(2024) 02 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 524 Of 2021

M/S Quality Pharma Products Pvt Ltd (Unit-II) APPELLANT

Vs

State Of Assam And 5 Ors RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21
Water (Prevention and Control of Pollution) Act, 1974 — Section 25

Citation : (2024) 02 GAU CK 0004

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : N. Saikia, A. Kalita, G. Das, S. Barua

Final Decision : Dismissed

Judgement

1. Heard Ms. N. Saikia, learned counsel for the petitioner. Also heard Mr. A. Kalita, learned counsel for the respondent nos.1, 2 & 5; Mr. S. Barua, learned Standing Counsel for the Pollution Control Board and Mr. G. Das, learned counsel for the respondent no.3.

2. The petitioner's grievance is that the petitioner has been denied the Capital Investment Subsidy under the Central Capital Investment Subsidy Scheme, 2007 (hereinafter referred to as "CCISS, 2007"). The brief facts of the case is that the CCISS, 2007 was published, vide Notification dated 27.07.2007 and the same came into effect from 01.04.2007 and was to remain in force up to 31.03.2007. In terms of the CCISS, 2007, all new industrial units as well as existing units which go in for substantial expansion and are located anywhere in the North Eastern Region, were eligible for Capital Investment Subsidy under the Scheme. The Scheme was made applicable to the following service sector activities/ industries :

"I. Service Sector :

(i) Hotels (now below Two Star category), adventure and leisure sports including ropeway;

(ii) Medical and health services in the nature of nursing homes with a minimum capacity of 25 beds and old-age homes;

(iii) Vocational training institutes such as institutes for hotel management, catering and food crafts, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion, dsign and industrial training.

II. Bio-technology industry

III. Power Generating Industries :

Power Generating plants upto 10 MW based on both conventional and non-confenational sources.”

The validity period for grant of the Capital Investment Subsidy Scheme was till 31.03.2017. Further, in terms of the Notification dated 12.09.2007, amendments were made to the CCISS 2007, in place of existing sub-paras (b) and (c) under para 4 thereof titled "Definitions" the following shall be substituted:

“4. Definitions:

(b) "New Industrial Unit" means an industrial unit which commences commercial production on or after the first day of April, 2007 but not later than 31st day of March, 2017.

(c) "Existing industrial unit' means an industrial unit which commenced commercial production before 1-4-2007”.

3. The case of the petitioner “M/s Quality Pharma Products Pvt. Ltd.(Unit-II)” is to the effect that it is involved in research, manufacturing and marketing of branded pharmaceuticals formulations. As it came to know of the CCISS, 2007 under the North East Industrial and Investment Promotion Policy, 2007 (hereinafter referred to as “NEIIPP, 2007”), the petitioner decided to expand it’s existing pharmaceutical manufacturing unit. The petitioner after completing expansion of the existing manufacturing unit wrote a letter to the Superintendent of Central Excise, Range-I, Dibrugarh Division on 28.03.2017 stating that they had started production of medicines w.e.f. 28.03.2017.

4. The Regional Executive Engineer, Dibrugarh Pollution Control Board thereafter wrote a letter dated 23.03.2017 to the petitioner, in reference to the petitioner’s letter dated 08.03.2017, stating that the petitioner’s application for “Consent to Establish” the Unit M/s Quality Pharma Products Pvt. Ltd.(Unit-II) had been received on 08.03.2017 and the same was under process. The “Consent to Establish” was finally given by the Pollution Control Board on 17.08.2017. The “Consent to Operate” permission was given to the petitioner by the Pollution Control Board on 13.12.2018 and the same was valid upto 31.03.2019.

5. The petitioner thereafter made an application for grant of Capital Investment Subsidy under the CCISS, 2007 and under the NEIIPP, 2007 on 02.01.2018. The

petitioner industry was consequently verified on 11.01.2018 and a recommendation for grant of Capital Investment Subsidy was made. However, vide the impugned 57th State Level Committee meeting held on 06.03.2019, the State respondents rejected the claim of the petitioner for grant of Capital Investment Subsidy on the ground that "Consent to Establish" the unit was obtained on 17.08.2017 and "Consent to Operate" was obtained on 13.12.2018 from the Pollution Control Board, both after the expiry of the NEIIPP, 2007, i.e. on 31.03.2017.

