

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.7453 of 2003 (O&M)

Date of Decision: November 10, 2016

Kaur Sain Spinners Ltd.

---Petitioner

Versus

State of Punjab and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

Mr.Piyush Bansal, DAG, Punjab.

HARINDER SINGH SIDHU, J.

1. The petition has been filed praying for directions that notifications dated 17.06.2002 and 12.09.2002 (Annexures P-17 and P-20) be treated as inoperative qua the petitioner-Company on the doctrine of promissory estoppel and that the respondent –State of Punjab be restrained from going back on its promise of providing sales-tax exemption to the petitioner Company as per the Industrial Policy, 1996 and subsequent notifications.

2. The petitioner has also prayed for quashing the letters dated 24.09.2002 (Annexure P-19) and 04.12.2002 (Annexure P-21), whereby the petitioner company has been informed that it is ineligible for grant of sales tax exemption.

3. The petitioner is a limited company incorporated with the objective to carry on business as manufacturer, processor, dealer, distributor,

agent, buyer, seller, importer and exporter of hosiery goods, knitting yarn and fabrics of various kinds.

4. The Government of Punjab, Department of Industries had notified a Package of Incentives-1992 on 28.09.1992 for attracting fresh investment to boost growth of industries in the State. As these incentives did not yield the desired results, the State on 20.03.1996 notified 'New Industrial Policy, 1996' (for short "Industrial Policy, 1996") offering fresh incentives to the industries. To implement the scheme of incentives set out in the 'Industrial Policy 1996', the State Government on 01.06.1996 notified rules known as 'Punjab Industrial Incentives Code under the Industrial Policy 1996' (for short "Incentives Code, 1996"). The eligibility, quantum of entitlement and procedure for grant of sales-tax exemption/deferment is prescribed in this Code as under:-

"3. Commencement and applicability

3.1 These rules shall come into force with effect from 1st April, 1996.

3.2 These rules shall be applicable to such of the units which come into production for the first time, on or after 1st April, 1996 or undertake expansion/modernisation after 1.4.1996.

5. Eligibility for incentives

The Incentives shall be granted to the units set up in 'A' and 'B' category area, provided that no incentives shall be allowed in 'B' category areas to the industrial units that are included in Annexure-II & in 'A' category areas to the Industrial Units that are included in Annexure-III.

5.1 Self financed units that are set up without mobilising funds from the Capital market through issue of shares, debentures, bonds, etc. shall not be eligible for any incentive.

However, self financed units which only avail of working capital limits from a scheduled bank shall be eligible for incentives only if their project report is appraised by the bank and the fixed capital investment made by them is certified by it.

5.2 Those units which do not have their own land and building, incentive would be allowed, if such units have lease/rent deed for land/building occupied by them for a period not less than 10 years.

6.3 Interest Subsidy or Sales Tax Exemption or Sales Tax Deferment:

Subject to the provisions of rule 5, a unit shall opt in form III(i) for availing either interest subsidy or Sales tax Exemption or Sales Tax deferment. The option shall be submitted to the District Officer, within six months of commencement of commercial production.

I) Interest Subsidy

x x x

II) Exemption from Sales Tax or Deferment of Sales Tax:

a) Eligibility:

Subject to provision of rule 5, exemption/deferment from Sales-Tax shall be admissible to an industrial unit, registered as a dealer under Punjab General Sales Tax/Central Sales Tax Act, provided the unit has opted to avail Sales Tax exemption or deferment.

Existing Small Scale Unit undergoing expansion in terms of rule 2.5, shall also be subject to provision of rule 5, eligible for Sales Tax exemption or deferment.:

b) Quantum of entitlement:

For calculating the entitlement of the unit to Sales Tax exemption/deferment, Punjab/Sales Tax Central Sales Tax and Purchase Tax, wherever applicable shall be taken into account.

The amount of Sales Tax exemption/deferment to which a

unit is entitled shall be calculated with reference to the following table:-

Area Category	Quantum of benefit	Total time limit within which concession shall be available from the date of commencement of commercial production
“A”	300% of FCI	120 months
“B”	150% of FCI	84 months

In case of exemption, the quantum of benefit shall be worked out on additional fixed capital investment made for expansion.

The amount of Sales Tax collected and retained by the unit under the deferment scheme shall be repaid by the unit to the Sales Tax Department in three equal annual installments in the 11th, 12th and 13th years or 8th, 9th and 10th year from the date of commencement of benefit as per applicability.

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c) Procedure:

i) *The applicant unit would apply to the District Officer within six months from the date of starting commercial production in form T-I alongwith the following documents.*

- Registration Certificate with the department of industries or any other competent authority, if applicable.*
- Attested copy of conveyance deed/lease/rent deed of the land/building under the unit, if applicable.*
- Sales Tax Registration Certificate.*
- Form “A” issued by Registrar of Firms and Societies/Special Power of Attorney/copy of resolution by the Board, whichever is applicable.*
- Certificate regarding FCI as appraised by the*

financial institution/scheduled bank.

ii) General Manager, District Industries Centre or a Gazetted Officer nominated by him will receive the application.

iii) The application would be checked then and there are deficiencies, if any, would be pointed out to the applicant in writing on the spot. The applicant would also be given a definite time period not exceeding eight weeks to rectify the deficiencies so pointed out.

