



THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION (C) NO. 329/2014

1. Emami Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office situated at 687, Anandpur, E.M. Bypass, Kolkata-700107 and having one of its individual Units at EPIP, Amingaon, Guwahati, Assam.
2. Sri Jaswant Sethia, Son of Sri Jawaharlal Sethia, Resident of Nilgiri Apartments, House no. 104H, Adabari Tiniali, Guwahati, Kamrup, Assam.

.....Petitioners

-Versus-

1. The Union of India, Represented by the Secretary to the Government of India, Ministry of Industrial Development, Department of Industrial Policy and Promotion, New Delhi.
2. State of Assam, Represented by the Commissioner and Secretary to the Government of Assam, Industries and Commerce Department, Dispur, Guwahati - 781006.
3. Commissioner of Industries and Commerce, Assam, Udyog Bhawan, Bamunimaidam, Guwahati - 781021.
4. Director of Industries and Commerce Centre Kamrup, Assam.

5. North East Industrial Development Finance Corporation, Dispur, Guwahati-781006.

.....Respondents

Advocates :

- Petitioners : Dr. A. Saraf, Senior Advocate
Mr. N.N. Dutta, Advocate
- Respondent no. 1 : Mr. R.K. Deb Choudhury,
Deputy Solicitor General of India [DSGI]
- Respondent nos. 2, 3 & 4 : Mr. A. Kalita, Standing Counsel,
Industries & Commerce Department
- Respondent no. 5 : Mr. G. Das, Advocate

Date of Hearing, Judgment & Order : 29.08.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

By this writ petition instituted under Article 226 of the Constitution of India, the petitioners have raised a grievance that despite being eligible to receive subsidy under the Transport Subsidy Scheme, 1971, they have been unjustly denied from receiving the same. The petitioner no. 1 is a company incorporated under the provisions of the Companies Act, 1956 with its registered office at Kolkata, West Bengal and the petitioner no. 2 is the General Manager – Commercial of the petitioner no. 1 company.

2. It is stated that the petitioner no. 1 company is a company, which deals in fast moving consumer goods [FMCGs]. It is engaged in manufacture of ayurvedic medicines and cosmetics under the brand names, 'Hemani', 'Emami' & 'Jandu'. The petitioner no. 1 company [hereinafter also referred to as 'the petitioner' and/or 'the petitioner company', for easy reference] has a total 7 [seven] manufacturing units all over India with two such units within Assam at Amingaon and Abhaypur

- respectively. The petitioner company has preferred the instant writ petition in respect of its claim arising out of its manufacturing unit situate at the Export Promotion Industrial Park [EPIP], Amingaon.
3. It is the case of the petitioners that attracted by the incentives provided under the provisions of the Transport Subsidy Scheme, 1971 framed by the Government of India and the Industrial Policy Resolution of 1997 published by the Government of Assam, the petitioner company had set up a manufacturing unit at the EPIP, Amingaon in and around the year 2003 when the Transport Subsidy Scheme, 1971 was in vogue. The commercial production from the manufacturing unit situate at the EPIP, Amingaon of the petitioner company commenced from 27.09.2003. The petitioner company got its manufacturing unit at the EPIP, Amingaon registered with the District Industries & Commerce Centre [DI&CC], Kamrup under the Transport Subsidy Scheme, 1971 and the said registration was effected by the DI&CC, Kamrup on and from 30.03.2004 vide Registration Certificate no. DICC/K-TS/2003-2004/305. As per the Registration Certificate dated 30.03.2004, the items of production from the petitioner company's manufacturing unit at the EPIP, Amingaon were [i] Ayurvedic Antiseptic Creams; [ii] Medicated Oil; and [iii] Shampoo.
 4. Finding itself eligible to claim subsidy under the Transport Subsidy Scheme, 1971, the petitioner company submitted an application before the General Manager, DI&CC, Amingaon on 28.09.2006 wherein the petitioner company made the claim for transport subsidy for the quarterly period from 01.10.2004 to 31.12.2004. The petitioner company submitted applications claiming transport subsidy for different quarterly periods including the quarterly periods viz. [i] from 01.04.2004 to 30.06.2004; [ii] from 01.07.2004 to 30.09.2004; [iii] from 01.10.2006 to 31.12.2006; and [iv] from 01.01.2007 to 31.03.2007. Though the petitioner company had submitted applications for transport subsidy in respect of few other quarterly periods, such claims are not necessary to be referred to as the claims for those periods were approved by the respondent authorities. So far as the petitioner company's claim for the quarterly period : 01.10.2004 to 31.12.2004, the said claims were rejected by the State Level Committee [SLC] in its Meeting held on 25.03.2008. In respect of the four quarterly periods, mentioned above together, the petitioner company's claims were rejected by the State Level Committee [SLC] in its 37th Meeting, held on 30.03.2009. Aggrieved by such rejections of its claims, the petitioner company has approached

