

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No.279 of 2024**

M/S PRAN Beverage (India) Pvt. Ltd., Industrial Growth Centre, Bodhjung Nagar, R.K. Nagar, P.S. Bodhjung Nagar, District-West Tripura, represented by its authorized signatory Shri Jayanta Das Gupta.

..... Petitioner(s)

**V E R S U S**

1. Union of India, represented by the Secretary, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion (DIPP), New Delhi-11001.
2. The State of Tripura, Represented by the Secretary, Department of Industries & Commerce, Government of Tripura, New Capital Complex, P.O & P.S- N.C.C. Agartala, West Tripura-799010.
3. The Director of Industries & Commerce, Government of Tripura, O/o the Directorate of Industries & Commerce, Shilpodyog Bhavan, P.S. N.C.C, P.O. Kunjaban, Agartala, District West Tripura.
4. The Deputy Director, Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, NEPS Section, Udyog Bhavan, New Delhi-110011.

..... Respondent(s)

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For Appellant (s) : Mr. B. N. Majumder, Sr. Advocate,  
Mr. D.J. Saha, Advocate,  
Mr. B. Paul, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Dy. S.G. I.,  
Mr. P. Gautam, Advocate.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH  
HON'BLE MR. JUSTICE S. D. PURKAYASTHA**

**\_O\_R\_D\_E\_R\_**

**24/09/2024**

Heard Mr. B. N. Majumder, learned senior counsel together with Mr. D.J. Saha, learned counsel for the petitioner. Also heard Mr. Bidyut Majumder, learned Deputy S.G.I for the respondent-Union of India and Mr. P.Gautam, learned counsel for the respondents-State.

**[2]** The writ petition has been preferred with the following prayers:

“(i) Issue RULE NISI;

(ii) Issue Rule calling upon the Respondents or each one of them to show cause as to why a Writ in the nature of Mandamus shall not be issued mandating/ commanding/ directing/ the State Respondents to accept the claim of the petitioner for Central Investment Subsidy Scheme under NE Industrial Investment Promotion Policy, 2007 and to release the amount of the claim submitted by the petitioner dated 26.02.2018;

(iii) Issue Rule calling upon the Respondents or each of them to show cause as to why a Writ in the nature of Certiorari shall not be passed quashing/ cancelling/ setting aside the impugned communication dated 3rd September, 2021 (Annexure-6);

(iv). Issue Rule calling upon the Respondents to show cause as to why any other appropriate writ or writs shall not be passed giving full reliefs to your petitioner and to pass such other order/ orders as to your Lordships may deem fit and proper to give full reliefs to your humble petitioner;

(v). In case the Respondent show caused or not your Lordships may be pleased to make the Rule absolute in terms of the prayers made in Sl. i, ii & iii as above;

AND

For this act of kindness your humble Petitioner as in duty bound shall ever pray.”

[3] Petitioner’s claim for Central Capital Investment Subsidy (CCIS, for short) under the North East Industrial and Investment Promotion Policy (NEIIPP, for short), 2007 as revised by office memorandum dated 15.12.2016 (Annexure- R/8) read with notification of revival of the scheme dated 22.11.2016 (Annexure- R/7) has been once again rejected vide letter dated 23.01.2024 (Annexure-14)/(Annexure-R/16 to the counter affidavit) on the ground that the claim was delayed by 11 days. However, the order of rejection dated 23.01.2024 has not been challenged.

[4] Mr. B. N. Majumder, learned senior counsel for the petitioner has drawn the attention of this Court to NEIIPP policy dated 01.04.2007 (Annexure-2) and the guidelines dated 27.05.2013 (Annexure-R/5). Learned senior counsel for the petitioner has referred to the relevant terms of the policy and the guidelines and submitted that as per clause-(vii) of the guidelines dated

27.05.2013, claims for subsidy under CCIS Scheme of NEIIPP, 2007 had to be submitted to the concerned DIC in the prescribed Application Forms within one year from the date of commencement of commercial production. However, the same clause also provides that in case of units which do not get themselves registered by 27.07.2007/21.09.2007 due to delayed notifications of the scheme and have subsequently got themselves registered latest by 31.12.2008, their claims within one year of registration could be deemed admissible, if State Level Committee (SLC) deems the case fit for condoning the delay. Any other case for subsequent waiver will be dealt on case specific basis by DIPP after the SLC recommends such relaxation, subject to strict proof of commencement of operation/commercial production. In such cases, the final decision rests with the Department of Industrial Policy & Promotion (DIPP, for short). It is submitted that though the SLC had recommended the claim of the petitioner for grant of CCIS taking into note the report of the field visit team dated 08.08.2019 vide minutes of the meeting dated 20.09.2019 (Annexure-R/15) but the DIPP has once again rejected it on wholly arbitrary grounds. The present order of rejection is only an eye wash and a reiteration of the earlier order of rejection dated 03.09.2021 (Annexure-6) which has been impugned in the writ petition. He, however, is not in a position to dispute that the order dated 23.01.2024 passed after reconsideration by the DIPP is not assailed in the present writ petition.

Learned senior counsel for the petitioner has advanced his two fold submissions in order to press the relief prayed for: (i) that a perusal of the 2007 policy read with the guidelines dated 27.05.2013 and the terms of revival of the NEIIPP vide notification dated 22.11.2016 and 15.12.2016 would go to show

that while the scheme was revived after a brief suspension from 01.12.2014 to 21.11.2016, the terms and conditions of the guidelines dated 27.05.2013 were not made applicable to the revived policy. As such, the revived policy did not stipulate any timeline for making a claim. (ii) the learned senior counsel for the petitioner submits that the order dated 03.09.2021 and also the last order of rejection dated 23.01.2024 have been passed in an arbitrary manner. According to him, petitioner was an existing unit under the 2007 policy and had been receiving CCIS till the policy was placed under suspension. After revival of the policy it went into expansion and commenced its commercial production on 01.04.2016. However, as per the revived policy it had to once again take pre-registration which was undertaken *with effect from* 09.02.2017 as per the certificate dated 13.02.2017(Annexure-4). The claim for CCIS for the expanded unit was submitted on 26.02.2018 after about 11 days of the expiry of one year period as stipulated under clause-(vii) of the guidelines dated 27.05.2013. As per the terms of the revised guidelines of 2013 such delay could be condoned on the recommendation of the SLC on a case to case specific basis. The order dated 03.09.2021 and the last order of rejection dated 23.01.2024, however, do not contain any plausible grounds to reject the claim on account of only 11 days delay beyond the period of one year . Therefore, the petitioner has assailed the original order of rejection dated 03.09.2021 (Annexure-6).

[5] Both the respondents, Union of India and the State have filed their counter-affidavit. It is the case of the respondents that the claim for CCIS was submitted beyond the period of one year as stipulated under clause-(vii) of the guidelines without any explanation at all worth its name. Learned Dy. SGI submits that the recommendation of the SLC dated 20.09.2019 (Annexure-

R/15) do not refer to any grounds for condonation of the delay in making the claim beyond the period of one year. The SLC has only recorded that the committee has accepted the eligible amount of investment made in Plant and Machineries amounting to Rs.13,10,37,643.00 and admissible amount of subsidy @30% on eligible investment to be Rs.3,93,11,293.00 as assessed by the field visit team. Therefore, the Committee recommended Rs.3,93,11,293.00 only as CCIS subsidy in favour of the petitioner. It further records that issuance of Pre-Registration Certificate under NEIIPP, 2007 was delayed due to suspension of Pre-Registration by DIPP vide letter dated 01.12.2014. Subsequently Pre-Registration was issued under NEIIPP, 2007 in favour of the unit after withdrawal of the suspension vide Notification dated 22.11.2016. The details of the claim recommended by SLC are enclosed in Annexure-II.

[6] As such, neither the petitioner nor the SLC made out a specific case for consideration of the condonation of the delay in making claim for CCIS beyond the stipulated period of one year. It is submitted that undue relaxations such as these may have far-reaching implications as other similarly placed units may also stake their respective claims and expect parity from the department. Petitioner cannot feign ignorance in view of the settled principles of *ignorantia juris non excusat* in making the claim within the timeline prescribed. It is further submitted that the claims of such investors or existing or new units have been processed on the basis of NEIIPP, 2007 policy and the circulars and guidelines issued from time to time even after its revival by notification dated 22.11.2016 on the same terms and conditions. Therefore, the petitioner is not right in contending that while undertaking expansion, after

revival of the policy, no time limit was prescribed for making a claim for CCIS for the expanded unit. As such, there is no ground for interference in the order.

[7] Mr. Bidyut Majumder, learned Deputy S.G.I. has placed reliance upon in the case of *Director General of Foreign Trade and another Versus Kanak Exports and another* reported in (2016) 2 SCC 226 (Paragraph-105). It is submitted that such incentives granted by the Central Government in exercise of the executive powers of the government under Article 73 of the Constitution of India should not be tinkered with by Court as all the matters are in the domain of policy decisions of the Government. In the absence of any plausible explanation, there is no reason as to why delay of 11 days should be condoned.

[8] Mr. P. Gautam, learned counsel for the respondents-State has adopted the stand of the respondent-Union of India in substance. Counter-affidavit has also been filed upon them. It is not disputed that the SLC has not recorded any particular reason as to why delay in making claim should be condoned.

[9] We have considered the submissions of the learned counsel for the parties and taken note of the materials placed from record. The claim of CCIS raised by the petitioner is on the basis of the NEIIPP, 2007. The Salient features of the 2007 policy are extracted hereinunder:

**“(i) Coverage:**

The North East Industrial Policy (NEIP), 1997 announced on 24.12.1997 covered the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Under NEIIPP, 2007, Sikkim will also be included. Consequently, the 'New Industrial Policy and other concessions for the "State of Sikkim' announced vide O.M. No.14(2)/2002-SPS dated 23.12.2002 and the Schemes thereunder i.e. Central Capital Investment Subsidy Scheme, 2002, Central Interest Subsidy Scheme, 2002 and Central Comprehensive Insurance Scheme, 2002, notified vide Notifications No.

F.No.14(2)/2002-SPS dated the 24.12.2002 will be discontinued from 1.4 2007.

**(ii) Duration:**

All new units as well as existing units which go in for substantial expansion, unless otherwise specified and which commence commercial production within the 10 year period from the date of notification of NEIIPP, 2007 will be eligible for incentives for a period of ten years from the date of commencement of commercial production.

**(iii) Neutrality of location:**

Incentives will be available to all industrial units, new as well as existing units on their substantial expansion, located anywhere in the North Eastern Region. Consequently, the distinction between 'thrust' and 'non-thrust' industries made in NEIP, 1997 will be discontinued from 1.4.2007.

**(iv) Substantial Expansion:**

Incentives on substantial expansion will be given to units effecting 'an increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purpose of expansion of capacity/modernization and diversification', as against an increase by 33½% which was prescribed in NEIP, 1997.

**(v) Excise Duty Exemption:**

100% Excise Duty exemption will be continued, on finished products made in the North Eastern Region, as was available under NEIP, 1997. However, in cases, where the CENVAT paid on the raw materials and intermediate products going into the production of finished products (other than the products which are otherwise exempt or subject to nil rate of duty) is higher than the excise duties payable on the finished products, ways and means to refund such overflow of CENVAT credit will be separately notified by the Ministry of Finance.

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**(vii) CAPITAL INVESTMENT SUBSIDY:**

Capital Investment Subsidy will be enhanced from 15% of the investment in plant and machinery to 30% and the limit for automatic approval of subsidy at this rate will be Rs.1.5 crores per unit, as against Rs.30 lakhs as was available under NEIP, 1997. Such subsidy will be applicable to units in the private sector, joint sector, cooperative sector as well as the units set up by the State Governments of the North Eastern Region. **For grant of Capital Investment Subsidy higher than Rs.1.5 crore but upto a maximum of Rs. 30 crores, there will be an Empowered Committee Chaired by Secretary, Department of Industrial Policy & Promotion with Secretaries of Department of Development of North Eastern Region (DONER), Expenditure, Representative of Planning Commission and Secretary of the concerned Ministries of the Government of India dealing with the subject matter of that industry as its members as also the concerned Chief Secretary/Secretary (Industry) of the North Eastern State where the claiming unit is to be located. Proposals which are eligible for a subsidy higher than Rs.30 crores, will be placed by Department of Industrial Policy and Promotion before the Union Cabinet for its consideration and approval.**

**(viii) Interest Subsidy:**

Interest Subsidy will be made available @3% on working capital loan under NEIIPP, 2007 as was available under NEIP, 1997.

**(ix) Comprehensive Insurance:**

New industrial units as well as the existing units on their substantial expansion will be eligible for reimbursement of 100% insurance premium.

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**(xii) Establishment of a monitoring mechanism for implementation of the NEIIPP, 2007:**

In order to establish a monitoring mechanism for implementation of NEIIPP, 2007, a 'High Level Committee' / an 'Advisory Committee' under the Chairmanship of Secretary, Department of Industrial Policy and Promotion and comprising Secretaries of the Ministries/Departments of Revenue, Department of Development of North Eastern Region (DONER), Banking and Insurance, Representative of Planning Commission, CMD, NEDFi as well as major stakeholders including the industry associations of the North Eastern region would be constituted. In addition, an 'Oversight Committee' will be constituted under the Chairmanship of the Union Commerce and Industry Minister with Industry Ministers of NE States as its members.

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**(xv) Nodal agency:**

The North East Industrial Development Finance Corporation (NEDFi) will continue to act as the nodal agency for disbursement of subsidies under NEIPP, 2007.

2. The 'New Industrial Policy and other concession in the North Eastern Region' announced vide O.M. No.EA/1/2/96-IPD, dated 24.12.1997 (NEIP, 1997) will cease to operate with effect from 1.4.2007. Industrial Units which have commenced commercial production on or before 31.3.2007 will continue to get benefits/incentives under NEIP, 1997.

3. Government reserves the right to modify any part of the Policy in public interest.

4. All concerned Ministries/Departments of the Government of India are requested to amend their respective Acts/rules/notifications etc. and issue necessary instructions for giving effect to these decisions.”

[10] For effective and smooth implementation of the Policy of 2007 General Operational Guidelines for Registration of Industrial Units and Procedure for Handling Subsidy Claim under CCIS Scheme of NEIIPP, 2007 were framed. It also prescribed the timeline of one year for making claims for subsidy under CCIS Scheme in the prescribed application forms within one year of commencement of commercial operations. It further provided for dealing with cases of delayed registration. Relevant guidelines are also extracted hereinunder:

(i) Industrial unit which wishes to claim subsidy under this Scheme should get registered with the District Industries Centre concerned, prior to the date of commencement of its commercial production for new units or undertaking substantial expansion for existing unit. The application for such registration shall be made in the prescribed Application Form.

(ii) ‘Substantial expansion’ means increase in the value of fixed capital investment in plant & machinery of an industrial unit by not less than twenty five percent for the purpose of expansion of capacity/modernization and diversification.

(iii) The General Manager of the concerned District Industry Center (DIC) shall be the competent authority to issue Registration Certificate.

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(v) It may be ensured that no industrial unit should be registered for benefits under NEIIPP, 2007 if it is covered under Negative List provided under para (x) & (xiii) of the Policy and Annexure-1 of the Notification of the respective Schemes.

(vi) A copy of the registration form and registration certificate should be endorsed to Department of Industrial Policy & Promotion (DIPP) (without enclosures) within 30 days of issuance of the Registration Certificate.

(vii) The claims for subsidy under CCIS Scheme of NEIIPP, 2007 have to be submitted to the concerned DIC in the prescribed Application Forms within one year from the date of commencement of commercial production. Cases of delayed registration will be dealt as per the clarification provided vide DIPP letter No.10(5)/2008-DBA- II/NER dated 25th August, 2008 and letter No. 10/6/2008-DBA II/NER dated 15<sup>th</sup> March, 2012. In case of units which do not get themselves registered by 27.07.2007/21.09.2007 due to delayed notifications of the scheme and have subsequently got themselves registered latest by 31.12.2008, claims submitted by these units within one year of registration could be deemed admissible, if State Level Committee (SLC) deems the case fit for condoning the delay. Any other case for subsequent waiver will be dealt on case specific basis by DIPP after the SLC recommends such relaxation, subject to strict proof of commencement

of operation/commercial production. In such cases, final decision rests with DIPP.

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(xvii) The authorized official of the DIC must visit the location of each and every unit and physically verify the existence and operation of the industrial unit/substantial expansion undertaken by the unit and submit a report in the prescribed Form. This would be placed before the appropriate Committee and appended to the minutes of its meeting.

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(xxi) The subsidy claim shall be considered by DLC/ SLC only after the unit has started commercial production unless otherwise provided in the Scheme. A certificate of the unit having started the production must be accompanied with the subsidy claims. This certificate would be issued by the State Govt./Central Govt. as the case may be.

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(xxiv) The concerned State Government shall set up a State Level Committee (SLC) consisting of at least one representative each from the State Industries Department, State Directorate of Industries, State Finance Department, Central Government (to be nominated by DIPP), North Eastern Development Financial Corporation Limited (NEDFi) and the Financial Institution concerned (if the industrial unit is being assisted by a financial institution), to go into details of each case to decide whether the unit qualifies for the grant of subsidy and also about the quantum of subsidy.

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(xxvi) Cases of subsidy claim between Rs. 1.5 crore to Rs. 30 crore will be put up to the Empowered Committee. Cases with claim above Rs 30 crore will be put up to the Union Cabinet thereafter.

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(xxviii) Usually, the SLC organizes a field visit to the unit before considering its claim. In case of claims under Central Capital Investment Subsidy Schemes of NEIIPP, 2007, requiring approval of Empowered Committee/ Union Cabinet i.e. for claims above Rs.1.5 crore, the concerned State Government must organize field visit of the unit, by a team consisting of one representative each from (a) State Government concerned (b) each of the Financial Institutions which assisted the unit, (c) Department/ Ministry of the Central Government administering the sector in which the claimant industrial unit falls (an illustrative panel of Administrative Ministries/Departments/Autonomous Bodies is enclosed as Annexure-A) and (d) NEDFi.

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(xxx) The field visit will take place before the SLC meeting. The report of the field visit team shall be included in the agenda note placed before the SLC meeting.

(xxxi) While recommending/approving a claim under the scheme, the SLC shall consider the following-

- Date of commencement of commercial operation
- Physical Verification Report of the DIC
- Assessment Report of Field Visit Team (must for claims above Rs. 1.50 crore)
- The documents pertaining to the proof of existence of the industrial unit
- Production figures of the unit
- Detailed Project Report (DPR)/Techno-Economic Feasibility Report (TEFR) of the industrial unit
- Whether payment for procuring/acquiring these Plant & Machinery has been made through A/c Payee Cheque/Drafts/NEFT/RTGS.
- Appraisal Report of the Financial Institution(s) which had assisted the project of the Industrial unit.
- Clarifications on the eligible components of P&M provided by DIPP from time to time. The latest clarification provided vide letter dated 25.02.2013 is enclosed as Annexure-B.
- Representatives of Financial Institutions must be invited to the SLC meeting in respect of units funded by them.
- In addition to the above, SLC can also stipulate the requirement of any other documents/reports which in its opinion are essential for ascertaining the genuineness of the claims made by the industrial units.

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(xxxiv) All the cases of subsidy claims approved/recommended by the DLC/SLC shall be subjected to pre-scrutiny. The concerned State Government shall send request for such pre-scrutiny. The concerned State Government shall send request for such pre-scrutiny to DIPP, who will arrange for deputing a Pre-Scrutiny team. Pre-scrutiny will be carried out at NEDFi office at Guwahati/concerned State Capital.

[11] The Government of India, Ministry of Commerce and Industries (DIPP) decided to suspend further registration under the NEIIPP, 2007 with immediate effect till further order by communication dated 01.12.2014 (Annexure-R/6). However, upon review the government decided to revise the above policy vide notification dated 22<sup>nd</sup> December, 2016, for the industrial units which had commenced production on or after 01.12.2014. The units registered before 01.12.2014 would continue to get benefits as per pre-revised norms. An office memorandum was issued on 15.12.2016 in pursuance thereto whereby the NEIIPP, 2007 stood modified to the extent indicated therein. The relevant terms and conditions which specifically relate to the case of the present petitioner are extracted hereunder:

“2.....

(i) Duration:

All Industrial units which commence commercial production on or after 01.12.2014 and on or before 31.03.2017 (hereinafter referred to as the 'new industrial unit) as well as existing units which go in for substantial expansion and commence commercial production on or before 31.03.2017 will be eligible for incentives as per the revised norms of subsidy notified vide Notification No. 10(3)/2007-DBA-II/NER dated 22.11.2016.

(ii) Capital Investment Subsidy:

The subsidy will be provided in terms of the Scheme notified vide Notification No.10(3)/2007-DBA-II/NER dated 27.07.2007 except for the modifications incorporated in this O.M. The subsidy for the new industrial units/existing industrial units going for substantial expansion (which registered and commenced production on or after 1.12.2014 and on or before 31.03.2017) will be limited to Rs.5.00 crore per industrial unit operating in manufacturing sector and Rs.3.00 crore per industrial unit operating in services sector. While the limit for automatic approval of subsidy at the rate of 30% of the investment in plant and machinery will continue to be upto Rs.1.5 crores per unit: for grant of capital investment subsidy higher than Rs.1.5 crores and upto a maximum of Rs. 5 crores, there will be an Empowered Committee chaired by Secretary, Department of Industrial Policy & Promotion with Secretaries of Department of Development of North Eastern Region (DoNER), Expenditure, representative of NITI Aayog and Secretary of the concerned Ministries of the Government of India dealing with the subject matter of that industry as its members as also the concerned Chief Secretary/Secretary (Industry) of the North Eastern State where the claiming unit is located.

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3. All other terms and conditions as regards coverage, neutrality of location, substantial expansion, excise duty exemption, income tax exemption, comprehensive insurance, negative list; incentives for service/other sector industries (service sector, incentives for biotechnology industry and incentives for power generating industries) and value addition would continue to be the same as defined in O.M. No. 10(3)/2007- DBA-II/NER dated 1.04.2007.

4. Industrial units registered before 1.12.2014 would continue to get benefits as per pre-revised Policy. The new industrial units as well as existing units going for substantial expansion, who are eligible for registration would register themselves to avail the benefits as per revised Policy notified vide Notification No. 10(3)/2007-DBA-II/NER dated 22.11.2016.

5. New industrial units/Existing industrial units going for substantial expansion that are registered under the existing or/and amended Policy and have commenced commercial production on or before 31.03.2017 shall only be eligible for the benefits of the Schemes under NEIIPP, 2007.”

[12] The petitioner went into expansion of its industrial unit which commenced its commercial production w.e.f. 01.04.2016. However, as per the revised policy it had to undertake pre-registration. Registration was allowed w.e.f. 09.02.2017 as per certificate dated 13.02.2017. Petitioner had to submit its claim for CCIS for the expanded unit within one year period as per clause (vii) of the operational guidelines under 2007 policy from the date of commercial production or within one year of the registration.

[13] However, the claim was submitted on 26<sup>th</sup> February, 2018 after 11 days of expiry of one year period as per clause (vii) of the guidelines. As per clause (vii) of the guidelines such delay could be condoned on the basis of recommendation of the SLC on case specific basis by DIPP. In such cases, final decision rests with DIPP. The SLC on the basis of the field inspection report dated 08.08.2019 (Annexure-R/10) had made a recommendation for grant of CCIS to the tune of Rs. 3.93 crores in its meeting dated 20.09.2019 (Annexure-R/15). However, it did not make any recommendation for condonation of the delay of eleven days in submission of the claim by the petitioner after the stipulated period of one year as per clause (vii) of the guidelines. The relevant part of the recommendation of the SLC is extracted hereinafter:

“Proposals Approved by the Committee:

A. Central Subsidy:

1. Central Capital Investment Subsidy: The proposal of the Central Capital Investment Subsidy of M/s. Pran Beverages (INDIA) Pvt. Ltd. Food Park, Industrial Growth Centre. Bodhjungnagar. P.O.- R.K.Nagar, West Tripura [Expansion] was placed before the State Level Committee. The Committee accepted the eligible amount of investment made in Plant and Machineries amounting of Rs.13,10,37,643.00 and admissible amount of subsidy @ 30% on eligible investment to be Rs.3,93,11,293 as assessed by the Field Visit Team. Therefore, the Committee recommended Rs. 3,93,11,293.00 (Rupees Three Crore Ninety Three Lakhs Eleven Thousand Two Hundred and Ninety Three) only as Central Capital Investment Subsidy in favour of M/s, Pran Beverages (INDIA) Pvt. Ltd.[ Expansion].

Issuance of the Pre-Registration Certificate under NEIIPP, 2007 was delayed due to suspension of Pre-Registration by DIPP vide letter dated, 01/12/2014 and subsequently issued Pre-Registration under NEIIPP,2007 in favour of the unit after withdrawn of the suspension Vide Notification No. 10(3)/2007-DBA-II/NER, dated, 22/11/2016.

The detail of the claim recommended by SLC is given in Annexure-II.”

[14] The DIPP rejected the claim on the ground that the date of receipt of claim at DIC was after one year “*The date of receipt of claim at DIC is after one year from the date of registration under NEIIPP, 2007 or Date of Commencement or Commercial Production and the amount as recommended by the State Level Committee has been objected/Rejected by the department*” vide letter dated 03.09.2021 (Annexure-6). Petitioner made representation for reconsideration to the government of Tripura, Industries Department on 11.10.2021 (Annexure-7). Thereafter, it approached this court in WP(C)848/2022 with a prayer for quashing of the order of rejection of CCIS dated 03.09.2021. The writ petition was disposed of on 24.11.2023 (Annexure-13) for reconsideration with a pragmatic view, keeping in mind the development of the state. Upon reconsideration the DIPP has once again rejected the claim vide order contained in letter dated 23.01.2024 (Annexure-14) on the following grounds:

“2. In this regard, it is to convey that this Department is of the view that "M/s. Pran Beverages (India) Pvt. Ltd. has undergone substantial expansion during the period of suspension of the Scheme, i.e., between 01.12.2014 to 21.11.2016, and the post-expansion commercial production was made on 01.04.2016. Further, the registration certificate allotted to it bearing number

DIC/WEST/Tripura/195/NEIIPP,2007/2017 dated 09.02.2017, was issued on 13.02.2017. The claims were submitted to the District Industry Center (DIC) on 26.02.2018, clearly after the stipulated deadline of one year. The matter was also referred to the Department (respondent) which rejected the claim of the Petitioner vide letter dated 26.02.2021 on the ground that the date of receipt of claim at DIC is after one year from the date of registration under NEIIPP, 2007 or date of commencement of commercial production. As per the available records put forth by Petitioner, a delay of 11 days had been caused in filing the claim before the DIC, which became the reason for the rejection of the CCIS Claims of the Petitioner as the same was not in sync with the Scheme guidelines, norms, amendment and clarifications issued from time-to-time.

3. It may kindly be noted that the rejection of the claim of the Petitioner was strictly made as per the norms of the policy, guidelines, amendments, and clarifications issued by the Department from time to time. More specifically, whether the unit could register after the commencement of production as the scheme guidelines issued by DIPP letter dated 07.05.2013 at para (i) of the general operational guidelines states that an industrial unit that wishes to claim subsidy under this scheme should get itself registered prior to the date of commencement of its commercial production. It was clearly specified in para (vii) that the filing of claims in such cases within one year of registration may also be permitted.

4. Since NEIIPP, 2007 is a scheme meant to promote industrial activity in the Northeastern Region, The scheme provides incentives to all new as well as existing units that go for industrial expansion and which commence commercial production within 10 years from the date of notification of NEIIPP, 2007 for a period of 10 years from the date of commercial production. Exceptions are the industries considered hazardous to public health and the environment, such as tobacco and its substitutes, pan masala, plastic carry bags, refinery products, etc. Therefore, taking into account the necessity for development in the state of Tripura, the Department has disbursed Rs. 19.02 crore during the last 5 financial years (2018-2023) to the industrial units of Tripura under NEIIPP,2007 as a subsidy for investment/industrial promotion.

5. Furthermore, it is evident that the Department rejected the promotional subsidy on the ground that the claim was submitted after 11 days beyond the period of one year. It is worth mentioning that the requirement of interpretation or waiver by authorities is required when the position of the Scheme is not clear and not where there is no room for confusion. Hence, the Department ought not to venture overzealously and grant undue relaxations as such relaxation may have far-reaching implications as other similarly placed units may also stake their respective claims and expect parity from the Department. Also, the fact of the Scheme suspension, its circumstances, and subsequent reinstatement must be kept in mind. Further, as per the settled proposition of ignorantia juris non excusat, the Petitioner ought to know the procedural aspects involved in the Scheme under which it is benefitting or is expected to benefit and cannot plead ignorance.

6. This is issued with the approval of the Competent Authority.”

[15] As noted above, the subsequent rejection of the claim for CCIS contained in letter dated 23.01.2024 (Annexure-R/16) have surprisingly not been assailed by the writ petitioner though such reconsideration was made only pursuant to the direction passed by this Court in WP(C) 848/2022. The first order of rejection dated 03.09.2021 (Annexure-6), the subject matter of the previous petition [WP(C) No.848/2022] have once again been challenged. In

that way the writ petition should not be entertained in the absence of specific challenge to the fresh order of rejection passed after reconsideration by the respondent DIPP upon remittance by this Court in the previous round of litigation. However, parties have exchanged pleadings on the averments in the writ petition. The stand of the respondent –Union of India and the State is categorical that no exception could be made to entertain the claim of the petitioner submitted after expiry of one year period as per clause-(vii) of the operational guidelines. In fact, neither the SLC nor the petitioner has offered any explanation worth its name as to why it could not make a claim within a period of one year from issuance of the pre-registration certificate dated 15.02.2017, made effective from 13.02.2017, till expiry of one year period as per clause-vii of the guidelines. As per paragraph 3 of the OM dated 15.12.2016 all other terms and conditions as indicated therein continue to be same as defined in OM dated 01.04.2007. Though arguments have been advanced on behalf of the petitioner that the revived policy does not incorporate the guidelines of 2013 but such a plea is not tenable in law or facts to be accepted at this stage.

**[16]** Petitioner's case has been set up from the beginning that it was obliged to submit its claim within one year of the grant of pre-registration certificate as per clause-(vii) of the guidelines of 2013. The entire case of the petitioner has been processed on those lines only. Moreover, it is the consistent stand of the respondent-Union of India, who are the makers of the documents, that the timeline of making such a claim provided under the 2013 guidelines is applicable to all such claims for grant of subsidy under the NEIIPP.

[17] In this regard it is relevant to refer to the maxim '*contemporanea expositio est optima et fortissima in lege*'. This maxim was considered in the case of ***Ultratech Cement Limited and another versus State of Rajasthan and others*** reported in (2021) 12 SCC 147. The maxim '*contemporanea expositio est optima et fortissima in lege*' means that the best way to construe a document is to read it as it would have read when made. The principle of '*contemporanea expositio*' (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive on the question of construction. It is also held that even if the persons who dealt with the Act understood it in a particular manner that does not prevent the Court in giving to the Act its true construction. Further, an interpretation to a statute received from contemporary authority is not binding upon the Courts and may have to be disregarded if such interpretation is clearly wrong. In essence, the doctrine of '*contemporanea expositio*' is applied as a guide to the interpretation of a statute or even document by referring to the exposition that the same has received from competent authority at the relevant point of time. This doctrine is also relatable to the doctrine of *stare decisis* whereunder, an exposition standing for a long length of time, is considered to be a law settled and is applied as such.

[18] As regards the contemporaneous construction placed by the administrative or executive officers charged with executing statute, the Courts lean in favour of attaching considerable weight to the same but, it cannot be laid down that understanding of a particular administrative or executing authority is always *fait accompli* and has to be applied even if erroneous. The

true principle is just to the contrary, i.e. if a construction placed by the contemporary authority is found to be clearly wrong or erroneous, the same deserves to be disregarded.

[19] In the light of the principles explained above on the application of the maxim of '*contemporanea expositio*' by the Apex Court, this Court is of the considered opinion that no materials have been placed before us to demonstrate that the relevant provisions, terms and conditions of the NEIIPP, 2007 policy revived by notification dated 22.11.2016 and the guidelines dated 27.05.2013 which laid down the timelines to be followed for claiming such benefit under the policy have been construed in a wrongful or erroneous manner, the authors of the documents, i.e. the Union of India to be discarded. As per OM dated 15.12.2016, paragraph 3, all the terms and conditions as regards coverage, neutrality of location, substantial expansion etc. would continue to be the same as OM dated 01.04.2007. It is trite to observe that such exemptions or incentives, as promulgated by the Government, are in the nature of concession or incentive which is a privilege of the Government. It is for the Government to take the decision to grant such a privilege or not. It is also trite law that such exemptions, concessions or incentives can be withdrawn any time. It is also well settled that for availing of such a claim of subsidy the unit or the petitioner has to strictly adhere to the terms and conditions of the Investment Policy. All these are matters which are in the domain of policy decisions of the Government. When there is withdrawal of such incentive and it is also shown that the same was done in public interest, the Court would not

tinker with these policy decisions. [See *Director General of Foreign Trade and another* (supra), paragraph-105].

[20] As such, we find no basis to accept the submission of the petitioner's that timeline for claiming CCIS would not apply to claims made after revival of the NEIIPP, 2007. Industrial policies have a definite life period. Claims for exemption or incentives thereunder also need to be adhered to the prescribed timeline, otherwise the whole purpose of granting such an incentive or exemptions or concessions during the period when a unit is either set up as new or is expanded, would get defeated as such industrial policy is intended to ensure industrial growth in the backward regions by promoting entrepreneurs to invest in those areas.

[21] The reasons for rejection contained in the order dated 03.09.2021 (Annexure-6) and the order dated 23.01.2024 (Annexure-14) passed in remand (not impugned) do not appear to suffer from any non-consideration of the materials on record or non-application of mind to be termed as arbitrary as such. As noted above, petitioner has not even made any semblance of explanation as to why the claim was submitted after the expiry of one year. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India is required to examine whether the decision of the authority suffers from arbitrariness or is irrational due to non consideration of the relevant factors required to be taken into account, under the Wednesbury Principles of Reasonableness. The order dated 23.01.2024 passed after reconsideration of the case of the petitioner records that NEIIPP, 2007 is a scheme meant to promote

industrial activity in the North East Region. The scheme provides incentives to all new as well as existing units that go for industrial expansion and commercial production within 10 years from the date of notification of the 2007 policy for a period of 10 years from the date of commercial production. The department has rejected the promotional subsidy on the ground that the claim was submitted after 11 days beyond the period of one year.

[22] It further records that requirement of interpretation or waiver by authorities is necessitated when the position of the scheme is not clear and where there is no room for confusion. The Department ought not to venture overzealously and grant undue relaxations as such relaxation may have far-reaching implications as other similarly placed units may also stake their respective claims and expect parity from the department. Petitioner also cannot claim ignorance of law as it ought to know the procedural aspects involved in the scheme under which it is benefitting or is expected to benefit and cannot plead ignorance. Similar are the terms of the earlier rejection order dated 03.09.2021 (Annexure-6) that the claim at DIC has been received after one year from the date of registration under NEIIPP, 2007 or date of commencement of commercial production. In the absence of any explanation or any reason contained in the recommendation of the SLC vide its minutes dated 20.09.2019 (Annexure-R/15) explaining the delay in making such claim for CCIS beyond the period of one year as required under clause (vii) of the guidelines on behalf of the petitioner, it would not be proper for this Court to interfere in the matter, more so when the order of rejection dated 23.01.2024

(Annexure-R/16) passed upon re-consideration after remand by this Court in WP(C) No.848 of 2022 has not been assailed in this writ petition.

[23] Accordingly, the instant petition is dismissed. Pending application(s), if any, shall also stand disposed of.

**(S. D. PURKAYASTHA), J**

**(APARESH KUMAR SINGH), CJ**

