



GAHC010123872014

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2038/2014

M/S LAXMI NARAYAN KRAFT INDUSTRIES
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE
INDIAN PARTNERSHIP ACT, 1932 HAVING ITS REGISTERED OFFICE
SITUATED AT ADAMS PLAZA, 1 COM. 2, 2ND FLOOR, UDAYACHAL PATH,
G.S. ROAD, GUWAHATI- 781005 AND ITS MANUFACTURING UNIT AT
CHANGSARI KAMRUP, ASSAM. REP. BY ITS PARTNER SRI VIVEK
AGARWAL, S/O SRI BASANT KUMAR AGARWAL R/O ASTHA APARTMENTS,
SUHAGPUR, REHABARI, GUWAHATI, KAMRUP, ASSAM.

VERSUS

THE UNION OF INDIA and 8 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
INDUSTRIAL DEVELOPMENT, DEPARTMENT OF INDUSTRIAL POLICY AND
PROMOTION, NEW DELHI.

2:STATES OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF INDUSTRIES AND COMMERCE
DISPUR
GUWAHATI- 781006
ASSAM.

3:STATE LEVEL COMMITTEE FOR IMPLEMENTATION
OF INCENTIVES UNDER INDUSTRIAL AND INVESTMENT POLICY OF
ASSAM
2008. REP. BY ITS CHAIRMAN AND PRINCIPAL SECRETARY TO THE GOVT.
OF ASSAM
INDUSTRIES and COMMERCE DEPARTMENT
DISPUR
GUWAHATI-6.



4:COMMISSIONER OF INDUSTRIES AND
COMMERCE
ASSAM UDYOG BHAWAN
BAMUNIMADAM
GUWAHATI- 781021
ASSAM.

5:COMMISSIOER OF TAXES

ASSAM
KAR BHAWAN
DISPUR GUWAHATI-6.

6:JOINT COMMISSIONER OF TAXES

ASSAM
KAR BHAWAN
DISPUR
GUWAHATI-6.

7:SUPERINTENDENT OF TAXES

GUWAHATI
UNIT-D
GUWAHATI.

8:DIRECTOR OF INDUSTRIES AND COMMERCE

CENTRE
KAMRUP
GUWAHATI
ASSAM.

9:DELETED VIDE H.C.O. DTD. 11.04.201

Advocate for the Petitioner : MS.P BARUAH

Advocate for the Respondent : SC, TAXES

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri KN Choudhury, Sr. Advocate;
Shri R Dubey, Advocate.



For the Respondents : Shri A Kalita, SC, Industries & Commerce Deptt.;

Shri B Gogoi, SC, Finance & Taxation Deptt.

Date of Hearing : 03.10.2023.

Date of Judgment : 13.10.2023.

13.10.2023.

Judgment & Order

The legality and validity of a Speaking Order dated 18.3.2014, passed by the Commissioner of Industries & Commerce, Government of Assam is the subject matter of challenge in this writ petition.

02. Before going to the issue which has arisen for determination, it would be convenient if the facts of the case are narrated in brief.

03. The petitioner is an industry. The Government of India had announced a fiscal policy giving incentives vide a notification dated 01.04.2007 which was named as NEIIP-2007. In terms of the said policy, the State Government had also announced a package of incentives and other concessions for the North East region vide a notification dated 01.10.2008 which was under the name, Industrial Policy of Assam 2008 (Industrial Policy). The petitioner, with a view to avail the benefits under the Industrial Policy, has started its production unit and accordingly, the commercial production was also started. It is the case of the petitioner that all necessary formalities, including NOC, license, application for eligibility etc. were duly procured.