6. The petitioner's counsel submits that the petitioner was already an existing unit and the claim for Capital Investment Subsidy had been made by the petitioner due to a substantial expansion undertaken by the existing unit. She submits that the existing unit was located in the ground floor of the building, while the expansion of the existing unit had been done on the first floor of the building.

7. The petitioner's counsel further submits that in terms of the Industrial Policy of Assam, 2008 published by the Government of Assam, various categories of non-polluting industries including those who make pharmaceuticals formulation, need not obtain the consent or No Objection Certificate from the Pollution Control Board for an industry to be set up. She submits that as the petitioner was manufacturing medicines, it was not required for the petitioner to obtain "Consent to Establish" and "Consent to Operate" from the Pollution Control Board, before commencement of the manufacture of medicines. She also submits that the delay in obtaining the "Consent to Establish" and "Consent to Operate" beyond the date provided in the CCISS, 2007 and the NEIIPP 2007, i.e., 31.03.2017, cannot bar the petitioner from being given the benefit of the Capital Investment Subsidy Scheme, as provided under the CCISS 2007 and the NEIIPP, 2007, inasmuch as, commercial production after substantial expansion of the industrial unit had commenced from 28.03.2017.

8. The petitioner's counsel submits that in the case of Undersecretary, Ministry of Industries and Ors. Vs. Marchon Textiles Inds. (P) Ltd. and Anr., reported in (2005) 10 SCC 8, the Hon'ble Supreme Court has held that the schemes of the State have to be construed with practical and pragmatic approach so as to achieve and not frustrate the purpose sought to be achieved. The applications should not be dealt with a hyper technical approach or in a pedantic manner. She submits that as the CCISS, 2007 provides for subsidy benefit, the provisions provided therein for grant of the scheme should not be interpreted strictly.

9. The petitioner's counsel has also relied upon the judgment of this Court in the case of Union of India & Ors. Vs. Vision Ispat Pvt. Ltd. & Ors., reported in 2009 (1) GLT 557, wherein it was held that the petitioners therein, who acted in pursuance of the promise of the authority and incurred expenditure, cannot be deprived of the benefit of the Scheme, simply by taking a plea that the scheme was withdrawn subsequently. She submits that as the petitioner had incurred huge expenditure in expanding the existing industrial unit, the petitioner cannot

be deprived of the subsidy that has been promised by the CCISS/NEIIPP, 2007. She also submits that the delay in making an application for the subsidy, that is, on 02.01.2018, cannot be a ground to deny the benefit of the subsidy to the petitioner, as the commercial production in the expanded industrial unit had commenced prior to the last date of the scheme.

10. Mr. A. Kalita, learned counsel for the respondent nos.1, 2 & 5 submits that the petitioner is trying to project the case as if there was an existing industrial unit which had undertaken substantial expansion. However, the application form used by the petitioner for claiming Central Capital Investment Subsidy clearly shows that the petitioner was a new industrial unit, which did not start production during the validity of the CCISS, 2007/NEIIPP, 2007. There was no expansion of an existing industrial unit. He submits that the petitioner may be having an existing industrial unit. However, the form used by the petitioner claiming Capital Investment Subsidy Scheme shows that the petitioner is a new unit and not an expansion of an existing unit. He further submits that the petitioner in the form dated 02.01.2018 recorded that commercial production had started on 28.03.2017. He also submits that the form which had been submitted with the respondents on 02.01.2018 shows that the petitioner had been allotted land by the Government only on 30.03.2017 for the industrial unit and as such, it would have been impossible for the petitioner to have established an industrial unit or made a substantial expansion of the unit and started the production prior to allotment of the land, i.e., on 28.03.2017.

