

18.06.2025
Court No.1
Item No.21 & 22
(PP)

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

**MAT 73 of 2024
with
IA No: CAN 1 of 2024**

**M/s. North East Ferro Alloys Company
Private Limited & Anr.**

Versus

**West Bengal State Electricity Distribution
Company Limited & Ors.**

WITH

**MAT 1 of 2020
With
IA No: CAN 2 of 2020**

**The General Manager/Officer-in-Charge, Sub-
District Industrial Centre, Siliguri, Government of
West Bengal, Directorate of Micro & Small Scale
Enterprises**

Versus

**M/s. North East Ferro Alloys Company
Private Limited & Anr.**

Mr. K. R. Thaker, Sr. Adv.,
Mr. Ajoy Kumar Singhania,
Mr. Chhunky Agarwal
....for the appellants in MAT 73/2024
& respondent in MAT 01/2020.

Mr. Sujit Shankar Koley,
Mr. Anirban Banerjee
....for WBSEDCL.

Mr. Subir Kumar Saha, AGP,
Mr. Hirak Barman,
Mr. Nabankur Paul
....for the respondent no.7 in MAT 73/2024
& appellant in MAT 1/2020.

The two appeals arise out of a common judgment and order dated 22nd February, 2019 passed by the learned Single Judge in WP 17840(W) of 2018. The appeal being MAT 1 of 2020 is filed by the General Manager/Officer-in-Charge, Sub-District Industrial Centre, Siliguri, Government of West Bengal, Directorate of Micro and Small Scale Enterprises. In the said appeal the appellant has challenged the impugned order on all counts. The other appeal being MAT 73 of 2024 is an appeal by the respondent no.1 in the other appeal. This is restricted to the refusal of interest on the principal sum allowed by the learned Single Judge vide the order impugned.

The facts which are germane for adjudication of the appeals may be summarized as follows:-

North East Ferro Alloys Company Pvt. Ltd. (in short 'North East') is a micro and small scale industry with a production unit situate at Suboljote, P. O. Nemai, P. S. Matigara, District – Darjeeling. The said North East under the West Bengal Incentive Scheme, 2007 (hereinafter referred to as 'the said scheme') which came into effect from 1st April, 2007 for a period of five years that is up to 31st March, 2012 in the whole West Bengal was entitled to waiver of electricity duty and subsidy on electricity charges in terms of Clause 10 of the said

scheme. The said Clause 10 is set out hereunder for the sake of convenience.

“10. Waiver of Electricity Duty and Subsidy on Electricity Charges

10.1 An eligible micro unit/enterprise for its approved project will be entitled to waiver of electricity duty on the electricity consumed for the production/operation activity for a period of 5 years from the date of commercial production/operation.

10.2 An eligible small scale unit/enterprise for its approved project will be entitled to waiver of electricity duty on the electricity consumed for the production/operation activity for a period of 5 years from the date of commercial production/operation.

10.3 An eligible micro or small scale unit/enterprise will be entitled to reimbursement of electricity charges @ 30% of such charges paid by it for a period of 5 years from the date of commencement production/operation.”

The admitted position is that the subsidy as per Clause 10.3 set out hereinabove has been paid to North East. However, North East says that the electricity charges were subsequently revised by the West Bengal State Electricity Distribution Company Limited (in short, ‘WBSEDCL’) retrospectively for the period in respect of which it is entitled to the subsidy and has given so. On the basis of such subsequent revision of the electricity charges which was made applicable retrospectively, the said North East had to pay to WBSEDCL an additional amount, a portion of which North East was entitled to

be reimbursed in terms of Clause 10.3 of the said incentive scheme.

Having been not paid so, North East filed a writ petition being WP 9463(W) of 2017. The said writ petition was disposed of by an order dated 2nd February, 2018. A portion of the said order dated 2nd February, 2018 reads as follows :

“Upon receipt of such letter, the Senior Manager (F&A), Central Commercial Department, WBSEDCL confirmed that the petitioners had indeed made payment of the energy bills for the financial years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 as reflected in the enclosed document.”

The said order dated 2nd February, 2018 was, however, not challenged by the appellant in the appeal being MAT 73 of 2024.

