



GAHC010009472014

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

Case No. : WP(C)/2415/2014

M/S SRI BALAJI CEMENT PRIVATE LIMITED
RAJAMAIDAM ROAD
JORHAT- 785001
ASSAM
REP. THROUGH ITS GENERAL MANAGER SRI MANOJ KUMAR
AGARWALLA

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRIES
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI- 110011.

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
DEPTT. OF INDUSTRY AND COMMERCE
DISPUR
GHY- 6.
3:THE DIRECTOR OF INDUSTRIES and COMMERCE
ASSAM
INDUTRIAL ESTATE
BAMUNIMAIDAN
GHY- 21.

4:THE GENERAL MANAGER
DIST. INDUSTRIES and COMMERCE CENTRE
CINNAMORA
JORHAT- 8.

5:THE MANAGING DIRECTOR
NORTH EASTERN DEVELOPMENT FINANCE CORPORATION LTD. NEDFI



NEDFI HOUSE
DISPUR
GHY- 6.

For the Petitioner :

Dr. A. Todi, Adv.

For the Respondents:

Mr. K. Gogoi, CGC.
Mr. A. Kalita, SC, Industries Deptt, Assam.
Mr. G. Das, SC, NEDFI.

BEFORE

THE HON'BLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 09/11/2023.

Date of judgement : 09/11/2023

JUDGEMENT AND ORDER (ORAL)

1. Heard Dr. A. Todi, learned counsel for the writ petitioner. Also heard Mr. K. Gogoi, learned CGC, appearing for the respondent no. 1, Mr. A. Kalita, learned Standing Counsel, Industries and Commerce Department, Government of Assam, representing the respondent nos. 2, 3 & 4 and Mr. G. Das, learned Standing Counsel, NEDFI, appearing for the respondent no. 5.

2. The writ petitioner herein is a company registered under the Companies Act and is engaged in the business of cement manufacturing through its industrial unit set up at Jorhat in the district of Jorhat, Assam. Being aggrieved by the rejection of its claim for releasing transport subsidy by the "Pre Audit" Team of the Principal Accounts Office of the Chief Controller of Accounts attached to the Department of Industrial Policy and Promotion (DIPP) on the ground that the claim was 'time-barred', the instant writ petition has been filed with a prayer to set aside the rejection letter dated 12/07/2010 and also for issuance of a direction to sanction the transport subsidy amounting to Rs. 21,01,715/- for the period from 01/10/2002 to 31/12/2002 along with interest @ 24% per annum from the date of submission of the claim till release of the full amount.

3. The facts of the case, in a nutshell, are that the Government of India through the Ministry of Industries and Commerce had introduced "Transport Subsidy Scheme, 1971" (herein after referred to as "the Scheme of 1971") under which, transport subsidy would be disbursed to eligible industrial units on being sanctioned by the State Level Committee (SLC). As per the mechanism envisaged by the scheme, the application/claim for transport subsidy is required to be submitted, at the first instance, before the District Industries and Commerce Centre (DICC) in the district where the unit is operating. On receipt of such claim, the DICC would verify the claim. Thereafter, the claim/application is required to be forwarded to the SLC for examining the eligibility of the unit to receive "transport subsidy" under the scheme. Once the said process is completed, the matter is then forwarded to the DIPPP for pre-audit verification.

4. On 03/06/2003, the petitioner had lodged its claim for transport subsidy pertaining to the period from 01/10/2002 to 31/12/2002, which claim was duly received by the DICC. After verification of the claim, the same was placed before the SLC which had also approved the claim of the petitioner on 12/01/2005. The application was then forwarded to the DIPPP. However, as noted above, the "Pre Audit" team had rejected the claim of the petitioner holding the same to be "time-barred" and communicated the said decision through the impugned letter dated 12/07/2010, which is under challenge in the present proceeding.

5. By referring to the documents annexed to the writ petition, Dr. Todi has argued that although there is no time limit prescribed under the scheme for lodging the claim, yet, in view of the communication issued by the Ministry dated 04/05/1993 which, *inter-alia*, provides that the claim for disbursement of "transport subsidy" under the Scheme of 1971, would be reimbursed only if the claim is lodged within one year from the date of incurring the expenditure and considering the fact that the claim of the petitioner, lodged on 03/06/2003, was for the period pertaining from 01/10/2002 to 31/12/2002, the said claim ought not to have been held to be "time barred" as the same was evidently filed within the prescribed period of one year.

6. By referring to the notification dated 04/05/1993, Dr. Todi has further argued that as per the prescription of the DIPPP, the units were required to submit quarterly claims and therefore, the claim for the last quarter of the year 2003, which would include the last day of

the year i.e. 31/12/2002, would come within the fold of the claim dated 03/06/2003. Under the circumstances, submits Dr. Todi, viewed from any angle, the claim of the petitioner could not have been held to be time-barred by the "Pre-Audit" team.