- this Court by this writ petition contending that its claims for the afore-mentioned five quarterly periods had been arbitrarily and unjustly rejected by the respondent authorities.
5. I have heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. N.N. Dutta, learned counsel for the petitioner; Mr. R.K. Deb Choudhury, learned Deputy Solicitor General of India [DSGI] for the respondent no. 1; Mr. A. Kalita, learned Standing Counsel, Industries & Commerce Department for the respondent nos. 2, 3 & 4; and Mr. G. Das, learned counsel for the respondent no. 5.
 6. Dr. Saraf, learned Senior Counsel appearing for the petitioner has submitted that as per the Transport Subsidy Scheme, 1971, a claim for transport subsidy was to be made for a quarterly period and such claim was to be submitted within a stipulated time period from the date of incurring the expenditure. He has contended that the claims applications for transport subsidy in respect of the five quarterly periods, referred above, were filed within the stipulated time periods before the General Manager, District Industries & Commerce Centre [DI&CC], Kamrup. He has drawn attention to contents of the letter bearing no. DI&C[I]TS/2092/06/193/14294 dated 17.03.2012 of the Commissioner of Industries & Commerce, Assam wherein the Commissionerate had observed that the claim for transport subsidy of the petitioner company for the period from 01.10.2004 to 31.12.2004 was rejected by the State Level Committee [SLC] on the ground that there was a gap of more than 1 [one] year in receiving the claim at the level of the State Level Committee [SLC]. He has also drawn attention to the Minutes of the 37th Meeting of the State Level Committee [SLC], held on 30.09.2009, wherein the claims for transport subsidy for the other four quarterly periods were considered and rejected by the State Level Committee [SLC] on the ground that the claims could not be placed before the State Level Committee [SLC] within a specified time period of 2 [two] years from the date of incurring expenditure. It is his contention that from the letter dated 17.03.2012 of the Commissioner of Industries & Commerce, Assam as well as from the Minutes of the 37th Meeting of the State Level Committee [SLC], held on 30.09.2009, it is evidently clear that the claims for transport subsidy for all the five quarterly periods were received at the office of the General Manager, DI&CC, Kamrup within time, notwithstanding the confusion created by the respondent authorities as regards the time limit of 1 [one] year or 2 [two] years from the date of incurring the expenditure.

7. Mr. Deb Choudhury, learned DSGI has submitted that the claims of transport subsidy of the petitioner company was rejected by the respondent authorities at the State level. As regards the proposal forwarded from the end of the Commissioner of Industries & Commerce, Assam vide letter no. CI&C[I]TS/Misc./373/2007/89 dated 20.03.2014 for consideration of the alleged time-bared transport subsidy claims of six industrial units including that of the petitioner company, for various claim periods, is concerned, he has submitted that he has not received any further instructions in the matter.

8. Mr. Kalita, learned Standing Counsel, Industries & Commerce Department for the respondent nos. 2, 3 & 4 has submitted that the claim application for transport subsidy for the period from 01.10.2004 to 31.12.2004 was received at the office of the General Manager, DI&CC, Kamrup on 28.09.2006. The other four claims for transport subsidy for the f [four] quarterly periods viz. [i] from 01.04.2004 to 30.06.2004; [ii] from 01.07.2004 to 30.09.2004; [iii] from 01.10.2006 to 31.12.2006; and [iv] from 01.01.2007 to 31.03.2007; were received at the office of the General Manager, DI&CC, Kamrup on 13.05.2005, 13.05.2005, 15.06.2007 & 26.07.2007 respectively. After receipt of the claim applications on such dates, the applications were processed and thereafter, forwarded to the office of the Commissioner of Industries & Commerce, Assam and the Commissionerate after processing those claims had thereafter, placed the matter before the State Level Committee [SLC] for consideration. It was after placing of the claims by the Commissioner of Industries & Commerce Department, Assam before the State Level Committee [SLC], the State Level Committee [SLC] considered the same and rejected the claims on the ground that the same were found to be placed before it beyond the specified time limit from the date of incurring the expenditure.

