



24.02.2026
Item No.966 (DL)
Court No.551
AJ.

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

W.P.A. 3173 of 2020

CAN 1 of 2023

CAN 2 of 2025

Fresenius Kabi Oncology Limited

-Vs-

The Union of India & Ors.

Mr. Saurabh Bagaria,
Mr. Arindam Chandra,
Mr. Atish Ghosh.

...for the petitioner.

Mr. Bhaskar Prasad Banerjee.
Mr. Abhradip Maity.

...for the respondents.

1. At the outset it is pointed out that there is a typographical error in the third last line of paragraph 5 of the order dated February 20, 2026 where "CESTAT" has been typed as "SESTAT". Let such error be corrected by replacing the expression "SESTAT" by the expression "CESTAT" in the said order dated February 20, 2026.

2. This writ petition mounts challenge to an order dated November 18, 2019 passed by the Revisional Authority i.e. the Additional Secretary to the Government of India, Ministry of Finance whereby it has been held that the subject exported goods fall under serial no.47A of the Central Government's Notification



No.4/2006-CE dated March 01, 2026 (hereafter 'the said Notification').

3. As recorded in the order dated February 20, 2026, during pendency of the writ petition in another matter pertaining to the same assessee but relating to a different financial year/tax period, an order in original had been passed by the Adjudicating Authority taking the same view as the one taken by the Revisional Authority in the order under challenge in the present writ petition. The said order in original was carried in appeal by the petitioner before the Appellate Authority i.e. CESTAT.

4. By an order dated June 26, 2024 CESTAT allowed the said appeal holding that the goods exported by the petitioner fall under serial no. 47B of the said Notification and not under serial no.47A thereof.

5. Mr. Bagaria, learned Advocate appearing for the petitioner submits that in yet another matter pertaining to the same assessee for a different period, the Adjudicating Authority itself has held in favour of the petitioner upon taking note of the fact that the respondent authorities have accepted the said order dated June 26, 2024 passed by CESTAT.



6. The said order in original dated May 01, 2025 as well as the order of CESTAT dated June 26, 2024 have been brought on record by the petitioner by way of a separate application being CAN 2 of 2025.

7. Mr. Banerjee, learned Advocate appearing for the CGST Authorities does not dispute the fact that the order in original dated May 01, 2025 has been passed on the basis of the respondents' acceptance of CESTAT order dated June 26, 2024. He however, submits that the present writ petition lays challenge to the order of the Revisional Authority which was passed prior to the order dated May 01, 2025 as well as order dated June 26, 2024 passed by CESTAT. He further submits that the respondents have already used an affidavit-in-opposition supporting the stand of the Revisional Authority in the order impugned.

8. Heard learned Advocates appearing for the respective parties and considered the material-on-record.

9. It is not in dispute that the respondents have accepted the order of CESTAT dated June 26, 2024 whereby it has been held that the goods exported by the petitioner fall under serial no.47B of the said Notification and not under



47A. To be precise the Adjudicating Authority has in the order in original dated May 01, 2025 in the petitioner's own case recorded as follows:-

“10. The Deputy/Assistant Commissioner (T & R), Kolkata North CGST & CX Commissionerate has been requested to intimate this office in case any Stay Order has been obtained in respect of the subject CESTAT Final Order. Vide letter under F. No. GEXCOM/ REV/ CE/ TRIB/1004/2024-T and R-O/O Pr Commr-CGST-Kolkata (N) dated 03.01.2025, the Superintendent, Tribunal & Review Section, Kolkata North CGST & CX Commissionerate has informed that the impugned CESTAT Final Order has been duly accepted by the competent authority on 11.11.2024.”

10. Before observing as above the relevant portion of the order passed by CESTAT on June 26, 2024 has been extracted by the Adjudicating Authority.

11. In such view of the matter, the respondents cannot now take a contradictory stand. Law on this score is well settled and in such regard one may profitably refer to the judgment of the Hon'ble Supreme Court in the case of *M/s. Radhasoami Satsang, Saomi Bagh, Agra -Vs- The Commissioner of Income Tax reported in (1992) 1 SCC 659*. In terms of the said judgement, rule of consistency has been held to be applicable to tax proceedings in cases where there is no difference of circumstances.



12. Thus when the respondents have accepted the decision of CESTAT to the effect that the bulk drugs exported by the petitioner fall under serial no.47B of the said Notification, there is no reason for the respondents to take a different stand in respect of the same goods merely because they relate to a different tax period.

13. In such view of this matter, the order impugned dated November 18, 2019 passed by the Revisional Authority is set aside.

14. WPA 3173 of 2020 stands disposed of with the above observations. CAN 2 of 2025 also stands disposed of accordingly. CAN 1 of 2023 had been filed for early hearing of the writ petition. Since the writ petition itself is being disposed of by the present order therefore CAN 1 of 2023 shall stand disposed of accordingly. There shall be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)