7. By referring to the decisions of this Court rendered in the case of ***Ishwar Food Products Pvt. Ltd. Vs. Union of India and Ors.*** reported in **(2012) 3 NEJ 327** as well as in the case of ***Jyoti Food and Proteins Vs. Union of India and others*** reported in **(2016) 2 NEJ 402 (Gau)**, Dr. Todi has argued that the issue raised in this writ petition is squarely covered by the aforesaid decisions of this Court and, therefore, the writ petition deserves to be allowed on such count alone.

8. By placing reliance on another decision of this Court rendered in the case of ***J. Tariang Vs. Union of India and others*** reported in **(2011) 3 NEJ 434**, Dr. Todi submits that in the aforesaid case, not only was a similar order issued by the "Pre-Audit" team set aside by the learned Single Judge but in the appeal preferred by the Union of India against the decision of the learned Single Judge in ***Union of India Vs. J. Tariang*** reported in **(2013) 2 NEJ 224(DB)**, interest @ 12% per annum had even been awarded to the writ petitioner therein due to delayed payment of subsidy. Therefore, submits Dr. Todi, his client would also be entitled to payment of interest on the un-paid amount of transport subsidy, on the same ground.

9. By inviting the attention of this Court to the communication dated 23/07/2014 issued by the Additional Director, Office of the Commissioner of Industries and Commerce, Government of Assam, addressed to the Under Secretary to the Government of India, Ministry of Commerce and Industries, DIPP, Udyog Bhawan, New Delhi, Dr. Todi submits that by the said communication, a categorical request was made by the State Industries Department requesting the DIPP to reconsider /review its decision reflected in the letter dated 12/07/2010 and drop the objection. Notwithstanding the same, no action has been taken in the matter, thereby, compelling the petitioner to approach this Court by filing this writ petition.

10. Mr. K. Gogoi, learned CGC, appearing for the respondent no. 1, on the other hand, submits that although the petitioner had lodged its claim on 03/06/2003, yet, it is apparent

from the materials on record that all the necessary documents were not furnished in support of the claim. The documents were completed only on 27/06/2005. He submits that since the complete documents were not submitted along with the claim lodged on 03/06/2003, hence, the claim ought to be treated as one lodged on 27/06/2005, which date was clearly beyond the prescribed period of one year from the date of the last expenditure incurred by the petitioner. On such count, Mr. Gogoi submits that there is no merit in this writ petition and the same is liable to be dismissed.

11. Mr. A. Kalita, learned Standing Counsel, Industries and Commerce Department, Assam, appearing for the respondent nos. 2, 3 & 4 submits that the stand of his clients is apparent from the affidavit filed by the departmental official as well as the communication dated 23/07/2014, which makes it clear that the claim of the petitioner was within time and, therefore, he would not have any further submission to make in this case.

12. Mr. G. Das, learned Standing Counsel, NEDFI, appearing for the respondent no.5 has argued that although NEDFI is merely the disbursing agency, which has the responsibility to release the subsidy amount as and when the same is received from the Central Government, yet, since the petitioner has approached this Court challenging the communication dated 12/07/2010 by filing a writ petition in the year 2014, hence, according to the learned counsel for the respondent no. 5, the petition is hit by laches and negligence since there is no proper explanation for the delay in approaching the Court.

13. I have considered the submissions advanced at the Bar and have also carefully gone through the materials available on record.

14. The basic facts in this case are not in dispute. It is the admitted position of fact that the writ petitioner is running a Cement Manufacturing Plant at Jorhat and its entitlement/eligibility to receive "transport subsidy" under the "Scheme of 1971" has not been disputed by any of the respondents. The only issue raised by the the respondent no.1 pertains to the question as to whether, the claim/application submitted by the petitioner company seeking "transport subsidy" was "time barred".

15. As has been mentioned herein above, the "Pre Audit" team has held that the application submitted by the writ petitioner on 03/06/2003 was time-barred. However, from a

careful reading of the impugned letter dated 12/07/2010, it appears that save and except opining that the claim of the petitioner was "time-barred", no proper ground/reason has been furnished by the "Pre-Audit" for arriving at such a conclusion.

16. In the case of ***Ishwar Food Products Pvt. Ltd (supra)***, the learned Single Judge of this Court had the occasion to deal with a similar issue where the claim for transport subsidy under the Scheme of 1971 was rejected on the ground that the claim was time-barred as it was submitted beyond the period of one year. In that case, the learned Single Judge had held that the time limit of one year prescribed by the authorities for grant of "transport subsidy" was for administrative convenience and to eliminate claims which were not genuine. By observing that the time limit of one year for lodging the claim is not an inflexible rule and was capable of being suitably relaxed depending on the merit of the case, the writ petition was allowed with a direction upon the respondents to release the transport subsidy amount claimed by the petitioner for the relevant period.

17. In another decision rendered in the case of ***Jyoti Food and Proteins (Supra)***, the same issue, pertaining to rejection of claim of "transport subsidy" under the Scheme of 1971 on the ground that the same was time barred, once again came up for consideration before this Court wherein, the learned Single Judge had observed that since there is no time limit prescribed under the scheme for lodging a claim for "transport subsidy" and considering the fact that the SLC had recommended the claim of the petitioner without holding the same to be time barred, hence, non-acceptance of the petitioner's claim for "transport subsidy" was irrational and unjustifiable.