9. Mr. Das, learned counsel for the respondent no. 5 has submitted that the role of the respondent no. 5 is that of a designated nodal agency, appointed by the Government of India, for the purpose of disbursement of transport subsidy, amongst others, in accordance with the guidelines issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. Its responsibility is limited to receipt of claims from the units and to process them. On receipt of a claim after computation of the subsidy amounts, found eligible by an

- applicant unit, the respondent no. 5 finally recommends the same for disbursement. The responsibilities [a] of admitting claim applications from the applicant units; [b] of processing the claim applications; [c] of computing the subsidy amounts, if found eligible; and [d] of finally recommending the same for disbursement rest with the concerned State Government authorities. Once a claim for transport subsidy is approved by the State Level Committee [SLC], the particulars of the claim are forwarded to the respondent no. 5 by the Member Secretary of the State Level Committee [SLC] of the State Government. After adhering to the procedure laid down by the Scheme, the respondent no. 5 takes necessary steps for disbursement of the fund to the eligible applicant unit. He has submitted that in so far as the rejection of the claims of the petitioner company is concerned, the respondent no. 5 had no role in the decision making process.
10. I have given due considerations to the submissions of the learned counsel for the parties and have perused the materials brought on record by the parties through their pleadings. I have also gone through the decision in **Ishwar Food Products [Private] Limited vs. Union of India and others**, reported in [2013] 1 GLR 359, placed on behalf of the petitioner.
 11. Before making any deliberation on the respective contentions advanced by the learned counsel for the parties, it appears necessary to have an overview of the Transport Subsidy Scheme, 1971, framed by the Government of India and published vide a Notification dated 23.07.1971. From the Notification [supra], it can be noticed that the Transport Subsidy Scheme, 1971 was brought into effect on and from 23.07.1971 and the same was made applicable to all industrial units [barring plantations, refineries and power generating units] both in the public sector and the private sector, irrespective of their size in the selected areas, categorised as [A], [B], [C] and [D], for a period 5 [five] years from the date of commencement of commercial production. It is submitted at the Bar that the period of validity of the Transport Subsidy Scheme, 1971 was extended from time to time and it is not in dispute that at the time of submission of the claims for transport subsidy by the petitioner company, the Transport Subsidy Scheme, 1971 was in vogue.
 12. As per the definition provided in Clause 4[a], 'Industrial Unit' means an industrial unit where a manufacturing programme is carried on. As per Clause 4[b], 'New Industrial

Unit' means an industrial unit which has set up manufacturing capacity and come into production on or after the date of commencement of the Scheme. In Clause 6 of the Scheme, the details of the Scheme were provided. A transport subsidy was to be given to the industrial units located in the selected areas in respect of raw materials which were brought into and finished goods which were taken out of such areas. In the case of North-Eastern Region comprising the States of Assam, Meghalaya, Nagaland, Manipur, Tripura and the Union Territories of Arunachal Pradesh and Mizoram the transport subsidy was to 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 would be taken into account. Similarly, while calculating the transport costs of finished goods the costs of movement by road from the location of the industrial unit to the nearest railway station and thereafter, the cost of movement by rail to Siliguri were to be taken into account. In the case of North Eastern Region, for materials moving entirely by road or other mode of transport the transport costs were to be limited to the amount which the industrial unit had paid for the raw materials moved from Siliguri by rail upto the railway station nearest to the location 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 were to be limited to the amount which the industrial unit had 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.

13. Transport subsidy also was to cover movement of 'raw materials' from one State to another within the North Eastern Region. Transport subsidy was also to cover inter-State movement of 'finished goods' within the North Eastern Region but the subsidy available would be 50% of the transport cost on the movement of the goods from the location of the industrial units to the nearest Railway Station by road and thereafter, by rail and vice-versa. Transport subsidy would also cover 75% of the air freight on movement of electronic component/products by air to and from Calcutta upto the location of the industrial unit & vice-versa. In case of movement of goods moving partly by air and partly by rail/road, the transport subsidy would be admissible @ 75% on air freight from Calcutta upto the airport nearest to the location of the

- industrial unit and thereafter, @ 90% for movement by rail/road upto the location of the industrial unit and vice-versa.
14. Transport Subsidy Scheme has further provided that the North East Development Finance Corporation [NEDFI], the respondent no. 5 shall act a nodal agency for release of transport subsidy on the basis of recommendations of the State Level Committee [SLC], for the North East Region, as per existing terms & conditions of the Scheme.
 15. The State Government had the responsibility to set up a State Level Committee [SLC] consisting of [i] the Directors of Industries, [ii] a representative each of the State Industries Department and [iii] the State Finance Department etc. on which a representative of the Ministry of Industrial Development would also be nominated. The State Level Committee [SLC] was to operate at the State level and scrutinize and settle all claims of transport subsidy arising in the State. The claimants were required to provide proof of raw materials 'imported' into and finished goods 'exported' out of the selected States areas where the unit was situated, from the registered chartered accountants. The Committee was also empowered the production of any other documents which in their opinion were necessary to decide the eligibility of claimant for the transport subsidy. However, in the case of small units with a capital investment of Rs. 1 lakh or less the requirement of production of certificate from Chartered Accountant could be waived, subject to the condition that such claims were properly verified by the State Government authorities before the subsidy was sanctioned/disbursed. After having scrutinized and settled the claims, the amount disbursed to industrial unit should first be adjusted against the outstanding ways and means advance made to the State Government for Centrally Sponsored Scheme in accordance with the procedure outlined in the Ministry of Finance, Government of India's letter no. 2[17]PII/58 dated 12.05.1958 and the balance, if any, shall be paid in cash to the State Governments. It was provided that in the case of small units with a capital investment of ₹ 1,00,000/- and less, the requirement of production of proof of import of raw material and export of finished products from registered Chartered Accountant was to be substituted by a appropriate verification by the State Government authorities.

16. As per the Registration Certificate issued by the General Manager, DI&CC, Kamrup on 30.03.2004, the petitioner company commenced its commercial production from its manufacturing unit, located in the EPIP, Amingaon on and from 27.09.2003. The petitioner company had submitted its claims for transport subsidy under the scheme quarterly for a number of quarters. From the minutes of the 37th Meeting of the State Level Committee [SLC], held on 30.03.2009, it transpires that the petitioner's claim for transport subsidy was approved by the State Level Committee [SLC] for three quarterly periods i.e. [i] from 01.04.2007 to 30.06.2007; [ii] from 01.07.2007 to 30.09.2007; and [iii] 01.01.2008 to 30.03.2008 for different Transport Subsidy amounts. The relevant excerpts of the Minutes of the 37th Meeting of the State Level Committee [SLC] were as under :-

17. M/s Emami Ltd., EPIP, Amingaon, Kamrup

T.S. Regn No. & Date : DICIU/K-18/03-04/305, dtd. 30.03.2004

Date of Commercial production : 27.09.2003

Date of submission of the claim at DI&GC : [a] 20.09.2007
[b] 04.12.2007
[c] 01.08.2008

Date of receipt at Directorate level : [a] 25.07.2008
[b] 12.08.2007
[c] 16.12.2008

The claims of the unit for 3 [three] quarters as follows were approved.

Sl. No.	Period of claim	On Raw materials	On Finished Products	Total T.S.	Verified DI&CC level by	Re-verifying Officer
1	01.01.2007 to 30.06.2007	6,46,852.00	7,63,768.00	14,10,620.00	Sri B.K. Choudhury, FM Sri M. Synal, GM, Kamrup	Sri M.U. Ahmed, Addl. Director [NAZ] Sri P.K. Sarma, DD[P]
2	01.07.2007 to 30.09.2007	9,40,913.00	9,49,607.00	18,90,520.00	Sri B.K. Choudhury, FM Sri M. Synal, GM, Kamrup	Sri Pratul Choudhury, Joint Director [SP], Sri K.C. Sonowal, Dy. Director [Tech]
3	01.01.2008 to 31.03.2008	10,12,415.00	10,53,000.00	20,65,415.00	Sri B.K. Choudhury, FM Sri M. Synal, GM, Kamrup	Sri Pratul Choudhury, Joint Director [SP], Sri K.C. Sonowal, Dy. Director [Tech]

