

(2012) 07 GAU CK 0049

Gauhati High Court

Case No: Writ Petition (C) 1572 of 2009

Ishwar Food Products Private
Limited

APPELLANT

Vs

The Union of India and others

RESPONDENT

Date of Decision: July 20, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) 1 GLD 340

Hon'ble Judges: Ujjal Bhuyan, J

Bench: Single Bench

Advocate: N. Saikia, Ms. P. Mahanta and Ms. L. Borgohain, for the Appellant; DC Chakraborty, Central Government Counsel and Ms. K. Devi, Government Advocate, Assam, for the Respondent

Final Decision: Allowed

Judgement

Hon'blr Mr. Justice Ujjal Bhuyan

1. By way of this application under Article 226 of the Constitution of India, the petitioner challenges the rejection of its claim of transport subsidy for the period from 01.07.2004 to 30.09.2005 as being time barred. The case of the petitioner as projected in the writ petition is that it is a company incorporated under the Company's Act, 1956 having its registered office at Tinsukia in the State of Assam. The petitioner is engaged in manufacturing of consumable goods such as Atta, Maida, Suji, Bran etc. for which it procures raw material from outside the State.

2. The Government of India framed a scheme for grant of subsidy on the transport of raw materials and finished goods to and from certain selected areas with a view to promote industrial growth in such areas. The scheme is called the Transport Subsidy Scheme, 1971. It has since been extended from time to time and was in operation during the period in question. The state of Assam is included in the

selected areas.

3. After establishment of its industry and commencement of production, the petitioner submitted an application on 14.11.2005 before the appropriate authority for grant of transport subsidy. According to the petitioner, the subsidy amounts being small at the initial stage, a composite claim was lodged for the periods from 01.07.2004 to 30.09.2005, the details of which are as under: -

	PERIOD	TOTAL AMOUNT ELIGIBLE
1.	1.7.04 to 30.9.04	Rs. 4,775.00
2.	1.10.04 to 31.12.04	Rs. 6,47,965.00
3.	1.1.05 to 31.3.05	Rs. 4,67,666.00
4.	1.4.05 to 30.6.05	Rs. 3,43,406.00
5.	1.7.05 to 30.9.05	Rs. 1,11,958.00

4. The petitioner was informed by the District Industries and Commerce Centre, Tinsukia by letter dated 01.11.2004 that its industrial unit had been registered under the Transport Subsidy Scheme. However, by letter dated 05.12.2005, the General Manager of the District Industries and Commerce Centre, Tinsukia informed the petitioner that the transport subsidy claim which was submitted and received on 14.11.2005, was for more than one period. The claim papers were returned to the petitioner for resubmission on quarterly basis. It appears that the claim for transport subsidy was thereafter submitted on quarterly basis for the periods indicated above in the office of the General Manager of the District Industries and Commerce Centre, Tinsukia on 14.12.2006, which was thereafter processed and forwarded to the Directorate of Industries and Commerce, Government of Assam. However, the Directorate of Industries and Commerce, Government of Assam by letter dated 08.02.2007 informed the General Manager of the District Industries and Commerce Centre, Tinsukia that the Transport Subsidy claims submitted by the petitioner on 14.12.2006 were time barred as they were not filed within one year of incurring of the expenditure.

5. The petitioner submitted representation dated 27.03.2007 before the Director, Industries and Commerce Department, Government of Assam stating that the Transport Subsidy claims were submitted on composite basis on 14.11.2005 before the District Industries and Commerce Centre, Tinsukia. It was further stated that the requirement of submitting the claim on quarterly basis became known to the petitioner only after receipt of the letter dated 05.12.2005 from the General Manager of the District Industries and Commerce Centre, Tinsukia. It was further stated that the company's Chairman was out of station because of health grounds for which there was delay in re-submission of the claims on quarterly basis. The petitioner requested the Director to grant the claims to enable it to overcome the financial hardship. However, the Directorate of Industries and Commerce,

Government of Assam informed the petitioner by letter dated 06.02.2009 that its transport subsidy claims for the period from 01.07.2004 to 30.09.2005 were time barred. Accordingly, the claims were not accepted.

6. Aggrieved, the petitioner has filed the present writ petition with the grievance as indicated above.

7. The respondent No. 1 i.e. the Union of India has filed two affidavits, one dated 01.08.2009 and the other dated 23.10.2009. In the two affidavits, the Union of India has stated that as far back as on 04.05.1993 and 09.05.1994, the Ministry of Industries, Government of India had issued communications and had intimated all the State Governments and other authorities that subsidy claim of more than one year from the date of incurring of expenditure should not be accepted. The Union of India has explained the procedure which is to be followed while processing claims of transport subsidy. As per the procedure prescribed, the claim made by an industrial unit for release of subsidy is first considered by the State Level Committee/District Level Committee. On the basis of their recommendation, the claim is forwarded by the Directorate of Industries to the North Eastern Development Financial Corporation (NEDFI), which is the designated nodal agency for disbursement of subsidy for the North Eastern Region. The NEDFI thereafter provides the claim papers to the pre-audit team of the internal audit wing of the office of the Chief Comptroller of Accounts attached to the Department of Industrial Policy and Promotion, Ministry of Industries, Government of India, who after final verification issues necessary directions to the NEDFI for release of the subsidy amount, subject to availability of funds. Rebutting the claim of the petitioner, the respondent No. 1 has stated that the said claim for the period from 01.07.2004 to 30.09.2005 amounting to Rs. 15,75,770.00 was not released to the petitioner on the ground of delay in submission of claim papers. Though the explanation of the petitioner for the delay in the submission of the claim has been taken note of, nothing has been stated as to why such explanation has not been accepted. However, it has been admitted that the claim of the petitioner was received by the office of the General Manager, District Industries and Commerce Centre, Tinsukia on 14.11.2005 which was returned back to the petitioner on 05.12.2005 for resubmission on quarterly basis. The petitioner resubmitted its claim on 14.12.2006 which according to the respondent No. 1 was beyond the period of one year and hence was rejected as time barred.

8. The respondent No. 3 has also filed his affidavit stating that specific instructions were issued by the Central Government not to accept claims which are more than one year old from the date of incurring of the expenditure. The respondent No. 3 has also stated that the petitioner had initially submitted the proposal on 14.11.2005 which was returned back on 05.12.2005 for resubmission on quarterly basis. The proposal was thereafter resubmitted on 14.12.2006 on quarterly basis as directed. The respondent No. 3 contends that this submission of the petitioner is beyond the

one year period and hence, the authority was justified in rejecting the claim as being time barred.

9. In its reply affidavit, the petitioner has stated that the communications of the Central Government dated 04.05.1993 and 09.05.1994 stipulating the one year period was never communicated to the petitioner or other parties and, therefore, such stipulation cannot be used to the prejudice of the petitioner.

10. In its additional affidavit, the Union of India has rebutted such submission of the petitioner by saying that those communications were circulated to all the States and Union Territories with a request to advise the entrepreneurs to submit their subsidy claims on quarterly basis.

11. Heard Ms. N. Saikia, learned counsel for the petitioner. Also heard Mr. D. C. Chakraborty, learned Central Government counsel appearing for the respondent No. 1, Union of India as well as Ms. K. Devi, learned State Counsel appearing for the remaining respondents 2 to 5.

12. Learned counsel for the petitioner argues that the petitioner had submitted the claim of Transport Subsidy within the period of one year but as the amounts were small, a composite proposal was submitted for the period in question. After the State authorities returned the proposal for resubmission on quarterly basis, the petitioner resubmitted the proposal on quarterly basis, as was directed. She, therefore, submits that there was actually no delay on the part of the petitioner in the submission of the claim but even if it is construed that there was delay, the same was because of the return of the proposal by the respondents themselves. She further submits that the communications of the Central Government whereby the limitation of one year was prescribed, were never communicated to the petitioner, and therefore, those could not be used to the prejudice of the petitioner. In support of the above submissions, learned counsel has placed reliance on the following decisions:-

1. [Bachhittar Singh Vs. The State of Punjab](#), .

2. 1995 (3) GLT 491 (Para 3, 5 and 8) : Sarda Plywood Industries Ltd and Ors-Vs-State of Assam and Ors

3. [Tagin Litin Vs. State of Arunachal Pradesh and another](#),

13. Learned counsel for the respondents in their separate but identical submissions argued that there was delay in submission of the proposal by the petitioner and there was no proper explanation explaining such delay. As such, they contend, the respondents were justified in, rejecting the claim of the petitioner. Arguing that the petitioner's claim has no merit, they seek dismissal of the writ petition.

14. The submissions made have received the due consideration of the Court.

15. The question which arises for consideration is whether the petitioner's claim of transport subsidy for the period from 01.07.2004 to 30.09.2005 can be said to be time barred and whether on such ground, the claim can be rejected.

16. As has already been noticed above, the petitioner had submitted its claim in composite form for the aforesaid periods before the authority, which was received on 14.11.2005. The composite claim was submitted because the subsidy amounts claimed were small. Barring the period 01.07.2004 to 30.09.2004, the composite claim for the rest of the periods was within the one year period. However, the claim was returned back to the petitioner on 05.12.2012 for resubmission on quarterly basis, which was done by the petitioner on 14.12.2006. The delay in the resubmission of the proposal on quarterly basis was explained by the petitioner on account of the ill health of the company's Chairman, who was out of station because of the aforesaid reason. However, the rejection of the petitioner's claim by the respondents by the order dated 06.12.2009 (Annexure 12 to the writ-petition) does not disclose any consideration of the reasons furnished by the petitioner. It also does not reveal consideration of the fact that the petitioner had initially submitted the proposal in composite form on 14.11.2005.

17. The Transport Subsidy Scheme is a part of the Government initiative to encourage industrialisation in what are called lesser developed regions of the country and thereby accelerate economic development of such areas. Objective of such scheme being beneficial, reasonable and liberal approach is required to be taken while implementing such scheme. Of course, the implementing agencies have to be alert to ensure that bogus or stale claims are not entertained. This Court understands that the time limit of one year prescribed by the authorities for grant of transport subsidy is for administrative convenience and to eliminate belated claims or claims which are not genuine. This time limit of one year, as prescribed, is not an inflexible rule and is capable of suitable relaxation in appropriate situations.

18. Coming back to the case in hand, it is clear from the pleadings and the stand taken by the respondents that the entitlement of the petitioner to receive transport subsidy is not disputed. The objection only the ground of delay. However, in view of the facts and circumstances as discussed above, this Court is of the considered opinion that as the claim was initially submitted on 14-11-2005 there was no delay in submission of the claim of transport subsidy by the petitioner for the period in question except for the period 01.07.2004 to 30.09.2004, for which period there was delay of about one and half months.

19. In view of the conclusions reached, a detailed discussion on the cited judgments is considered not necessary.

20. Following the discussions made above, this writ petition is therefore allowed by directing the respondents to release the transport subsidy amount of the petitioner as may be found due for the period 01.10.2004 to 30.09.2005 by following the

prescribed procedure within six months from the date of receipt of a certified copy of this order. There will, however, be no order as to costs.