11. The counsel for the respondent Nos. 1, 2 and 5 has also referred to Paragraph Nos. 4 and 7 of the writ petition to show that while the petitioner was claiming subsidy on the ground of expansion of an already existing unit during the validity of the two Schemes, CCISS, 2007 and NEIIPP, 2007, the same is contradicted by the application form used by the petitioner, where the petitioner is claiming Central Capital Investments Subsidy as a new industrial unit. Further, the enquiry report made by the respondents, for verifying the application/form for grant of central capital investments subsidy under the NEIIPP, 2007, also showed that the petitioner had made the claim for subsidy, as a new industrial unit.

12. The counsel for the respondent No. 6, that is, the Pollution Control Board, submits that this Court vide order dated 30.03.2022 had asked for a clarification as to whether any manufacturing unit, such as the petitioner, could start its commercial operation without obtaining prior approval from the Board, that is 'Consent to Establish' and 'Consent to Operate' under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. In this respect, the counsel has referred to the affidavit of the respondent No. 6 at Paragraph No.13, where it has been stated that no manufacturing unit can go ahead with it's commercial production, without obtaining prior 'Consent to Establish' and 'Consent to Operate' from the Pollution Control Board, Assam, as per Section 21 of the Air (Prevention and Control of

Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

13. Mr. G. Das learned counsel for the respondent no.3 submits that he has got no comments to make in this case.

14. On perusing the writ petition and the documents on record, there is nothing to show that the petitioner has made the claim for subsidy as an already existing industrial unit undergoing expansion during the validity of the CCISS, 2007 under the NEIIPP, 2007, i.e., from 01.04.2007 to 31.03.2017.

15. The CCISS, 2007 provides for grant of Capital Investment Subsidy to all new industrial units, as well as existing units which go for substantial expansion located in the North East region, under the medical and health services sector amongst others. The scheme was to remain in force from 01.04.2007 till 31.03.2017. Though the petitioner has tried to make out a case that the petitioner is an expanded industrial unit of an existing industrial unit, the form used by the petitioner for claiming the Central Capital Investment Subsidy under the CCISS/NEIIPP, 2007 shows otherwise. While the petitioner in the said form has stated that the date of commencement of commercial production started on 28.03.2017, the same is belied by the fact that the land as reflected in Paragraph No. 9(B) of the form shows that the petitioner's land was allotted by the government only on 30.03.2017 for 30 years. As the CCISS, 2007 was valid only till 31.03.2017, it would have been impossible for the petitioner to have constructed an industrial unit and commenced production two days prior to the date of allotment, i.e., 28.03.2017. It is also seen that the application form claiming investment subsidy had been submitted by the petitioner only on 02.01.2018.

16. The enquiry report made by the respondents for grant of Central Capital Investment Subsidy to the petitioner shows that the petitioner's industrial unit was verified on 11.01.2018. The said enquiry report also states that land was allotted by the government and that the date of agreement was made between the parties on 29.03.2017.

17. Though the petitioner has brought out a loose document on the date of hearing, stating that the land had already been given on lease to the petitioner by the Government of Assam on 03.08.2004, by way of a lease deed I find that the said lease deed has not been reflected by the petitioner in the application form submitted for grant of subsidy on 02.01.2018. Further, while the petitioner has taken the stand that the subsidy is for expansion of an already existing industrial unit, as has been stated in Paragraph Nos. 4 and 7 of the writ petition, the form used by the petitioner for grant of subsidy has categorically stated that the industrial unit was a new industrial unit. The relevant portion of the form which is at Paragraph No.3 is reproduced hereinbelow as follows-

"3. Whether new unit or existing unit undergoing expansion : new

a) In case of New unit

i) Date of commencement of commercial production/operation 2017-03-28”

18. The Lease Deed dated 03.08.2004 produced by the petitioner’s counsel shows that the shade area of 21,600 sq. feet had been leased to the petitioner for 15 years. If that be the case, the lease period would have been valid till the year 2019. Further, if the petitioner was the product of a substantial expansion of an existing unit made on the first floor of the same building housing the existing industrial unit, there was no requirement for allotment of new land by the government to the petitioner on 30.03.2017. The form used by the petitioner for grant of subsidy does not show that any lease hold land had been used for building the industrial unit where the petitioner is located, inasmuch as, Paragraph No. 9 of the form states as follows-

“9. DETAILS OF LAND AND BUILDING:

A. Land

a) Own Land

i) Land area, Revenue Village, Dag No. & Patta No.:

ii) Date of Purchase:

iii) Date of Registration:

b) Land allotted by Government/Government agency

i) Date of allotment/agreement: 30.03.2017 6695

ii) Date of taking over possession: 30 YEAR

c) Lease hold Land

i) Date of lease of land:

ii) Period of lease:

B. Building

a) Own Building/Rented Building

i) In case of own building built up area own 11200 SQ FT”

19. The Lease Deed dated 03.08.2004, which has been submitted by the petitioner’s counsel to this Court is made a part of the record and marked as ‘Annexure-X’. As can be seen from the records, the Pollution Control Board, Assam granted the petitioner ‘Consent to Establish’ the industrial unit vide letter dated 17.08.2017 and ‘Consent to Operate’ the industrial unit vide letter dated 13.12.2018. The above facts clearly go to show that the petitioner could not have started operation of the industrial unit during the validity of the CCISS/ NEIIPP, 2007. In fact, the letter dated 13.12.2023 issued by the Pollution Control

Board, Assam granting 'Consent to Operate' to the petitioner refers to a document pertaining to the date 02.09.2018, which implies that the petitioner had applied for 'Consent to Operate' the industrial unit only in the year 2018. As such, the above gives rise to an inference that the petitioner could not have started operation of the industrial unit on 28.03.2017. Further, Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 provides that no person can establish or operate an industrial plant, without the previous consent of the Pollution Control Board. Further, Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 provides that no person shall establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land, without the previous consent of the Pollution Control Board. Thus, the stand of the learned counsel for the petitioner that the consent of the Pollution Control Board for setting up the industry is not necessary in terms of the Industrial Policy of Assam, 2008, cannot be accepted, inasmuch as, an executive instruction cannot supersede/over-ride the provisions of a statutory law.

20. As the 'Consent to Establish' and 'Consent to Operate' had been issued by the Pollution Control Board only in the year 2018, it cannot be said that the petitioner had validly started commercial production prior to April, 2007, i.e., during the validity of the CCISS/NEIIPP, 2007.

21. The above being stated, the Constitution Bench of the Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company & Ors., reported in (2018) 9 SCC 1 decided the question regarding the interpretative role to be applied while interpretating a tax exemption provision/ notification, when there is an ambiguity as to it's applicability, with reference to the entitlement of the assessee or the rate of tax to be applied. The Supreme Court held that every taxing statute including the charging, computation and exemption clause should be interpreted strictly. In case, of ambiguity in charging provisions, the benefit must necessarily go in favour of the subject/ assessee, but the same is not true for an exemption notification, wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State. It thus held that exemption notification should be interpreted strictly and the burden of proving the applicability would be on the assessee, to show that his case comes within the parameters of the exemption clause or exemption notification.

22. The CCISS/NEIIPP, 2007 having clearly stated that the scheme would be in force from 01.04.2007 till 31.03.2017 and that grant of Capital Investment Subsidy could be availed by existing industrial units or those undertaking substantial expansion, it was incumbent on the part of the petitioner to show that the petitioner's claim for subsidy was as per the requirement of the scheme. The petitioner not having been able to show that the subsidy was for a new industrial unit, which commenced production between 01.04.2007 and 31.03.2013, the petitioner has not been able to prove that the petitioner's case

comes within the parameters of the scheme for grant of subsidy. As such, this Court does not find any ground to exercise its discretion in this case. This Court also finds that the judgments of the Hon'ble Supreme Court relied upon by the petitioner's counsel is not applicable to the facts of this case.

23. The writ petition is accordingly dismissed.