Pursuant to and in terms of the direction contained in the said order, the Officer-in-Charge, Sub-District Industrial Centre, Siliguri by an order dated 15th March, 2018 rejected the claim of North East. The operative portion of the said order is as follows :

“Since the Petitioner company has not submitted any money receipts/documents in support of such payment of arrear energy charges, this Office issued a letter vide Memo No.192/2015/DIC/SLG dated 17/06/2015 to the Chief Engineer (Commercial), WBSEDCL asking for confirmation of such payment, if any, made by the Petitioner company towards arrear energy charges. Subsequently, the Sr. Manager (F&A), Central

Commercial Department, WBSEDCL vide their letter No.C/BC/HIM/55/1182A dated 29/06/2015 replied to this Office only mentioning about an enclosure of detailed statement of arrear energy charges charged by WBSEDCL to the petitioner company in the energy bills for the period of FY 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 but with no confirmation about any payment, if any, made by the petitioner company.”

North East thereafter challenged the said dated 15th March, 2018 by filing a writ petition being WP No.17840(W) of 2018. This writ petition was partially allowed by order dated 22nd February, 2019 directing the appellants being respondent nos.5 and 6 in the said writ petition to pay electricity/energy subsidy for a sum of Rs.2,50,37,115/- within 12 weeks from the date of communication of the said order. As stated aforesaid, this is the order impugned in the two appeals.

On behalf of the General Manager/Officer in Charge, Sub-District Industrial Centre, Siliguri, Government of West Bengal, Directorate of Micro and Small Scale Enterprises, being the appellant in MAT 1 of 2020 it is submitted that Clause 10.3 of the said scheme does not provide for paying of any arrears or energy charges levied subsequently. The entire amount for the period of five years as per the provisions of the said scheme has been paid and as such, there was no ground for the learned Single Judge to direct payment of

any further amount. The main ground on which the order impugned is assailed by the General Manager/Officer in Charge, Sub-District Industrial Centre, Siliguri is, however, not reflected to have been urged or considered in the order dated 15th March, 2018 by which the Officer in Charge, Sub-District Industrial Centre, Siliguri has rejected the claim of North East.

On behalf of the North East a preliminary objection on such count has been taken by relying upon the judgment reported in **(1978) 1 SCC 405 [Mohinder Singh Gill V. Chief Election Commissioner]** and **(2016) 1 SCC 724 [State of Punjab Vs. Bandeep Singh And Others]**. By referring to the ratio laid down in the said two judgments it is contended by North East that the decision of the Officer in Charge, Sub-District Industrial Centre, Siliguri dated 15th March, 2018 has to be construed as a composite and self-sustaining one. The authorities, therefore, cannot be permitted to travel beyond the stand adopted and expressed in the said order dated 15th March, 2018.

The contention of North East regarding additional grounds being taken beyond those considered and discussed in the order dated 15th March, 2018 is a matter of substance. Even thereafter, assuming without admitting that the grounds now urged by the Directorate of Micro and Small Scale Enterprises being based on the interpretation of Clause 10.3 of the scheme to be a point

of law and can be considered, then also such ground does not persuade us to take a contrary view to that expressed by the learned Single Judge in the order impugned in view of the fact that the language of the said clause on a plain reading does not bar payment or receipt of subsidy for the additional electricity charges made applicable retrospectively on being revised.

Clause 10.3 of the said scheme clearly speaks of reimbursement on electricity charges. The revision of rate of electricity made by WBSEDCL which became operative retrospectively is the electricity charges referred in Clause 10.3 of the said scheme. North East had to pay the additional charges for the period between May, 2010 and November, 2014 though retrospectively made applicable but for the period for which it has received subsidy. North East having commenced its commercial production on 9th November, 2009 i.e., within the period between 1st April, 2007 to 31st March, 2012 was entitled to the subsidy for a period of five years from the date of commencement of its commercial production. The time period for which the additional amount was realized due to retrospective revision of electricity charges also fall within the five years' period for which North East was entitled to the subsidy. If the contention of the Directorate is to be accepted then in clause 10.3 it was required to be specifically stated that no subsequent revision of rate of electricity charges on

being retrospectively made applicable should not be reimbursed even if paid. The scheme was drafted by the State respondent to which North East had no role to play. It was, therefore, incumbent upon the State respondent to provide such specific restriction to deny any claim made by North East.

