

**Rejected application seeking amendments in the Writ Petition introducing entirely different cause of action**

The Hon'ble Sikkim High Court in *M/s. Sun Pharma Laboratories Ltd. v. UOI & Ors. [I.A. No.03 of 2020 in WP(C) No.47 of 2018 (dated November 2, 2020)]* rejected the application filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) seeking to insert amendments in the Writ Petition as the proposed amendments if permitted would change the very nature and character of the Writ Petition and introduce an entirely different cause of action, which is not permissible.

**Facts:-**

M/s. Sun Pharma Laboratories Ltd. (“the Petitioner”) has filed an Interlocutory Application (“I.A.”) No. 03 of 2020 on June 06, 2020, seeking to insert amendments in the Writ Petition and by the proposed amendments, the Petitioner seeks to challenge the vires of Section 174(2)(c) of the Central Goods and Services Tax Act, 2017 (“CGST Act”) and *Notification No.21/2017-C.E., dated July 18, 2017* vide which the exemption notifications were issued under the erstwhile regime, on the ground that it takes away the vested rights of the Petitioner by reducing the exemption/benefits to the Petitioner.

The Petition prayed to issue an appropriate Writ reading down Clause 5.1 & 5.2 of the *Notification F.No.10(1)/2017-DBA-II/NER dated October 5, 2017*, notifying ‘Scheme of Budgetary support under Goods and Services Tax regime to the units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North-East including Sikkim’ (“BSS”) so as to enable the Petitioner to claim full refund of the CGST and 50% of IGST paid through the electronic cash ledger or in alternative to fix a special rate of refund eligible to the Petitioner so that under the BSS, the Petitioner is entitled to refund equivalent to that under the erstwhile regime.

Writ Petition was finally heard on September 3, 2019 and judgment was reserved.

**Issue:-**

Whether amendment by way of I.A. No. 03 of 2020 dated June 06, 2020 can be allowed.

**Held:-**

The Hon'ble Sikkim High Court in *I.A. No.03 of 2020 in WP(C) No.47 of 2018, dated November 2, 2020* held as under:

- The Court perused the Writ Petition and noted that the prayers in Writ Petition are confined to granting the Petitioner refund of the CGST and 50% of the IGST paid through the electronic cash ledger. An alternative prayer ensues directing the department to fix a special rate of refund eligible to the Petitioner to entitle them to refund equivalent to that available under the erstwhile regime which should also be granted under the BSS.
- Observed that, Order VI Rule 17 of the CPC clothes the Court with powers to allow either party to alter or amend their pleadings at any stage of the proceedings on such terms as may be just. It also requires that all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties provided that no application for amendment should be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Thus, the provisions in the first part is discretionary and in the second part is imperative inasmuch as amendments that are necessary for the purpose of determining the real question in controversy between the parties ought to be allowed.
- Held that, it cannot be said that the Petitioner was unaware of the provision of the statute the vires of which they now seek to assail, nor was it inserted at some point later in time to the filing of the Writ Petition. In view of the questions involved in the instant Writ Petition, it cannot be said that the amendments are necessary for determining the real question in controversy between the parties. The proposed amendments if permitted would in fact would change the very nature and character of the Writ Petition and introduce an entirely different cause of action, which is not permissible.

We have recently released the **6<sup>th</sup> Edition of our GST Book titled “GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES”, in a set of 3 Volumes**. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

*Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!*

This book can be ordered online at: <https://rb.gy/benrpb>

***DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.***