iv) In case the deficiencies are not removed within the specified time as mentioned above, the claim would be filed by the General Manager, under intimation to the party through a Registered AD, a copy of which would be sent to the Directorate.

v) The District Officer, on verifying the complete application so submitted and satisfying himself regarding the genuineness of the claim, shall issue a certificate of the eligibility within 15 days in form T-II for claiming this benefit from the Department of Excise & Taxation

7. Incentives to Large & Medium Units

7.1 Investment Incentive (Capital Subsidy)

Subject to the provisions of Rule 5, new Large & Medium units set up only in 'A' category areas as mentioned in Annexure-I, shall be entitled to Investment Incentive @ 30% of Fixed Capital Investment subject to maximum of Rs.50.00 lacs.

7.2 Existing Large & Medium Units set up in 'A' category areas, which undertake expansion as prescribed in rule 2.5, shall be entitled to Investment Incentives subject to provisions contained in Rule 2.20 & rule 5 and as per the limits indicated in Rule 7.1 above.

7.3 Existing large and medium units set up in 'B' category areas, which undertake expansion as prescribed rule 2.5 shall be entitled to Investment Incentive subject to the provisions contained in Rule 2.20 and Rule 5 and at rate of 20% of Fixed Capital Investment subject to a maximum of Rs.30 lacs.

7.4

7.5 Exemption from Sales Tax or deferment of Sales Tax

a) Eligibility, Quantum of entitlement and procedure for grant of Sales Tax exemption or Sales Tax deferment

shall be as prescribed in rules 6.3(II).

b) The eligible units with fixed capital investment of over Rs.100 Crore shall be entitled to select the block of 7 or 10 years within the first 10 or 13 years of going into commercial production.”

5. It is the case of the petitioner that in order to avail of the incentives provided by the Code, the petitioner - company was incorporated on 18.9.1997 and it obtained a certificate of Commencement of Business on 25.09.1997. For setting up the unit, it acquired land measuring 43,600 sq. yards on 24.10.1997 and 28.10.1997, at a cost of ₹20,50,000/-. Some additional land measuring 1,100 sq. yards was purchased in the year 2001.

6. As the company was to operate in the Medium Scale, it applied for grant of Industrial Licence under the Industries (Development and Regulation) Act, 1951 (for short “ the 1951 Act”) which was granted vide letter dated 10.7.1998. Permission was accorded to manufacture acrylic yarn with installed capacity of 12,672 spindles . The total cost of the unit was estimated at ₹1,761 lacs.

7. The petitioner - company applied for loan of ₹6.00 crores to Canara Bank Ludhiana in the year 1997, but the loan could not be availed because higher rate of interest was proposed to be charged which was not acceptable to the company. The petitioner thereafter applied for loan to Oriental Bank of Commerce, Ludhiana on 31.1.2002 which was sanctioned vide letter dated 5.9.2002. Order for the supply of machinery was placed with M/s Laxmi Machine Works Ltd., Coimbatore in May 2001 and order for setting up for the plant was given to M/s Draft Air (India) Pvt. Ltd. New Delhi in Jan. 2002. Contract for construction of the building was given to M/s R.S. Builders and Engineers Ltd. of Ludhiana on 7.2.2002. Most of

the construction work was completed in the Ist half of the year 2002.

8. The company applied for registration under the Central Sales Tax Act, 1956 (for short “the Central Act”) and the Punjab General Sales Tax Act, 1948 (for short “the State Act”) which was granted on 2.3.2002 and 21.3.2002, respectively. The validity of the letter of intent dated 10.7.1998 which was initially valid for three years was further extended by the Govt. of India Ministry of Textiles upto 31.12.2002. Deposit of ₹40,000/- was made with the Punjab Pollution Control Board for seeking clearance for setting up of industry on 6.2.2002. An amount of ₹1,42,500/- was deposited on 2.3.2002 as earnest money with the Punjab State Electricity Board for availing power connection of 1,425 KWs.

9. The Government of Punjab, Department of Industries and Commerce, issued notification dated 26.4.2000 (Annexure P-11) making certain amendments to the Incentives Code of 1996. As per this notification, for the grant of Sales-tax exemption/deferment the following effective steps were required to be taken by 30.04.2000:

- a) registration with the Department of Industries and Commerce;
- b) purchase of land for the project;
- c) submission of loan application with the financial institution

It was also stipulated that the units for which the industrial license was required, the grant of such industrial license by 30.04.2000 would be considered sufficient collective step for the purpose of granting Sales Tax Exemption/ Deferment.