17. It is the claims for transport subsidy for five quarterly periods i.e. [i] from 01.04.2004 to 30.06.2004; [ii] from 01.07.2004 to 30.09.2004; [iii] from 01.10.2004 to 31.12.2004 [iv] from 01.10.2006 to 31.12.2006; and [v] from 01.01.2007 to

- 31.03.2007, which had been rejected by the State Level Committee [SLC] against which the petitioner company has approached this Court. While one of such claim was rejected by the State Level Committee [SLC] in its meeting held on 25.03.2008, the other four claims were rejected by the State Level Committee [SLC] in its meeting held on 30.03.2009.
- 17.1. In so far as the reason assigned for rejecting the claim of the petitioner company for the Quarter : 01.10.2004 to 31.12.2004 was concerned, it was noted in the letter dated 17.03.2012 [supra] that the claim application from the petitioner company was received on 21.11.2005 and the office of the General Manager, DI&CC, Kamrup forwarded the claim to the Commissioner of Industries & Commerce, Assam on 28.09.2006 and the same was received by the Commissionerate on 05.10.2006. The claim proposal was placed before the State Level Committee [SLC] in its Meeting held on 26.03.2008.
- 17.2. In respect of the claim for the Quarter : 01.04.2004 to 30.06.2004, the petitioner company submitted its claim application on 13.05.2005 at the office of the General Manager, DI&CC, Kamrup and the said claim was received at the Commissionerate office on 09.10.2006. In respect of the claim for the Quarter : 01.07.2004 to 30.09.2004 was received at the office of the General Manager, DI&CC, Kamrup on 13.05.2005 and the said claim was received at the Commissionerate level on 11.12.2006. In respect of the claim for the Quarter : 01.10.2006 to 31.12.2006, the petitioner company submitted its claim at the office of the General Manager, DI&CC, Kamrup on 15.06.2007 and the same was received at the Commissionerate level on 03.12.2007. In respect of the claim for the Quarter : 01.01.2007 to 31.07.2007, the office of the General Manager, DI&CC, Kamrup received the same on 26.07.2007 and on being forwarded, the said claim was received at the Commissionerate level on 03.12.2007.
18. The above noted facts go to show that the claims by the petitioner company for the respective quarter was submitted at the office of the General Manager, DI&CC, Kamrup within a period of one year from the purported date of incurring the expenditure. The relevant excerpts from the Minutes of the 37th Meeting of the State Level Committee [SLC], which contained the reason for rejection of the claim for transport subsidy made by the petitioner were extracted hereinbelow :-

2. M/s Emami Limited, EPIP, Amingaon, Kanwup

T.S. Regn no. & Date : DICC/K-TS/03-04/308, dated 30.03.2004

Date of Commercial production : 27.09.2003

Date of submission of the claim at DI&CC : [a] 16.06.2007
[b] 26.07.2007
[c] 13.05.2005
[d] 13.05.1995

Date of receipt at Directorate level : [a] 03.12.2007
[b] 03.12.2007
[c] 09.10.2006
[d] 11.12.2006

The claims for the following periods were submitted within specified time at DICC. However, due to non-submission of some important documents and clarification on certain matters, the claims could not be placed before SLC within the specified time of 2 years from the date of incurring expenditure.

In view of above, SLC advised Member Secretary to take up the matter with DIPPP, Government of India.

Periods : [a] 01.10.2006 to 31.12.2006,
[b] 01.01.2007 to 31.03.2007
[c] 01.04.2004 to 30.06.2004
[d] 01.07.2004 to 30.09.2004

19. From the Minutes of the 37th Meeting of the State Level Committee [SLC], it has emerged that the claims for transport subsidy in respect of the afore-mentioned four quarterly periods were received at the office of the General Manager, DI&CC, Guwahati within a time period of 1 [one] year from the last date of the concerned Quarter. The State Level Committee [SLC] had, however, observed that due to non-submission of some important documents and clarification on certain matters, the claims for transport subsidy of the petitioner could not be placed before the State Level Committee [SLC] within the specified time limit of 2 [two] years from the date of incurring expenditure. It was after assigning such reason, the State Level Committee [SLC] advised the Member Secretary to take up the matter with the Department of Industrial Policy and Promotion [DIPP], Ministry of Commerce & Industry, Government of India. It was after lapse of about five years, the Commissioner of Industries & Commerce, Assam vide his letter bearing no.

CI&C[I]TS/Misc./373/2007/ 89 dated 20.03.2014, forwarded the matter to the Department of Industrial Policy and Promotion [DIPP], Ministry of Commerce & Industry, Government of India for consideration of the alleged time-bared subsidy claims of the petitioner company along with five other alleged time-bared claim. While forwarding the proposal for consideration, the Commissioner of Industries & Commerce, Assam observed that the claims became time-bared for non-receipt of various important documents from the units in time, which ground was also found mentioned in the Minutes of 37th Meeting of the State Level Committee [SLC], held on 30.03.2009. In so far as the transport subsidy claims of the petitioner company are concerned, the letter dated 20.03.2014 reflects as follows :-

Sl No.	Name & address of Industrial Unit	Claim period	Date of 1 st commercial production	Date of submission of the claim at DI&CC	Date of receipt of the claim at Directorate	Reason for condonation as per decision of SLC
2[a]	M/s Emami Ltd. EPIP, Amingaon, Kamrup	01.10.2006 to 31.12.2006	27.09.2003	28.03.2006	21.02.2008	Due to non-submission of various important documents & clarification by the unit, claims could not be placed before SLC within specified time of 2 years from the date of incurring expenditure.
[b]		01.01.2007 to 31.03.2007		26.07.2007	03.12.2007	
[c]		01.04.2004 to 30.06.2004		13.05.2005	09.10.2006	
[d]		01.07.2004 to 30.09.2004		13.05.2005	11.12.2006	

20. From the observations made in the Minutes of the 37th Meeting of the State Level Committee [SLC], held on 30.03.2009, and the contents of the letter dated 20.03.2014 of the Commissioner of Industries & Commerce, Assam, the issue that requires a consideration is whether there was any lapse on the part of the petitioner company in submitting the claims for transport subsidy under the Transport Subsidy Scheme, 1971 before the appropriate authority. The Minutes of 37th Meeting of the State Level Committee [SLC] had observed that the original claims were submitted by the petitioner company within the specified time limit at the office of the DI&CC, Kamrup. The reason assigned in the Minutes of the 37th Meeting of the State Level

Committee [SLS] for not processing the claim for transport subsidy was non-submission of some important documents and clarifications on certain matters. In the letter dated 20.03.2014 also, it was mentioned that the claims for transport subsidy could not be placed before the State Level Committee [SLC] in time due to delay in processing of the claims at the district level as well as at the Commissionerate level 'for non-receipt of various important documents from the units in time'. The letter of the Commissioner, Industries & Commerce, Assam dated 20.03.2014 had, however, admitted that the petitioner company had submitted their claims well within the specified time period in the office of the DI&CC, Kamrup.

21. The petitioner has categorically asserted that at no point of time, the petitioner company was informed as regards the deficit of any papers, which were not submitted along with the claim applications. The petitioner company has categorically asserted that they were kept in complete dark for a substantial period of time about the reasons for rejection of the transport subsidy claims until the petitioner company obtained the Minutes of the 37th Meeting of the State Level Committee [SLC], held on 30.03.2009, through an application under the Right to Information Act, 2005 on 15.05.2012. The respondent authorities, more particularly, the General Manager, DI&CC, Kamrup and the Commissioner of Industries & Commerce, Assam have maintained complete silence as to whether they had asked for any documents from the petitioner company with the information that the petitioner company's claim applications, under process at their ends on the dates mentioned hereinabove, were deficient of any documents. The categorical assertion made by the petitioner company that it was never asked for to submit any further document or clarification was not traversed in any manner by the State respondent authorities. On further perusal of the reason assigned by the State Level Committee [SLC] in its Minutes of the 37th Meeting, held on 30.03.2009, as well as the letter of the Commissioner of Industries & Commerce, Assam goes to indicate that the delay in processing the claim applications of the petitioner company had occurred at the District level as well as the Commissionerate level, which ultimately resulted in delayed placement of the claim proposals of the petitioner company for transport subsidy before the State Level Committee [SLC]. The delay occurred in processing the claims of the petitioner at the district level and the Commissionerate level cannot be attributable to the petitioner company as it had no role at the said levels.