18. It would be pertinent to mention herein that in the case of ***Jyoti Food and Proteins (Supra)***, the petitioner had lodged its claim for "transport subsidy" for the period 01/04/2001 to 30/06/2001, 01/07/2001 to 30/09/2001 and 01/10/2001 to 31/12/2001 by making an application dated 12/12/2003. Thus, it is apparent that the claim in the aforesaid case was lodged approximately 2 (two) years after the last expenditure was incurred by the petitioner. Notwithstanding the same, the decision to reject the claim for "transport subsidy" had been interfered with by the learned Single Judge on the grounds and reasons stated therein.

19. In the case of **J. Tariang (Supra)**, similar view was expressed by the learned Single Judge, thereby negating the stand of the department that the claim for "transport subsidy" made by the writ petitioner was also time barred, merely because some documents were not submitted along with the claim application but were produced later i.e. after the expiry of the period of one year from the last date of expenditure.

20. From a careful analysis of the decisions referred to herein above, it is thus apparent that this Court has been consistently holding that an application seeking "transport subsidy" under "the Scheme of 1971" cannot be rejected merely on the ground that the same was lodged beyond the period of one year, as prescribed by the Ministry, since the Scheme itself did not lay down any such time frame.

21. In the present case, it is not in dispute that the petitioner had in-fact lodged its claim on 03/06/2003 which date is within the period of one year from date of incurring the last expenditure. The SLC had accepted the claim of the petitioner and recommended the same to the DIPP. The policy documents/scheme also does not categorically prescribed any time limit for lodging a claim. However, by issuing subsequent notification, more particularly, the circular dated 04/05/1993, the Ministry has prescribed that the claims are to be entertained, which were less than one year old. There is no doubt or dispute about the fact that the petitioner had lodged its claim before the expiry of one year from the date of incurring the last expenditure. Therefore, even under the circular dated 04/05/1993, it cannot be said that the claim of the petitioner was time barred.

22. Coming to the next issue as to whether due to non-furnishing of certain documents, which were subsequently completed beyond the prescribed period of one year, can the application be treated as time barred, the said issue is also no longer *res integra* in view of the law laid down by this Court in the case of **J. Tariang (Supra)** wherein, it has been categorically held that merely because some documents, which were not submitted along with the claim but were furnished later, after a period of one year whereas, the claim itself was lodged within the prescribed period, cannot be held to be time barred. As such, the grounds urged by the learned CGC assailing the claim of the petitioner due to alleged late submission of documents and cannot be accepted by this Court. What would be significant to note herein is that the decision rendered in the case of **J. Tariang (supra)** has been upheld

by the Division Bench and the said decision has also attained finality in so far as the conclusions and observations made by the learned Single Judge pertaining to the time limit for accepting a claim application along with belated submission of documents is concerned.

23. It would also be pertinent to note herein that in the impugned letter dated 12/07/2010, the department has not indicated as to the basis for arriving at the conclusion that the application was time barred. Although, an attempt has been made subsequently to develop its stand by filing affidavit by the respondent no. 1 wherein, averments have been made in paragraph 8 to contend that belated submission of documents was the ground for rejection of the claim, yet, there is neither any reflection of the said ground in the impugned letter dated 12/07/2010 nor could the said stand be substantiated by the departmental counsel. Moreover, in view of the law laid down by this Court in the case of **J. Tariang (Supra)**, as noted above, the stand of the department cannot be accepted by this Court on the above point. Therefore, this Court is of the considered opinion that the writ petitioner has made out a good case for interference by this Court.

24. In so far as the prayer for payment of interest @ 24% per annum is concerned due to delayed payment of "transport subsidy" it has been brought to the notice of this Court that although such a relief was granted by the Division Bench in the case of **M/s. Ishwar Food Products Private Ltd. Vs. Union of India** vide judgement and order dated 12/06/2020 passed in connection with Writ Appeal No. 243/2019, yet, the said decision had been assailed by the State by filing **SLP(C) No. 11056/2020**, which is pending disposal before the Hon'ble Supreme Court and an order has been passed to maintain *status quo*. As such, this Court is not inclined to entertain the said prayer at this stage and leaves the matter open for the writ petitioner to avail appropriate remedy, as and when the legal issue is settled by the Supreme Court in connection with **SLP(C) No. 11056/2020**.

25. For the reasons stated herein above, this writ petition partially succeeds. The prayer made by the petitioner for setting aside the letter dated 12/07/2010 is hereby granted. Accordingly, the impugned letter dated 12/07/2010 is set aside. Consequently, the respondents, more particularly, the respondent no. 1 is directed to process the claim of the petitioner for release of "transport subsidy" and disburse the amount, as expeditiously as possible, but not later than 6(six) months from the date of receipt of a certified copy of this



order.

With the above observations, the writ petition stands disposed of.

There shall be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant