

GAHC010274882018



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

Case No. : WP(C)/8631/2018

PDP STEELS LTD.

A COMPANY INCORPORATED UNDER THE PROVISION OF THE COMPANIES ACT, 1956 AND HAVING ITS REGD. OFFICE LOCATED AT ESPLANDE MANSION, GOVT. PLACE EAST, KOLKATA- 700069 IN THE STATE OF WEST BENGAL AND ITS FACTORY SITUATED AT BONDA, NARENGI, ASSAM, AND REP. BY ONE OF ITS DIRECTOR SRI RAHUL PASARI, R/O- 4A RAINEY PARK, KOLKATA-15

VERSUS

THE UNION OF INDIA AND 3 ORS.

REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI-110107

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF INDUSTRIES AND COMMERCE
ASSAM SECRETARIAT
DISPUR
GHY-5

3:THE COMM. OF INDUSTRIES AND COMMERCE

DEPTT. OF INDUSTRIES AND COMMERCE
GOVT. OF ASSAM
UDYOG BHAWAN
BAMUNIMAIDAM
GHY-21

4:THE GENERAL MANAGER
DISTRICT INDUSTRIES AND COMMERCE CENTRE
BAMUNIMAIDAM
GHY-21 (ASSAM)

Advocate for the Petitioner : DR. ASHOK SARAF, MR. Z ISLAM,MR. P DAS,MR. S P SHARMA,MR. N N DUTTA,MR. P BARUAH

Advocate for the Respondent : ASSTT.S.G.I., MR. S C KEYAL,SC, INDUSTRIES AND COMMERCE,DR. B AHMED

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

04.11.2024

1. Heard Dr. A. Saraf, learned Sr. Counsel for the petitioner assisted by Mr. P.K. Bora. Also heard Mr. S.S. Roy, learned counsel for the respondent No.1 and Mr. A. Kalita, learned counsel for the respondent Nos. 2, 3 & 4.
2. The petitioner is aggrieved by the rejection of his claim for grant of subsidy in terms of the North East Industrial and Investment Promotion Policy (NEIIPP), 2007 and the Central Capital Investment Subsidy Scheme, 2007 (CCISS, 2007).
3. The petitioner's counsel submits that the petitioner had made substantial expansion in terms of Clause (iv) of the NEIIPP, 2007 and Clause 4(d) of the Notification dated 27.07.2007, in relation to the Central Capital Investment Subsidy Scheme, 2007. He submits that the petitioner had made a claim for grant of subsidy in terms of the above NEIIPP and CCISS on 10.03.2016, which was forwarded to the concerned authorities by the General Manager, District Industries & Commerce Centre, Kamrup (M), Guwahati on 10.06.2016. A report

on the claim for subsidy made by the petitioner was made by a committee constituted by the Government of Assam, Industries & Commerce Department, which stated that the Field Visit Team had recommended that the petitioner should be given subsidy @30% of the investment under the CCISS, 2007 and NEIIPP, 2007, i.e., Rs.3,44,01,121/-. Thereafter, in terms of the 43rd Meeting Minutes of the State Level Committee for Central Capital Investment Subsidy under the NEIIPP, 2007 held on 09.05.2017, it was resolved that the IIT, Guwahati should be requested to assess production and productivity increase 3 years prior to and 3 years post the modernization/expansion of the petitioner's unit. Consequent to the 43rd Meeting Minutes of the State Level Committee held on 09.05.2017, Dr. P.S. Robi, Professor, Department of Mechanical Engineering, Indian Institute of Technology, Guwahati submitted a letter dated 21.12.2017 to the Commissioner, Industries & Commerce, stating that he was deputed to assess the productivity and production increase due to modernization programme carried out by the petitioner and on inspection, he found the profit index leading to an increase in annual production of the plant by 9359-16 M.T., i.e., an increase of 19.03%.

4. Clause (iv) of the NEIIPP, 2007 and Clause 4(d) of the CCISS, 2007 are reproduced hereinbelow as follows:-

“(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.”

“4. (d) Substantial expansion' means increase in the value of fixed capital investment in plant and machinery of an industrial unit by not less than 25%, for the purpose of expansion of capacity/modernization and diversification.

5. The petitioner's counsel submits that the petitioner thereafter submitted various representations for release of subsidy. However, the Government of Assam, Office of the Commissioner of Industries & Commerce thereafter issued a letter dated 26.06.2018 to the General Manager, District Industries & Commerce Centre, Kamrup(M), stating that as per the decision of the SLC held on 09.05.2017, the Committee had suggested obtaining additional information regarding power consumption, I.T. return etc under modernization. The petitioner thereafter supplied additional information to the respondents for grant of 30% CCISS claim.

6. Thereafter, in the 50th Meeting Minutes of the State Level Committee for Central Capital Investment Subsidy under the NEIIPP, 2007 held on 30.10.2018, the Committee took a decision that the additional information of the petitioner's unit regarding turnover, production quantity, employment, power consumed, cost of production, profit etc of two years prior and two year after modernization of the unit, besides observing the percentage of increase/decrease of turnover, production quantity, unit consumed, cost of production etc. of one year after expansion to one year prior to expansion, were not satisfactory.

7. The petitioner's counsel submits that the rejection of the petitioner's claim for subsidy on the basis of the turnover/production quantity, power consumed etc, as reflected in the 50th Meeting Minutes of the State Level Committee for Central Capital Investment Subsidy under the NEIIPP, 2007 held on 30.10.2018

should be set aside in view of the fact that the grant of subsidy in terms of the NEIIPP, 2007 would only be relatable to Clause (iv) of the NEIIPP, 2007 and Clause 4(d) of the CCISS, 2007. He submits that the question of going into the production of materials, power consumed, cost of production, profit etc cannot be a ground for deciding whether the petitioner is to be granted subsidy, as the same is not provided in the meaning of substantial expansion. The respondents would only have to consider the petitioner's case only on the basis of the definition given to "substantial expansion", as provided in the NEIIPP, 2007 and the CCISS, 2007.

8. Mr. A. Kalita, learned counsel for the respondent Nos. 2, 3 & 4 submits that this Court had disposed of similar cases, i.e., WP(C) 443/2019 and WP(C) 435/2019, by directing that the claim of the petitioners therein should be placed before the next State Level Committee meeting, to be considered in the light of instructions issued vide letter dated 17.06.2022 by the Under Secretary to the Government of India, Ministry of Commerce & Industries.

9. On considering the submissions of the counsels for the parties and keeping in view the disposal of WP(C) 443/2019 (M/s Ozone Ayurvedics Vs. the State of Assam and 6 ors.) and WP(C) 435/2019 (Ozone Pharmaceuticals Ltd. Vs. the State of Assam and 6 Ors.), this Court is also of the view that the writ petition can be disposed of in the same manner. Accordingly, the claim of the petitioner should be placed before the next State Level Committee meeting to be considered in the light of the instructions issued vide letter dated 17.06.2022 issued by the Under Secretary to the Government of India, Ministry of Commerce & Industries. Further, the State Level Committee shall have to consider the case of the petitioner in terms the definition of "substantial

expansion” provided in the NEIIPP, 2007 and CCISS, 2007.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant