(2012) 08 GAU CK 0005

In the Gauhati High Court

Case No : WA No. 26 (SH) of 2011

Union of India APPELLANT

Vs

J. Tariang RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Citation : (2013) 3 GLT 16

Hon'ble Judges : S.R. Sen, J;Arup Kumar Goswami, J

Bench : Division Bench

Advocate : S.C. Shyam, CGC, for the Appellant; K. Khan, for the Respondent

Final Decision : Partly Allowed

Judgement

Arup Kumar Goswami, J.—This appeal is directed against the judgment and order dated 10.05.2010 passed in W.P.(C) No. 110 (SH) of 2008, allowing the writ petition, whereby, while quashing the letter dated 09.12.2009, issued by the Deputy Secretary, Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, for short, DIPP, keeping the release of the Transport Subsidies in abeyance until further order, directions were issued to the present appellant as well as the respondent Nos. 4 and 5 in the writ petition to release the transport subsidies for the period (i) 01.04.1996 to 31.03.1997 and (ii) 1.04.1998 to 04.12.1999, amounting to Rs. 6,55,216/- and Rs. 6,35,193/-, respectively, to the writ petitioner within a period of one month from the date of the receipt of the judgment with a further direction to the appellant and the respondent No. 5 in the writ petition to pay simple interest @ 12% per annum on the aforesaid amount from the date of pre-audit report dated 24.11.2003, till realization of the said transport subsidies for wrongfully withholding the same. Aggrieved, the Union of India, represented by the Secretary, Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion has preferred this appeal.

2. The case of the writ petitioner, briefly, as set out in the writ petition is that the

writ petitioner is the proprietor of "Meghalaya Chemical and Calcinates", a Lime Calcination Plant and is a small scale industry, which was set up in the year 1994. The writ petitioner had availed of loan from Meghalaya Industrial Development Corporation. The writ petitioner, was entitled to Transport Subsidy and from time to time the writ petitioner had prepared and submitted claims on account of, amongst others, Transport Subsidies to the General Manager, District Industries Centre, Jaintia Hills District, Jowai (respondent No. 3 in the writ petition). The writ petitioner received Transport Subsidies for the year 1994-1995, 1995-1996 and 1997-1998. Claim was submitted for the year 1996-1997, which was scrutinised by the State Level Committee set up to scrutinise such claims. The writ petitioner was informed by the Commissioner and Secretary, Industries Department, Government of Meghalaya by a letter dated 08.09.2001 that Transport Subsidy for the period 1996-1997 and from 01.04.1998 to 04.12.1999, amounting to Rs. 12,90,409/- was sanctioned and that the writ petitioner may contact the General Manager, North-East Development Finance Corporation Ltd. (respondent No. 4 in the writ petition), which is the disbursing authority. The respondent No. 4, also by a letter dated 16.10.2001, had informed that the claim for Transport Subsidy which was approved by the State Level Committee/District Level Committee was forwarded by the respondent No. 2 for disbursement to the writ petitioner and by the said letter, the writ petitioner was requested to comply with certain directions for early disbursement of the amount. While the matter rested at that, a letter dated 13.01.2003 was received from the respondent No. 2 directing the petitioner to resubmit certain challans and details of expenditure. The writ petitioner by letter dated 28.03.2003 questioned the authority of the respondent No. 2 to ask for the very same documents which were supplied earlier. The writ petitioner had also filed a writ application before this Court which was registered as W.P.(C) No. 190 (SH) of 2003 questioning the inaction of the respondents in not releasing the Transport Subsidy due to the writ petitioner, which, however, came to be dismissed for non-prosecution by an order dated 09.11.2006. There were number of correspondences between the parties and in response to letter dated 29.01.2008 of the writ petitioner, the respondent No. 4 had replied by a letter dated 04.02.2008 informing that the claimed amount of Rs. 12,90,409/- was held up because of pre-audit report dated 24.11.2003.

3. The stand of the respondent No. 1/appellant is that in terms of the letter dated 04.05.1993, reiterated by a letter dated 09.05.1994, issued by way of clarification under Transport Subsidy Scheme, the State Governments/Union Territories were informed not to accept claim more than one year old from the date of incurring expenditure and that subsidies in question were not released in view of the claim being made after inordinate delay, on 08.05.2001. It is also indicated that the claims were ''pre-audited'' by the Principal Accounts, Office of DIPP and in the report dated 31.10.2003, it was opined that claims cannot be recommended for disbursement.

4. Heard Mr. S.C. Shyam, learned C.G.C. for the appellant and Mr. K. Khan,

learned counsel appearing for the writ petitioner/respondent No. 1 in the appeal.

5. Mr. Shyam submits that the learned Single Judge was in error in concluding that the claims submitted by the writ petitioner was within the time prescribed under the scheme. The learned counsel submits that there is no material on record suggesting that the claims were submitted within the time prescribed. Merely because the State Level Committee meeting held on 16.08.2001 had sanctioned the Transport Subsidies for the periods in question, it cannot be said as a logical corollary that claims were submitted within the time prescribed. The learned counsel submits that an Audit Team of DIPP had pre-audited the claim of the writ petitioner, and had observed that the claims were made on 08.05.2001 and hence, claims cannot be recommended: It is further submitted by him that the grant of interest by the learned Single Judge is also not sustainable in law as there is no provision for payment of interest under the Transport Subsidy Scheme.

6. The respondent Nos. 1 and 5 had filed one additional affidavit on 31.03.2010. However, by an order dated 13.04.2010, the Court had noted that as the said affidavit was filed beyond the time granted, the same shall not be taken on record.

7. Mr. K. Khan, learned counsel for the writ petitioner/respondent No. 1 submits that the letters dated 04.05.1993 and the letter dated 09.05.1994, on which reliance has been placed by the learned counsel for the appellant do not have binding force and they are merely directory in nature and on the alleged ground of non- submission of claim within a period of one year, the claim of the writ petitioner for the period 01.04.1996 to 31.03.1997 and 01.04.1998 to 04.12.1999 could not have been rejected. It is also submitted by him that as the claim of the writ petitioner was found valid in all respects, the State Level Committee had sanctioned the same in the meeting held on 16.08.2001.

8. Learned counsel has placed reliance on the decision rendered in the case of Under Secretary, Ministry of Industries & Ors. Vs. Marchon Textile Inds. (P) Ltd. & Anr. reported in (2005) 10 SCC 554 , which was also relied upon by the learned Single Judge, to impress upon this Court that application for grant of benefit of the scheme ought not to be dealt with in a pedantic manner or with a hyper-technical approach and if an application filed before the cut-off date is substantially in order and satisfies the formalities expected of the Scheme, then an opportunity ought to be granted to the applicant to clear defects so that deserving units may get the benefit of the scheme. The learned counsel has also placed reliance on paragraphs 43 and 52 of the decision rendered in the case of Ramrajsingh Vs. State of M.P. and Another, , to submit that as the orders in question did not provide for the consequence of non-compliance, the direction for not accepting the claim more than one year old from the date of expenditure must be held to be directory and that for noncompliance of the same, the claims, lodged by the writ petitioner, will not merit rejection.

9. The writ petitioner is seeking to avail the benefit under the Transport Subsidy Scheme. The letter dated 04.05.1993 issued by the Ministry of Industries, Department of Industrial Development under the subject "Transport Subsidy Scheme-Clarification-regarding" was forwarded to, amongst-others, the Secretary, Industries Department, Government of Meghalaya. The said letter directed the State Government/Union Territories to advise the entrepreneurs to submit Transport Subsidy claims quarterly. It is also provided that thenceforth, under no circumstances they should accept claims more than one year old from the date of incurring of the expenditure. The letter dated 09.05.1994 is a reiteration of the letter dated 04.05.1993. The letters, thus, prescribed a cut-off date for entertaining the claim petition. It is emphatically laid down that the State Government should not accept claim more than one year old from the date of incurring of the expenditure.

10. The judgement in the case of Ram Raj (supra), is in the context of interpretation of statutes and is not applicable in the facts of this case. It also appears to us that non-applicability of the aforesaid letters were not put in issue before the learned Single Judge.

11. In the circumstances, we are of the opinion that claim has to be submitted within a period of one year from the date of incurring of the expenditure failing which the claim should not be accepted and consequently, there will be no occasion for disbursement of the claimed amount as well.

12. In the writ petition, the writ petitioner has annexed copies of the claim forms for the periods in question. From the aforesaid, it is apparent that the writ petitioner had submitted Transport Subsidy claim for 1998-99 on 14.03.2001 and for 1999-2000 on 15.03.2001. It appears that claim for the year 1998-99 is for the period 01.04.1998 to 31.03.1999 and the claim for 1999- 2000 is for the period 01.04.1999 to 04.12.1999. From the aforesaid documents it becomes crystal clear that the claim was lodged by the writ petitioner beyond the stipulated period of one year. The date, namely, 08.05.2001, as recorded in the pre-audit report appears to be not correct. However, that will not make any difference so far as the claim for the period 01.04.1998 to 04.12.1999 is concerned, in view of our discussions above.

13. In view of the above, to that extent, the learned Single Judge was not right in holding that claim submitted by the writ petitioner for the period 01.04.1998 to 04.12.1999 was within the time prescribed under the scheme and therefore, we hold that the writ petitioner will not be entitled to the amount of Rs. 6,35,193/- for the period 01.04.1998 to 04.12.1999.

14. It also appears from the material on record that the writ petitioner had submitted Transport Subsidy claim on 26.08.1997 for the period 1996-97, ending on 31.03.1997.

15. Materials on record also disclose that the said claim was taken up along with the claim of the unit for Transport Subsidy for 1995-96 in the 4th meeting of the

35th State Level Committee held on 03.09.1998. In the said meeting, while the claim for 1995-96 was sanctioned, the claim for the period 1996-97 was not sanctioned as the unit had failed to produce the Income Tax Clearance Certificate. As has been noted earlier, the claim for the period 1996-97 was sanctioned by the State Level Committee in the meeting held on 16.08.2001 after all the papers were found to be in order. The learned Single Judge rightly noted that on what basis the pre-audit team had come to the conclusion that the claim was made by the petitioner on 08.05.2001 is not known. On the basis of the available materials on record, the observations recorded by the Audit Team in the report dated 31.10.2003 that the petitioner had submitted the claim for Central Transport Scheme for 1996-97 also on 08.05.2001 cannot be held to be correct. If the claim was lodged within the specific period of time, and some documents, which were not submitted along with the claim, is furnished later on after a period of one year, it cannot be said that the claim itself was lodged beyond the prescribed period of time. In the instant case, we are satisfied that the claim was lodged within time, however, without the Income Tax Clearance Certificate, which was later on supplied. It is also to be noted that the respondents had also disbursed a claim for the period 1997-98. On that score also, the observations of the Audit Team in the report dated 31.10.2003 that the claim was made on 08.05.2001 for the period "01.04.1996 to 04.12.1999" is palpably wrong. We are in agreement with the finding of the learned Single Judge that the writ petitioner is entitled to the Transport Subsidy amount of Rs. 6,55,216/- for the period 01.04.1996 to 31.03.1997 (1995-96). Accordingly, the directions given by the learned Single Judge to the respondent Nos. 1, 4 and 5 of the writ petition to release the Transport Subsidy for the period 01.04.1996 to 31.03.07 is upheld. The appellant and respondent Nos. 4 and 5 of the writ petition will now make the aforesaid payment within a period of one month from the date of receipt of this judgement.

16. As has been noted in Marchon Textile (supra), 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 a public purpose to achieve. But for the encouragement to promote growth of industries in such districts/areas, these areas would continue to remain backward and industrial investment will not be attracted. The petitioner had set up its plant in a remote area of Jaintia Hills District and was heavily dependant on Transport Subsidy at the nascent stage for its viable existence. The claim for Transport Subsidy are to be submitted within a period of one year from the expenditure incurred. A corresponding duty is also cast upon the authorities to disburse the claim duly made and sanctioned within a reasonable period. The learned single judge directed payment of simple interest for wrongfully withholding the Transport Subsidy. We see no reason to take a different view and accordingly, directions of the learned single Judge to pay simple interest @ 12% per annum is upheld. As we have held that the writ petitioner will be entitled to Transport Subsidy claim only for the period 01.04.1996 to 31.03.1997, the interest will be payable only in

respect of the amount Rs. 6,55,216/- in terms of the directions of the learned Single Judge.

17. The appeal is partly allowed as indicated above. No costs.

