

**(2008) 09 GAU CK 0088**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 7304 of 2005**

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|--------------------------------------|------------|
| North Eastern Tubes Ltd. and Another | APPELLANT  |
| Vs                                   |            |
| Union of India (UOI) and Others      | RESPONDENT |

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**Date of Decision :** 16-09-2008

**Acts Referred:**

**Citation :** (2009) 2 GLR 492 : (2009) 1 GLT 181

**Hon'ble Judges :** Hrishikesh Roy, J

**Bench :** Single Bench

**Advocate :** A.K. Bhattacharyya and K. Agarwal, for the Appellant; N. Bora and G. Soren, for the Respondent

**Final Decision :** Allowed

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## Judgement

Hrishikesh Roy, J.—Heard Mr. A.K. Bhattacharyya, learned senior Counsel, assisted by Mr. K. Agarwal, appearing for the Petitioners. Mr. N. Bora, learned Central Government Standing Counsel appears for Respondent Nos. 1 and 2. Also heard Mr. G. Soren, learned Government Advocate, who represents the Respondent No. 6.

2. The Petitioner No. 1, a public limited company and the Petitioner No. 3. one of the Directors of Petitioner No. 1, are before this Court to challenge the communication dated 11.6.2002 (Annexure-42) of the Government of India and also the communication dated 3.8.2005 (Annexure-41) of the Director of Industries, Assam, whereby the claim for transport subsidy from Siliguri (West Bengal) to the nearest rail head (Guwahati), of the Petitioners Industrial unit located at Paschim Boragaon, Guwahati, for the period 1.7.1998 to 10.1.2001 has been rejected by the Respondent authorities. The Petitioners are also seeking further direction for sanction and disbursal of the transport subsidy claim of the Petitioners for movement of raw materials from Siliguri to the Guwahati stockyard of the manufacturers.

3. The basis for the claim made by the Petitioners is found in the Central

Government notification dated 27.7.1971, whereby a scheme for grant of subsidy on the transport of raw materials and finished goods to and from certain selected areas was notified with a view to promoting growth of industries in those areas. The scheme has been described as the Transport Subsidy Scheme, 1971 ("the Scheme").

4. Under the scheme new industrial units which have been set up and have commenced production during the validity of the scheme were also declared eligible to the benefits under the scheme. It is not in dispute that the Petitioners industry is located in the selected area (A), notified under the scheme which comprises all the States of the North East region. In the instant case, the claim of the Petitioners, is with regard to securing of raw materials described as HR. Coil, fine etc. which are procured by the Company from the Steel Authority of India Ltd., (SAIL) and Tata Iron & Steel Co. (TISCO), which have their manufacturing units at Bokaro, Jamshedpur (Jharkhand) and Durgapur (West Bengal) respectively.

5. Under Clause 6(i) of the scheme, transport subsidy is to be given to the industrial units in respect of raw materials, which are brought into for manufacturing of finished products.

Under Clause 6(iv) of the scheme, it is specified that:

In the case of North-Eastern region comprising the State of Assam, Meghalaya, Manipur, Tripura and the Union Territories of Arunachal Pradesh and Mizoram the transport subsidy will be given on the transport costs between Siliguri and the location of the industrial unit in these States/Union Territories. 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 industrial unit to the nearest railway station and thereafter the cost of movement by rail to Siliguri will be taken into account. In the case of North Eastern region, for raw materials moving entirely by road or other mode of transport the transport cost 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 station of the industrial unit and thereafter by road. Similarly, in the case of movement of finished goods moving entirely by road or other mode of transport in the North Eastern region, the transport costs will be limited to the amount which the industrial unit might have paid had the finished goods moved from the location of the industrial units to the nearest railway station by road and thereafter by rail to Siliguri.

6. Under Clause 6(xii), a committee is required to be set up with representatives of all the concerned Government authorities and it is the responsibility of the said Committee to scrutinize and settle all claims of subsidy and the claimants are

required to provide proof of import of raw materials to the said committee.

7. It is also indicated in the scheme that the Government will have the discretion to refuse to entertain or reject the claim for transport subsidy.

8. The Petitioners unit commenced commercial production as a new unit from 11.01.1996 and, accordingly, under the scheme, it was entitled the benefit of transport subsidy for a period of 5 years from 11.1.1996 to 10.1.2001.

9. The specific averments made in the writ petition is that since the withdrawal of the freight equalization scheme for steel materials in the country, the prices of steel are determined at the price prevalent at the manufacturing units and the main producers like SAIL and TISCO levy a freight charge for transporting steel from their plants, when supplies are made at any place away from the manufacturing units.

In the instant case, the Petitioners secure their supply of raw materials from the Guwahati stockyards of SAIL and TISCO by paying the cost of steel and also by paying the cost of movement of steel from the steel plants to the stockyard of the steel companies. From the sample invoice of the Steel Authorities of India, with regard to the steel purchased by the Petitioners from them, it appears that the Petitioners have been made to pay freight charge for transport of steel from the steel plants located at Bokaro and Jamshedpur to the stockyards of the manufacturers located at Guwahati.

