IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2732 of 2020

Shilpa Steel and Power Ltd.
Plot No. B-209 and B-209/1,
Five Star Zone MIDC, Butibori,
Tahsil Hingna, District Nagpur.
Through its Managing Director-
Shri Krishnakumar Bagaria. .... **PETITIONER**

...V E R S U S...

1. The State of Maharashtra,
Industries, Energy and Labour Department,
Mantralaya, Mumbai-400 032.
Through its Principal Secretary.

2. The Director of Industries,
Maharashtra State, having its Office at
Directorate of Industries,
New Administrative Building, Second Floor,
Opp. Mantralaya, Madam Cama Road,
Mumbai-400 032.

3. The General Manager,
District Industries Center,
Udyog Bhavan, Opp. Sales Tax Office,
Civil Lines, Nagpur-440 001.

4. The Commissioner of Sales Tax(Administration)
Sales Tax Office, Civil Lines,
Nagpur.

.... **RESPONDENTS**

Shri S.P.Dharmadhikari, Senior Advocate with Shri Ninad Almelkar, Advocate for petitioner.
Shri N. R. Patil, Assistant Government Pleader for respondents.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- AUGUST 11, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard by issuing ***Rule*** and making the same returnable forthwith.

2. The petitioner is a Company incorporated under the Companies Act, 1956 and undertakes the activity of manufacture and sale of steel products. It has a factory at Butibori Industrial Estate which area has been notified by the State Government as D Plus (D+), being a backward and rural area in the matter of industrial development. With a view to attract industries in underdeveloped areas of the State, a package scheme of incentives for starting of new units or for expansion of the same was declared in the year 1964. The same was amended from time to time and the Scheme is presently known as "Package Scheme of Incentives-2013" (for short, the Incentive Scheme). A Government Resolution dated 01.04.2013 was issued prescribing the modalities for benefits under the said Incentive Scheme. In the light of the promises and assurances of the State Government as incorporated in the aforesaid Government Resolution dated 01.04.2013, the petitioner sought to expand its production capacity by investing an amount of Rs.92.31 Crores

in its units at Butibori. After complying with all necessary requirements, it applied to the District Industries Centre, Nagpur for issuance of Eligibility Certificate. The concerned authority-respondent no.3 on being satisfied with the expansion activities carried out by the petitioner issued Eligibility Certificate for Industrial Promotion Subsidy - IPS for an amount of Rs.34.61 Crores. The period mentioned in the Eligibility Certificate was for six years from 01.10.2015 to 30.09.2021.

3. Pursuant to the aforesaid, the petitioner started receiving the amount of IPS and for the period between 01.10.2015 and 30.06.2017 it received an amount of Rs.7.34 Crores. On 01.07.2017 the Goods and Services Tax Act, 2017 (for short, the Act of 2017) came into force. As a consequence thereof, the tax structure underwent a change and the petitioner after introduction of Goods and Service Tax could not claim the amount of IPS. It is in this backdrop that the petitioner has challenged the Government Resolution dated 12.06.2018 to the extent the policy of granting IPS to the petitioner has been altered. The petitioner also seeks a direction to be issued to the respondents to extend the benefit of IPS as per the Eligibility Certificate dated 8-9.02.2016.

4. Shri S.P.Dharmadhikari, learned Senior Counsel for the petitioner after referring to the aforesaid facts submitted that as per the Government

Resolution dated 01.04.2013 the Scheme with regard to providing incentives for establishment of new units or their expansion was made operative from 01.04.2013. Acting on the promise contained in that Government Resolution that the benefit of subsidy would be made available as per an Eligibility Certificate, the petitioner expanded its unit at Butibori. With the grant of Eligibility Certificate the respondents accepted the fact that for a period of six years from 01.10.2015 to 30.09.2021 the petitioner's unit would be entitled to receive such incentives. Having found the petitioner's unit entitled for such subsidy in terms of the Government Resolution dated 01.04.2013 it was not permissible for the State Government to act contrary to the promise as held out in the said Government Resolution and by the Eligibility Certificate. It was submitted that this Court in Writ Petition No. 2209 of 2018 (*M/s. K. M.Refineries and Infraspace Pvt. Ltd. Vs. The State of Maharashtra and others)* by its judgment dated 16.07.2019 had considered a similar issue based on the applicability of the principles of promissory estoppel as the incentives offered earlier were sought to be curtailed prior to expiry of the period for which such incentives were promised. He submitted that the ratio of the decision in *M/s. K. M. Refineries and Infraspace Pvt. Ltd.* (supra) would be applicable to the facts of the present case and prayed that a similar order be passed in the present writ petition. He also invited our attention to the chart indicating particulars of the Goods and Service Tax paid for the last three years to indicate the prejudice caused to the petitioner as a result of modifying the Eligibility Certificate criteria. It was thus prayed that the petitioner was entitled for appropriate relief.

5. Shri N.R.Patil, learned Assistant Government Pleader for the respondents opposed the writ petition. He relied on the affidavit in reply filed on behalf of the respondent nos. 1 and 2. According to him in view of implementation of Goods and Service Tax regime from 01.07.2017 the incentives that were provided in the form of refund of Value Added Tax as well as the Customs and Sales Tax were required to be modified. By issuing the Government Resolution dated 12.06.2018 the State Government had amended the Incentive Scheme and in view of that Government Resolution the petitioner could not urge that the benefit under the IPS should be continued. It was not permissible for the State to offer incentives which were not in accordance with the Government Resolution dated 12.06.2018.

6. We have heard the learned counsel for the parties and we have perused the documents placed on record. The factual aspects referred to above are not in dispute. Admittedly, the petitioner expanded its existing activities at Butibori in the light of the Government Resolution dated 01.04.2013 which prescribed benefits under the Incentive Scheme for such expansion. The petitioner has been issued an Eligibility Certificate by the

District Industries Centre. Nagpur and for a period of six years from 01.10.2015 the petitioner is entitled to the benefit of IPS. As a consequence of the Act of 2017 coming into force, the amount of IPS which the petitioner was entitled to otherwise receive has been drastically reduced.

7. In *M/s. K. M. Refineries and Infraspace Pvt. Ltd.* (supra) this Court has considered a somewhat similar question with regard to curtailment of validity period of the Incentive Scheme pursuant to the Act of 2017. The aspect of reduction of incentives offered under the IPS detriment to the interests of the petitioner therein in violation of principles of promissory estoppel has been considered. In paragraphs 16 to 18 and 25 it has been observed as under :

> *"16. Now, if we look at the Incentive Scheme, one feature of the Scheme that would prominently strike us is that of a promise given by the State to the industries. The promise is that, if the industries come out of their secure shells in Mumbai-Thane- Pune industrial belt and set up their industrial units in diffused virgin pastures of the State, spread out in rural and remote areas, the industrial units would be eligible for various incentives offered in the Incentive Scheme. These incentives are meant for offsetting the additional investment and increase in cost of production of the industrial units so that the goods and services could be produced at competitive rates and without incurring any losses.*
>
> *17. Relying upon such a promise and assurance given by the State, the Petitioner has opened its industrial unit at village Dabha by making substantial investment. The Petitioner has acted upon the promise and the promise had been given by the State with an intention to create legal relation. The Petitioner having changed its position and having made investments, has forged a legal relation with the State, and*

therefore, now the State would be bound by the promise that it gave to the Petitioner through the Incentive Scheme and which it confirmed it by issuing the Eligibility Certificate.

18. It would be clear from the facts stated and the discussion made by us thus far that the doctrine of promissory estoppel clearly apply here and would forbid the Government from taking any decision of not completely implementing the Incentive Scheme or reducing the incentives to the detriment of the Petitioner and to that extent the decision would have to be held as illegal. Once a promise has been solemnly given with an intention that it would be acted upon and which has been indeed acted upon and liabilities suffered by the promisee, the State cannot be permitted to backtrack on the promise and change its position so as to cause loss to the promisee. There can be an exception to the application of the principle of promissory estoppel, but, the facts and circumstances necessary for exempting the Government from its liability do not exist on record and the reply of the State also does not convincingly point out any such exceptional facts and circumstances warranting toning down or withdrawing of its promise, much to the disadvantage of the Petitioner. If the State has to reverse its promise, it must demonstrate specifically the facts and circumstances showing that enforcing of the promise against it would be highly iniquitous. The Government cannot change its stand merely upon its ipse dixit. There must be in existence justifiable facts and circumstances to change the decision or otherwise the State must give full effect to the decision, which in the present case is to be found in the Incentive Scheme. This is the essence of the rule of law.

25. Now, midway through the operation of the Incentive Scheme, many of the incentives are being taken away or reduced and if this is permitted, it would certainly adversely affect not only the industrial units, but also the whole process of achieving the directive of Article 39(c) that operation of economic system does not result in the concentration of wealth and means of production to the common detriment. Such reduction under the Incentive Scheme in the name of new policy of GST is clearly not permissible and the Incentive Scheme that was in operation on the date of issuance of Eligibility Certificate would have to be enforced against the State. The only liberty that could be granted to the State would be of modifying the Incentive Scheme in such a way *that it is consistent with the new tax structure under the General Sales Tax Scheme and at the same time it also does not result in reducing or restricting the benefits which have been conferred upon an industrial unit like that of the Petitioner under the Incentive Scheme."*

8. We find that the aforesaid decision squarely applies to the facts of the present case. Despite the Government Resolution dated 01.04.2013 and issuance of the Eligibility Certificate on 8-9.02.2016, the petitioner has been deprived of the benefit under the IPS. We are therefore inclined to apply the ratio of the aforesaid decision to the facts of the present case.

9. Hence for the reasons contained in Writ Petition No.2209 of 2018 and in the light of the principles of promissory estoppel, the following order is passed:

(i) The respondents are directed to implement the Incentive Scheme as amended up-to-date with a discretion to modify the Scheme so as to bring it in line with the new tax structure under the Goods and Service Tax regime, but without reducing or restricting the benefits as conferred upon the petitioner under the Incentive Scheme within a period of eight weeks from the date of receipt of copy of this judgment.

(ii) Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..