IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURSANGABAD

WRIT PETITION NO.10495 OF 2016

Padmashree Dr. Vitthalrao Vikhe Patil
Sahakari Sakhar Karkhana Ltd.,
at Pravara Nagar, Tq. Rahata,
Dist. Ahmednagar,
through its Managing Director,
Abasaheb s/o. Nivrutti Nibe,
Age : 57 years, Occ. Service,
r/o. Pravara Nagar, Tq. Rahata,
Dist. Ahmednagar ..Petitioner

Vs.

1. The Union of India,
   Through the Secretary for
   Ministry of Finance
   (Department of Revenue),
   128-A, North Block,
   New Delhi

2. The Commissioner,
   Central Excise and Customs
   and Service Tax, Nashik II
   Commissionerate, Plot No.155,
   Sector P-34, NH Jeshtha-Vaishakh,
   CIDCO, Nashik ..Respondents

Mr.V.D.Hon, Senior Advocate i/b. A.V.Hon, Advocate for petitioner

Mr.S.B.Deshpande, A.S.G.I. for respondent no.1

Mr.S.S.Ladda, Advocate for respondent no.2

CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATE : DECEMBER 18, 2018

ORDER :

Mr.Hon, learned Senior Counsel for the petitioner, submits that the petitioner is a co-operative sugar factory. The petitioner also has a distillery plant, wherein they produce rectified spirit, which is used for production of ethanol. The learned Senior Counsel submits that the petitioner – Sugar Factory, to meet with its demand, is also required to purchase molasses, which is the raw material for production of ethanol.

2. On 04.06.2015, the Government of India issued a notification in exercise of its powers under sub-section (1) of Section 5-A of the Central Excise Act, 1944, thereby making an amendment to the effect that the ethanol production generated from cane crushing for the season 2015-16 i.e.from 01.12.2015 onwards, for supply to the public sector, the central excise was exempted. The learned Senior Counsel

submits that the petitioner had submitted bids pursuant to the notice issued by the oil marketing companies for providing ethanol. The petitioner was held to be qualified for stage no.2 for ethanol tender for the period of December, 2015 to November, 2016. The petitioner, accordingly, executed agreements with Bharat Petroleum Corporation Ltd., Indian Oil Corporation Ltd. and Hindustan Petroleum Corporation Ltd., and accordingly, purchase orders were issued by the said oil companies for supply of ethanol. The petitioner accepted the purchase orders and supplied 9352 KL ethanol as per the agreements and purchase orders.

3. The learned Senior Counsel further submits that the Central Government abruptly on 10.08.2016 withdrew the notification dated 04.06.2015. He submits that relying on the earlier notification dated 04.06.2015 issued by the Central Government, the petitioner had supplied ethanol to the oil companies. The petitioner now is put in irreversible

position. Because of issuing the notification dated 10.08.2016, the petitioner – Karkhana would be put to a loss of Rs.3,56,66,100/-. He submits that the Government cannot change its stand in the midst of the season. The said action can be termed as arbitrary. He submits that the principle of promissory estoppal would be attracted in the present case. The petitioner made a detailed representation to the Ministry of Finance, New Delhi, to continue to grant the aforesaid exemption. However, no action was taken. According to learned Senior Counsel, the impugned notification dated 10.06.2016 is bad in law and deserves to be quashed and set aside.

4. Mr.Ladda, learned Counsel for respondent no.2, submits that the exemption notification provides for surplus collection of duties. The said exemption can be modified or revoked at any time. The principle of promissory estoppal is not applicable in this case. He relies on the judgment of the Hon'ble Apex Court in the case of **Kasinka**

Trading and anr., etc. etc. Vs. Union of Indian and anr., AIR 1995 SC 874.

5. We have considered the rival submissions canvassed by learned Counsel for the parties.

6. It requires no debate that it is the prerogative of the State to embark upon a policy decision. The State, in its wisdom, may evolve a policy decision commensurate with the exigencies in the given circumstances. The wisdom of the State, in such a case, need not be questioned.

7. This Court, in its powers under Article 226 of the Constitution of India, would be slow to exercise powers of judicial review in the policy matters, more particularly, involving financial and fiscal ramifications. The State frames policy on the basis of the inputs given by the experts. This Court cannot entertain a petition challenging the policy decision of the State involving economic considerations, as a matter of course, unless it is shown that the said policy

decision is perverse and arbitrary. In the matters regarding levy of duty/exemption of duty, the Court is required to observe restraint.

8. The Apex Court, in the cases of **Kasinka Trading (supra)** and the **State of Jammu and Kashmir Vs. Trikuta Roller Flour Mills Private Limited and anr., (2018)11 SCC 260** has held that in public interest, if demands so, an exemption, even a time bound, can be modified or revoked at any time and the doctrine of promissory estoppal is not attracted.

9. In the light of the above, the Writ Petition is dismissed. No costs.

[**R.G. AVACHAT, J.**] [**S.V. GANGAPURWALA, J.**]

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