It must also be noticed that irrespective of the mode and manner of transport of raw materials from Siliguri to the eligible industrial units, transport subsidy is reimbursable only on rail transport cost from Siliguri to the railway station nearest to the location of the industrial unit and thereafter the cost of movement by road to the actual location of the industrial unit.

10. After the Petitioners commenced production, the claims of transport subsidy were made before the committee constituted under Clause 6(xii) of the scheme and the said committee ("the SLC") scrutinized the claims of the Petitioners and allowed transport subsidy for the period 11.1.1996 to 30.6.1998. This approval of the SLC is recorded in the communication dated 17.5.1999 (Annexure-5) of the SLC.

11. Although there was no dispute that the raw materials used by the Petitioners have actually been transported from outside the North East region and the Petitioners paid for the additional freight charge and on this basis the Petitioners were initially granted the benefit of transport subsidy for about two and half years from the date of commercial production, a decision was taken in the deliberation of the SLC while examining the claim for transport subsidy of the Petitioners for subsequent period after 30.6.1998, to request the Government of India to confirm entitlement of the Petitioners to the transport subsidy.

In response to the query made through the letter dated 20.2.2001, certain clarifications were sought by the Ministry of Commerce & Industry, Government

of India and it was clarified by the Government of Assam through its communication dated 23.4.2002 that while the Petitioners lift steel used as a raw material from the stockyard, the freight from the plants of SAIL and TISCO to the stockyard is charged separately by the manufacturers, in addition to the ex-factory price of the said materials. The SAIL and TISCO have provided details of the exact freight cost charged by them from their respective plants to their respective stockyard located at Guwahati.

12. By the impugned communication dated 11.6.2002, issued by the Government of India to the Government of Assam on the entitlement of the Petitioners to the transport subsidy on raw materials, it was indicated that the said claim of reimbursement of freight charge from Siliguri to Guwahati from those who lifted the raw materials (steel) from the Guwahati stockyard is not found feasible by the Government of India and on the basis of the aforesaid decision of the Central Government, the Assam Government informed the Petitioner by the next impugned communication dated 3.8.2005, that the transport subsidy from Siliguri (West Bengal) to the nearest rail head (Guwahati) to unit in Assam would not be admissible and the Petitioners would be entitled to transport subsidy only on transportation cost from the stockyard of the steel manufacturer to the factory site of the Petitioners.

13. It is contended on behalf of the Petitioners that the Petitioners decided to set up their factory in Assam, which is a notified selected area only because of the incentive offered through the transport subsidy scheme notified by the Government of India and if the Petitioners would have been left to decide for themselves without referring to the incentives offered by the transport subsidy scheme, they would have set up their factory at a location where the raw materials were readily available at a cheaper and competitive cost. It is accordingly submitted that only because of the assurance of reimbursement of transport subsidy, the Petitioners have set up their industry in a backward and remote location and the feasibility of the industrial unit has also been assessed by their financiers by taking into account the benefit of transport subsidy on raw materials and finished products promised by the Central Government for such industries located in the N.E. Region.

13.1. It is also contended on behalf of the Petitioners that if the raw materials were to be procured by the Petitioners directly from the manufacturers located at Bokaro, Jamshedpur or Durgapur as the case may be and if the Petitioners would have transported the raw materials themselves to their factory located at Guwahati, the Petitioners would have been definitely reimbursed the rail freight cost from Siliguri (West Bengal) to the nearest rail station to their plants and under such circumstances, merely because the freight cost is incurred by the steel manufacturer themselves and the Petitioners are charged separately for such cost of freight borne by the steel manufacturers, there is no justification to deny the benefit of transport subsidy to the Petitioners under the scheme.

13.2. The Petitioners also submit that no justification has been given by the

Central Government in "support of their decision to deny the benefits of transport subsidy to the Petitioners on transport of raw materials from Siliguri to Guwahati and the stand taken by the Central Government that granting of transport subsidy is not found to be "feasible", cannot be accepted as a legally acceptable justification for denial of a promised benefit.

13.3. The Petitioners also contended that the competent authority namely, the SLC, which is entrusted with the responsibility of scrutinizing the claim for transport subsidy have already scrutinized the claim of the Petitioners and have recommended the payment of transport subsidy and on the basis of such recommendation the Petitioners have already received subsidy for about two and half years and not to act thereafter on the recommendation and the approval of the SLC, which is the competent authority envisaged by the scheme, would clearly be unjustified and more so when no explanation is offered by the Government of India for not accepting the recommendation of the SLC.

14. The learned Central Government counsel, per contra submits that since the movement of raw materials in the instant case is not between one State to another but it is within the same State (Assam), on strict application of the provisions of the scheme, the Petitioners would not be entitled to the reimbursement of rail transport cost from Siliguri to Guwahati on movement of steel.

14.1. It is further submitted that the Government of India has not found the claim made by the Petitioners to be feasible and accordingly the claim made by the Petitioners have been found to be unacceptable.