04. With regard to the issue of availing the benefits, the Additional Director of the office of the Commissioner of Industries and Commerce issued a communication dated 11.01.2012 to the Commissioner of Taxes, Assam seeking their views in terms of the provisions of the Industrial Policy. The said query was responded by the office of the Commissioner of Taxes by recommending that eligibility certificate may be considered at a fixed capital investment of Rs. 5,56,10,159/-. Accordingly, the State Level Committee had prepared the agenda note. On 6.02.2012, the State Level Committee held its meeting for grant of eligibility certificate to various industrial units under the Industrial Policy, including that of the petitioner. In the said meeting, the eligibility certificate was duly granted to the petitioner. It is the case of the petitioner that on 22.03.2012, a complaint was given to the Industries and Commerce Department by one Shri D Dutta whereby the allegations were made that plants and missionaries were purchased by the petitioner at an inflated price. Be that as it may, on 04.04.2012, the Eligibility Certificate under the Industrial Policy was granted to the petitioner. Accordingly, the petitioner applied for Certificate of Entitlement under Assam Industries (Tax Exemption) Scheme, 2009. On 19.04.2012, there was a spot visit to the unit of the petitioner by two officers of the Tax Department and the statement of one of the partners was recorded. Subsequently, on 17.05.2012, a letter was issued by the Industries and Commerce Department to make an enquiry and submit a report on the complaint of Mr. D Dutta. It appears that simultaneously, the complaint was also taken up by the Bureau of Investigation (Economic Offence). Pursuant thereto, on 04.07.2012 another spot verification was made to the factory premises of the petitioner which was followed by a report. Based on the said report, communications were made to the Tax Department of Kolkata in respect of

certain purchases made by the petitioner from two vendors at Kolkata. The said query was responded in the negative by the Joint Commissioner, Commercial Taxes, Kolkata vide communication dated 10.10.2012. Based on the said communication, the Commissioner of Taxes, Assam had issued a letter dated 03.01.2013 for terminating the Eligibility Certificate granted to the petitioner. In the meantime, the Superintendent of Taxes, Guwahati, Unit D had also submitted an enquiry report in respect of a vendor of Guwahati. On 27.02.2013, the Commissioner of Taxes, Assam issued a letter to the Commissioner of Industries and Commerce to terminate the Eligibility Certificate. Accordingly, on 05.03.2013, a show cause notice was issued to the petitioner and on 11.03.2013, the Eligibility Certificate was put under suspension.

05. On 10.04.2013, the petitioner had submitted reply to the show cause notice. Subsequently, the petitioner had also submitted the Bank Appraisal Report.

06. At that point of time, the petitioner had filed a writ petition in this court being WPC/7237/2013 wherein an order was passed on 11.12.2013 remanding the matter to the Commissioner of Industries and Commerce to pass appropriate orders in accordance with law. In the meantime, the petitioner had procured some vital information by invoking the provisions of the Right to Information Act. According to the petitioner, such information have material bearing with the issue and would be a conclusive proof on the *bona fide* and genuineness of the investment made. On 18.03.2014, the petitioner had made a request to the authorities to take into consideration the information obtained under the RTI Act before taking a final decision. However, vide the Speaking Order dated 18.3.2014, the representation has been rejected.



07. I have heard Shri KN Choudhury, learned Senior Counsel assisted by Shri R Dubey, learned counsel for the petitioner. I have also heard Shri A Kalita, learned Standing Counsel, Industries and Commerce Department as well as Shri B Gogoi, learned Standing counsel, Finance & Taxation Department, Assam. Shri Kalita, learned Standing Counsel has also placed before the Court the original file.

08. Shri Choudhury, learned Senior Counsel submits that the initiation of the entire impugned action is based upon a letter dated 22.03.2012 by one Shri D Dutta. By referring to the copy of the said letter which has been annexed to the writ petition, it is submitted that the sender of the letter is not only vague, there is no full name or address and for all purposes can be termed as an anonymous letter. In the said letter, allegations have been made of inflation of price of materials purchased by the petitioner.

09. It is the contention of the learned Senior Counsel for the petitioner that when the due process of law was adhered to and the Eligibility Certificate was granted by the highest body, namely, the State Level Committee, the decision to proceed on an anonymous complaint is itself lacking *bona fide* and it appears that the entire complaint is on the basis of some business rivals.

10. It is submitted that the complaint is mainly with regard to three dealers, namely M/S Balaji Sales Agencies and M/S Durga Commodeal Pvt. Ltd. which are from Kolkata and one BN Mechanical of Guwahati. With regard to the two vendors from Kolkata, the respondent authorities are depending on a communication dated 10.10.2012 from the Tax Office at Kolkata as per which, M/S Balaji does not exist in the declared address and so far as M/S Durga is



concerned, there are no records of any interstate sales transaction. So far as M/S BN Mechanical, the vendor of Guwahati is concerned, reliance has been taken by the Department on a communication dated 30.01.2013 by the Superintendent of Taxes that on an enquiry made, it was revealed that no purchases were made from the said vendor and the firm was mainly into job contract and was not a dealer.