The notification dated 26.4.2000 reads as under:-

***“GOVERNMENT OF PUNJAB
DEPARTMENT OF INDUSTRIES & COMMERCE***

NOTIFICATION

No.15/45/9605/IB-2045

Dated: 26th April, 2000

The Government of Punjab is pleased to make the following amendments with regard to sales tax exemption or deferment under the "Punjab Industrial Incentive Code under the Industrial Policy, 1996" notified vide Nol.Inc.II/15/43/96-S/IB/4170 dated 1.6.1996 as under:-

Sales Tax Exemption or Sales Tax Deferment :

No sales tax based incentive i.e. Sales Tax Exemption or Deferment from the Sales Tax will be granted to any new industrial unit or existing unit undertaking expansion except the following:-

- (i) Information Technology units shall continue to get sales tax exemption/deferment as provided in the Information Technology Policy notified vide No.15/4/99 51B/2174 dated : 5.3.2000.*
- (ii) In case there are recommendations by BIFR regarding Sales Tax Exemption/Deferment, the same shall be considered by the Empowered Committee for adoption not withstanding the abolition of Sales Tax Exemption/Deferment.*
- (iii) Units which may have taken following effective steps or which may take the effective steps by 30th April, 2000 will also be eligible for grant of Sales Tax Exemption/Deferment, after coming into production :-*
 - a) Registration with Department of Industries & Commerce.*
 - b) Purchase of land for the project:*
 - c) Submit loan application with the Financial Institution.*

OR

Units for which the industrial license is required, the grant of such industrial license by 30th April, 2000 will be considered sufficient collective step for the purpose of granting Sales Tax Exemption/ Deferment as above.

- (iv) Industrial units which have already been granted exemption/deferment under the Industrial Policy of the State Government will continue for the benefit till the expiry of the concession period.*
- (v) Industrial units which have already gone into production are eligible for the same. The Exemption/deferment in terms of the Rules 6.3 and 7.5 of the Punjab Industrial Incentive Code un-*

der the Industrial Policy, 1999. Such calls and those units which may go into production by 30th April, 2000 shall be granted Sales Tax Exemption/Deferment, if otherwise eligible.

This notification shall be effective from 1st May, 2000.

sd/- R.I.Singh

*Secretary to Government, Punjab
Department of Industries and Commerce”*

10. The petitioner addressed a letter dated 22.6.2000 to the General Manager, District Industries Centre, Ludhiana enquiring as to whether it was eligible for sales tax exemption as per the Industrial Policy, 1996 and Incentives Code, 1996. After repeated reminders the General Manager vide letter dated 7.5.2001 (Annexure P-15) informed the petitioner that as all the requirements regarding eligibility for sales tax exemption as per notification dated 26.4.2000 had been fulfilled, it would be eligible for grant of the same.

11. However, subsequently, the General Manager vide letter dated 28.6.2002 (Annexure P-16) informed the petitioner that a notification dated 17.6.2002 (Annexure P-17) had been issued and that sales tax exemption would be given according to this notification.

12. As per this notification dated 17.06.2002, certain amendments were made to the earlier notification 26.4.2000 which are as under:

“1) Clause (1) of the notification is deleted.

2) Clause (2) of the notification is deleted.

3) Clause (3) of the notification is substituted as under:-

‘Units which may have taken following effective steps of which may take Exemption/Deferment, provided such units come into production by 30th June 2002.

a) Registration with Department of Industries & Commerce of with any other designated Department including in the case of licensed items the obtainment of such industrial licence.

- b) *Purchase of land for the project.*
- c) *Submit loan application with the Financial Institution”*

13. Thus, as per the notification dated 17.6.2002, in addition to the earlier conditions of registration with the Department of Industries and Commerce, purchase of land for the project and submission of loan application with the financial institution, an additional condition was imposed viz. that the unit was required to have come into production by 30th June 2002.

14. To give effect to the above notification, the Punjab General Sales Tax (Deferment and Exemption) (Second Amendment) Rules, 2002 were notified on 12.9.2002, which are reproduced as under:-

“Vide notification dated 12th September 2002, the Government of Punjab Department of Excise and Taxation the Punjab General Sales Tax (Deferment and Exemption) (Second Amendment) Rules, 2002 were notified whereby in the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, in rule 3, after sub-rule (2), the following shall be added, namely:-

‘(3) Notwithstanding anything contained in any other provision of these rules,

(i) no sales tax based incentives that is Sales Tax Exemption or Deferment from the sales tax will be granted to any new industrial unit or existing unit undertaking expansion except the unit which had taken the following effective steps by 30th April, 2000.

(a) Registration with the Department of Industries and Commerce or with any other designated Department including, in the case of licensed items, the obtainment of such industrial license,

(b) Purchase of land for the project;

(c) Submit loan application with the financial institu-

tion.

Provided such units had come into production by 30th June, 2002.

ii) Industrial units, which have already been granted Exemption/Deferment under the Industrial Policy of the State Government, will continue to get this benefit till the expiry of the concession period.

iii) Only those industrial units which have already gone into production by 30th June 2002 shall be granted Sales Tax Exemption/Deferment, if otherwise eligible.”

By this amendment a new Sub-Rule (3) was added, which was a non obstante provision. As per this, notwithstanding anything contained in any provision of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short “the Deferment and Exemption Rules, 1991”), no sales tax incentive would be granted to any new industrial unit except the units which had taken the following effective steps by 30.04.2000.

- (a) Registration with the Department of Industries and Commerce or with any other designated Department including, in the case of licensed items, the obtaining of such industrial license,
- (b) Purchase of land for the project;
- (c) Submit loan application with the financial institution.

Additionally, such units should have commenced production by 30.06.2002.

Before this amendment Rule 3 was as under:

“CONDITIONS FOR ELIGIBILITY

(1) Deferment of, or exemption from the payment of tax under the Act shall be admissible to a unit, -

(i) 3-b [excluding the units which has been set up in ‘A’

category area, in respect of which] an eligibility certificate has been granted by the competent authority of the Department of Industries and which has not been included in the negative list;

(ii)for a period not exceeding one hundred and eight months, eighty-four months and sixty-months, respectively in respect of the units located in `A' Growth, `B' Growth and `C' Growth Area and for a period of one hundred and twenty months in respect of F Group of Industries;

*(iii)[*****]*

(2) The deferment of, or exemption from the payment of tax shall become admissible only after the issue of the certificate of eligibility in form ST(D and E). III by the prescribed authority in charge of the district in the department of Excise and Taxation.”

15. Thus, before this amendment, apart from the conditions of applicability of these Rules as specified in Rule 1(3) namely that they would apply to units which came into production for the first time on or after the first day of April, 1989 or after the first day of October, 1992 or after the first day of April, 1996 etc. there was no condition of commencing production by a particular date to be eligible for sales tax exemption.

16. Meanwhile, the petitioner submitted representation dated 28.06.2002 (Annexure P-16) to the General Manager, District Industries Centre, Ludhiana informing that the petitioner had taken various steps like buying land, getting licence from the Government of India, availing credit facilities from the bank, applying for electric connection and certificate from the Pollution Control Board, placing orders for plant and machinery and also substantially completing the construction. It had already spent about ₹7 to 8

crores. In the light of these, it was requested that the petitioner's case be treated separately and the time for commencement of production for availing the incentive, in its case, be extended till 31.12.2002. This representation was rejected on 24.9.2002 stating that the petitioner was not eligible for sales tax exemption in terms of notification dated 17.06.2002 wherein the cut off-date for start of production was 30.06.2002.

17. Yet another representation submitted by the petitioner for extension of date for starting production to 31.12.2002 was rejected vide letter dated 4/5.12.2002 (Annexure P-21) of the Joint Secretary Government of Punjab, Department of Excise & Taxation. In justification of the rejection it was mentioned that as per the National Consensus arrived at in the meeting of the Empowered Committee of State Finance Ministers, no sales tax related incentives were to be granted after 30.4.2000 except to units in pipe line. As per government notification dated 12.9.2002 no sales tax based incentives were to be granted to units which came into production after 30.6.2002.

18. Meanwhile, during this period, the petitioner unit commenced production on 21.10.2002.

19. The petitioner submitted yet another representation dated 13.12.2002 (Annexure P-23) to the Hon'ble Chief Minister of Punjab requesting to extend the required date of commencement of production for availing sales tax exemption upto 31.12.2002, but without any positive result.

20. Hence, this writ petition praying for a direction that the notifications dated 17.6.2002 and 12.9.2002 be declared to be inoperative qua the petitioner company and the letters dated 24.9.2002 and 4.12.2002

informing the petitioner that it is ineligible for grant of sales tax exemption be quashed and the respondents be directed to grant sales tax exemption to the petitioner company.

21. Ld. Counsel for the petitioner has argued that it was in pursuance to the incentives announced in 'Industrial Policy 1996', and the Incentives Code, 1996 that the petitioner decided to set up the spinning unit to manufacture Acrylic Yarn. It purchased 43,600 square yards of land in village Arrencha, Doraha, District Ludhiana on 24.10.1997 and 28.10.1997 at the approximate cost of ₹20,50,000/-. It purchased additional 1,100 square yards of land in the year 2001. It obtained Industrial licence under the 1951 Act, on 10.7.1998. Its initial validity was three years which was subsequently extended up to 31.12.2002. It obtained registration under the Central and the State Act on 2.3.2002 and 21.3.2002, respectively. It obtained NOC from the Punjab Pollution Control Board on 10.7.1998, which was further extended till 10.9.2002. It got a temporary electric connection for 70 kilowatt for construction and applied for 1,425 kilovolt electric connection on 2.3.2002. It applied to the Canara Bank for availing credit / loan facility in the year 1998, but due to non-agreement on the rate of interest, the proposal did not fructify. Subsequently, the petitioner applied for availing loan from Oriental Bank of Commerce on 30.4.2002 and credit facility of ₹6.00 crore in shape of term loan and ₹4.00 crore as working capital was sanctioned on 27.8.2002.

22. As per the Incentives Code of 1996, the incentives including sales tax deferment/ exemption would be available to new industrial units that came into production or undertook expansion on or after 1.4.1996.

There was no further condition regarding commencing production before a particular date. The industry could apply for the incentives within six months of the date of starting commercial production. It was only vide the notification dated 24.6.2000 that it was specified that the sales tax exemption or sales tax deferment would be available in the case of units, which took the following three effective steps, before 30.4.2000 namely (a) registration with the department of Industry and Commerce (b) purchase of land for the project and (c) submission of loan application with the financial institution. For units for which industrial licence is required, the grant of industrial licence by 30.4.2000 would be considered sufficient step for the purpose of granting sales tax exemption or deferment.

23. After the issuance of the aforesaid notification, on the petitioner's query the General Manager, District Industries Centre, Ludhiana vide his letter dated 7.5.2001 confirmed to the petitioner, that as it fulfilled the terms and conditions of the notification dated 26.4.2000, it would be eligible for sales tax exemption under the Industrial Policy 1996. Being thus assured the petitioner went ahead with his project. Order for supply of machinery was placed in May, 2001 and order for setting up of the plant was given in January, 2002. Contract for construction of the factory building was given on 7th February, 2002. The petitioner had completed more than half of the construction in the first half of 2002. All this happened before the notification of 17.6.2002. The unit finally commenced production on 21.10.2002.

24. Ld. Counsel contended that the rejection of the claim of the petitioner for sales tax exemption is wholly illegal. The petitioner had made huge investment in setting up of the project in furtherance of the promise

made by the State Government in the Industrial Policy, 1996 and Incentives Code, 1996. Further the General Manager, DIC Ludhiana, having clarified that the petitioner would be eligible for sales tax exemption, his case could not be rejected on the basis of a condition subsequently imposed vide notification dated 17.6.2002 and the amendment made to the Deferment & Exemption Rules, 1991 on 12.9.2002. He argued that these subsequent notifications would not operate qua the petitioner as his claim for sales tax exemption had accrued before the issuance of the said notifications. In this behalf, Ld. Counsel for the petitioner has placed reliance on the following decisions:

***Mahabir Vegetable Oils Pvt. Ltd. and another v. State of Haryana and others*, (2006) 3 SCC 620**

***Manuelsons Hotels (P) Ltd. v. State of Kerala*, (2016) 6 SCC 766**

***Devi Multiplex and another v. State of Gujarat and others*, (2015) 9 SCC 132**

25. On the other hand, Ld. State counsel argued that it was in pursuance of National Consensus arrived at in the meeting of the Empowered Committee of State Finance Ministers that no sales tax related incentives be granted after 30.4.2000 except to units in the pipeline, that the State of Punjab issued the notification dated 17.06.2002 and amended the Deferment & Exemption Rules, 1991 on 12.9.2002 that no sales tax based incentive would be granted to those units, which come into production after 30.6.2002. He further stated that it is always open for the State to withdraw any exemption or incentive offered earlier and there can be no claim that an incentive once given should continue forever. He further argued that the petitioner after purchase of land in the year 1997 did not take any effective steps to start production. It was only in May, 2001 that the petitioner placed order for the supply of machinery and other steps regarding construction

were taken after January, 2002. Moreover, it submitted its application for grant of credit/loan facility to Oriental Bank of Commerce OBC on 31.1.2002, which was sanctioned on 5.9.2002. He further stated that as the unit started production on 21.10.2002 i.e., after the notifications dated 17.6.2002 and 12.9.2002, its case would be governed by these notifications.

26. Heard Ld. Counsel for the parties and perused the record.

27. The law on the doctrine of promissory estoppel is well settled.

In ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC***

409 Hon'ble the Supreme Court explained the doctrine as under:

“24.....The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of “honesty and good faith”? Why should the Government not be held to a high “standard of rectangular rectitude while dealing with its citizens”? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise

made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise “on some indefinite and undisclosed ground of necessity or expediency”, nor can the Government claim to be the sole Judge of its liability and repudiate it “on an ex parte appraisalment of the circumstances”. If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be

sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Avodeji Ajaye v. Briscoe."

Recently, this view was reiterated by Hon'ble the Supreme Court in

Manuelsons Hotels's case (*supra*) , as under:

"19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court in Commonwealth of Australia v. Verwayen [Commonwealth of Australia v. Verwayen, (1990) 170 CLR 394 (Aust)] , by Deane, J. in the following words:

"1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual ingredients of which fall to be

pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. *The central principle of the doctrine is that the law will not permit an unconscionable—or, more accurately, unconscientious—departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.*

3. *Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.*

4. *The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:*

(a) has induced the assumption by express or implied representation;

(b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;

(c) has exercised against the other party rights which would exist only if the assumption were correct;

(d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (a), a

critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, “equitable estoppel” should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.”

(emphasis supplied)

20. *The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference—under our law, as has been seen*

hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel—one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party.”

28. In the present case, it is clear from the record that acting on the promise of incentives incorporated in the Industrial Policy, 1996 and the Incentives Code, 1996, the petitioner undertook a series of steps to set up the unit commencing with the purchase of 43,600 square yards of land on 24.10.1997 and 28.10.1997 at approximate cost of ₹20,50,000/-. It purchased additional 1,100 square yards of land in the year 2001. It obtained Industrial Licence under the 1951 Act, on 10.7.1998. The initial validity of the Licence was three years which was subsequently extended up to 31.12.2002. It obtained registration under the Central Act and the State Act on 2.3.2002 and 21.3.2002, respectively. It obtained NOC from the Punjab Pollution Control Board on 10.7.1998, which was further extended till 10.9.2002. After its application to Canara Bank for availing credit / loan facility in the year 1998, did not fructify due to non-agreement on the rate of interest, the petitioner applied for availing loan from Oriental Bank of Commerce on 31.1.2002 and credit facility of ₹6.00 crore in shape of term loan and ₹4.00 crore as working capital was sanctioned on 5.9.2002.

In response to the petitioner's query the General Manager, District Industries Centre, Ludhiana vide his letter dated 7.5.2001 confirmed to the petitioner that as it fulfilled the terms and conditions of the notification dated 26.4.2000, it would be eligible for sales tax exemption under the Industrial Policy 1996. On this assurance the petitioner went ahead with his project. . Order for supply of machinery was placed in May, 2001 and order for setting up of the plant was given in January, 2002. Contract for construction of the factory building was given on 7th February, 2002. Most of the construction was completed in the first half of the year 2002. The unit finally commenced production on 21.10.2002.

30. Thus, it is clear that the petitioner had made substantial progress towards completion of the project before the issuance of the notification dated 17.6.2002 and the amendment dated 12.9.2002 to the Deferment & Exemption Rules, 1991. This is further evidenced by the fact that it was able to commence production within a short period after these notifications i.e., on 21.10.2002, and within four months of 30.06.2002, the date specified in these notifications.

31. In these circumstances, in our view, Ld. Counsel for the petitioner is right in urging that as the petitioner had irretrievably altered its position in pursuance of the promise of the Government and made substantial investment before the issuance of the later notifications, they could not operate to its detriment and it could not be denied the promised benefit.

32. A somewhat similar situation arose in ***Mahabir Vegetable Oils's case (supra)***. In that case the appellants were owners of solvent extraction plants. The State of Haryana had announced an Industrial Policy for the period from April 1, 1988 to March 31, 1997 wherein, besides other in-

centives, sales tax exemption was to be given to the industries set up in backward areas in the State. Rules 28A to 28C to the Haryana General Sales Tax Rules, 1975 (for short “the Rules”) specified the class of industries, period and other conditions for exemption/deferment from payment of tax. As per these Rules the operative period was from 1st April, 1988 to 31st March, 1997. Schedule III contained a negative list of industries. Solvent extraction plant was not included in this list. On 3-1-1996, the State notified its intention to amend the Rules and circulated the draft Rules for information of persons likely to be affected thereby so as to enable them to file objections and suggestions thereto. Amendments in the terms of the said draft Rules were notified on 16-12-1996 and solvent extraction plant was included in Schedule III. Note 2 was appended to Schedule III as per which industrial units in which investment had been made up to 25% of the anticipated cost of the project and which had been included in the negative list for the first time would be entitled to the sales tax benefits related to the extent of investment made up to 3-1-1996. On 28-5-1997 the said Rules were amended, inter alia, by omitting Note 2 deeming it to have always been omitted.

33. The appellant had purchased land measuring 30 kanals 17 marlas in the month of August 1995 to set up the unit. It also obtained registration under the provisions of the Haryana General Sales Tax Act, 1973 and the Central Sales Tax Act, 1956 on 6-9-1995. On 13-8-1996 it applied for a no-objection certificate from the Haryana State Pollution Control Board. On 15-8-1996, it entered into an agreement with a firm of consultants for supply and erection of the plant for a sum of ₹55,55,000 and ₹22,75,000 respective-

ly and advances were paid on different dates. On 6-9-1996, civil construction work started at site. On 26-9-1996, process of installation of the plant started at the site. On 26-3-1997, the appellant started the trial production and commercial production commenced on 29-3-1997.

34. Thus, even though the appellant had made 45% of the total investment as on 16.12.1996 as against the requirement of 25% of the anticipated cost as per Note-2, its claim for grant of exemption from payment of sales tax was rejected on the ground that the solvent extraction plants were included in the negative list with effect from 16-12-1996 and Note 2 was deleted vide notification dated 28-5-1997 deeming it to have been always omitted.

35. Hon'ble the Supreme Court held that the appellants were entitled to the benefit of Note 2. It held that by reason of Note 2, certain rights were conferred on the appellant. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not have taken away the rights of the appellant with retrospective effect. The Court observed as under:

“38. The promises/representations made by way of a statute, therefore, continued to operate in the field. It may be true that the appellants altered their position only from August 1996 but it has neither been denied nor disputed that during the relevant period, namely, August 1996 to 16-12-1996 not only have they invested huge amounts but also the authorities of the State sanctioned benefits, granted permissions. Parties had also taken other steps which could be taken only for the purpose of setting up of a new industrial unit. An entrepreneur who sets up an industry in a backward area unless otherwise prohibited, is entitled to alter his position pursuant to or in furtherance of the promises or representations made by the State. The State accepted that equity operated in favour of the entrepreneurs by issuing Note 2 to the notification dated 16-12-1996 whereby and where under solvent extraction plant was for the first time inserted in Schedule III i.e. in the negative list.

39. Both the provisions contained in Schedule III and Note 2 formed part of subordinate legislation. By reason of the said note, the State did not deviate from its professed object. It was in conformity with the purport for which original Rule 28-A was enacted.

40. We, in this case, are not concerned with the quantum of exemption to which the appellants may be entitled to, but only with the interpretation of the relevant provisions which arise for consideration before us.

44. By reason of Note 2, certain rights were conferred. Although there lies a distinction between vested rights and accrued rights as by reason of a delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not, thus, have taken away the rights of the appellant with retrospective effect.”

36. The appeals were allowed and the matter was remitted to the Director of Industries to consider it afresh.

37. In ***Ashoka Smokeless Coal India (P) Ltd. v. Union of India, (2007) 2 SCC 640***, Hon'ble the Supreme Court upheld the claim of the companies to incentives on the ground of promissory estoppel by observing as under:

“173. We have noticed hereinbefore that smokeless coal operators had set up their units at the behest of the coal companies. Those who had set up their units in the erstwhile States of Bihar and West Bengal evidently did so at the behest of the companies having been encouraged therefor. It was done to share the burden of coal companies to supply soft coke to the small consumers. Doctrine of promissory estoppel would, therefore, be applicable.

174. The States concerned also intended to grant incentives to such industrial units by way of waiver and/or deferment of payment of sales tax wherefor Rule 28-A in the Sales Tax Rules was introduced. Sales tax laws enacted by the States contain a provision empowering the State to grant such exemption.

175. The relevant provisions of the Act and the rules framed thereunder indisputably were made keeping in view the industrial policy of the State. Such industrial policies by way of legislation or otherwise, subject of course to the provisions of the statute have been framed by several other States.”

176. In Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.

this Court rejected the plea of the State to the effect that in the absence of any notification issued under Section 4-A of the U.P. Sales Tax Act, the State was entitled to enforce the liability to sales tax imposed on the petitioners thereof under the provisions of the Sales Tax Act and there could be no promissory estoppel against the State so as to inhibit it from formulating and implementing its policy in public interest.

177. *The question came up for consideration before this Court in Pournami Oil Mills v. State of Kerala wherein it was held: (SCC p. 732, para 7)*

“7. Under the order dated 11-4-1979, new small-scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five-year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of M.P. Sugar Mills. On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in Bakul Cashew Co. v. STO. In Bakul Cashew Co. case this Court found that there was no clear material to show any definite or certain promise had been made by the Minister to the persons concerned and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in M.P. Sugar Mills case. In our view, to the facts of the present case, the ratio of M.P. Sugar Mills case directly applies and the plea of estoppel is unanswerable.”

180. *Mangalore Chemicals and Fertilisers Ltd. v. CCT is a case where this Court had the occasion to consider as to whether*

subsequent change in the eligibility criteria can undo the eligibility for the condition stipulated in the earlier notification and answered the same in the negative.

181. *This Court reaffirmed the legal position in Pawan Alloys & Casting (P) Ltd. v. U.P. SEB holding: (SCC p. 294, para 62)*

“62. As a result of the aforesaid discussion on these points the conclusion becomes inevitable that the appellants are entitled to succeed. It must be held that the impugned notification of 31-7-1986 will have no adverse effect on the right of the appellant new industries to get the development rebate of 10% for the unexpired period of three years from the respective dates of commencement of electricity supply at their units from the Board with effect from 1-8-1986 onwards till the entire three years’ period for each of them got exhausted. This result logically follows for the appellants who have admittedly entered into supply agreements with the Board as new industries prior to 1-8-1986.”

182. *The question came up for consideration before this Court recently in State of Punjab v. Nestle India Ltd. wherein this Court surveyed the growth of the said doctrine and held the doctrine to be applicable to legislative action also.*

38. In ***State of Bihar v. Kalyanpur Cement Ltd., (2010) 3 SCC 274***, the Supreme Court rejected the justification of the State to deny the tax exemptions promised in the Industrial policy of 1995 based on a change in policy advocated at the Chief Ministers’ Conference and held that the discontinuance of the sales tax exemptions w.e.f., 1.1.2000 could not have affected the rights of the respondent company under the Industrial Policy, 1995. It was observed as under:

“79. *We are also unable to accept the submission that the decisions dated 6-1-2001 and 5-3-2001 had been taken due to the change in the national policy. This was sought to be justified by Dr. Dhavan on the basis of the Conferences of Chief Ministers/Finance Ministers. It is settled law as noticed by Bhagwati, J. in Motilal Padampat that the Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency. The Government is required to place before the Court the entire material on account of which it claims to be exempt from liability. Thereafter, it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the*

Government. Mere claim of change of policy would not be sufficient to exonerate the Government from liability. It is only when the Court is satisfied that the Court would decline to enforce the promise against the Government. However, the burden would be upon the Government to show that it would be inequitable to hold the Government bound by the promise. The Court would insist on a highly rigorous standard of proof in the discharge of this burden.

80. *In the present case, the claim of the Government is based on a change in policy advocated in the Chief Ministers' Conference. These Conferences had taken place before the affidavit was filed on 5-12-2001. Therefore, the High Court concluded that the Government has not been candid in disclosure of the reasons for passing the Order dated 6-1-2001. In our opinion, the aforesaid decisions with regard to the discontinuance of the sales tax exemptions from 1-1-2000 could not have affected the rights of the Company under the Industrial Policy, 1995. Necessary application was made to the Government seeking exemption on 21-11-1997. For more than three years, the Company and the financial institutions had been assured by the Government that the notification will be issued forthwith. However, it was not issued. We are of the opinion that the action of the appellants is arbitrary and indefensible.... ..*

88. *The four reasons given in support of the decision are clearly arbitrary. It was no longer open to the appellant not to issue the notification on the ground that the Policy had lapsed on 31-8-2000. The second reason that the exemption could not be granted to the Company as no notification had been issued under Clause 24 cannot be accepted as the appellant State cannot be permitted to take advantage of its own wrong. The third reason given is that the State-Level Empowered Committee (SLEC) had not approved the rehabilitation package. This clearly is against the record which has been examined by us in the earlier part of the judgment. Not only was the exemption recommended by the competent Committees under the Industrial Policy, 1995, emphatic assurances were given that the notification will be issued within a very short period. The fourth reason with regard to the resolution passed at the Chief Ministers' Conference is equally extraneous to the issue. The Company had made the application for exemption at a much prior time in 1997. No material has been placed either before the High Court or before this Court about the legal enforceability of the resolutions passed at the Chief Ministers' Conference. In our opinion the decision-making process which culminated in passing of the Orders dated 6-1-2001 and 5-3-2001 is seriously flawed, therefore, the same have been justifiably quashed by the High Court."*

39. In ***MRF Ltd. v. CST, (2006) 8 SCC 702***, the action of the State Government to withdraw the benefit of tax exemption granted in terms of the Industrial policy was held to be arbitrary and unreasonable. :

*“39. MRF made a huge investment in the State of Kerala under a promise held to it that it would be granted exemption from payment of sales tax for a period of seven years. It was granted the eligibility certificate. The exemption order had also been passed. It is not open to or permissible for the State Government to seek to deprive MRF of the benefit of tax exemption in respect of its substantial investment in expansion in respect of compound rubber when the State Government had enjoyed the benefit from the investment made by MRF in the form of industrial development in the State, contribution to labour and employment and also a huge benefit to the State exchequer in the form of the State’s share i.e. 40% of the Central excise duty paid on compound rubber of Rs 177 crores within the State of Kerala. The impugned action on the part of the State Government is highly unfair, unreasonable, arbitrary and, therefore, the same is violative of Article 14 of the Constitution of India. The action of the State cannot be permitted to operate if it is arbitrary or unreasonable. This Court in *E.P. Royappa v. State of T.N.* observed that where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of “justice and fair play”. The attempt to take away the said benefit of exemption with effect from 15-1-1998 and thereby deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years, in our opinion, is highly arbitrary, unjust and unreasonable and deserves to be quashed. In any event the State Government has no power to make a retrospective amendment to SRO No. 1729/93 affecting the rights already accrued to MRF thereunder.”*

40. In ***S.V.A. Steel Re-Rolling Mills Ltd. and others v. State of Kerala and others, (2014) 4 SCC 186***, the Supreme Court emphasized that before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits because it would be in violation of the principles of promissory

estoppel, besides being unfair and immoral on the part of the State not to act as per its promise. The Court pointed out that before setting up any industry, the industrialist considers several factors including the incentives offered by any State which factor must be kept in mind by the Court in deciding cases of this nature.

“30. Before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise.

31. In the instant case, the respondent State was conscious about the fact that there was a problem with regard to supply of electricity in the State of Kerala and possibly for that reason industries which depended much upon electricity as a source of power were not inclined to establish new industries in the State of Kerala. Before setting up an industry, the entrepreneur or the industrialist considers several factors and thereupon takes several decisions like place of business, capacity at which production should be made, type of raw material, etc. After considering all these factors, a final decision is taken with regard to setting up of an industry. For a new entrepreneur, such a decision is of vital importance because if he fails in his estimates or in consideration of all the relevant factors, there are all chances that he would fail not only in his business but he would completely ruin himself. Thus, one can very well appreciate that the appellants must have thought about all relevant factors, including the incentives offered by the respondent State and might have decided to set up their industries in the respondent State. While deciding this case, this Court would invariably keep in mind the circumstances in which the appellants had set up their industries in the State of Kerala.

32. In view of the incentives and assurances given to the appellants along with others, who were desirous of setting up new industries, the appellants set up their new units which were much dependent upon continuous supply of electricity. One of the appellants is a Steel Re-rolling Mill. In steel industry, when the industry is concerned with making of steel or re-rolling of steel, it requires lot of power and energy, and electricity being one of the important sources of power, the appellant was much dependent on continuous supply of electricity, which had been assured to it by the respondent State.”

41. Based on the aforesaid decisions of Hon'ble the Supreme Court we feel that the petition deserves to succeed. We do not find any merit in the arguments on behalf of the State in justification of the rejection of the claim of the petitioner, namely the consensus at the Empowered Committee of State Finance Minister or that the State has the liberty to withdraw the promised incentive at any time. Nor, on the facts as they have emerged, is it possible to agree with the Ld. State Counsel that the petitioner has been lax or took no timely steps in proceeding to set up the unit.

42. Thus, this writ petition is allowed.

It is held and declared that the petitioner company would be entitled to the benefit of sales tax exemption as per the Industrial Policy 1996, Incentives Code, 1996 and the notification dated 30.4.2000 on the ground of promissory estoppel and the said benefit cannot be denied to the petitioner on the basis of the subsequent notifications dated 17.6.2002 and 12.9.2002.

The letters dated 24.9.2002 and 04.12.2002 rejecting the claim of the petitioner for sales tax exemption are quashed.

The respondents are directed to re-consider the claim of the petitioner for grant of sales tax exemption as per the Industrial Policy 1996, Incentives Code, 1996 and the notification dated 30.4.2000.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 10, 2016

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No