**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 10177 OF 2012

M/s Spectrum Infrastructure,
Office at B-002, Tarangan Apartment,
Mahatma Nagar Nashik 422 007.
Through its Partner
Amol Shripad Ghule
age 36 years, occ. Business
r/o 9, Pravara Housing Society
Ganeshnagar, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. .. **PETITIONER**

VERSUS

1. The State of Maharashtra
Through tis Secretary
Department of Finance,
Mantralaya, Mumbai 32.

2. The State of Maharashtra
Through its Secretary
Department of Housing Development
Mantralaya, Mumbai 32.

3. Joint Commissioner,
Sale Tax (Vat Administration)
Nashik, Tq. & Dist. Nashik

4. Dondaicha Warwade Municipal
Council, Dondaicha
Tq. Shindkheda, Dist. Dhule
through its Chief Officer. .. **RESPONDENTS**

Mr. S.P. Brahme, advocate for petitioner.
Mrs. V.A. Shinde, AGP for the State.
Mr. Milind Patil, advocate for respondent no. 4.

WITH
WRIT PETITION NO. 5143 OF 2013

M/s Shreekrupa Group & Constructions
Having office at Shop No. 1,
Rameshwar Nagar,
Jamner Road, Bhusawal, Tq. Bhusawal
Through Its partner
Shri Santosh Sitaram Jaiswal
age 37 years, occ. Business
r/o Shivaji Nagar,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon. **.. PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Secretary
Department of Finance
Mantralaya, Mumbai 32.

2. The State of Maharashtra
Through its Secretary
Department of Housing Development
Mantralaya, Mumbai 32.

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4. Dondaicha Warwade Municipal
Council, Dondaicha
Tq. Shindkheda, Dist. Dhule
Through its Chief Officer. **.. RESPONDENTS**

Mr. S. P. Brahme, advocate for petitioner.
Mrs. V.A. Shinde, AGP for the State.
Mr. Milind Patil, advocate for respondent no. 4.

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CORAM : R.M. BORDE &
P. R. BORA, JJ.
RESERVED ON : 22nd JANUARY, 2015.
PRONOUNCED ON : 26th FEBRUARY, 2015.

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties, both the petitions are taken up for final disposal at admission stage.

3. The common question raised by both the petitioners in these petitions relates to exemption from payment of Value Added Tax in accordance with the policy reflected in Government Resolution issued on 25.06.2007. Petitioners in both the petitions are partnership firms and were awarded contract in respect of construction of units for poor people under Integrated Housing and Slum Development project promulgated by the Central Government. As per the said program, MHADA was appointed as the Nodel Agency and funds were made available for implementation of the project by the Central and the State Government to the local bodies. Petitioners were entrusted work of construction of houses for low income group under the scheme by the local bodies. It is not disputed that the work allotted to the petitioners is complete and the constructed units are handed over to the local authority. Under the scheme formulated in accordance with the directives of the State Government, there are certain concessions extended such as exemption from charges of fees for the purpose of conducting cadesteral survey, making available plots for the purpose of raising construction by the Collector or local planning authority on nominal rates, concession in the matter of charging of levy of registration charges while executing the documents and, complete exemption in the matter of levy of Value Added Tax in respect of work undertaken under the

Scheme. It is the contention of petitioners that the benefit of exemption and concession allowed under the scheme are extended except grant of exemption from Value Added Tax in favour of the contractors. Petitioners contend that they were required to pay amount towards Value Added Tax while purchasing construction material which was to be utilised for raising construction of the units as well the local bodies while issuing bills/payment under the terms of contract also deducted Value Added Tax at source. Petitioners thus contend that they were required to pay Value Added Tax on two occasions; while purchasing construction material which was utilised for raising construction as well as while receiving bills towards contract work from the local authority. Petitioners submit that since the scheme stipulates total exemption of Value Added Tax, they are entitled to claim refund of Value Added Tax which was required to be paid by them or the amount which was deducted out of the bill amount received by them. Petitioner, however, contend that the bills of purchase of construction material which included Value Added Tax were audited and there was no scope to draw an inference that the material purchased under the bills was not utilised for construction work or that the construction material has been utilised for any other program or scheme. There appears to be little doubt as regards entitlement of petitioners to claim exemption from payment of Value Added Tax on the goods purchased in view of the subsequent policy decision taken by respondent. However, there appears to be hesitation on the part of respondents in permitting extension of benefits to the petitioners in respect of deduction of Value Added Tax at source effected by the planning authority while remitting bills in respect of work done under the contract. Since the claim of petitioners for refund of Value Added Tax has not been favourably considered, petitioners are constrained to approach this Court.

4. In identical circumstances, a petition was presented by Ramdeo Baba Charitable Trust, Akola in the High Court, Bench at Nagpur praying for issuance of directions to respondents to issue notification granting exemption from payment of Value Added Tax for the project undertaken under the program namely Jawaharlal Nehru National Urban Renewal Mission. Affidavit-in-reply has been presented on behalf of the State Government in the said petition and in paragraph no. 2 of the affidavit it is recorded that as per clause 11.27 of the scheme it was published that for said programme Value Added Tax is completely exempted. A requisite notification to that effect will be separately issued by the finance department. An undertaking was given on behalf of the State Government that necessary notification would be issued within a period of six weeks. It was further clarified that Value Added Tax paid on purchase by contractors under Integrated Housing and Slum Development programe will be refunded subsequently. Writ petition came to be disposed of by the Division Bench at Nagpur on 24.09.2010 in view of the undertaking recorded in the affidavit-in-reply presented on behalf of the State Government. Consequential notification came to be issued by the State Government on 18.10.2010 thereby providing for grant of refund of tax paid on purchase of goods by the contractors or the persons for executing work contract either himself or through his agent under Integrated Housing and Slum Development

program as mentioned in Government Resolution dated 24.06.2007 with effect from that date. Petitioners submit that apart from this, while implementing the scheme, they were required to pay the tax since the amount has been compulsorily deducted by the local authority while issuing bills in respect of work done under contract. Petitioners claim that the liability in respect of payment of Value Added Tax or deduction of said amount at source by the local authority is not in consonance with the policy of the Government declared on 25.06.2007 and, petitioners are entitled to claim complete exemption in respect of payment of Value Added Tax.

5. Contentions raised by petitioners are controverted by respondent no. 2 by presenting affidavit-in-reply. It is the contention of respondent that there is no provision under the Maharashtra Value Added Tax Act, 2002, to exempt any specific class of sale from tax except class of dealers specified in section 8 of the Act and as such, sales effected while execution of work contract cannot be exempted. It is also contended by respondent that in view of decision rendered in Writ Petition 6238/2012, it is not permissible for petitioners to raise the issue in the instant petitions. Writ petition presented at Nagpur bench came to be disposed of with direction to petitioner to move the State Government for the relief claimed in the petition.

6. The State Government has taken a decision to implement the Integrated Housing and Slum Development scheme with a noble object to provide housing facilities to poor citizens residing in slum area. With a view

to provide residential accommodation to the poor people, the scheme has been floated whereunder several concessions are granted with an ultimate object to make the scheme viable. Petitioners have participated in the scheme and have undertaken to execute the work on behalf of Municipal council which is an implementing authority. Considering that the scheme stipulates certain concession, paragraph 11.27 of the Government Resolution dated 25.06.2007 declares that the works undertaken under the scheme shall be exempted from payment of Value Added Tax and a necessary notification in that regard shall be issued by the State through its finance department independently. It is a matter of record that only after intervention of the court, a notification came to be issued on 18.10.2010 granting partial exemption from payment of Value Added Tax under the scheme. As has been stated above, petitioners are required to pay Value Added Tax while purchasing goods for raising construction of the tenaments as well as certain amount towards Value Added Tax has been deducted by the planning authority / respondent while making payment in respect of work done by the contractors i.e. petitioners in the instant petitions. So far as the amount deducted by the Municipal Council while making payment in respect of work done i.e. in respect of finished products, the petitioners are surely entitled to claim exemption under clause 11.27 and respondents are liable to refund the amount deducted by Municipal Council and deposited in turn with the concerned department.

7. So far as contention raised by respondents that exemption can be granted only in terms of section 8 of the Act of 2002 and, it is impermissible

for respondents to grant any other exemption or to issue notification is concerned, the same is not liable to be accepted. Grant of Exemption and refund is specifically provided under section 41 of the Act which reads thus :

> **41. Exemption and refund :**
>
> (1) The State Government, if satisfied that it is necessary in the public interest to grant refund of any tax levied and collected from any class or classes of dealers or persons, or, as the case may be, charged on the purchases or sales made by any class or classes of dealers or persons it may, by notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification, provide for grant of refund of such tax, for such period and to such class of dealers or persons as specified in the said notification; on such tax payers applying to the Commissioner in the prescribed form for such refund.

Thus, it is permissible for the State Government to issue notification in the official gazette prescribing the terms and conditions for granting refund of tax for such period and for such class of dealers or persons as specified in the notification. In the instant matter, a decision has already been taken by the Government on 25.06.2007 to grant total exemption from payment of Value Added Tax in respect of work done under the scheme and the State Government is obliged to honour the commitment made under the policy and issue necessary notification in that regard. In this context, it must be stated that petitioners do have legitimate expectation from Government since assurance is extended under the Government policy and in pursuance thereof petitioners have taken steps and have carried out contract work. In the event, State Government refuses to honour the commitment, petitioners are likely to suffer. Although there is limitation in claiming relief based on legitimate expectations, however, such expectation is in aid of and may constitute a ground which may give rise to judicial review. Reference can be made to the observation made by the Supreme Court in paragraph no. 27 of the judgment in the matter of *Sethi Auto Service Station and another Vs. Delhi Development Authority and others* reported in **2009 AIR SC 904** which read thus :

> 27. An examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the

> deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited [Vide Hindustan Development corporation (supra)]

8. On consideration of clause 11.27 of the Government Resolution dated 25.06.2007, it is noticed that assurance given under the policy is not honoured. There is unequivocal promise to grant exemption from charging Value Added Tax in respect of the work carried out under the scheme, Petitioners did enter into contract with the local authority, which is an implementing agency under the scheme and have carried out work of construction of units for urban poor. Petitioners were required to pay Value Added Tax while purchasing goods which are used as raw material for raising construction as well certain amount has been deducted by the Municipal Council while paying bills under the contract to petitioners/contractor. Petitioners are assured of total exemption from payment of Value Added Tax under the scheme. In the circumstances, grant of partial exemption by the State Government under the notification dated 18.10.2010 is not in compliance with the policy of the State and the petitioners are entitled to claim total exemption and respondents are liable to extend financial benefits to petitioners.

9. In the facts and circumstances of the case and for the reasons recorded above, we direct respondents to give effect to clause 11.27 of the

Government Resolution dated 25.06.2007 and permit petitioners total exemption from payment of Value Added Tax in respect of work done by them in executing contracts under Integrated Housing and Slum Development scheme. On petitioners fulfillment of necessary procedural requirements for claiming refund or for claiming exemption, respondents are directed to permit necessary refund and/or to grant total exemption from payment of Value Added Tax, as stipulated above. Respondents shall take appropriate steps on fulfillment of procedural formalities by petitioners, as expeditiously as possible, preferably within a period of four months from today. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

10. Pending civil application, if any, does not survive and stands disposed of.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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