11. Shri Choudhury, learned counsel for the petitioner has submitted that the aforesaid consideration for denying the benefit to the petitioner is not only erroneous but also irrelevant. By referring to the communication dated 10.10.2012 of the Tax Office of Kolkata, Shri Choudhury, learned Senior Counsel has submitted that so far as M/S Balaji is concerned, the existence of the firm is not denied in toto and what has been stated is that the same does not exist in the earlier address. It may, however, be mentioned that various registration numbers of the firm have been mentioned. So far as M/S Durga is concerned, the conclusion is based on the assumption that there is no interstate sales transaction shown. It is submitted that the petitioner cannot be made to suffer due to certain non-compliance by the vendors and the relevant materials to examine the genuineness of the claim is to verify the records of the petitioner. It is submitted that the petitioner possesses all the documents relating to the purchase, including Transit Passes for interstate movement, the cash memos, details of payment which was done through Demand Draft and RTGS etc. It is further submitted that on spot verification, the unit of the petitioner was found to be functional and therefore, there was no question to even go for a further verification when the recommendation was given by the State Level Committee by following the due process of law.

12. The learned Senior Counsel for the petitioner has also submitted that certain information were received by the petitioner by taking recourse to the RTI Act vide an application dated 03.03.2014. The said application was responded to on 15.03.2014. As stated earlier, the State Level Committee in its meeting held on 06.02.2012 had already approved the grant of Eligibility Certificate to the petitioner. Further, the note sheet regarding consideration of the case of the petitioner was also obtained, including the Appraisal Note on the complaint against the petitioner. As per the same, the details of the road permits, entry tax as well as payments made to the vendors have been given. The Appraisal Note also clarifies that there was no detail of ACME machinery in the quotation and the original invoices were of M/S Balaji Sales Agency which were also containing the check gates stamps of Assam. It is submitted by Shri Choudhury that the Inquiry Report of the Additional Director (UAZ) on the allegation of machineries installed would also be relevant. In the said report, it has been stated that as per the complaint of Mr. D Dutta, the plant and machinery were purchased from M/S ACME Machinery Company (Pvt.) Ltd., Mumbai. However, it is seen that the plant and machinery were supplied by M/S Balaji Sales Agency, Kolkata and not by M/S ACME as per the allegations. The report further reveals that a comparative assessment was made with the items purchased from M/S Balaji with one M/S Cosmos Shuoqi Impex India (P) Ltd., Jammu and it was found that the prices were more or less similar.

13. Shri Choudhury, learned Senior Counsel submits that the aforesaid information which was obtained by RTI were not even considered while passing the impugned order. By drawing the attention of this Court to the pleadings in the writ petition, more particularly, in paragraph 30 thereof with regard to the aforesaid facts, it is submitted that in the affidavit-in-opposition of the Tax Department filed on 09.06.2014, there is no denial at all. The communication of the petitioner dated 18.03.2014 which has been annexed as Annexure-40 has also been referred to by which, the petitioner had



requested for consideration of the aforesaid information received through RTI.

14. The learned Senior Counsel for the petitioner also submits that vide the impugned Speaking Order dated 18.03.2014 while the claim of the petitioner is rejected, no reasons are assigned and the only reason which is discernible is that the matter was 'beyond the authority'. He submits that when the speaking order was directed to be passed by this Court in its order dated 11.12.2013, the aforesaid reason cannot be accepted at all.

15. *Per contra*, Shri A Kalita, learned Standing Counsel, Industries and Commerce Department has raised stiff objection against the writ petitioner. He submits that the origin of the dispute is the letter of Shri D Dutta which contains serious allegations of misuse of the scheme wherein public money is involved and therefore, it was the responsibility of the Department to look into the matter. He submits that the Inquiry Report against the petitioner dated 04.07.2012 is not the subject matter of challenge and neither the communication dated 10.10.2012 by the Tax Department, Kolkata has been challenged and therefore, he questions the maintainability of the writ petition.

16. By referring to the Appraisal Note which the petitioner has relied upon, Shri Kalita submits that the same is only with regard to the purchase from M/S Balaji Sales Agency and does not cover the aspect of the claim made regarding purchase from M/S Durga Commodoreal (P) Ltd. He has also referred to the communication dated 04.07.2012 by the BI(EO), Assam whereby, the Eligibility Certificate issued to the petitioner was directed to be kept in abeyance leading to issuance of the communication dated 19.07.2012 by the Industries Department to the Commissioner of Taxes. Ultimately, vide the order dated 11.03.2013, the Eligibility Certificate was suspended. Shri Kalita, however, fairly submits that the documents and information received through the RTI do not appear to have been considered while passing the

impugned ordered dated 18.03.2014 and rather, in the original file, such documents are not there.

17. Shri B Gogoi, learned Standing Counsel, Finance Taxation appearing for the respondent nos. 5, 6 and 7 has supported the impugned action. By referring to the Industrial Policy, more particularly, Chapter-7 which relates to tax incentives, it is submitted that for the VAT exemption, the Finance Department is the implementing agency and was also empowered to bring out a separate notification. He submits that the notification dated 03.11.2009 issued by the Finance Department is the said notification and therefore, the Tax Department is a vital party in the present *lis*. He submits that on 04.04.2012, the Eligibility Certificate was granted pursuant to the State Level Committee recommendation. However, the letter by Shri D Dutta had triggered the present action in which an Inquiry Report dated 04.07.2012 was submitted. He fairly submits that though in September 2012, a clarificatory letter was issued by M/S Balaji, there was no such document with regard to M/S Durga of Kolkata and M/S BN Mechanical Works of Guwahati. Rather, so far as the alleged purchase from Kolkata is concerned, there is a communication from the Tax Department, Kolkata dated 10.10.2012 stating that there was no record of interstate sales. As regards the alleged purchase from M/S BN Mechanical, Guwahati, the learned Standing Counsel has relied upon the communication dated 04.07.2012 by the BI(EO), Assam that no such supply was made and also the communication dated 30.01.2013 by the Deputy Superintendent of Taxes, Guwahati.

18. Justifying the impugned Speaking Order dated 18.03.2014, Shri Gogoi, learned Standing Counsel has submitted that the issue of authority was rightly mentioned as a part of the implementation of the Scheme was under the Taxation Department.

19. Rejoining his submission, Shri Choudhury, learned Senior Counsel for the



petitioner has submitted that with regard to the issue of purchase, though questions were raised with regard to three vendors, the bill of purchase from M/S Durga dated 21.04.2011 is a part of the record. The bank statement of the petitioner has also been referred to as well as the records of payments which were mainly by Demand Drafts and RTGS. He reiterates that the petitioner cannot be made liable for incorrect returns/suppression by the vendor.

20. With regard to the vendor, M/S BN Mechanical, details of all supplies have been given, including the payment details. He submits that in the affidavit-in-opposition by the Industries Department, such statements have not been denied and rather, in paragraph 9 of the affidavit-in-opposition dated 24.05.2018 of the Industries Department, the reply is as follow:

That as regards the averments made in paragraph no.7 to 67 of the writ petition, your humble deponent has no comments to offer.

21. Shri Choudhury, learned Senior Counsel has also referred to the reply of the petitioner dated 20.05.2013 to the show cause notice dated 05.03.2013 in which, all particulars regarding the purchase from M/S Balaji, M/S Durga and M/S BN Mechanical have been given in details. Shri Choudhury also informs this Court that as per the order of this Court in the earlier writ petition, the incentives have already been availed. Further, in terms of an order dated 14.05.2015 passed by the Hon'ble Division Bench in WA/52/2015, no coercive action has been taken against the petitioner for any recovery.

22. The rival submissions of learned counsel for the parties have been duly considered and the materials placed before this Court have also been carefully examined.

23. The existence of the scheme for giving benefits in the form of Fiscal Incentive in the North Eastern Region under the NEIIP, 2007 is not in dispute. In terms of the said Scheme, the Government of Assam had also announced an Industrial Policy of 2008 w.e.f. 01.10.2008. The establishment of the unit of the petitioner by obtaining necessary approval and the fact of starting commercial production from 01.06.2011 are also not in dispute. The claim for the benefits under the policy was examined in a phased manner in terms of the procedure prescribed. The views sought for by the Additional Director, Industries and Commerce from the Commissioner of Taxes vide communication dated 11.01.2012 was replied in the affirmative by recommending in favour of the petitioner for consideration for a fixed capital investment of Rs. 5,56,10,159/-. The State Level Committee in its meeting dated 06.02.2012, being the prescribed authority, had recommended the case of the petitioner followed by issuance of the Eligibility Certificate by the Industries Department. The certificate of registration under the NEIIP, 2007 was also issued by the District Industries and Commerce Centre (DICC), Kamrup on 07.01.2010 whereafter the petitioner had applied for the Entitlement Certificate. Since the same was not granted, the petitioner had earlier filed writ petition, being WP(C)/7237/2013 which was disposed of on 11.12.2013 pursuant to which, the petitioner had got the benefit of the incentive.

