



GAHC010045912021

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

Case No. : WP(C)/1603/2021

DUROPLY INDUSTRIES LIMITED (PREVIOUSLY KNOWN AS SARDA PLYWOOD INDUSTRIES LTD)
CORPORATE OFFICE AT 4TH FLOOR, NORTH BLOCK, 113, PARK STREET, KOLKATA- 700016 AND HAVING ONE OF ITS INDIVIDUAL UNITS AT JEYPORE, DIST.- DIBRUGARH, ASSAM, 786614, BEING REP BY ITS CHIEF FINANCE OFFICER AND COMPANY SECRETARY, RAVI KUMAR MURARKA, AGED ABOUT 47 YEARS, S/O- LT. SHYAM SUNDAR MURARKA, WORKING FOR GAIN AT 113, PARK STREET, NORTH BLOCK, KOLKATA- 700016, WEST BENGAL

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI- 110011

2:THE STATE OF ASSAM
REP. BY CHIEF SECRETARY TO THE GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR, GHY-06

3:THE COMMISSIONER AND SECRETARY
INDUSTRIES AND COMMERCE DEPTT.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR, GHY-06

4:THE STATE LEVEL COMMITTEE
CONSTITUTED UNDER THE TRANSPORT SUBSIDY SCHEME 1971 BY THE GOVT. OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
INDUSTRIES AND COMMERCE DEPTT.



BEING ITS CHAIRMAN
GHY-06

5:THE DIRECTOR OF INDUSTRIES AND COMMERCE
ASSAM
BAMUNIMADAM, GHY-21

6:THE GENERAL MANAGER
DISTRICT INDUSTRIES AND COMMERCE CENTRE
DIBRUGARH, PIN-786003, ASSAM

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : MR A KALITA

Linked Case : WP(C)/4912/2019

DUROPLY INDUSTRIES LTD.
(FORMERLY SARDA PLYWOOD INDUSTRIES LTD.)
CORPORATE OFFICE AT 4TH FLOOR
NORTH BLOCK, 113 PARK STREET
KOLKATA- 700016 AND HAVING ONE OF ITS INDIVIDUAL UNIT AT
JEYPORE, DIST- DIBRUGARH
ASSAM, PIN- 786614
BEING REP. BY ITS CHIEF FINANCE OFFICER AND COMPANY SECY.
RAVI KUMAR MURARKA
AGED ABOUT 46 YEARS
S/O- LT SHYAM SUNDAR MURARKA
113 PARK STREET, NORTH BLOCK
KOLKATA- 700016, WEST BENGAL

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY MINISTRY OF COMMERCE AND INDUSTRY
(DEPTT. OF INDUSTRIAL POLICY AND PROMOTION)
UDYOG BHAWAN, NEW DELHI- 110011

2:THE STATE OF ASSAM
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
ASSAM SECRETARIAT, DISPUR, GHY-6

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4:THE STATE LEVEL COMMITTEE
CONSTITUTED UNDER THE TRANSPORT SUBSIDY SCHEME
1971 BY THE GOVT. OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
INDUSTRIES AND COMMERCE DEPTT.
BEING ITS CHAIRMAN, DISPUR, GHY-6

5:THE DIRECTOR OF INDUSTRIES AND COMMERCE
ASSAM,
BAMUNIMAIDAM, GHY-21

6:THE GENERAL MANAGER
DISTRICT INDUSTRIES AND COMMERCE CENTER
DIBRUGARH, ASSAM

Advocate for : MR. U K NAIR
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER
(ORAL)

Date : 21-11-2023

Both the writ petitions are taken up together for final disposal taking into account the similarity of the issues involved and the parties being the same.

2. The petitioner herein is a Public Limited Company incorporated under the provisions of the Companies Act, 1956. The petitioner *inter alia* carries out the business of manufacturing and selling of plywood. Earlier, the petitioner was known as "Sarda Plywood Industries Ltd." and later on its name was changed to "Duroply Industries Ltd." vide a certificate dated 13.12.2018, issued by the office of the Registrar of Companies, Eastern Region.

3. For the growth and development of industries in the country, the Central Government had introduced a number of schemes by way of offering incentives to various categories of industries. Amongst the various schemes, the Central



Government, in the department of Industrial Policy and Promotion, had framed a scheme for grant of subsidy on transport of raw materials and finished goods to and from certain selected areas with a view of promoting growth of industries in such areas. The scheme was brought into effect through a notification published in Part-I, Section 1 of the Gazette of India, Extra-ordinary dated 27.07.1971 and the scheme was known as "The Transport Subsidy Scheme, 1971". A perusal of the said scheme, which has been annexed as Annexure-B to WP(C) 1603/2019, reveals that transport subsidy would be given to industrial units located in selected areas in respect of raw materials which are brought into, and finished goods which are taken out of such areas. Taking into account that the instant writ petition pertains to an industrial unit which was set up in the North Eastern Region, this Court finds it relevant to take note that under the Transport Subsidy Scheme, transport subsidy in the North Eastern Region would be given to industrial units on the transport costs between Siliguri and the location of the industrial unit in the States of North Eastern States/Union Territories. It is further mentioned in the notification that while calculating the transport costs of raw materials, the cost of movement by rail from Siliguri to the railway station nearest to the location of the industrial unit and, thereafter, the cost of movement by road to the location of the industrial unit will be taken into account. Similarly, while calculating the transport costs of finished goods, the costs of movement by road from the location of the industrial unit to the nearest railway station and thereafter the cost of movement by rail to Siliguri will be taken into account. Further to that, in case of North-Eastern Region, for raw materials moving entirely by road or other mode of transport, the transport costs will be limited to the amount which the industrial unit might have paid had the raw materials moved from Siliguri by rail up to the railway station nearest to the location of the industrial unit and, thereafter, by road. Similar was also in case of finished products. It is, however, relevant to take note of sub-Clause (xii) of Clause-6 of the Transport Subsidy Scheme, which stipulates that the State Government/Union Territory Administration will set up a



committee consisting of the Director of Industries, a representative each of the State Industries Department and the State Finance Department, etc. on which a representative of the Ministry of Industrial Development will also be nominated. The Committee will operate at the State/Union Territory level and scrutinise and settle all claims of transport subsidy arising in the State/Union Territory. It has been further stipulated that the claimants should be asked to provide proof of raw materials imported into and finished goods exported out of the selected States/Union Territory areas where the unit is situated from registered chartered accountants. The committee may also lay down the norms/qualifications for production of any other documents which in their opinion is necessary to decide the eligibility of claimant for the transport subsidy. Further to that, it is also seen that after having scrutinised and settled the claims, the amount disbursed to the industrial units should first be adjusted against the outstanding ways and means of advances made to the State Government/Union Territory Administration for Centrally Sponsored Scheme in accordance with the procedure outlines in the Ministry of Finance letter No. 2(17) P-II/58 dated 12.05.1958 and the balance, if any, shall be paid in cash to the State Government/Union Territory Administration. Sub-Clause (xiii) of Clause-6 is also relevant taking into account the issue involved, which stipulates that in order to check any misuse of transport subsidy, the Director of Industries in the State/Union Territories will carry out periodical checks to ensure that the raw materials and the finished goods, in respect of which transport subsidy had been given, were actually used for the purpose by a system of scrutinising of consumption of the raw materials and the output of the finished goods. As per Sub-Clause (xiv) of Clause 6, the Director of Industries of the State/Union Territory concerned will draw up procedure and arrangement not only for scrutinising the claims but also arrange for prompt payment of the claims. The number of transport subsidy claims that may be preferred by an industrial unit should not ordinarily exceed one in a quarter. However, The Director of Industries may at his discretion entertain more number of claims in a financial year, if

the financial position of the industrial unit so warrants. Sub-Clause (xvii) of Clause-6 grants discretion upon the Government of India or the State Government/Union Territory concerned to refuse to entertain or reject any claim for transport subsidy. However, in terms of Sub-Clause (xviii) of Clause-6, any disqualification from the grant of transport subsidy for such period of time, as the Government of India and/or the State Government/Union Territory concerned may decide, shall be effected after giving a reasonable opportunity to the industrial unit to state its case. The record further reveals that the Transport Subsidy Scheme, which was initially framed in the year 1971 for a particular period, has been extended from time to time.

4. In the backdrop of the above, it is relevant to take note that the petitioner herein had submitted claims for transport subsidy for various periods. The said claims of the petitioner admittedly were duly forwarded to the Commissioner of Industries and Commerce, Assam, after necessary verifications. The details of the period of claims, date of application as well as the dates on which the said claims were forwarded to Commissioner, Industries and Commerce, are as under:

WP(C) 1603/2021

Date of Application	Period for which subsidy claimed	Date of which the claim was forwarded to the Commissioner, Industries & Commerce
02.01.2013	01.01.2012 – 31.03.2012	22.03.2013
26.04.2013	01.04.2012 – 30.06.2012	18.06.2013
16.07.2013	01.07.2012 – 30.09.2012	05.09.2013
07.10.2013	01.10.2012 – 31.12.2012	16.11.2013
19.12.2013	01.01.2013 – 31.03.2013	18.02.2014
29.04.2013	01.04.2013 – 30.06.2013	26.05.2014
25.07.2013	01.07.2013 – 30.09.2013	30.08.2014

28.10.2014	01.10.2013 – 31.12.2013	12.12.2014
29.06.2015	01.01.2014 – 31.03.2014	13.03.2015
27.04.2015	01.04.2014 – 30.06.2014	19.06.2015
24.07.2015	01.07.2014 – 30.09.2014	24.09.2015
30.10.2015	01.10.2014 – 31.12.2014	22.12.2015
28.01.2016	01.01.2015 – 31.03.2015	19.03.2016

WP(C) 4912/2019

Date of Application	Period for which subsidy claimed	Date of which the claim was forwarded to the Commissioner, Industries & Commerce
22.03.2012	01.04.2011 – 30.06.2011	17.05.2012
29.06.2012	01.07.2011 – 30.09.2011	27.12.2012
21.09.2012	01.10.2011 – 31.12.2011	27.12.2012

5. From the above, it would be seen that the claims made by the petitioner for transport subsidy for the period from 01.04.2011 till 31.03.2015 had been duly forwarded by the General Manager, District Industries and Commerce Centre, Dibrugarh, to the Commissioner, Industries and Commerce, Assam, after due verification; the last claim being forwarded on 19.03.2016. The aforementioned verifications could be seen from the Annexure-H series annexed to WP(C) 1603/2021 as well as Annexure-F series annexed to WP(C) 4912/2019. It is also relevant to take note that on 17.11.2016, the General Manager, Industries and Commerce Centre, Dibrugarh, had certified after due verification that the petitioner industrial unit was functioning, as could be seen from Annexure-J to WP(C) 1603/2021. Be that as it may, on 01.08.2018 an inspection of the petitioner unit was carried out for re-verification of



the petitioner's TS/FSS claim for the period from 01.04.2011 to 30.06.2013. The Additional Director (UAZ), Office of the Commissioner of Industries & Commerce, Assam, submitted a report pursuant to the said re-verification stating therein that at the time of the inspection, the unit production was found closed due to financial crisis and shortage of raw material as reported by the unit concerned. On the basis of the said report, the State Level Committee, in its meeting held on 31.12.2019, rejected the claims of the petitioner for the period from 01.01.2012 to 31.03.2015 on the ground that the unit was found closed since January, 2018 for which the authenticity of the claims could not be established. On that basis all alone the State Level Committee rejected the petitioner's claims. Similarly, in respect of the claims for the period from 01.04.2011 to 31.12.2011, the State Level Committee, in its meeting held on 09.08.2018 rejected the claims of the petitioner unit on the ground that the unit had not been functioning and was shown closed. Being aggrieved by the rejection of the claims by the State Level Committee, both the writ petitions have been filed.

6. It is pertinent to observe herein that the Writ Petition (C) No. 4912/2019 pertains to rejection of the petitioner's 3 claims for the period from 01.04.2011 to 31.12.2011, and Writ Petition (C) No. 1603/2021 is in respect to the rejection of the petitioner's 13 claims for the period from 01.01.2012 to 19.03.2016. This Court has also duly taken note of the affidavit-in-opposition filed by the respondent Industries Department, wherein the ground as to why the petitioner's claims have been rejected is on account of the fact that the petitioner unit was not functioning, as could be ascertained from the re-verification report dated 01.08.2018.

7. I have heard the learned counsel for the parties and have also perused the materials on record including the Transport Subsidy Scheme and the conditions mentioned therein.

8. The affidavit-in-opposition filed by the respondent Nos. 3, 4, 5 and 6 in both the writ petitions clearly shows that the claims of the petitioner were duly verified and



due recommendations were made for payment of the amount of transport subsidy in favour of the petitioner. This Court has also raised a specific query upon the learned counsel appearing on behalf of the Industries Department as to whether it is the necessity of the Transport Subsidy Scheme that the industrial unit concerned has to be functioning as on the date on which the amount is to be released, or is it necessary to make verification as to whether such raw materials or finished goods were actually transported or not. Learned counsel appearing on behalf of the Industries Department with all fairness submitted that though it is the requirement of the scheme that the transport subsidy is to be released without any delay, at the same time it is also required to be looked into as to whether the raw materials and finished products, in respect of which the transport subsidy has been claimed, were actually transported within the framework of the said scheme. The learned counsel appearing on behalf of the respondent Industries Department further submitted with candour that the entitlement of the petitioner has to be ascertained on the basis of the materials as to whether the petitioner actually transported the raw materials as well as the finished products, or not.

9. This Court had also duly perused the Transport Subsidy Scheme and had also taken note of the fact that the petitioner unit was duly functioning at the time when the claims for transport subsidy were made, and this aspect of the matter would be clear from the certificate issued by the General Manager, District Industries and Commerce Centre, Dibrugarh, stating that the petitioner unit was physically verified on 17.11.2016 and it was found functioning as on date. Even the affidavit-in-opposition filed by the respondents on 16.03.2022 reveal that the petitioner unit had to be closed down sometime in January, 2018 due to financial crisis and shortage of raw materials. Under such circumstances, it is the opinion of this Court that the respondent authorities, more particularly, the State Level Committee ought not to have rejected the claims of the petitioner on the ground that with effect from January, 2018 the petitioner unit was not functioning.



10. Accordingly, this Court therefore sets aside the decisions of the State Level Committee taken in its 55th meeting held on 09.08.2018 and 21.08.2018, whereby the petitioner's 3 claims were rejected as well as the decision taken in the 57th meeting of the State Level Committee, held on 31.12.2019, whereby the petitioner's 13 claims for transport subsidy were rejected on the ground that the petitioner unit was found closed since January, 2018. In the above backdrop, this Court further finds it relevant to direct the State Level Committee to decide on the 16 claims of the petitioner, as tabulated hereinabove, on the basis of the Transport Subsidy Scheme and further on the basis as to whether the petitioner herein had transported the raw materials as well as the finished products in question. This Court further is of the opinion that in the circumstances and on the basis of the materials available the State Level Committee has any doubt on any aspect of the claims made by the petitioner, an opportunity may be given to the petitioner to explain and clarify the said aspect of the matter. The said exercise be completed by the State Level Committee within a period of 6 (six) months from the date a certified copy of the instant judgment submitted to the Commissioner of Industries and Commerce Department, Government of Assam.

11. With the above observations and directions both the writ petitions stands disposed of.

JUDGE

Comparing Assistant