
(2018) 05 GAU CK 0174
In the Gauhati High Court
Case No : WP(C) 6410 of 2014

Dhansri Tea Industries

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0174

Hon'ble Judges : MANOJIT BHUYAN, J

Bench : Single Bench

Advocate : G N Sahewalla

Final Decision : Dismissed

Judgement

1. Heard Mr. G.N. Sahewalla, learned senior counsel for the petitioner as well as Ms. P. Baruah, learned counsel representing the respondent no. 1

and Dr. B. Ahmed, learned Standing Counsel for respondent nos. 2 and 3. None for the respondent no. 4, though served.

2. The petitioner is a proprietorial concern operating a Tea Industry under the name and style as Dhansri Tea Industries. Present case pertains to the

claim made by the petitioner for benefit of Central Capital Investment Subsidy as brought about vide Office Memorandum dated 01.04.2007 of the

Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion. The subsidy benefit is one amongst the

packages of fiscal incentives and other concessions approved by the Government of India by way of a policy called the North East Industrial and

Investment Promotion Policy (NEIIPP), 2007, made effective from 01.04.2007. For the purpose of claiming Central Capital Investment Subsidy, an

aspirant has to make application in the prescribed format and in case it is a new

unit it must have a Provisional Acknowledgement (EM Part-II) to support that it is registered with the concerned District Industry Centre.

All other documents as provided in the Check List are to be submitted along with the Application Form. The petitioner being granted Provisional

Acknowledgement (EM Part-II) by the District Industries & Commerce Centre (DI&CC), Tinsukia vide Certificate dated 18.05.2011, had made

application in EM-II Form along with the computer generated Provisional Acknowledgement to the General Manager, DI&CC on 21.05.2011 for

verification and authentication of the seal and signature in terms of the condition in the said Provisional Acknowledgment certificate. On 30.05.2011,

the General Manager, DI & CC, Tinsukia informed the petitioner that while making scrutiny of the EM-II application it was found that the Tea Board

Registration Certificate had not been produced along with the application. Accordingly, request was made to submit the same at the earliest. Mention

be made that the said Tea Board Registration Certificate in case of a Tea Factory is one of the documents in the Check List which is to be submitted

along with the Application Form.

3. It is the case of the petitioner that the said Certificate could not be submitted as the same was not made available to it by the Tea Board despite the

fact that application was made on 25.05.2010. The Certificate was eventually made available on 20.12.2013 under the covering letter of the Tea

Board at Annexure- XXVI of the writ petition. This certificate was issued under paragraph 3(4) of the Tea Marketing Control Order, 2003.

4. Being armed with the said Tea Board Registration Certificate and a fresh Certificate of Issuance (EM Part-II) along with all necessary documents,

the petitioner made application claiming Central Capital Investment Subsidy on 08.06.2014 before the Office of the General Manager, DI&CC,

Tinsukia. On 11.06.2014 the petitioner's claim for 30% Central Capital Investment Subsidy was treated as not acceptable as per the policy under

NEIIPP, 2007, whereunder a claim has to be made within one year from the date of commencement of commercial production. It was noted that

whereas commercial production commenced on 18.05.2011, claim application was made on 08.06.2014. On the said ground it was held that the 30%

Central Capital Investment Subsidy Claim of the petitioner cannot be accepted for further processing. Being aggrieved, the present petition is laid.

5. The determination of this case lies in a narrow compass. There is no dispute to the fact that whereas commercial production in the petitioner's tea

industry started on 18.05.2011, the claim for subsidy was made on 08.06.2014. This claim has to be tested on the edifice of the General

Operational Guidelines of NEIIPP, 2007, as updated from time to time. The Application Forms for claiming subsidy under NEIIPP, 2007 have been

devised along with necessary Check List to be strictly followed for scrutiny of claims. In addition, General Operational Guidelines have also been

evolved, which are made to be strictly followed by all State Governments concerned. The General Operational Guidelines, as brought in the year 2008,

inter alia, provided at Clause (ix) that "The DIC/Directorate of Industries must ensure that the claim Application Form for subsidies is complete in

all respects and accompanied by all the documents required as per the respective check list appended therewith". Most pertinently, Clause (xix)

provided that "After issue of these guidelines, the claims for subsidy under any Scheme will be submitted within one year from the date of

commercial production". In the updated Operational Guidelines, brought about in the year 2013, it is also provided at Clause (vii) as under:

"(vii) The claims for subsidy under CCIS Scheme of NEIIPP, 2007 have to be submitted to the concerned DIC in the prescribed Application

Forms within one year from the date of commencement of commercial production. Cases of delayed registration will be dealt as per the clarification

provided vide DIPP letter No. 10(5)/2008-DBA-II/NER dated 25th August, 2008 and letter No.10/6/2008 -DBA-II/NER dated 15th March, 2012. In

case of units which do not get themselves registered by 27.07.2007/21.09.2007 due to delayed notifications of the scheme and have subsequently got

themselves registered latest by 31.12.2008, claims submitted by these units within one year of registration could be deemed admissible, if State Level

Committee (SLC) deems the case fit for condoning the delay. Any other case for subsequent waiver will be dealt on case specific basis by DIPP

after the SLC recommends such relaxation, subject to strict proof of commencement of operation/commercial production. In such cases, final decision rests with DIPP."

From the guidelines above, it is apparent that claim for subsidy under the Central Capital Investment Subsidy Scheme under NEIIPP, 2007 can only be

entertained if the claim is made in the prescribed Application Form within one year from the date of commencement of commercial production.

Relaxation is also provided which, however, is not a subject matter in the present case.

6. To overcome the requirement of making application within one year from the date of commencement of commercial production, justification made

by the petitioner is that one of the necessary documents i.e. Tea Board Registration Certificate was made available to it only on 20.12.2013 although

application to the Tea Board was made way back on 25.05.2010. It is contended that no fault can be attributed to the petitioner for any delay in

making the application claiming subsidy.

7. On behalf of the respondent it is submitted that the Policy/Operational Guidelines are to be followed in letter and spirit and to that extent, claim for

subsidy has to be made in the prescribed Application Form within the period prescribed in the Guidelines. It is contended that the cause for the delay in

getting the Tea Board Registration Certificate by the petitioner cannot be acted to the detriment of the Department concerned for considering and

processing the claim for subsidy made by the petitioner. Further, the said delay in obtaining the Tea Board Registration Certificate is not a valid ground

for relaxation envisaged in the Policy/Operational Guidelines and if relaxation has to be granted on the ground alleged, it would only go to make the

Policy/Operational Guidelines as otiose.

8. I fully subscribe to the contentions put forth by Dr. B. Ahmed, learned counsel representing the respondent nos. 2 and 3. The Policy/Operational

Guidelines cannot be given a liberal interpretation so as to suit the claim made by the petitioner. Without any manner of doubt, the Policy/Operational

Guidelines being clear and categorical that claim has to be made in the prescribed Application Forms within one year from the date of commencement

of commercial production, the same cannot be given any other liberal construction.

The nature of the handicap expressed by the petitioner in not being able to make the claim within the prescribed period cannot entitle the petitioner to

derive benefit of the Central Capital Investment Subsidy. To do so, it would amount to reading into and expanding the scope of entitlement to subsidy

in the Policy/Operational Guidelines under NEIIPP, 2007. This Court would refrain

from doing so. It would not substitute its views with those of the Experts in the field. It would not interfere with a valid policy decision of the State shorn of any apparent element of arbitrariness. Having regard to the above, I find no merit in the writ petition. Accordingly, the writ petition stands dismissed, however, without any order as to cost.