We, therefor, have no doubt to hold that North East was entitled to the subsidy for the additional amount it had paid on account of revision of rate of electricity which was made applicable retrospectively for the period between May, 2010 to November, 2014. Furthermore, the refusal to allow the subsidy for the additional sum was on the ground of non-production of payment receipts by North East in support of payments made by it for the additional amount to WBSEDCL on the retrospective revision of rates. This ground also does not hold good, particularly, in view of the admitted fact recorded in the order dated 22nd February, 2019 which is set out hereinabove and had remained unassailed. That apart and in any event, the licensee (WBSEDCL) in all stages have confirmed receipt of payment of the additional amount of retrospective revision of rate from North East.

We, therefor, do not find any cogent ground for refusing the subsidy with regard to the additional amount of electricity charges paid by North East on retrospective revision of rate of electricity charges made

by WBSEDCL. We have also considered and order of the learned Single Judge, being the order impugned in the light of the arguments advanced and discussion made hereinabove. We do not find any infirmity in the order as urged by the Directorate of Micro and Small Scale Enterprises.

The appeal being MAT 1 of 2020 preferred by the Directorate of Micro and Small Scale Enterprises, therefor, stands dismissed along with connected application.

In respect of the appeal preferred by M/s. North East Ferro Alloys Company Private Ltd., being MAT 73 of 2024, we find that the learned Judge, after considering all aspects of the matter allowed the principle sum of Rs. 2,50,37,115/- but did not award any interest.

Under the common law concept, the Directorate of Micro and Small Scale Enterprises on having not paid the principle sum in time had retained the said sum of Rs. 2,50,37,115/- with it thereby deriving benefit out of the same.

On the other hand, North East having not been paid the said sum of Rs. 2,50,37,115/- failed to derive the benefit out of the same which it could have done in ordinary course, had it received the money in time.

North East has also relied upon a judgment reported in **2024 SCC Online SC 559 (Govind Kumar Sharma and Another vs. Bank of Baroda and**

Others) wherein the interest aspect has been considered in details.

We have no reasons to deviate from the ratio so laid down in the facts of the instant case and in the light of the discussions as aforesaid.

Since the Directorate of Micro and Small Scale Enterprises derived benefit out of the said sum of Rs. 2,50,37,115/- and North East was deprived of such benefit for not having been paid, the said money, the Directorate of Micro and Small Scale Enterprises is required to compensate North East for the same. The compensation is in the form of interest.

In view of the above, North East is entitled to receive interest from 1st January, 2017 on having paid the last installment for the additional sum in December, 2016 as appears from the record which is not disputed by the Directorate of Micro and Small Scale Enterprises on the principal sum of Rs.2,50,37,115/- @ 9% per annum until repayment of the said principal sum.

The principle sum of Rs. 2,50,37,115/- has not been paid by the Directorate of Micro and Small Scale Enterprises as yet to North East as directed by the order impugned on the ground that the Directorate of Micro and Small Scale Enterprises has assailed the said order in MAT 1 of 2020. As we have dismissed the said appeal along with the connected applications, North East has become entitled to receive the principal sum of

Rs.2,50,37,115/- along with interest @ 9% per annum from 1st January, 2017 till the date of actual repayment.

We direct the Directorate of Micro and Small Scale Enterprises to pay interest on Rs.2,50,37,115/- @ 9% per annum until actual payment. We also find and hold that the rate of interest allowed is reasonable and fair, considering that the amount is receivable under an incentive scheme and is not directly interlinked with a commercial transaction though North East may have used the electricity for its production and had to pay higher rate of interest in respect of any financial assistance it had availed for its commercial activities.

The principal and interest as directed to be paid shall be made within a period of 12 weeks from the date of communication of this order.

It is made clear that in case of default, the interest rate will stand increased to 12% per annum.

Nothing further remains to be adjudicated in this appeal. The appeal, being MAT 73 of 2024, along with the connected application stands disposed of accordingly.

All parties to act on the basis of a server copy of this order downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Arindam Mukherjee, J.)

(Partha Sarathi Chatterjee, J.)