

Serial No. 17-18
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 345 of 2021 with
WP(C) No. 346 of 2021

Date of Decision: 07.08.2023

M/S Meghalaya Feed Products
M/S Meghalaya Feed Products

Vs.
Vs.

Union of India & Ors.
Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s): Dr. B.P. Todi, Sr. Adv. with
Dr. A. Todi, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv. (For R 1)
Ms. S. Ain, GA (For R 2-4)
Mr. B.A. Wanswett, Adv. vice
Mrs. P.D.Bujarbaruah, Sr. Adv. (For R 5).

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The writ petitioner is before this Court in a second round of litigation by way of these two writ petitions, and as they are similar are being disposed of by this common order and judgment. These matters concern the grant of subsidy on the transport of raw materials and finished products, under the Transport Subsidy Scheme, 1971, from selected areas to promote industries which includes the State of Meghalaya of which the petitioner firm is a beneficiary.

2. By these writ petitions, the writ petitioner firm is aggrieved with the non-disbursement of the complete amount of transport subsidy, which it claims has been allowed by this Court by order dated 03.05.2019, passed in WP(C) No. 389 and 390 of 2014, wherein, it was held that the requirement for payment by cheque of the expenditure incurred, would not be applicable for the period 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009, the period for which the subsidy had been claimed. It has been contended by the writ petitioner that, the order dated 03.05.2019, had directed the respondents to re-consider the claim, in the light of the observations made therein, for disbursement of the subsidy amount for the period 01.10.2008 to

31.12.2008 and 01.01.2009 to 31.03.2009, which however the respondents by the impugned order dated 02.08.2019, though releasing certain amounts, fell short of the amount as claimed by the writ petitioner.

3. In this context, as the matter had been dealt with by this Court in the earlier writ petitions namely WP(C) No. 389 and 390 of 2014, which were disposed of by order dated 03.05.2019, it would be useful to reproduce the same below, for easy reference:

Serial No. 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 389 of 2014
With WP(C) No. 390 of 2014

Date of order: 03.05.2019

M/S Meghalaya Feed Products Vs. The Union of India & Ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice

Appearance:

For the Petitioner/Appellant(s) :Dr. B.P. Todi, Sr. Adv. with
Dr. A. Todi, Adv.
Ms. P. Agarwal, Adv.

For the Respondent(s) : Mr. R. Debnath, CGC (For R 1)
Mr. S. Sengupta, Addl.Sr.GA (For R 2- 4)
Ms. B. Ghosh, Adv.
Vice Mrs. P.D.B. Baruah, Adv. (For R 5)

i)Whether approved for reporting in **Yes/No**
Law journals etc.:

ii)Whether approved for publication **Yes/No**
in press:

Oral:-

1. The scheme called the 'Transport Subsidy Scheme, 1971' has been formulated and notified for grant of subsidy on the transport of raw materials and finished goods to and from the selected areas with a view to promote growth of industries. The State of Meghalaya falls within the selected area 'A' of the scheme. In the said area petitioner M/S Meghalaya Feed Products has an industrial unit. Vide letter dated 12.05.2009 issued by the respondent Director of Industries to the petitioner, it has been conveyed that the subsidies had been sanctioned against the claim of the petitioner by the State Level Committee in its 58th meeting held on 07.05.2009 as such, has been advised to contact the North Eastern Development Finance, Guwahati for necessary disbursement. The types of subsidy, period and amount sanctioned are as under:

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Sl. No.	Types of Subsidy	Period	Amount Sanctioned (Rs)
1.	Central Interest Subsidy	01.09.05 to 31.03.09	24,56,615.00
2.	Central Transport Subsidy	01.04.08 to 30.06.08	68,12,316.00
	- do -	01.07.08 to 30.09.08	66,43,080.00
	- do -	01.10.08 to 31.12.08	94,74,928.00
	- do -	01.01.09 to 31.03.09	1,38,69,552.00
	Total :		3,92,56,491.00

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2. So far as the subsidy for the periods of 01.09.2005 to 31.03.2009, 01.04.2008 to 30.06.2008 and 01.07.2008 to 30.09.2008 are concerned same have been disbursed in favour of the petitioner whereas, regarding the Central Transport Subsidy for the periods of 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009, amounting

to Rs. 2,33,44,480/- has not been disbursed same has been conveyed to the respondent No. 5 by the Under Secretary to the Govt. of India vide letter dated 02.09.2014 because the expenditure incurred by cash on transportation of raw materials/finished goods is not permissible as per the existing policy.

3. It appears that for ensuring that the object for grant of subsidy is not misused, the checklists for scrutiny of claims under the Transport Subsidy Scheme has been formulated as Annexures 'A' and 'B' to the letter dated 20.11.2009 issued from the Ministry of Commerce and Industry, Department of Industrial Policy & Promotion which inter alia provides that all claims arising from transportation of raw materials and finished goods prior to 10.09.2009 will be examined/re-audited as per checklist 'A' of 44 points. Point No. 35 which is relevant provides as under, Bank statement for payment made to Transporters during the period (payment only by cheque).

4. Precisely, the point for consideration is as to whether Point No. 35 for the periods of 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009 will apply viz-a-viz payment to Transporters by cheque, the answer has to be no. The notification has been issued on 20.11.2009, the periods of claim of the petitioner is 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009, during that period he had no idea that he has to satisfy the condition of making the payment of the transportation by cheque, as usual he has claim to have made the payment by cash, same he had done in case of the other three

claims for the periods of 01.09.2005 to 31.03.2009, 01.04.2008 to 30.06.2008 and 01.07.2008 to 30.09.2008, the amount of those claims has been disbursed. To abruptly say that the petitioner did not make the payment by cheque for the periods when the notification dated 20.11.2009 was not in place shall be illogical even though in the notification the condition has been incorporated that all claims arising for transportation of raw materials and finished goods prior to 10.09.2009 will be examined/pre-audited as per checklist 'A' of 44 points. Point 35 providing for payment by cheque is introduced in the month of November 2009, petitioner claim to have made the payment by cash during the relevant quarter on 31.03.2009, as such the condition, if applied retrospective will totally be illogical.

5. Now, the question is as to whether the claim of the petitioner is genuine or not, same position is clarified by respondent No. 5 in the affidavit-in-opposition by annexing pre-audit report in respect of the Transport Subsidy Scheme sent by the Under Secretary to the Government of India to the Chairman cum Managing Director, North East Development Finance Corporation Ltd. The pre-audit team during its visit from 19.01.2012 to 28.01.2012 of 64th SLC dated 30.05.2011 had at paragraphs 67 to 68 dealt with the claim of the petitioner for the aforesaid periods. In the remarks column it is recorded as under:

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CENTRAL TRANSPORT SUBSIDY CLAIMS OF MEGHALAYA PRE-AUDITED BY PRE AUDIT TEAM during its visit from 19-01-2012 to 28-01-2012 OF 64TH SLC Dated 30-5-2011						
Sl. No.	Name & address of the Company	Period of claim	Amount approved by the SLC	Amount recommended by Pre Audit	Amount disallowed by Pre Audit by if any	Remarks
1	2	3	4	5	6	7
67	M/S Meghalay a Feed Products	01-10-2008 to 31-12-2008	9474928	9474928	0	Sanctioned by the 58th SLC held on 07-05-2009 but not Audited, the present team Audited the case on request of Directorate as no such guide line was provided by DIPP before issuance of 44 points guide lines about cash payment. Hence the cash payment made to the transporters by the units have been allowed.

CENTRAL TRANSPORT SUBSIDY CLAIMS OF MEGHALAYA PRE-AUDITED BY PRE AUDIT TEAM during its visit from 19-01-2012 to 28-01-2012 OF 64TH SLC Dated 30-5-2011						
Sl. No.	Name & address of the Company	Period of claim	Amount approved by the SLC	Amount recommended by Pre Audit	Amount disallowed by Pre Audit by if any	Remarks
1	2	3	4	5	6	7
	M/S Meghalay a Feed Products	01-01-2009 to 31-03-2009	13869552	13869552		Sanctioned by the 58th SLC held on 07-05-2009 but not Audited, the preset team Audited the case on request by Directorate as no such guide line was provided by DIPP before issuance of 44/45 points guide lines about cash payment. Hence the

68						cash payment made to the transporters by the unit have been allowed.
					0	

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6. *The object of avoiding misuse of the subsidy is achieved because the claim of the petitioner has been audited by the Pay and Accounts Officer, Pay & Accounts Office, Ministry of MSMF, therefore, there could be no reason for the respondents to deny the claim of the petitioner. That apart, it shall be open for the respondents, if they so choose, to re-verify, in case they have any doubt about the audit conducted by the Pay and Accounts Officer, Pay & Accounts Office, Ministry of MSMF otherwise, the amount shall be disbursed subject to adherence to the norms.*

7. *Petition is disposed of with a direction to the respondents that they shall re-consider the claim of the petitioner, in the light of the aforesaid observations, for disbursement of the subsidy amounting to Rs. 94,74,928/- and Rs. 1,38,69,552/- for the periods of 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009 respectively along with interest from the date of Pre-Audit report and to pass appropriate order thereon whatever permissible under rules within a period of four weeks.*

8. *Disposed of as above.*

4. The directions of this Court, as contained in Para – 6 and 7 as quoted above, had left it open for the respondents if they chose, to re-verify the claim amount of the writ petitioner and had disposed of the

writ petitions, with the direction that the claims be re-considered. It was in this backdrop that, the respondent particularly the respondent No. 1, while re-verifying the claim of the petitioner by the impugned order dated 02.08.2019, released most of the claim amount, but not the full amount as claimed by observing therein ‘inter alia’ as follows.

“AND WHEREAS, the claim denied is for the period 1.10.2008 to 31.3.2009 which the Hon’ble High Court has ordered to review, reconsider and pay. Since the subsidy claimed during second half of 2008-09 is significantly higher than that paid in the first half of 2008-09 which has been denied on account of cash payment, DPIIT reviewed the denial order and agreed to pay as much subsidy as was paid in the first half of 2008-09 i.e. Rs.1,34,55,396/-. Under the given circumstances, this should be considered fair and reasonable because DPIIT don’t trust the cash payments. Based on subsidy claims of 1st half of 2008-09 made by cheque i.e. Rs.1,34,55,396/- plus simple interest @ 8% per annum amounting to Rs.63,96,658/- (Total amounting to Rs.1,98,52,054/-) has been released in settlement of subsidy claims for the 2nd half of 2008-09 (copy of sanction letter No. 17(2)/2015-DBA-II/NER dated 26/06/2019 is enclosed). This rate of interest of 8% per annum was the rate as decided by the Hon. Supreme Court in a case of settlement of dues of State Trading Corporation (copy enclosed). This payment of Rs.1,98,52,054/- is in order, since the checklist of Transport Subsidy Scheme provides for payment to transporters only by

cheque. Payments made in cash are ineligible for reimbursement. It is further stated that under Transport Subsidy Scheme, 1971, there is no provision for payment of interest on delayed payment.

NOW, THEREFORE, the matter of pending claims of M/s. Meghalaya Feed Product has been examined in accordance with directions of Hon'ble High Court of Meghalaya and total amount of Rs. 1,98,52,054/- [Rs. 1,34,55,396/- + Rs. 63,96,658/- (as 8% interest)] released.

This issue with the approval of Secretary, DPIIT.”

5. Dr. B.P. Todi, learned Senior counsel assisted by Dr. A. Todi, learned counsel for the petitioner, has submitted that by the impugned order, the respondent No. 1 has not complied with the directions contained in the order of this Court dated 03.05.2019, inasmuch as, the respondent's action in the non-release of the subsidy as claimed, was on an altogether new ground that the amount claimed during the second half of 2008-09, is significantly higher than that paid in the first half of 2008-09. He contends that the fixation of the amount payable on the basis of the amount claimed for the first half of 2008-09, is arbitrary and illegal. He further submits that the claim as submitted under the scheme, had been approved by the State Level Committee, and had also been pre-audited for the amounts of Rs.94,74,928/- (Rupees Ninety Four

Lakhs Seventy Four Thousand Nine Hundred Twenty-Nine only) and Rs.1,38,69,552/- (Rupees One Crore Thirty Eight Lakhs Sixty Nine Thousand Five Hundred and Fifty-Two only) for the period 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009 respectively, which totals to Rs.2,33,44,480/- (Rupees Two Crores Thirty Three Lakhs Forty Four Thousand Four Hundred and Eighty only). However, he submits by the impugned order, an amount of only Rs.1,98,52,054/- (Rupees One Crore Ninety Eight Lakhs Fifty Two Thousand and Fifty Four only) including interest, has been released, which he contends is in violation of the orders of this Court, inasmuch as, re-verification can be only with regard to the audit, and not for re-fixation of the claim amount.

6. Dr. N. Mozika, learned DSGI assisted by Ms. S. Rumthao, learned counsel for the respondent No. 1 has submitted that, the earlier order dated 03.05.2019, had been carried on appeal before the Division Bench of this Court, but the same was closed by order dated 24.02.2022 passed in WA No. 3 of 2022 along with MC(WA) No. 39 of 2019 and MC(WA) No. 40 of 2019, as it was accepted that the order had been given effect to by the respondents, and that further with regard to full compliance, the writ petitioner had already instituted the present proceedings.

7. The Learned DSGI then submits that the order dated 03.05.2019, granted liberty to the respondents if they chose, to re-verify the claims and that during this exercise, as the amount for the quarter 01.01.2009 to 31.03.2009, was found unusually high, the amount payable to the petitioner was rationalised based on the claim amounts of the first and second quarter, that is, 01.04.2008 to 30.06.2008 and 01.07.2008 to 30.09.2008. It is further submitted that, to avoid the misuse of subsidy, a decision of introducing checklists in the Transport Subsidy Scheme, 1971, was introduced vide notification dated 20.11.2009, stressing upon only cheque transactions, while considering subsidy claims. He submits that though the notification as observed by order dated 03.05.2019, would not apply to the case of the writ petitioner, who had submitted the claims prior to this date, the notification dated 20.11.2009, is not a change in policy and does not extinguish or create new rights, but was made with a view to check false claims.

8. The learned DSGI, has also referred to a CAG report of 2010-11, wherein at Para – 3.4.4.2, the issue of insufficient documentation in support of subsidy claims has been flagged and discussed, especially with regard to the extent of checks exercised at different levels, by the implementing and monitoring agencies regarding the correctness and

genuineness of the subsidy claims. He therefore submits that, there was no mala fide involved in the entire process and even though cash payment as done by the petitioner was not admissible, an equitable way out was devised and the eligible amount was paid to the petitioner.

9. The other counsels appearing for the other respondents have not tendered any submissions, as they have no role to play, as far as, fixation and release of the claimed amount is concerned.

10. Having heard the learned counsels for the parties, it is noted that the claim of the writ petitioner is based solely on cash transactions incurred in expenditure for transport of goods, which was permitted prior to the issuance of the notification dated 20.11.2009. This Court while disposing of the earlier writ petitions, while holding that the writ petitioner was not bound to satisfy the condition of making the payment of the cost of transportation by cheque, however, had left it open to the respondents to re-verify, in case there was doubts about the pre-audit and had further directed for re-consideration of the claim of the writ petitioner.

11. It appears on not being satisfied or convinced with the extent and amount of the claim, the method of re-verifying or re-consideration adopted by the respondents pursuant to the order dated 03.05.2019, was to rationalize the claim by arriving at the amount payable, based on the

average of the first two quarters, that is, 01.04.2008 to 30.06.2008 and 01.07.2008 to 30.09.2008, and thus denied the full claim amount of the petitioner for the two periods of 01.10.2008 to 31.12.2008 and 01.01.2009 to 31.03.2009, as they were found to be significantly higher. By the impugned order as has been quoted earlier, the respondents as per the reasons contained therein, deemed it fit to release to the petitioner a total amount of Rs.1,98,52,054/- (Rupees One Crore Ninety Eight Lakhs Fifty Two Thousand and Fifty Four only) along with interest of 8%, instead of the total amount which was in excess of Rs. 2.33 crores.

12. While examining the action of the respondent No.1, this Court cannot ignore a basic fact that, when claims are made for reimbursement based on cash transactions, sufficient materials to substantiate the claim are necessary to be provided, which would not be required if payments are made through bank transactions. The notification dated 20.11.2009 therefore, as submitted by the respondents was introduced to discourage such cash transactions, as the source and flow of such transactions could not be easily ascertained or tracked, thereby leading to a detrimental impact on the economy.

13. In the opinion of this Court, in this scenario therefore, the burden of substantiating the claim made on the basis of cash

transactions, would squarely lie upon the writ petitioner, subject to verification thereof of the claim by the respondents. The respondents therefore, on not being satisfied with the clearance of the State Level Committee of the claim, as well as the pre-audit report, on being permitted by this Court, had by their re-verification exercise, re-considered and allowed payment by the impugned order, to the extent they deemed admissible.

14. This Court, in these circumstances therefore, while sitting in writ jurisdiction, cannot and is not in a position to render any conclusive finding on the claim of the petitioner, as surely this will fall within the realm of disputed facts which has to be proven. The question therefore of determining the legitimate dues of the petitioner by this Court, or to endorse the claims as made and to direct for payment as claimed for which a mandamus is sought, at this stage is well-nigh impossible.

15. In this view of the matter therefore, these writ petitions are closed and disposed of leaving the writ petitioner to take recourse to appropriate civil proceedings for the reliefs claimed, if so advised.

Judge

Meghalaya
07.08.2023
"D.Thabab-PS"