit, it may not be necessary to dwell further on the issue of eligibility.

Para 4.2 defines “*specified goods*” as the goods specified under exemption notifications, 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.

Para 5 spells out how the amount of budgetary support is to be determined in respect of the goods and it uses the word “*specified goods*” manufactured by the eligible unit.

41. From the above, what is important to be noted is that the budgetary support is to be given with reference to the “*specified goods*” only. What can further be noted is that under the definition of “*specified goods*”, it does not stop by merely the item being mentioned in the Exemption Notification. There are other conditions for the item being qualified as “*specified good*”, i.e., the good must find mention in the Exemption Notification and it must not only have been manufactured by the unit when the Exemption notification was in operation, excise duty must have been also availed in respect of the said good by clearing it from the unit. Only, when these conditions are fulfilled, such good will qualify to be a “*specified good*” under the new Scheme to avail budgetary support.

42. Therefore, we have to refer to the definition of “*specified goods*” as defined in the Scheme of 2017 which will govern the nature of goods for which budgetary support can be availed. As discussed above, “*specified goods*” has been defined as the goods which were being manufactured and cleared by the eligible unit by availing the benefit of excise duty. Thus, only such goods having the attributes of being manufactured earlier and in addition, having the benefit of excise duty availed earlier which fell under the broad Tariff Head of 3808 under Chapter 38 of the Excise and Tariff Act under the early Exemption Notification, would qualify for getting the benefit of budgetary support under the Scheme. It would not suffice as contended by the petitioner that any good being manufactured now, which fall within the category of Tariff Head of 3808 would qualify for availing the budgetary support. More is required of such good to be qualified for getting the budgetary support as discussed above.

43. As observed by us, even if any unit manufactures an item now which is covered under the Tariff Head of 3808, if the same had not been manufactured earlier during the subsistence of the Exemption Notification and had not availed excise duty exemption, such good would not qualify for claim of budgetary support under the Scheme.

44. Thus, we are not able to accept a plea of the petitioner that since the petitioner's unit is manufacturing 8-digit items which fall under the broad Tariff Head of 3808, and since the petitioner was availing tax exemption in respect of some other item falling under Tariff Head of 3808, the petitioner's unit would be eligible to claim budgetary support under the Scheme. The said plea does not appear to be correct.

45. We are also not able to accept the submission of the petitioner that the Scheme contains no prescription whatsoever to the effect that the budgetary support is available only for such goods which are identifiable with reference to their 8-digit classification. We are also not convinced with the submission of the petitioner that the respondent's contention that the goods manufactured and cleared before and after the repeal of the Exemption Notification should have been identical in their 8-digit HSN code classification and that this is an attempt by the respondents to supply additional words to the Scheme notification which are neither found in the provisions nor ever intended by the Central Government.

46. The contention of the petitioner that the Central Government intended the category of goods specified in the Exemption Notification shall be eligible goods under the Scheme notification as well and if the relevant Exemption Notification lists an item with reference to their 2-, 4-, or 8-digit heading, "*specified goods*" under the Scheme notification shall include the same goods with reference to their respective heading is not correct because of the definition of "*specified goods*" in the Scheme as those goods which were manufactured, exemption availed

and cleared from the manufacturing units under the Exemption Notification. Such exemption could be availed in respect of 8-digit HSN code item only, which is covered by the general Tariff Item with 4-digits (i.e., 3808).

47. Much emphasis has been laid on the words “any goods under Chapter 38” used in the Exemption Notification by the petitioner to claim that budgetary provision can be also availed in respect of “any goods under Chapter 38” under the scheme. In our opinion, such a generalised approach is not contemplated under the Scheme for the reason that it is only such goods which come within the ambit of “specified goods” that would qualify for the benefit of budgetary support and not any good which is covered under Chapter 38.

48. If this interpretation of the petitioner is accepted, it would render the definition of “*specified goods*” in the Scheme notification redundant. If the intention of the government was to extend the budgetary support to all items covered under Chapter 38 as claimed by the petitioner, there was no need to use the words, “for each of the eligible units in respect of *specified goods (as defined in para 4.2)...*” in Para 3.1 of the Scheme and there was no need to define the “*specified goods*” as those “which were being manufactured and cleared by the eligible units by availing the benefit of excise duty exemption” in Para 4.2 of the Scheme. By identifying the “*specified good*” with the past activities of being manufactured and of having availed excise duty exemption, any item which was not being manufactured earlier and not having availed excise exemption will not qualify to be treated as “*specified good*”, and thus not eligible for budgetary support.

49. The submission advanced by the petitioner that the scheme is of a beneficial nature to give support, encouragement and incentives to the industrialist to set up their units in the State of Jammu and Kashmir (now UT), to boost industrial infrastructure and the economy, and as

such the scheme should be liberally construed, does not merit consideration, in view of the fact that the language used in this scheme is very clear about conditions to be fulfilled for availing the benefit of budgetary support. Had there been some ambiguity in the language under this Scheme, the said contention of the petitioner could have been considered. In view of the specific requirements of the nature of goods to avail the benefit of budgetary support, having been very clearly defined under Para of 4.2 of the Scheme "*specified goods*" as discussed above, there is no scope for any liberal interpretation of the words and languages used in the Scheme.

In view of the above, it may not be necessary to discuss the cases laws cited by the petitioner and by the respondents in rebuttal in this regard.

50. Accordingly, we are in agreement with a view taken by the respondents as mentioned in the impugned speaking rejection order dated 07.12.2020 that if the provisions of the Scheme Notification are given the meaning as sought to be done by the petitioner, every unit which was eligible to avail exemption under any specified notification and started manufacturing new items after 01.07.2017 would claim to be eligible for budgetary support under the new Scheme, which would result in the creation of uneven playing field in respect of new units which start production/clearance of similar products but would not be entitled for the benefit of budgetary support.

51. We have also noted that the respondents have clearly mentioned that goods under Tariff Headings 38089113, 38089199, 38089290, 38089340, 38089350, 38089390, 38089910 and 38089990 manufactured after 01.07.2017, were not manufactured/cleared by the petitioner prior to 01.07.2017 and as such there is no question of availing excise duty exemption prior to 01.07.2017 in respect of these goods. As these goods were not manufactured earlier and

consequently, no exemption of excise duty was availed in respect of these goods, these goods are not eligible for budgetary support.

52. For the reasons discussed above, we are of the view that the decision taken by the respondents does not suffer from any illegality or arbitrariness which would warrant our interference and accordingly, we dismiss the petition.

(Vinod Chatterji Koul)
Judge

(N. Kotiswar Singh)
Chief Justice

Pronounced at **Srinagar** (through V.C.)
23.05.2023

Whether the judgment is speaking: Yes.

Whether the judgment is reportable: Yes.