24. In the aforesaid order dated 11.12.2013 passed by this Court in WP(C)/7237/2013, the following observations have been made:

“ It is the grievance of the petitioners that no decision has been taken by the respondent No. 3 on the show cause reply submitted by the petitioner No.1, though about 8 months have gone by. In the meanwhile, the eligibility certificate has also been suspended by the authority because of which the manufacturing activities of the petitioners have

come to a grinding halt.

Having regard to the nature of the grievance expressed, Court is of the view that respondent No. 3, Commissioner of Industries and Commerce, Assam shall pass appropriate order(s) in accordance with law, if necessary by giving an opportunity of personal hearing to the petitioners within a period of 30 days from the date of receipt of a certified copy of this order. In the meanwhile, respondent No. 4 shall release the relevant forms which the petitioners are entitled under the law so as to enable it to resume its commercial activities.

Writ petition stands disposed of in the above terms. No costs.”

25. The aforesaid order was not put to challenge by the Department and has attained finality. The Commissioner of Industries and Commerce was directed to pass appropriate orders on the matter as it was the grievance of the petitioner in the said case that after submission of reply on 10.04.2013 to the show cause notice dated 11.03.2013, no orders were passed. Therefore, rejecting the case of the petitioner by citing that he has no authority/jurisdiction to reject the Inquiry Report of the Commissioner of Taxes is wholly untenable in law. Admittedly, the Taxation Department only plays a role and the policy is ultimately required to be implemented by the Industries and Commerce Department.

26. As regards the alleged complaint which had admittedly triggered the present action, the name of complainant is given as Mr. D Dutta with address as Cholapara Road, Guwahati. No other details have been given. The connection of the complainant with either the petitioner or the policy, has not been disclosed and the allegation is of inflating the prices to get Government subsidies. In the opinion of this Court, such complaint, without any proper disclosure of the complainant can be deemed as an anonymous complaint and be treated accordingly. However, even assuming that there



were certain materials which might lead to do a re-verification, the re-verification is not on the aspect of the allegation of the complaint, namely, quoting inflated price but on the aspect of non-procurement of materials, mainly from three vendors.

27. The conclusion derived by the authorities on the said non-procurement is based on certain reports/communications pertaining to the three vendors. Such communications/reports were accepted without giving the petitioner an opportunity. Further, such reports are mainly based on the Returns/ledgers of the vendors and some statements. This Court finds force in the contention made on behalf of the petitioner that incorrect filing of Returns/suppression made by the vendors cannot be a reason to wholly brush aside the claim of the petitioner, more so, when the petitioner had submitted all the bills, the details of payments made vide Demand Drafts/RTGS, the bank statement showing the debits as payments made to the vendors. The physical verification regarding commissioning of commercial production is also a relevant factor which the authorities seem to have overlooked.

28. This Court is also intrigued by the fact that when there were many documents showing proper investment in machineries by the petitioner which were obtained by RTI and there was a specific request vide communication dated 18.03.2014 to consider the same, why the said documents were not considered. In fact, those documents do not even find a mention in the impugned speaking order. This Court has also noted that the specific averment on that issue made in paragraph 30 of the writ petition has not been denied in the affidavit-in-opposition of the Department dated 09.06.2014.

29. Under the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned Speaking Order dated 18.03.2014 is bereft of any cogent reasons and rather, the Commissioner of Industries and Commerce has expressed lack



of authority/jurisdiction to reject the Inquiry Report of the Taxation Department and has also remarked that the same was beyond his authority. This Court has also noticed that the order has reflected that the investigation by the BI(EO) was yet to be completed. Therefore, the denial of the benefits of the policy by suspending the Eligibility Certificate is not sustainable in law. Accordingly, the impugned Speaking Order dated 18.03.2014 passed by the Commissioner of Industries and Commerce is set aside. Since this Court has been informed that the petitioner had already availed of the benefit in terms of the earlier order dated 11.12.2013 passed in WP(C)/7237/2013, coupled with the interim order dated 14.05.2014 passed by the Hon'ble Division Bench in WA/52/2015 restraining from taking any coercive action, it is directed that no recovery be made from the petitioner of the said fiscal incentives.

30. The writ petition accordingly stands allowed.

31. No order as to costs.

JUDGE

Comparing Assistant