

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

WPTT 4 OF 2022

Electrosteel Castings Limited & anr.

vs.

The Deputy Commissioner of Commercial Taxes & ors.

For the Petitioner : Mr. Jayanta Mitra, learned Senior Counsel
Mr. Rahul Dhanukaadvocates

For the State : Mr. A. Ray,
Mr. T. M. Siddiqui,
Mr. D. Ghosh,
Mr. Debraj Sahu,
Mr. Subhojit Roy,advocate

Reserved on : 07.02.2023

Judgment on : 28.02.2023

Hiranmay Bhattacharyya, J.:-

1. This writ petition is at the instance of a registered dealer under the West Bengal Sales Tax Act, 1994 (for short "the 1994 Act") under the West Bengal Value Added Tax, 2003 (for short "WB VAT") Act praying for a writ of mandamus, commanding the respondents to allow remission of tax after setting aside the order dated 08.02.2022 passed by the West

Bengal Taxation Tribunal (for short “The Tribunal”) in case no. RN-1761/12.

2. The petitioner no. 1 claims to be one of the leading producers of Ductile Iron (for short “DI”) Pipes and has set up its unit at Khardah (for short “the unit”) for the manufacture of DI Pipes with an installed capacity of 60,000 metric ton. The petitioner undertook expansion of the unit from time to time and became eligible for remission of sales tax under various Incentive Schemes of the State. It is the further case of the writ petitioners that the actual investment made up to 31.03.2005 including the expansion programs undertaken by the unit stood at Rs. 250.88 cores i.e., Rs. 251 crores. The petitioners claim to have made a further investment of Rs. 23 crores during the period from 01.04.2005 to 31.12.2005 taking the total investment till 31.12.2005 at Rs. 274 crores. The petitioners claim that the Gross Value of Fixed Capital Assets (for short “GVFCA”) was determined at Rs. 194 crores. Petitioners prayed for enhancement of GVFCA by Rs. 80 crores to include the investment made by the petitioner till 31.12.2005. The Standing committee of the industries of the State Cabinet in its meeting held on 18.03.2006 enhanced the Fixed Capital Investment (for short “FCI”) by Rs. 57 crores instead of 80 crores as prayed for by the petitioner. The Special Secretary to the Government of West Bengal by a letter

dated 20.06.2006 informed the petitioner that the investment of Rs. 23 crores made after 31.03.2005 will not be counted.

3. Challenging the decision of the respondent authorities not to allow remission on the FCI of Rs. 23 crores, the writ petitioners filed an application under Section 8 of the West Bengal Taxation Tribunal Act 1987 (for short “the 1987 Act”) giving rise to case no. RN 1761 of 2012.
4. Before the learned Tribunal, the writ petitioners prayed for an order directing the respondents to allow remission of tax to the petitioner covering the GVFCA of 23 crores. The Tribunal, by a judgment and order dated 25.07.2018, dismissed the said application. The writ petitioners challenged the said order of the Tribunal before this Court in WPTT No. 20 of 2018 which was disposed of by a co-ordinate bench by an order dated 28.08.2019 by setting aside the order of the learned Tribunal dated 25.07.2018 and by directing the learned Tribunal to rehear and decide RN 1761/12 by giving an opportunity of being heard to the parties and by passing a reasoned decision within the time limit stipulated therein.
5. After remand the learned Tribunal by a judgment and order dated 08.02.2022 disposed of RN 1761/2012 upon holding that there is no infirmity in the decision making process by the State Government. The Tribunal further observed that the State had exercised discretion and increased further limit of

eligible amount of GVFCI for eligible incentives by way of remission of taxes after taking into account all the aspects. The registered dealer has challenged the said decision of the learned Tribunal by filing this writ petition.

6. Mr. Mitra, learned Senior Counsel appearing in support of the writ petition placed the various provisions under the West Bengal Incentive Scheme 1999 (for short “the scheme”) and contended that the said scheme provides that all investments made in land, building, plant and machinery and equipment on or after 01.04.1998 shall be eligible for benefits under the scheme. He further contended that the said scheme does not put any embargo upon the unit to complete the investments within the duration of the scheme. He also contended that the scheme contains a promise made by the State Government to allow deferred payment of Sales Tax dues or remission of sales tax dues to an existing unit for its approved project of expansion. By referring to paragraph 10.1.2(II) of the said scheme he contended that the unit altered its position on the basis of the said promise held out by the State Government in its incentive scheme and it is not open to the State to back out from the said promises and deny remission of sales tax with regard to the GVFCI of Rs. 23 crores.

7. In support of his contention Mr. Mitra relied upon the following decisions.

- (i) *State of Jharkhand and Ors. vs. Brahmputra Metalics Ltd., Ranchi and Anr.* reported at (2020) SCC Online SC 968.
- (ii) *Indian Oil Corporation Ltd. vs. Shashi Prabha Shukla* reported at (2018)12 SCC 85
- (iii) *K.M. Refineries and Infraspce Pvt. Ltd. vs. State of Maharashtra and ors.* reported at 2020(1) MH.L.J.904.

8. By referring to Section 44 of the 1994 Act, Mr. Mitra contended that the State Government has the power to relax certain provisions of the 1994 Act relating to deferment of payment of taxes or remission of taxes and allow remission of sales tax to the petitioner in respect of the GVFCA to the tune of Rs. 23 crores. He further submitted that after the coming into force of the WB VAT Act, a registered dealer holding eligibility certificate under the 1994 Act and who was enjoying benefit of remission of tax under Section 41 of the 1994 Act for a specified period or a specified amount determined shall be allowed remission under the WB VAT Act in terms of the provisions laid down under Section 118(c) of the WB VAT Act.

9. Per contra Mr. Ghosh, learned counsel representing respondent authority contended that the unit was allowed remission of sales tax over and above the eligible amount of FCI of Rs. 194 crores. He contended that the State was gracious to allow a further remission of sales tax on the amount of FCI made up to 31.03.2005 over and above 194

crores. He contended that the unit cannot claim remission of sales tax for an unlimited period of time and the State which has the power to grant remission of sales tax also has the power to decide the period up to which the investments made in the Fixed capital assets will be counted for the purpose of remission of sales tax. He also submitted that the unit cannot claim remission of sales tax as a matter of right as the investments were made beyond the duration of the scheme. He concluded by submitting that the doctrine of promissory estoppel do not have any manner of application to the case on hand.

10. In reply Mr. Mitra learned Senior Counsel contended that the ground for not allowing remission of sales tax for the FCI of Rs. 23 crores, as urged by Mr. Ghosh, is a submission from the Bar for which there is no basis either in the communications made by the State to the writ petitioners or in the affidavits filed by the State either before the Tribunal or before this Court. He, thus, concluded by submitting that this Court is to consider the materials available on record and should not take into consideration such submissions advanced from the Bar to support the action of the State.
11. Heard the learned advocates for the parties and perused the materials placed.

12. The claim of the petitioners for allowing remission of sales tax in respect of the GVFCA to the tune of Rs. 23 crores is based on the promises alleged to have been made by the State in the Scheme to allow remission of sales tax to an existing unit for its approved project of expansion. It would be relevant to take note of the following salient features of the said scheme for ascertaining the nature of promise alleged to have been made by State.

(a) The said scheme came into effect on and from 01.04.1999 in the whole of West Bengal and remained valid for a period of 5 years ending on the 31.03.2004.

(b) An existing unit for its approved project of expansion shall be eligible for deferred payment of sales tax dues for payments by it or alternatively for remission of sales tax due for payment by it for the period and subject to a ceiling limit depending on the location of the expansion project.

(c) In respect of group B area remission sales tax due for payment by the unit shall be 7 years and the percentage ceiling in terms of the GVFCA of the approved project shall be 75%.

(d) Notwithstanding the percentage ceiling specified at various clauses of sub-paragraph 10.1 of the scheme, the maximum limit of deferment of sales tax due for payment by unit is Rs. 75 crores. Whenever, the aggregate amount of sales tax due for payment for which deferment/ remission has been allowed,

exceeds the percentage ceiling of Rs. 75 crores, whichever is less, the deferment or remission will be discontinued even before the specified period.

13. One limb of the argument of Mr. Mitra is based on the doctrine of promissory estoppel to the effect that the writ petitioners having altered their position on the representation of the State to allow remission of sales tax on the investments made in GVFCAs as contained in the scheme, the State cannot reverse its promise without assigning any justifiable reasons therefor.
14. It is now well settled that where the Government makes a promise knowing or intending that it would be acted upon by the promisee and in fact the promisee acting in reliance of such promise 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 of India. However, there is an exception to the doctrine of promissory estoppel. Since the said doctrine is an equitable one, the Court would not raise any equity in favour of the promisee and enforce the promise against the Government 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. In the event the

Government claims exemption from the liability, it will have to disclose before the Court the facts and circumstances on account of which the Government claims exemption from liability and then it would be for the Court to decide whether the facts and circumstance makes it inequitable to enforce the liability against the Government (See M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P. & Ors. reported at (1979) 2 SCC 409.

15. By relying upon the aforesaid proposition of law, Mr. Mitra contended that the action of the State is arbitrary and violative of Article 14 of the Constitution as the State is acting in breach of the doctrine of promissory estoppel by not disclosing the reasons for not allowing remission of sales tax.
16. It is evident from the materials placed that the unit submitted a petition before government to allow clubbing of all investments made for acquiring capital assets under various schemes and to allow incentives at a special rate on the enlarged bases. The Standing Committee in its said meeting held on 20.10.2001 took a decision to allow the unit 9 years remission as against the normal 7 years permissible in remission cases only. The unit was allowed remission at the rate of 75% on the investment made in respect of the exemption program undertaken by it subject to a maximum of Rs. 145 crore after taking into account the total investment of Rs. 194 crores. The unit was further allowed to enjoy

deferment up to 31.08.2001 and then was allowed to switch over to remission with effect from 01.09.2001. However, at that point of time the Standing Committee did not accept the demand of the unit for clubbing of all investments.

17. However, the unit submitted representations even thereafter for clubbing of the investments. Pursuant to such representations being made the Cabinet modified its earlier decision and decided to allow the unit remission at the rate of 75% of the GVFCA amounting to Rs. 194 crores invested in the 5 expansion programme with a rider that maximum amount of remission should be limited to Rs. 145 crore. This modified decision was taken by the Cabinet with the concurrence of Finance Department as would be evident from the memo dated 25.06.2004.
18. The decision to allow remission on the FCI amounting to Rs. 194 crore subject to the maximum amount of remission of Rs. 145 crore was duly accepted by the writ petitioners. On the basis of such settled position the registration certificate was accordingly modified by issuance of a registration certificate dated 27.08.2004. It is also evident from the said registration certificate dated 27.08.2004 that the maximum amount of remission of sales tax will be on a total investment of Rs. 194 crore. It would be relevant to also take note that the writ petitioners have specifically admitted in the pleadings of the application filed under Section 8 of the 1987 Act before the

learned Tribunal that the remission as allowed has been fully utilised by the petitioners. This Court is thus of the considered view that the promise made by the State Government in the scheme was that the unit would be allowed remission on the investments made in fixed capital assets amounting to Rs. 194 crores only and the State has fulfilled its promise by allowing remission of sales tax on the GVFCA amounting to Rs. 194 crores. Therefore, there has been no breach of the doctrine of promissory estoppel in the instant case.

19. It would not be out of place to record that the State even after fulfilling its promise by allowing remission on the aforesaid investment of Rs. 194 crores made within 31.03.2004 to the unit, also allowed further remission on the additional investments made even during the period 01.04.2004 to 31.03.2005 as and by way of a special package of incentives.
20. The writ petitioners after enjoying full benefits under the Incentive Scheme as well as by way of special package incentive has approached this Court with a claim for further remission on the capital investment claimed to have been made during the period 01.04.2005 to 31.12.2005 amounting to Rs. 23.33 crores which was not allowed by the State.
21. The grievance of the petitioners is with regard to refusal to allow remission of sales tax on the fixed capital investment of

Rs. 23 crores made during the period 01.04.2005 to 31.12.2005.

22. Mr.Mitra, learned Senior Counsel would contend that the investment of Rs. 23 crores in Fixed Capital Assets by the unit for the period from 01.04.2005 to 31.12.2005 would also qualify for remission of sales tax under the Scheme as no cut-off date has been fixed under the scheme for such investment. In other words, according to Mr. Mitra, the promise made by the State in the Scheme to allow remission shall also apply to investments made in Fixed Capital Assets irrespective of the period in which such investment is made.
23. With greatest of respect to Mr. Mitra, this Court is unable to accept such contention for the reasons assigned hereinafter.
24. The object and purpose behind framing the said scheme is to promote industries in the State of West Bengal. From a bare reading of the scheme it is evident that the State promised to allow remission of sales tax on condition that an investment is made on Fixed Capital Assets which may be either by setting up a new unit or by way of expansion of an existing unit. The real object behind the scheme is to attract investors and encourage them to invest in the State. The said scheme, however, had a limited duration of 5 years with effect from 01.04.1999 till 31.03.2004. Mr. Mitra, would contend that the duration of the scheme or the last date of 31.03.2004 is of no

relevance. The terms and conditions of the scheme is to be interpreted harmoniously to make the said scheme a workable one so that none of the clauses becomes otiose. The amount of remission of sales tax allowable under the scheme is dependant on the investment made in Fixed Capital Assets. The right to claim remission of sales tax under the Scheme accrues only upon an investment being made on Fixed Capital Assets. Therefore, the investment is the prerequisite for the right to claim benefit under the scheme to accrue. Such right to claim remission, therefore, has to accrue on or before the last date i.e., 31.03.2004. This Court is, therefore, of the considered view that only investments made in Fixed Capital Assets in terms of the conditions incorporated in the scheme before the last date i.e., 31.03.2004 would only qualify for remission under the scheme. If the investment in Fixed Capital Assets is made within such date, the unit will be entitled to enjoy the benefit of remission as per the said scheme for the balance unexpired period or the balance eligible amount even after 31.03.2004 and for such purpose only the said scheme shall be deemed to be in operation even after 31.03.2004. Any contrary interpretation thereto will lead to laying down a proposition that the scheme is of unlimited duration which will be against the very object of the scheme.

25. The learned senior counsel for the petitioner strenuously argued that there has been a breach of the doctrine of

promissory estoppel in the instant case as the unit altered its position by investing the aforesaid amount of Rs. 23 crores on fixed capital assets acting on the promise made by the State in the scheme to allow remission of sales tax on the fixed capital investment while undergoing expansion of the unit. As observed herein before, the promise of the State was limited to allowing remission on the investment on fixed capital assets to the extent of Rs. 194 crores only. The petitioners failed to demonstrate before this court that there was any promise made by the government to allow remission for the investments made on fixed capital assets after 31.03.2004. Since the decision of the Cabinet not to allow remission of sales tax on the investments made on fixed capital assets with effect from 01.04.2005 appears to have coincided with the date of coming into force of the WB VAT Act, the learned senior counsel for the petitioners was prompted to advance an argument that introduction of the WB VAT Act cannot deprive the unit from enjoying the benefit of remission of tax which was allowed to the petitioner under the provisions of the 1994 Act read with the Incentive Scheme. Mr. Mitra learned Senior Counsel referred to Section 118(c) of the WB VAT Act 2003 in support of such contention. It would be relevant at this stage to refer to the said provision under the WB VAT Act 2003 and for such purpose the same is extracted herein below-

“Sec 118. Notwithstanding anything contained elsewhere in this Act,-

(a)

(b)

(c) where a registered dealer was enjoying benefit of remission of tax under section 41 of the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994), for a specified period or a specified amount determined with respect to gross value of the fixed capital assets, and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed remission of output tax under this Act by the Commissioner for the balance unexpired period or balance eligible amount with respect to gross value of fixed capital assets, whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed.”

27. The aforesaid provision starts with a non obstante clause and provides that where a registered dealer was enjoying benefit of remission of tax under the 1994 Act for a specified period or a specified amount may be allowed remission of output tax under the WB VAT Act 2003 by the commissioner for the balance unexpired period or the balance eligible amount with respect to GVFCA whichever expires earlier. The said provision uses the expression “balance unexpired period” and “balance eligible amount”. Upon reading the said provision this court is of the considered view that the registered dealer can enjoy benefit of remission of tax under the 1994 Act even after the coming into

force of the WB VAT Act 2003 if there is balance eligible amount or balance unexpired period. If the balance eligible amount expires before the expiry of the balance unexpired period then in that event even assuming that there may be balance unexpired period but the same would be of no relevance or vice versa.

28. It is not the case of the writ petitioners that the balance eligible amount that was available prior to the coming into force of the introduction of the WB VAT Act 2003 was not allowed to be utilised after the coming into force of the WB VAT Act 2003. On the contrary the case made out by the writ petitioners is that the State is duty bound to allow remission of sales tax on the investments made on fixed capital assets with effect from 01.04.2005. Such contention of the petitioner cannot be accepted for the following reasons. Admittedly investments on fixed capital assets of Rs. 23 crores was made during the period 01.04.2005 to 31.12.2005 i.e., well beyond the duration of the scheme. Therefore, the said investment could not qualify for remission of sales tax dues as the right to claim remission for such investment did not accrue within 31.03.2004. Therefore, there was no question of any balance eligible amount available for the purpose of allowing remission as on the date of coming into force of the WB VAT Act 2003 in respect of the investment of Rs. 23 crores.

29. For the reasons as aforesaid, this Court is of the view that the provisions laid down under Section 118(c) of the WB VAT Act

2003 does not come to the aid of the petitioners in the instant case insofar as the investment of Rs. 23 crores is concerned.

30. This takes the court to the last limb of argument of Mr. Mitra that a writ of mandamus is to be issued directing the State Government to exercise its power to relax the provisions of the 1994 Act relating to remission of tax and allow such remission for the investments made by the petitioner for the period 01.04.2005 to 31.12.2005 amounting to Rs. 23 crores.

31. State Government has been vested with the power to relax certain provisions of the Act relating to remission of tax under Section 44 of the 1994 Act. However, such power of relaxation is to be exercised by the State in its discretion as would be evident from the term “MAY” used in Section 44. State, therefore, has the discretion to exercise the power of relaxation in cases where the State considers it necessary so to do in the public interest after due consideration of certain factors as specifically mentioned in Section 44. Merely because the power of relaxation has been vested upon the State Government by the statute, no right has been conferred upon the writ petitioners to compel the State to exercise the power of relaxation so that the unit can enjoy the benefit of remission of tax on the investment of Rs. 23 crores. This Court therefore, holds that the unit has also failed to demonstrate any right to claim relaxation of the conditions for enjoying remission.

32. In *D.L. Vasanthakumar alias Veervasanthakumar vs. Chief Secretary Government of Tamil Nadu, Chennai* reported at (2019) 7 Mad LJ 869 cited by Mr. Ghosh, the Hon'ble Madras High Court held that the person approaching the High Court under Article 226 of the Constitution of India has to prove that he has the legal right to be enforced against the authority and there is a failure of performance of a legal or statutory duty by the authority against whom the relief is sought for.
33. In the case on hand the petitioners have failed to prove that there exists a legal right which is to be enforced against the State and that the State has failed to perform its legal or statutory duty. No mandamus can, therefore, be issued commanding the State to exercise the power of relaxation in a manner so as to fulfill the desire of the unit to avail remission of sales tax.
34. This Court has already observed that the petitioners have failed to demonstrate that the investment of Rs. 23 crores made by the unit was pursuant to any promise made by the government to allow remission of sales tax on such investment. Therefore, the question of reversing the promise by the State does not arise in the case on hand. Under such circumstances, the necessity to assign reasons for not allowing the remission as argued by the learned Senior Counsel for the petitioner does not arise as it is not a case of claiming exemption from liability.

35. For all the reasons stated hereinbefore this Court is of the considered view that the State action in the case on hand cannot be said to be arbitrary. The learned Tribunal rightly observed that no right accrued in favour of the petitioners to claim remission of tax. The Tribunal was also right in observing that the unit was granted benefit as a special case. This Court accordingly holds that the impugned order passed by the learned Tribunal do not suffer from any infirmity. Therefore, no interference with the said order is called for.

36. The issue that fell for consideration in *K.M.Refineres* (supra) was whether the Commissioner of Sales Tax had the power to curtail the validity period for enjoyment of incentives and other benefits under the relevant Incentive Scheme and also whether such reduction could have been made in the name of the policy of GST. On such facts it was held that no authority was given to the Commissioner to modify, enlarge or curtail the validity period and also that the benefits under the Incentive Scheme cannot be curtailed in the name of the new GST policy.

37. In the case on hand it cannot be said that the validity period for enjoyment of the Incentive Scheme has been curtailed or that the unit was deprived from enjoying the benefits of remission of tax for the investments made on Fixed Capital Assets within 31.03.2004. Thus, the reported decision in *K.M.Refineres* (supra), being distinguishable on facts, do not have any manner of application to the case on hand.

38. In *Indian Oil Corporation* (supra), the award of dealership was in issue. A factual finding was recorded therein that the dealership was awarded at the fanciful discretion of the Departmental Minister. On such factual background, the Hon'ble Supreme Court observed that the public authority in its dealings has to be fair, objective, non arbitrary, transparent and non discriminatory. The said reported decision being distinguishable on facts is of no assistance to the petitioner.
39. In *Brahmputra Metallics* (supra), the curtailment of the validity period as promised by the State was in issue. It was found on facts that though the State made a representation in the relevant Industrial Policy that a rebate/ deduction in electricity duty would be offered for a specified period, the units were deprived from enjoying such benefit for such specified period due to unexplained delay in issuance of notification as contemplated under the scheme. On such factual background, the Hon'ble Supreme Court held that the State action is arbitrary and violative of Article 14. In the case on hand, this Court has already observed that State action is not arbitrary and therefore, the said reported decision is not applicable.
40. In view of the findings recorded hereinbefore, this Court, holds that the writ petition is devoid of any merit and the same is liable to be dismissed. Accordingly, the writ petition stands dismissed without, however, any order as to costs.

41. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)