15. On reading of the counter affidavit filed on behalf of the Government of India, it is clear that the Government of India has treated the response of the Government of Assam to be relevant, in the present dispute. In the counter affidavit filed by the Joint Director of Industries, Assam, it is clearly indicated that the SLC was satisfied with claim of the Petitioners to receive transport subsidy as the raw materials have actually been transported from outside the North East region and the Petitioners unit pays for the additional freight cost for such raw materials. The actual entitlement of the Petitioner have also been determined from the invoices submitted by the Petitioners while making the claim as can be gathered from the counter affidavit of the Joint Director counter. It is also averred that the Petitioners unit have been paid transport subsidy for the earlier period 11.1.1996 to 30.6.1998 and the claim for the balance period were rejected only on the basis of the directions given by the Government of India.

15.1. It is also seen from the counter affidavit of the Government of India that the provisions of the scheme have been strictly interpreted by them to consider the claim of transport subsidy made by the Petitioners to be not feasible. But when incentives are offered to the entrepreneurs to set up industries in backward and far flung locations and the entrepreneurs set up industries being attracted by

the incentives offered under the scheme, whether it would be justified to make a strict interpretation of the scheme to deny the incentives under the scheme, as has been done by the Government of India in the instant case.

16. It has been held by the Supreme Court in the case reported in Under Secretary, Ministry of Industries v. Marchon Textile Inds. (P.) Ltd. 2005 10 SCC 554 that:

The schemes floated by the State releasing grant of subsidy for industrial units to be set up in certain selected backward districts/areas have a benevolent and public purpose to achieve, and that is, to promote the growth of industries in such districts/areas which but for the State encouragement would continue to remain backward and the industrial investment will not be attracted to such areas. Such schemes have to be construed with practical and pragmatic approach so as to achieve and not frustrate the purpose sought to be achieved. The benefit of the scheme ought to be allowed, if it can be done.

Having regard to the above decision of the Supreme Court in Marchon Textile Inds. (P.) Ltd. (supra) it is clear that strict interpretation of the clauses of an incentive scheme to deny the benefit of the scheme is not warranted and claims under incentive schemes have to be construed with practical and pragmatic approach and the benefit of the scheme ought to be allowed, if it can be done.

17. In the present dispute, the Petitioners claim, that they set up their industry in a backward State away from ready source of raw materials only because of the incentives promised by the Government of India and only because of the promise made by the Government of India, they were attracted, to make heavy investment to set up their industry in Assam. Accordingly it is contended that it would be totally impermissible for the Government, of India to now take a stand that payment of incentive offered through the scheme is not feasible by strict interpretation of the scheme and the Government of India cannot be permitted to resile from the promises made.

18. The decision of the Supreme Court in the case of U.P. Power Corporation Ltd. v. Sant Steels & Alloys (P.) Ltd. may also be relevant to examine the legitimacy of the stand taken by the Government of India. In this case the Supreme Court stated that:

In this 21st century, when there is global economy, the question of faith is very important. The Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the shortsightedness of governance. Therefore, in order to keep the faith of the people, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the Appellant Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the word of the Government. That will shake the faith of the people in the governance.

Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a matter of faith.

19. Having regard to the aforesaid decisions of the Supreme Court in *Marchon Textile Inds. (P.) Ltd.* (supra) and in the *U.P. Power Corporation* (supra), I am of the opinion that the Government of India is not entitled to deny the benefit of transport subsidy to the Petitioners when the Petitioners have set up their industrial unit in a backward region lured by the promises made by the Government. The entitlement of the Petitioners to the benefits under the scheme have been examined and favourably considered by the competent committee constituted for the purpose. The scheme does not envisage any other authority other than the SLC to decide on the entitlement of the subsidy of industrial unit under the scheme.

20. The Government of India has averred that the granting of transport subsidy is not found to be feasible. But I am of the opinion that feasibility is a matter which ought to be decided at the time when incentive schemes are formulated and the ground of feasibility cannot be cited as a justification to deny benefit of transport subsidy to an industrial unit which has been set up in a particular location on the basis of the incentives promised under a notified scheme. The Petitioners are not only found eligible but have also received benefit under the scheme for the first half of their entitled 5 years period. Nothing is also indicated by way of reasoning as to why the Petitioners' claim is not found feasible. Therefore, the contention of the Government of India is not found to be reasonable and acceptable.

21. In the aforesaid circumstances, I am of the considered opinion that the decision of the Government of India conveyed through their letter dated 11.6.2002 (Annexure-42) is not sustainable and the same is accordingly quashed. The consequent communication of the State Government dated 3.8.2005 is also accordingly declared to be unsustainable.

22. As the impugned communications have been interfered with, there shall be further direction on the Respondent authorities to consider the claim of transport subsidy of the Petitioner on the admissible railway freight cost from Siliguri to Guwahati on raw materials used by the Petitioners. The competent authority, namely, the SLC has already recommended the case of the Petitioners and if there is no other impediment, the Respondent authorities would take all necessary steps to ensure that the transport subsidy under the scheme on raw materials for the period 1.5.1998 to 10.1.2001 would be paid expeditiously and preferably within a period of six months from today.

23. The writ petition stands allowed accordingly.