22. It is evident that once a claim application is filed by an applicant for transport subsidy under the Transport Subsidy Scheme, 1971, such claim is to be processed at three levels, *first*, at the District level, *Thirdly*, at the Commissionerate level and *thirdly*, at the level of the State Level Committee [SLC]. From the Notification dated 23.07.1971 whereby the Transport Subsidy Scheme, 1971 was notified, it is evident that the Government of India had framed the scheme for grant of subsidy for the transport of raw materials and finished goods to and from certain selected areas with a view to promoting growth of industries there. The incentives sought to be given to the Industrial Units/New Industrial Units set up in the North Eastern Region including Assam, under the Scheme was more than the ones given to other regions of the Country. For example, the transport subsidy in the North Eastern Region covered inter-State movement whereas such subsidy was not available in respect of the developed States. Thus, it is evident that the better incentives were made available to the Industrial Units/New Industrial Units set up in the North Eastern Region including the State of Assam, for a faster industrial development as admittedly, the North Eastern Region was industrially less developed than many other regions of India.

23. From the facts and circumstances of the case in hand, it has become evident that there was no delay on part of the petitioner company in submission of their quarterly claims for transport subsidy for the 5 [five] different quarterly periods, as indicated above. The delay which had occurred, was clearly attributable to the office of the DI&CC, Kamrup and the office of the Commissioner of Industries & Commerce, Assam respectively in processing of such claims and thereafter, to forward the same to the next higher authority involved in the process of examining the claims, that is, State Level Committee [SLC]. The delay that had occurred at their levels had ultimately resulted into delayed placement before the State Level Committee [SLC], which was the final authority to examine the claims and to recommend disbursement, if the claims were otherwise eligible for grant of transport subsidy under the Transport Subsidy Scheme, 1971. In such view of the matter, the reason assigned for rejection in the Minutes of the 37th Meeting of the State Level Committee [SLC], held on 30.03.2009 and in the letter of the Commissioner of Industries & Commerce, Assam dated 20.03.2014 is found to be irrational and specious. By assigning such irrational and specious reason, the authorities had sought to shift the fault to the petitioner company which is found unsustainable after perusal of the materials on

record. The said plea advanced by the concerned authorities in rejecting the claims of the petitioner was not on the basis of any materials on record.

24. At this stage, it is also apposite to refer to the observations made in decision in **Ishwar Food Products [Private] Limited** [supra]. The claims for transport subsidy of the petitioner therein under the Transport Subsidy Scheme, 1971 was rejected on the ground that the claim was made in a consolidated form and submitted after more than 1 [one] year period. In such backdrop, the Court had observed as under :-

16. 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.
17. 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.
18. 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.

19. 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.

25. The object behind framing of the Transport Subsidy Scheme, 1971 is primarily beneficial. It was for providing incentives to the interested entrepreneurs, industries, etc. to set up industrial units in the industrially less developed regions like the North Eastern Region. A legitimate claim made by an industrial unit for transport subsidy under the Transport Subsidy Scheme, 1971 is to be rejected only on merits and is not to be rejected on the ground like the ones assigned by the respondent authorities in the case in hand. The Court is of the considered view that a genuine claim of an applicant for transport subsidy under the Transport Subsidy Scheme, 1971 should not be rejected for a reason, which is not attributable to the applicant. As the Transport Subsidy Scheme, 1971 was framed for the purpose of giving incentives in setting up industrial units in the lesser developed regions like the North Eastern Region, the respondent authorities are duty bound to adopt a reasonable and liberal approach in processing to the claim of such an applicant. In such view of the matter, this Court is of the view that the claims of the petitioner for the transport subsidy under the Transport Subsidy Scheme, 1971 for the afore-mentioned 5 [five] quarterly periods deserve re-consideration at the end of the respondent authorities. Accordingly, the writ petition is disposed of directing the respondent authorities, more particularly, the respondent nos. 2 – 4 to process the claim of the petitioner strictly on merits in terms of the provisions contained in the Transport Subsidy Scheme, 1971 in an expeditious manner and if after processing the claims of the petitioner, the amounts claimed in respect of the 5 [five] quarterly periods found entitled to the petitioner company, the matter shall be decided and thereafter, necessary steps for its disbursement are to be

undertaken in consultation with the Department of Industrial Policy and Promotion, the Ministry of Commerce and Industry, Government of India. Considering the preceding events and taking into account the object and purport behind framing of the Transport Subsidy Scheme, 1971, it is observed that the entire process shall be completed within a period of 4 [four] months from the date of receipt of a certified copy of this order at the office of the respondent no. 3.

26. With the observations made and directions given above, the writ petition stands allowed to the extent indicated. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant