



W.P.No.2932 of 1998

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2025

Pronounced on : 26.08.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.2932 of 1998

1.The Government of Tamil Nadu
rep. by its Commissioner and
Secretary, Industries Department,
Fort St. George, Chennai-9.

2.The Deputy Commissioner of Commercial Taxes,
Fort Main Road, Shevapet, Salem-2.

3.The Assistant Commissioner of Commercial Taxes,
Commercial Tax Office, Gandhi Nagar, Namakkal.

4.The Deputy Commercial Tax Officer,
Tiruchengode (Rural)
Ponnusamy Buildings, Sankari Road,
Tiruchengode.

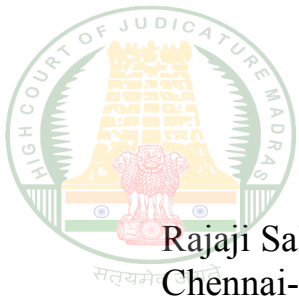
.. Petitioners

Vs.

1.Tvl.Ponni Sugars (Erode) Limited,
Rep. by its Managing Director, Esvin House,
No.13, Old Mahabalipuram Road,
Seevaram Village, Perungudi,
Chennai-600 096.

(R1 cause title amended vide order dated 19.12.2023
Made in WMP.32851/2023 in WP.2932/1992)

2.The Tamil Nadu Taxation Special Tribunal,



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Rajaji Salai,
Chennai-600 001.

.. Respondents

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Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the file of the 2nd respondent, Tamil Nadu Taxation Special Tribunal, Chennai in TP.No.568/97 (WP.1099/89) dated 26.11.1997 and quash the same.

For Petitioners : Mr.Haja Nazirudeen
Additional Advocate General
Assisted by
Mr.C.Harsha Raj,
Additional Government Pleader

For Respondents : Mr.N.Prasad (for R1)
R2 - Tribunal

ORDER

(Order of the Court was made by Dr. ANITA SUMANTH..J)

This Writ Petition has been filed by the State represented by its Commissioner and Secretary, Industries Department (P1) and Officers of the Commercial Tax Department (P2 to P4) challenging an order passed by the Tamil Nadu Taxation Special Tribunal (Tribunal/R2), dated 26.11.1997.

2.The assessee is arrayed as R1 and is referred to herein as either assessee or R1. This writ petition had originally been allowed by a Division Bench, vide decision dated 17.04.2002, in *Government of Tamil Nadu and Others Vs. Ponni Sugars and Chemicals Ltd. and others (and another case)*(129 STC 30). As against this order, the assessee filed an appeal before



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the Hon'ble Supreme Court which, vide judgment dated 22.11.2004 in *Bannari*

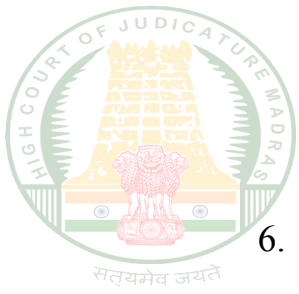
Amman Sugars Ltd. Vs. Commercial Tax Officer and others(139 STC 86),

remanded the matter to this Court for re-consideration.

3. Three submissions were raised by the assessee before the Hon'ble Supreme Court. The first submission was on promissory estoppel and on this point, the appeal has been dismissed. At paragraph 21 of the STC report, the Supreme Court holds that the doctrine of promissory estoppel has no application to the facts of the case, since at the time when the manufacturing units had been set up and commercial production started, the State has not extended any assurance or promise to which they could be held.

4. They also found no substance in the plea that the beneficiary was to be heard by grant of opportunity prior to the amendment of a policy decision or alteration of a promise indicated in a particular Notification. This was extended even to a circumstance where the benefit originally granted was sought to be withdrawn. Hence those grounds relating to promissory estoppel have attained finality, adverse to the assessee.

5. The second submission is legitimate expectation of an assessee. The Court holds that the question of legitimate expectation would have to be considered afresh in light of the facts and circumstances that arise in this matter. We will dilate more on this when this issue is taken up for decision.

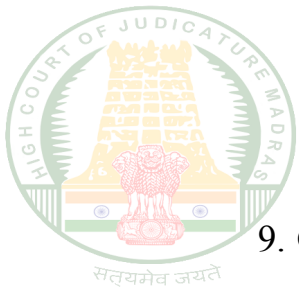


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6. The third submission relates to a challenge to a retrospective withdrawal of benefit by way of an executive order. This issue had not been considered by the High Court in the original decision and hence, has been remanded to this Court. The Apex Court has made it clear that no opinion has been expressed in regard to the aforesaid two issues. We have now taken the matter up post remand.

7. The assessee is a sugar mill. It had been granted an annual subsidy equivalent to the quantum of purchase tax on sugarcane for a period of two years commencing from the date of going into production. This benefit was vide G.O.Ms.No.1414, Industries Department dated 30.11.1984. The Government Order (G.O.) had been issued by the Industries Department. The period under the aforesaid G.O. was extended from 2 to 5 years vide G.O.Ms.No.1497, Industries (MID.I) Department dated 26.12.1984.

8. On the heels of the aforesaid G.O.s, the State undertook the exercise of reviewing the Scheme for grant of subsidy to sugar mills, undertaking a comparison with existing sugar mills and sugar mills that had been set up and for which licence had been issued subsequently, both in the cooperative and private sector. Having regard to the functional modifications involved, the Scheme for grant of subsidy was modified to one of Interest Free Sales Tax Deferral (IFST) with a monetary ceiling limit.

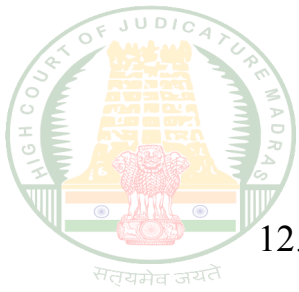


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9. G.O.Ms.No.989 dated 01.09.1988 thus converted the existing relief of grant of subsidy into a deferral of purchase tax. A ceiling of Rs.300 lakhs (Rs.70 lakhs) per year for a period of 5 years was fixed for a mill with capacity of 1250/1500 TCD. The shift from subsidy to deferral was given effect under G.O.Ms.No.989 dated 01.09.1988. The G.O. made it clear that in the event the mill has already disbursed subsidy in excess of the 5 years ceiling that had been fixed, no further disbursement will be made. However, it was also made clear that there would be no recovery of the excess disbursement that had been made prior to 01.09.1988.

10. On 28.12.1988, an amendment was issued to G.O.Ms.No.989 dated 01.09.1988, and paragraph 4 was inserted reading '*This orders issued in paragraph 2 and 3 above shall come into force with retrospective effect from 01.04.1988*'. A representation made by the assessee for re-consideration of G.O.Ms.No.989 dated 01.09.1988 had been rejected.

11. The said rejection was challenged in W.P.No.1099 of 1989, with a consequential direction sought for refund of a sum of Rs.92,85,227/- which had been paid by the assessee under protest, towards purchase tax, along with interest thereupon at 18% per annum from date of payment till date of refund or adjustment of the aforesaid amount towards future purchase tax liability.



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12. The Writ Petition was transferred to the Tamil Nadu Taxation Special Tribunal and ultimately came to be allowed on 26.11.1997, as against which, the present Writ Petition has been filed by the State.

13. Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Mr.C.Harsha Raj, learned Special Government Pleader would assail the order of the Tribunal pointing out that the Tribunal has not gone into the issues in proper perspective. The Tribunal has decided the matter, holding both the principles of legitimate expectation as well as promissory estoppel in favour of the assessee. The argument qua promissory estoppel has no merit in light of the judgment of the Supreme Court.

14. As far as legitimate expectation is concerned, he would submit that the levy of tax, grant of benefit and reversal or modification of the same, are matters that would come within the exclusive domain of the State. Hence, there is no merit whatsoever in the assessee urging the principle of legitimate expectation in the present case as these are policy matters in which no intervention may be brooked.

15. He would submit that the assessee had already been the beneficiary of significant revenue as subsidy. Government Orders passed at various times have taken stock of economic developments and there was a compulsion cast upon the State to balance the interests of entities in different sectors. Hence,



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being matters of policy, the assessee cannot intervene in such matters. He

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1.Madras City Wine Merchants 'Association and Another Vs.State of T.N. and another.¹

2.Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others.²

3.Small Scale Industrial Manufactures Association (Registered) Vs. Union of India and others.³

4.Union of India Vs.K.P.Joseph and others.⁴

16. In response, Mr.Prasad, learned counsel for the respondent/assessee would submit that, as the subsidy had been extended by the Industries Department and not the authorities under the sales tax enactments, the latter would have no jurisdiction to withdraw or amend the same in any way.

17. He would emphasize the legitimate expectation of the assessee, that the relief granted under G.O.Ms.No.1414 dated 30.11.1984 read with G.O.Ms.No.1497 dated 26.12.1984, should play out in full, and that there should be no interference or abrupt curtailment of the same.

18. The business activities of the assessee had been curated and managed in line with the expectation that it would be given the full component of relief as originally promised. Hence, the abrupt curtailment of the relief in September, 1988 vide G.O.Ms.No.989 dated 01.09.1988 is illegal and contrary

¹ (1994) 5 SCC 509

² (2015) 8 SCC 519

³ (2021)8 SCC 511

⁴ (1973) 1 SCC 194



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to the principles of legitimate expectation, apart from being unfair and

unwarranted. Fuel was added to the fire by way of letter No.515342/MIS.1/88-

1 dated 28.12.1988, where G.O.Ms.No.989 dated 01.09.1988 was brought into

force with retrospective effect from 01.04.1988. Even assuming without

conceding, that, as a policy, the State is entitled to revoke the relief granted

earlier, such withdrawal or reversal can only be prospective and not

retrospective.

19. He relies on the following decisions:

*1.State of Bihar and another Vs. Usha Martin Industries Ltd.*⁵

*2.Usha Martin Industries Ltd. V. The Additional Superintendent of Commercial Taxes, Jamshedpur Circle, Jamshedpur and others.*⁶

*3.Pournami Oil Mills V. State of Kerala and another.*⁷

*4.Union of India and others Vs.Hindustan Development Corporation and others.*⁸

*5.Bejgam Veeranna Venkata Narasimloo and others Vs. State of A.P. and Others.*⁹

*6.Honest Corporation V. State of Tamil Nadu.*¹⁰

*7.State of Tamil Nadu V.Kannapiran Steel Re-rolling Mills.*¹¹

*8.Eicher Motors Ltd.and another Vs.Union of India and others.*¹²

*9.Punjab Communications Ltd. V.Union of India and others.*¹³

*10.Kusumam Hotels Private Limited Vs. Kerala State Electricity Board and others.*¹⁴

⁵ 65 STC 430

⁶ 55 STC 380

⁷ (1987) 65 STC 1

⁸ (1993)3 SCC 499

⁹ (1998) 1 SCC 563

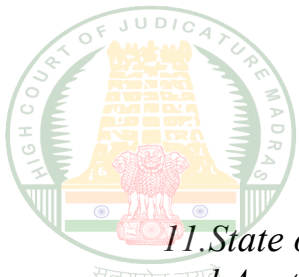
¹⁰ (1999) 113 STC 26

¹¹ (1999) 112 STC 161

¹² (1999) 2 SCC 361

¹³ (1999) 4 SCC 727

¹⁴ (2008) 13 SCC 213



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11. *State of Jharkhand and Others Vs. Brahmputra Metalics Limited, Ranchi and Another.*¹⁵

12. *Sivanandan C.T. and Another Vs. High Court of Kerala and Others.*¹⁶

13. *State of Jharkhand and others Vs. Tata Cummins Ltd. and another.*¹⁷

20. We have heard both learned counsel and have perused the material records as well as the case law cited.

21. The facts are not in dispute. The Government Order under which the assessee sought benefit is G.O.Ms.No.1414 Industries Department dated 30.11.1984, wherein it was granted subsidy equivalent to purchase tax on sugarcane for a period of two years. G.O.Ms.No.1414 reads as follows:

*GOVERNMENT OF TAMILNADU
ABSTRACT*

*INDUSTRIES - Sugar - M/s. Ponni Sugars and Chemicals Limited,
Pallipalayam, Salem District - Sanction of subsidy equivalent to the
Purchase Tax payable by the Mills for 2 years - Orders - Issued.*

INDUSTRIES DEPARTMENT

G.O.Ms.No.1414

Dated the 30.11.1984

Rakthakshi, Karthikai. - 15

Tiruvalluvarandu - 2015.

Read:

G.O. Ms.No.1294, Industries, dt. 24.10.75.

Read also:

*From M/s. Ponni Sugars and Chemicals Limited Pallipalayam,
Salem District, Letter dt. 6.8.84*

ORDER:

¹⁵ (2023) 10 SCC 634

¹⁶ (2024) 3 SCC 799

¹⁷ (2006) 4 SCC 57



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1. *The Government of India had constituted a committee to go into the question of viability of sugar factories of 1250 TCD. That Committee had observed that sugar factories of 1250 TCD established at high cost, would lose heavily unless adequate relief as recommended by them, is granted by the Central and State Governments. Among other recommendations for consideration, the committee has recommended relief from payment of purchase tax on sugarcane by the State Government.*
2. *In the G.O. read above, the Government ordered that new sugar mills set up in the cooperative and public sector be granted relief from payment of purchase tax. This relief would be in the form of an annual subsidy equivalent to the Sales Tax on cane due from these sugar factories for a period of five years from the date of their going into production.*
3. *M/s Ponni Sugars and Chemicals Limited, Pallipalayam, Salem District have set up a 1250 TCD Sugar Mill in private sector at Odapalli Village, Pallipalayam, Tiruchengode Taluk in Salem District. The Sugar Mill has commenced crushing operation in January 1984. The above sugar mill has requested the Government to extend to it, the concession granted in [G.O.Ms. No.1294, Industries, dated 24.10.75](#) in view of the following reasons:*
 - a. *Sugar factory is set up at a high cost of about Rs.1,000 lakhs;*
 - b. *Due to high cost of investment, the depreciation charge and the interest on Term Loan along works out to Rs.150 lakhs per annum;*
 - c. *Financial Institutions do not allow any moratorium for repayment of term loan by new sugar factories; loan repayment is to commence in the very first year of the operation of the Mill;*
 - d. *If the concession is not extended the viability of the project may be affected;*
 - e. *The sugar mill will contribute, substantial revenue to state Exchequer. A sum of about Rs.15 lakhs will be paid as sales tax every year;*
 - f. *A term loan of Rs.598 lakhs has been obtained from the financial institutions. According to the conditions of*



agreement entered into with Financial Institutions, the sugar mill has to obtain an assurance from the Government of Tamil Nadu, that the Sugar Mill be granted exemption from payment of purchase tax on cane;

- g. For the first time in the sugar industry in the country, a coal fired boiler has been installed in place of conventional baggage-fired boiler at an estimated cost of Rs.75 lakhs so that additional baggage generated in Ponni Sugar can be supplied in entirety as primary raw material to seshasayee paper and Boards Ltd;*
- h. Efforts have been taken by the Seshasayee Paper and Boards Limited and Ponni Sugars Company to treat their effluent suitably
Under ISI standards for irrigation purpose.*
- i. As a result of the above effort more than 200 acres have been brought under cane cultivation due to the gravity flow of effluent discharge*
- j. Steps have been taken to instal lift irrigation system by erecting suitable pumpsets to bring under cultivation an additional extent of 500 acres of fallow lands which are situated at higher levels. than the level at which the effluent is discharged; within the next year or two, more than 1000 acres of fallow lands will be brought under cultivation;*
- k. Taking into consideration, the welfare of Rural people, the Company has installed drinking water taps; and*
- l. While granting concession, it does not appear correct to allow the concession to new sugar mills in co-operative and public sector and to deny the same to sugar mills in private sector.*

4. The Government have carefully examined the request of M/S.Ponni Sugars and Chemicals Limited, Pallipalayam, Salem District, After due consideration they have decided that M/s Ponni Sugars and Chemicals Limited be granted relief in the form of an annual subsidy equivalent to the quantum of purchase tax on sugarcane due from it, for a period of two years from the date of its going into production.

5. This order issues with the concurrence of the Finance Department - Vide its U.O.No.4224/FS/1/84 dated 23.11.1984.

(BY ORDER OF THE GOVERNOR)



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V.SELVARAJ

COMMISSIONER AND SECRETARY TO GOVT.

WEB COPY 22. Vide G.O.Ms.No.1497, Industries (Mid.I) Department, dated

26.12.1984, the benefit granted earlier was enhanced, in that, the grant of subsidy was extended to 5 years from the date of the company going into production as against two years, as originally granted. The assessee had, as would have any prudent commercial entity, invested substantial sums of money and effort in setting up the units having regard to the benefit that was set out in the aforesaid Government Orders.

23. G.O.Ms.No.1497, Industries (Mid.I) Department, dated 26.12.1984 reads as follows:

GOVERNMENT OF TAMILNADU

ABSTRACT

INDUSTRIES - Sugars - Messers. Ponni Sugars and Chemicals Limited Pallipalayam, Salem District - Sanction of subsidy equivalent to purchase tax payable by the mills for five years - Orders - Issued.

INDUSTRIES (MID.I) DEPARTMENT

G.O.Ms.No.1497.

Dated the 26th December 1984.

Rakthakshi, Margazhi-11

Thiruvallurvarandu-2015.

Read:

G.O.Ms.No.1414, Industries, dated 30.11.1984.

Read also:

From M/s.Ponni Sugars and Chemicals Limited,

Lr. No.ACS/T2, dt.5.12.84.

ORDER



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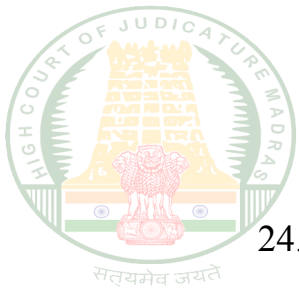


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1. *In the Government Order read above, the Government Ordered that M/s.Ponni Sugars and Chemicals Limited be granted relief in the form of an annual subsidy equivalent to the quantum of purchase tax on sugarcane due from it for the period of two years from the date of its going into production. However, M/s.Ponni sugars and Chemicals Limited In the letter read above have represented to the Government that the subsidy be given for a period of five years.*
2. *The Government have carefully examined the request of M/S. Ponni Sugars and Chemicals Limited and decided to accept it.*
3. *Accordingly, in partial modification of the orders issued in G.O.MS.No.1414, Industries (MID.I) Department dated 30.11.1984, the Government direct that M/s. Ponni Sugars and Chemicals Limited be granted relief in the form of an annual subsidy equivalent to the quantum of purchase tax on sugarcane due from it for a period of five years from the date of its going into production.*
4. *The expenditure shall be debited to "320_ Industries - B.Large and Medium Industries - AE. Consumer Industries - Schemes in the Sixth Five Year Plan - II. State Plan - JB/Assistance to Sugar Mills towards payment of Purchase Tax/ (DP Code 320B ABJB_0008) - 09. Subsidies (DP Code 320B ABJB 0909) by Contra Credit to the head of Account 040.Sales Tax-AB. Receipts under the Sales Tax Act - 01.Tax Collections" (DP Code 040A ABAA 0104).*
5. *The Expenditure is on "New Service" and the approval of the Legislature will be obtained in due course. Pending approval of the Legislature, the expenditure will be met initially by an advance from Contingency Fund. Orders in this regard will issue separately from the Finance (BG.I) Department.*
6. *This order issues with the concurrence of the Finance Department - Vide its U.O.No.147174-A/BG.II/84-1 dated 26.12.1984.*

(BY ORDER OF THE GOVERNOR)

V.SELVARAJ
COMMISSIONER AND SECRETARY TO GOVT.



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24. While so, and having reviewed the scheme for grant of purchase tax subsidy, the State had had a change of heart, and hence, G.O.Ms.No.989, Industries (Mid.I) Department, dated 01.09.1988 came to be issued. That G.O. took note of the position that in the interests of general industrial development, the Government had sanctioned a scheme of Interest Free Sales Tax Loan for an initial period with a certain ceiling and that scheme was being modified to one of tax deferral. Hence, they preferred that the special benefit of purchase tax subsidy also be modified to one of deferral of purchase tax in order to bring about uniformity in the type of assistance extended to industrial units.

25. G.O.Ms.No.989 dated 01.09.1988 reads as follows:

*GOVERNMENT OF TAMILNADU
ABSTRACT*

*Industries - Sugar - New Sugar Factories - Relief from
Purchase Tax Subsidy - Orders modified.*

INDUSTRIES (MID.I) DEPARTMENT

G.O.Ms.989,

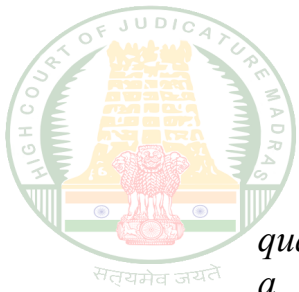
*Date : 1-9-1988
(Avani-16th Vibhavan-
2018, Thiruvallurvarandu)*

Read the following:

- 1. G.O.Ms.No.1294, Industries dated 24.10.75*
- 2. G.O.Ms.No.1497, Industries dated 26.12.84*
- 3. [G.O.Ms.No. 268](#), Industries dated 16.4.87.*

ORDER

1. In the G.O.first read above the Government sanctioned the grant of reliefs to the new sugar factories in co-operative and public sector in the form of annual subsidy equivalent to the



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quantum of purchase tax on cane due from the sugar factories for a period of five years from the date of their going into production. The above scheme had also been extended to the new sugar mills in private sectors in the G.O.'s and 2nd and 3rd read above. The Government have reviewed the existing scheme of grant of purchase tax subsidy to new sugar mills in the context of new sugar mills which have been licensed in the current plan period and which will be coming up both in the Co-operative and in the private sectors in the next two years. For general Industrial Development, the Government have sanctioned a Scheme of Interest Free Sales Tax Loan for an initial period with certain ceilings of loans - both annual and for the entire period of assistance. Such a scheme is being modified to one of tax deferral as announced by the Governor in the recent package of measures to give a boost to industrial development. In the case of sugar mills so far subsidies have been given instead of Interest Free Sales Tax Loan, The Government have carefully re-examined the above scheme and have decided that to bring about unity in the type of assistance given to Industrial Units, the Purchase tax subsidy scheme be modified to one of deferral of Purchase Tax.

2. In a partial modification of the orders issued in the G.O.'s read above the Government direct that the purchase tax payable by newly established sugar mills be deferred for a period of 4 years, subject to modifications as announced from time to time, from the date of commencement of production, subject to the following ceiling.

Ceilings:

Capacity of the Mills / Ceiling for a Year / Ceiling for 4 Years.

(Rs.in lakhs)		
1250/1500 TCD	70.00	240.00
2500 TCD	125.00	440.00

The above ceilings will however be restricted to the purchase tax leviable for the cane actually drawn from the reserved areas, The purchase tax deferred for 1st, 2nd, 3rd and 4th year will be collected without interest in the 5th, 6th 7th and



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8th year respectively. The above assistance of purchase tax deferral is also subject to the condition that it will not be applicable in a year if a mill declares dividend during the year and the deferment will be restricted within the period of 4 years from the date of commencement of production to only those years in which dividend is not declared. No subsidy will be granted hereafter to any new sugar mill.

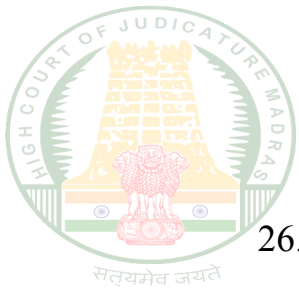
3. In the case of mills already established and which have been granted purchase tax subsidy under G.O.'s read above, while the scheme of subsidy will continue and the condition relating to dividend will not apply, the ceilings be as follows:"

Capacity of the Mills/ Ceiling for a Year/ Ceiling for 5Years		
(Rs.in lakhs)		
1250/1500 TCD	70.00	300.00
2500 TCD	125.00	550.00

The above ceilings will be further restricted to the purchase tax leviable for the cane actually drawn from the reserved areas. If subsidy has been disbursed for one or more years, the subsidy for the subsequent years upto the limit of 5 years will be disbursed annually with reference to the ceiling for a year as fixed above but such that the 5 years' ceiling is not exceeded. In case the mills have already been disbursed subsidy in excess of the 5 years ceiling indicated above, no further disbursement will be made. However there will not be any recovery of such excess.

4. This order Issues with the concurrence of Finance Department Vide its U.O.No.1267/ABS(N)/83 dated 29.8.88.

(BY ORDER OF THE GOVERNOR)
P.SHANKAR
COMMISSIONER AND SECRETARY TO GOVT.



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26. The above G.O. indicates a marked shift in the thinking of the State in the grant of sales tax benefit, from a subsidy to a deferral. On the heels of the above change in stance, came Letter No.51532/MIS.1/88-1 dated 28.12.1988 that reads as follows:

**GOVERNMENT OF TAMILNADU
INDUSTRIES DEPARTMENT**

*Fort St. George,
Madras - 9.*

Letter No.51532/MIS.1/88-1.

Dated : 28.12.88.

From

*Thiru. P.SHANKAR, I.A.S.,
Commissioner and Secretary to Government.*

To

*The Director of Sugar,
474, Anna Salai, Madras - 35.*

Sir,

*Sub : Industries - Sugar - New Sugar Factories - Relief
from Purchase Tax subsidy orders - Modified -
Amendment issued.*

Ref: 1. G.O.Ms.No.989, Industries dated 1.9.88.

2. Your Lr.No.D2/10516/88 dated 30.9.88

*I am directed to state that the following amendment is
issued to the Government Order first cited.*

AMENDMENT

*In the G.O.Ms.No.989/Industries, dated 1.9.88 after paragraph 3,
the following may be inserted as paragraph 4 and the existing
paragraph 4 be renumbered as para 5.*

*"4. This orders issued in paragraph 2 and 3 above shall
come into force with retrospective effect from 1.4.1988".*

*Yours faithfully
K. ChidambaraVadivelu
2/1/89.*



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*For Commissioner and Secretary
to
Government.*

*The Chairman and Managing Director,
Tamil Nadu Sugar Corporation Limited;
474, Anna Salal, Madras - 35.
The Commercial Taxes and Religious Endowment Dept.
Madras -9.
The Finance Department, Madras-9.*

27. This letter was like a missive, in that, the tax deferral scheme that had been introduced on 01.09.1988 was stated to have come into force with retrospective effect, from 01.04.1988 itself, which consequently put into jeopardy the subsidy that the assessee had been enjoying for the period till 30.09.1988. Challenging the aforesaid, the assessee has approached the Tribunal and succeeded, as against which the State is before us.

28. The Tribunal in its order dated 26.11.1997 considered the background in which the scheme of subsidy had been initiated. The petition was allowed by the Tribunal applying the theory of promissory estoppel holding that G.O.Ms.No.989 dated 01.08.1988 will have no application to the case of the petitioner/assessee. That argument is no longer available to them in light of the judgment of the Supreme Court.

29. One of the arguments taken by the assessee is that the impugned notifications have been issued by the Industries Department and not by the



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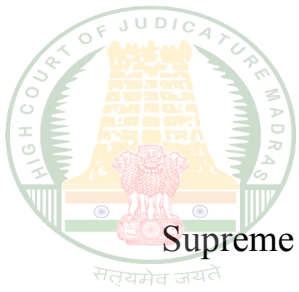
Commissioner, Commercial Taxes Department. While they state that the

Notifications have not been notified/gazetted, the State objects, pointing out that the Government Orders have been gazetted. However, and admittedly, communication dated 28.12.1988 making the levy retrospective, is a letter simplicitor.

30. The State had relied upon the case of *KP Joseph* (supra), that arose from the Mysore High Court and related to re-fixation of the pay of a combatant clerk in the Indian Army whose pay had been re-fixed with retrospective effect by way of an administrative order. The Court holds that while, generally speaking an administrative order would confer no justiciable right, the rule is subject to exceptions.

31. Thus, they argue that though normally the Government cannot supersede statutory rules by administrative instructions, they can proceed to fill gaps in those rules and supplement the rules by way of instructions, so long as those instructions are not inconsistent with the rules framed. Thus, according to the State, the impugned communication supplants the policy already in place and does not militate with the same in any way.

32. We do not agree. There is no merit in the objection of the assessee that the G.O.s have been issued only by the Industries and not the Commercial Taxes Department, as the benefit of that subsidy has been availed by it. The



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Supreme Court in the case of *Pournami Oil Mills*(supra), considered a case

where that appellant had been the beneficiary of two Exemption Notifications.

The State contested the grant of exemption contending that the Notifications had not been issued in exercise of the powers under Section 10 of the Kerala General Sales Tax Act, 1963 which vested power in the Government to grant exemption and reduction in rate of tax.

33. The Court concludes that though in the second order there was no reference to Section 10, it could be inferred that both the Exemption Notifications had been issued under the same provision. They state, *'it is a well settled principle of law that where the authority making an order has power conferred upon it by statute to make an order made by it and an order is made without indicating the provision under which it is made, the order would be deemed to have been made under the provision enabling the making of it'*. Thus, the G.O.s are not vitiated by reason of their issuance by the Industries Department.

34. However, we are of the categoric view that the impugned communication making the withdrawal of the subsidy retrospectively has no sanction in law. The grant of the subsidy is a substantive benefit that has its base in a Government Order issued by the Industries Department. Even if the Government Orders have not been gazetted, this assessee, and several more,



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have had the benefit of the subsidy. While the withdrawal of the subsidy is

itself challenged, we are in no doubt that the method by which it has been retrospectively withdrawn, that too by way of a letter, cannot be accepted.

35. We now come to the argument on legitimate expectation. Learned AAG has argued that the assessee could not have had any legitimate expectation as regards the grant of subsidy or the continued grant thereof. The grant of a tax benefit of the withdrawal thereof, including the mode of withdrawal, is within the domain of the Legislature. In *Madras City Wine Merchants' Association* (supra), paragraph 48 has been cited to say that there are some situations where the principle of legitimate expectation would not stand attracted.

36. In that case, the Court was concerned with the argument of legitimate expectation in the context of a change in policy relating to sale of liquor. Several cases have been taken note of such as *Supreme Court Advocates –on-record Assn. V. Union of India* *Supreme Court Advocates –on-record Assn. V. Union of India*¹⁸, *Kumari Shrilekha Vidyarthi V. State of U.P.*¹⁹, *Council of Civil Service Unions V. Minister for the Civil Service*²⁰(All ER pp.943-44), *Halsbury's Laws of England*²¹, *Union of India V. Hindustan Development*

¹⁸ (1993) 4 SCC 441

¹⁹ (1991) 1 SCC 212

²⁰ (1984) 3 All ER 935

²¹ Vol 1(1), 4th Edn. Para 81 at pages 151-52



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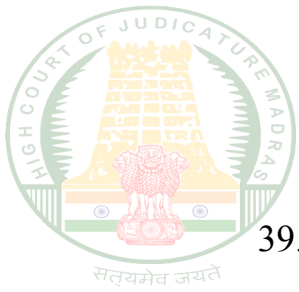
Corpn (SCC pp.540-41 para 29)²², among others, where the Court had taken the view that the consideration of legitimate expectation in the decision making process is a requirement of the rule of non-arbitrariness.

37. Quoting extensively from the judgment in *Hindustan Development Corporation* (supra), the Court states that, '*If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.*²³'

38. Next referring to *Dharampal Satyapal Limited* (supra), the learned Additional Advocate General has reiterated the test of prejudice caused to the aggrieved party. In this case, what came under the scanner was the new industrial policy for the North Eastern region that had been unveiled to stimulate the development of industrial infrastructure in that region. As a result, the region was made a tax free zone for a period of 10 years, extending incentives to those who wanted to establish industries there.

²²(1993) 3 SCC 499

²³(1993) 3 SCC 499



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39. The Notifications granting the benefit had been issued under the provisions of the Central Excise Act, 1944, the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and other enactments, but was withdrawn in respect of some products, being tobacco and tobacco substitutes, including cigarettes, chewing tobacco etc.

40. The withdrawal of the benefit of exemption Notification was challenged on several grounds, including the violation of principles of natural justice. The Court noted that the withdrawal of the benefit was to designated products, such as tobacco, cigarettes, etc., and had been done in pursuance of the judgment of the Supreme Court in the case of *T.C.Tobacco (P) Ltd. V. Union of India*²⁴.

41. The Court thus held that since the withdrawal had its basis in the pronouncement of the Supreme Court that becomes law of the land in terms of Article 141 of the Constitution of India, even if there had been an infraction in the principles of natural justice, the grant of an opportunity would not have changed the matters in any material sense. Hence the exercise of grant of opportunity would be an exercise in futility.

42. The same view was taken in *Escorts Farms Ltd. V. Commr.*²⁵, which reiterated the position that rules of natural justice are necessarily to be followed

²⁴(2005) 7 SCC 725

²⁵ 2004 4 SCC 281



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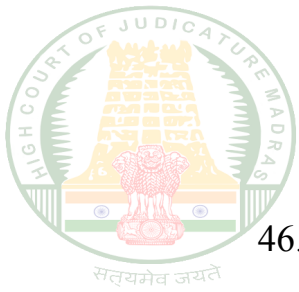
for doing substantial justice. However, if it were to amount to a mere ritual of

hearing without any possibility of change in the decision on merits, then such an opportunity was of no use.

43. Learned AAG has argued that there is limited scope of judicial review in matters relating to economic and fiscal regulatory issues, relying upon the judgement in *Small Scale Industrial Manufactures Association (Registered)* (supra). Three Hon'ble Judges of the Supreme Court cautioned that Judges are not experts in such areas and must exercise restraint in impugning the judgment of experts and their policy decisions, arrived at after pain-staking examination of all parameters involved.

44. Hence, unless the Court has satisfied that there is a rank illegality in the decision itself or if the policy could be faulted on the ground of malafides, arbitrariness etc., '*wisdom and feasibility of economic policy are not amenable to judicial review*'.

45. The judgments cited have been carefully studied as have the propositions laid down therein. However, what remains to be seen is as to whether those propositions are applicable to the case on hand. In the present case, the subsidy granted has been withdrawn at the very end of the five year period in preference to the issuance of a deferral scheme, and that too retrospectively.



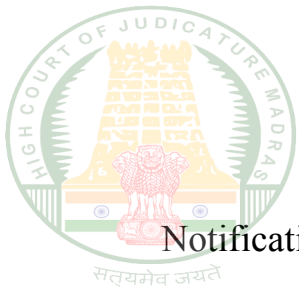
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46. Undoubtedly, the State can adopt different measures for incentivising the tax-paying public and in this case, the State has extended a scheme of subsidy. The assessee has also designed its business to suit the incentive offered. Those measures however must not militate against the tax payers who would legitimately expect that there would be no change in the circumstances governing their business or the attendant conditions for the duration as originally assured by the State.

47. The subsidy had originally been granted for two years on 30.1.1984, extended to five years on 26.12.1984, had been cut short even at the end of the fourth year on 01.09.1988 and then, short-circuited by four months, vide communication dated 28.12.1988.

48. The question to be answered is as to whether the incentive granted may be abruptly terminated without any semblance of justification for such stoppage. If that were to be acceded to, there would be no certainty in the conduct of business as one could never be sure about the continuance of incentives granted.

49. In *Brahmputra Metallica Limited* (supra), the issue that arose was whether that assessee was entitled to claim deduction of 50% of the amount assessed towards electricity duty in certain financial years. Such entitlement was claimed based on the 2012 Industrial Policy as well as the statutory



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Notification issued under the Bihar Electricity Duty Act, 1948. Under the

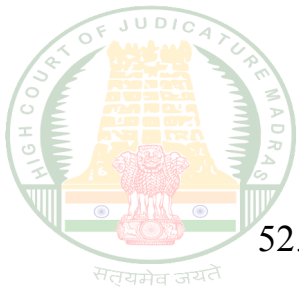
WEB Industrial Policy 2012, Clause 32.10 provided as under:-

Clause 32.10 provided an exemption from the payment of 50 per cent of the electricity duty for a period of five years, for captive power plants established for self-consumption or captive use:

“32.10 Incentive for captive power plant New or existing industrial units setting up captive power plant shall be exempted from the payment of 50% of electricity duty for a period of five years for self - consumption or captive use (i.e. in respect of power being used by the plant) from the date of its commissioning”.

50. The relief was eventually granted under Notification dated 08.01.2015 only after a writ petition had been filed by another assessee. However, the relief was made effective only from the date on which it was issued i.e., prospectively. Hence, and seeing as under the Industrial Policy 2012, an assessee was granted exemption for a period of five years, the argument before the Supreme Court was that the Exemption Notification ought not to have been prospective as it curtailed the benefit by three years and ought to have been retrospective, so that assessees could have availed the benefit of all five years.

51. The High Court has accepted the assessee's case, specifically noting that the Exemption Notification had been issued only in 2015 when the policy had been announced in 2012. They concluded that it is nothing but the lethargic approach of the State that was responsible for the delay.



52. Defending the order of the High Court before the Supreme Court on the principle of legitimate expectation, the judgment in *National Buildings Construction Corporation vs S. Raghunathan*²⁶ rendered by a three Judge Bench of the Supreme Court was cited. The court noted the historical context for the doctrine of legitimate expectation as being grounded in the field of administrative law. Paragraph 18 is relevant and is extracted below:-

“18. The doctrine of “legitimate expectation” has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of “legitimate expectation” was evolved which has today become a source of substantive as well as procedural rights. But claims based on “legitimate expectation” have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

53. The Bench in *Brahmputra Metallics Limited* (supra), noted that the above observation was made while understanding the doctrine under English law. A line of cases was thereafter discussed, making a distinction between the doctrines of legitimate expectation on the one hand, and promissory estoppel on the other, serving to emphasise the differences between the two doctrines and to ensure that one does not conflate with the other.

²⁶(1998) 7 SCC 66



54. Referring to the judgment in *Monnet Ispat and Energy Ltd. vs Union of India*²⁷, in particular to the opinion of H.L.Gokhale.,J they refer to the following paragraphs:

“Promissory Estoppel and Legitimate Expectations

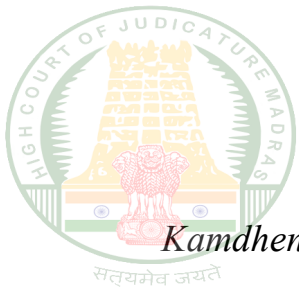
289. *As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.*

290.....*In any case, in the absence of any promise, the Appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the Appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest.”*

55. The concept was refined even further in *Union of India v P.K.Choudhary*²⁸, where they say that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can only be used where there is a denial of legitimate expectation leading to violation of Article 14 of the Constitution. The juxtaposition of this relationship between the doctrine of legitimate expectation and Article 14 was discussed in *Food Corpn. Of India V.*

²⁷(2012) 11 SCC 1

²⁸(2016) 4 SCC 236



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*Kamdhenu Cattle Feed Industries*²⁹, and one of the fulcrums on which the judgment rested was the ground of arbitrariness.

56. Hence the Bench said that a mere expectation, albeit a reasonable or a legitimate one, would not be a distinct enforceable right, but failure to consider and give due weight to such expectation, may render a decision of an authority arbitrary. This is how, they say, the requirement of due consideration of legitimate expectation forms part of the principle of non-arbitrariness which is a necessary concomitant of the rule of law.

57. This has been carried forward in *Noida Entrepreneurs Assn. V. Noida*³⁰, where the Court says public authorities cannot play fast and loose with the powers vested in them and go on to say the three tests that have been set forth are those of reasonableness, consistency and non-arbitrariness. (See: *State of Bihar V. Shyama Nandan Mishra*³¹ and *SEBI v. Sunil Krishna Khaitan*³²).

58. Applying those tests to that case, the Court notes that the State of Jharkhand had made no attempt whatsoever to disclose any reason or justification for not giving effect to the Exemption Notification in time. In strong words the Court says ‘*Both the accountability of the State and the solemn obligation which it undertook in terms of the policy document militate against accepting such a notion of the state power. The State must discard the*

²⁹(1993) 1 SCC 71

³⁰(2011) 6 SCC 508

³¹ (2022) 17 SCC 420

³²(2023)2 SCC 643



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colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the State will act according to what it puts forth in the public realm. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest.'

59. While considering the ambit of State powers, they refer to the observations of the Court in *National Building Constructions Corpn. (supra)* at paragraph 18, extracted below, ultimately holding that the course of action by the State of Jharkhand was arbitrary and violative of Article 14.

"18.....The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice."

60. A Constitution Bench of the Supreme Court in the case of *Sivanandan C.T. and Another (supra)*, a recent judgment rendered in 2024 on the aspect of legitimate expectation, reiterates the march of law on this aspect and useful reference may be made to paragraphs 28 and 29 extracted below:-

'28.In R. V. North and East Devon Health Authority, ex p Coughlan, the Court of Appeal laid down the test of abuse of power to determine whether a public authority can resile from a prima facie legitimate expectation. It was held that frustration of a substantive legitimate expectation by public authorities would be unfair and amount to abuse of power. Importantly, it was held



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that abuse of power constitutes a ground for the courts to exercise judicial review of executive actions.

29. In R. (Nadarajah) v. Secy. of State for the Home Deptt. the Court of Appeal added another facet to the doctrine of substantive legitimate expectation by grounding it in the principles of good administration. Importantly, the Court identified that consistency and probity are tenets of a good administration. Laws, L.J. explained the principles underlying the doctrine of legitimate expectation in the following terms:

“68. The search for principle surely starts with the theme that is current through the legitimate expectation cases. It may be expressed thus. Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honoured unless there is good reason not to do so. What is the principle behind this proposition? It is not far to seek. It is said to be grounded in fairness, and no doubt in general terms that is so. I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public.”
(emphasis supplied)

Moreover, Laws, L.J. held that a public authority can resile from its promise or future conduct if its decision: (i) is in pursuance of a legal duty; or (ii) is a proportionate response having regard to the legitimate aim pursued by the public body in the public interest.’

61. The Court made it clear that the discussions and conclusions were not unfettered but rested on a careful perusal of the mode, manner, purpose and object of the actions on the State. They clarify as follows at paragraph 38:-

‘38. The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy



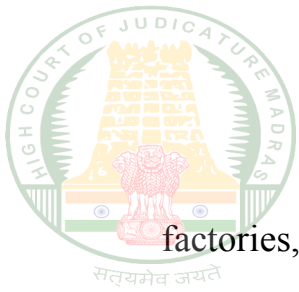
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or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.'

62. At paragraph 40 they say that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the Court that its decision was in public interest. Hence, it all boils down to whether this test would apply to this case.

63. The recommendation for purchase tax subsidy emanated from the Sampath Committee Report dated 05.04.1974. That Committee had been constituted to examine matters relating to economic viability of new sugar factories. Under the caption 'incentives' at clause 21 of that Report, the Committee considers the deficits liable to be suffered in the establishment and operation of new sugar factories and hence recommended suitable incentives.

64. The incentives were in the nature of capital subsidy, allowing a larger percentage of free sale sugar, high level sugar price in the case of new sugar



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factories, allowing a rebate on excise duty and remission of purchase tax

imposed by different State Governments. The last recommendation reads thus:

'No.F.27(6)/74.ST/
Government of India
Ministry of Agriculture
(Department of Food)
Directorate of Sugar and Vanaspati
'Krishi Bhavan'

New Delhi, the 5th April 1974

To

*Sub: Constitution of a Committee to examine the matters
relating to economic viability of new sugar factories*

.....

28.0 Remission of Purchase Tax: Purchase Tax on sugarcane is levied by different state Governments at different rates. In the initial stages of operation a new sugar factories established at a very high block cost, the factories would incur cash losses as discussed above. In actual practice, some of the State Governments, in the past allowed either complete exemption from payment of purchase tax or concession in this regard. The Committee, therefore, suggests, that the different state Governments may be moved to exempt all new sugar factories from payment of purchase tax on sugarcane upto the same level of sugar production for which the excise duty rebate is allowed by the Central Government.

The Committee further suggests that this issue shall be taken up independently by the Industrial Finance Corporation with the State Governments concerned recommending remission of Purchase Tax in respect of new sugar factories.'

65. As a consequence, G.O.Ms.No.1294 came to be issued providing for purchase tax subsidy in the following terms:

G.O.Ms.No.1294, Industries Department Dated 24.10.75.

ABSTRACT



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Industries – Sugar – New Sugar Factories in Cooperative and Public Sector – Relief from Purchase Tax – subsidy – Ordered.

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ORDER:

1) Two new sugar Factories Viz., Vellore Cooperative Sugar Mills and Tirupattur Cooperative Sugar Mills are being set up in the Cooperative sector. Under the Tamil Nadu Sugar Corporation one new sugar factory is being put up in the Public Sector at Thanjavur. It has been observed that these projects are likely to cost over Rs.6 Crores each.

2) The Government of India had constituted a committee to go into the question of viability of sugar factories of 1,250 TCD established at such high cost. That committee had observed that sugar factories of 1,250 TCD. Established at such high cost would lose heavily unless adequate relief as recommended by them, and granted by the Central and State Governments. Among other recommendations for consideration, the committee had recommended remission of purchase tax on cane by the State Government.

3) Government have considered the recommendation of the above committee in the light of the projected profitability of the new sugar factories presently being set up in the cooperative and public sectors. After due consideration, they have decided in favour of grant of relief to these new sugar factories yet to be commissioned in the cooperative and public sectors. It has been decided that this relief will be in the form of an annual subsidy equivalent to the quantum of purchase tax on cane due from those sugar factories for a period of five years from the date of their going into production.

4) This order issues with the concurrence of the Finance Department – Vide its U.O.No.2302/FS/P/75-1 Dated 22.9.75.

(BY ORDER OF THE GOVERNOR)

A.PADMANABHAN

Secretary to Government

66. The Government Orders issued in 1984 specific to the assessee, and extending purchase tax subsidy is the result of a detailed study on the subject

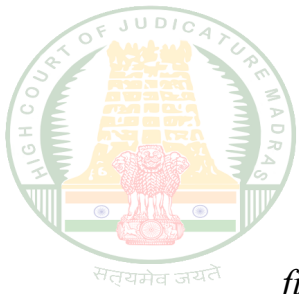


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after a Committee constituted for the subject. The subsidy was originally granted for 2 years and then extended to 5 years. The impression created was that the subsidy would play out the entire period for which it had been issued and there was absolutely no inkling that it would be abruptly terminated/withdrawn.

67. The test to determine the legality of such withdrawal as per the test in the case of C.T.Sivanandan's case is as to whether any justification or explanation has been given for the withdrawal. Thus, even granting that the State could withdraw an incentive, abruptly and without provocation, such withdrawal must be justified and with a proper explanation. Let us test that position now. In the additional supporting affidavit filed by the State, they state at para 5 to 8 as follows:-

'5.It is submitted that M/s.Ponni Sugars & Chemicals Limited, made a representation dated 6.8.1984 seeking purchase tax subsidy and the Government, even though initially rejected their request subsequently conceded to their request for a limited period of two years since as per the statements furnished by the first respondent company, the company was shown to be incurring loss in the first two years and from the third year onwards, it was expected to make a profit of Rs.198.20 lakhs per annum. Accordingly by G.O.Ms.No.1414 Industries Department dated 30.11.1984 annual subsidy equivalent to the quantum of purchase tax on sugar cane was granted for two years. Subsequently the Government by an order in G.O.Ms.No.1497 Industries Department dated 26.12.1984 extended the subsidy for five years. The first respondent company commenced commercial production on 1.12.1984.



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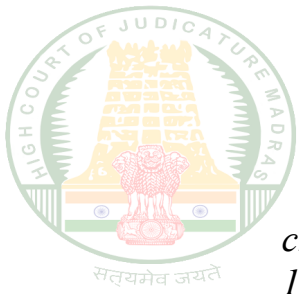
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6. It is submitted that while considering the request of the first respondent company for purchase tax subsidy, the Government estimated the subsidy payable to a 1250 Tonnes Crushed per day (TCD) capacity mill as follows:-

Year	Proposed subsidy (approximate) (Rupees in lakhs)
I year	22.23
II year	33.34
III year	44.45
IV year	50.00
V year	50.00

Total	200.02

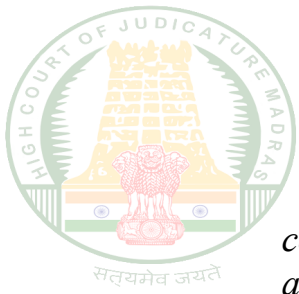
However, the M/s. Bannari Amman Sugars Limited, (hereinafter referred to as BS) which commenced its commercial production on 22.1.1986 claimed a subsidy of Rs.22,09,554/- for the assessment year 1985-86 (for 68 days) and Rs.1,28,10,680/- for the assessment year 1986-87. As per the scheme, the Director of Sugar to whom allocations were made by the Government for disbursing subsidy, had to make payment to the commercial Taxes Department towards the purchase tax payable by the sugar mills who were granted the benefit of subsidy. In the year 1987, the Director of Sugar adjusted the purchase tax dues of BS to an extent of Rs.1.5 crores out of the budgetary provisions made for other mills and in his letter dated 8.6.1987 addressed to the Commissioner and Secretary to Government, Industries Department, sought for additional allotment so as to enable him to disburse the subsidy due for other mills. The Government, astonished by the enormous amount claimed by BS sought for certain clarifications from the Director of Sugar. As per the report of the Director of Sugar dated 23.7.1987 Bannari Amman Sugars Limited purchased sugar cane worth Rs.1,66,75,878.07 upto 31.3.1986 i.e. for 68 days for which the purchase tax worked out to Rs.22,09,554/-. During the year 1986-87 i.e. upto 31.3.1987 BS purchased sugar cane for about Rs.9,48,93,922.79 for which the purchase tax liability worked out to Rs.1,28,10,680/-. It was also pointed out that Bannari Amman Sugars Limited started its production on 22.1.1986 and they



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crushed 68,000 tonnes of sugar cane upto 31.3.86 and during 1986-87 a quantity of 442389.185 MTs of sugar cane was crushed by it. The Director of Sugar further pointed out that if 1250 TCD capacity mill crushes sugar cane for 172 days (optimum capacity) in a year it may crush about 2,15,000 MTs of cane and if the mill pays a price of Rs.240/- per MT as in the case of Bannari Amman Sugars Limited the total payment will come to Rs.516 lakhs and the purchase tax at 13.5% will come to Rs.69.66 lakhs, but the first respondent company had surpassed all levels. The said report was submitted in reply to the contention of the Industries Department that the subsidy to be given in the first year 1250 TCD mill was Rs.22.23 lakhs only. It was further pointed out that according to the existing Government order there was no limit upto which the subsidy could be claimed. Under these circumstances, the Government thought it fit to fix ceilings on purchase tax subsidies in public interest.

7.It is submitted that the Government re-examined the claim of purchase tax subsidy and felt that there was no need to extend the subsidy to sugar mills in future when they were in a position to make substantial profit even after payment of purchase tax. After a thorough discussion on the nature of subsidy granted and as to how the benefits were utilised by the mills the Government came to the conclusion that there was no justification for extending unlimited benefit to the sugar mills since they were making profits. While concluding that the continuation of unlimited subsidy on profit making sugar mills would an “undue benefit” the Government also took into consideration that the benefit of subsidy was extended to Bannari Amman Sugars Limited on the ground that if sufficient incentives were not given by the Government, the Bannari Amman Sugars Limited would not be able to pay the loan to the financial institutions and develop Bannari Amman Sugars Limited on sound lines. It was suggested after discussion with the Advisor to the Governor, that instead of withdrawing the concession already announced it would be enough if the ceiling already decided upon in respect of the subsidy were enforced. It was proposed that in the case of 1250/1500 TCD mills the annual ceiling would be Rs.70 lakhs and the 5 years



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ceiling would be Rs.3 crores and in the case of 2500 TCD mills, annual ceiling would be Rs.1.25 crores and the five year ceiling would be Rs.6 crores. In the case of new sugar mills, instead of purchase tax subsidy interest free purchase tax deferral for a period of four years subject to ceiling was proposed. Thus keeping in mind the revenue loss and public interest as well as the interest of the sugar mills which were availing purchase tax subsidy, the Government restricted the purchase tax subsidy to Rs.70 lakhs per year and in the aggregate Rs.300 lakhs through the impugned Government Order.

8.It is submitted that the allegation in para 26 and 27 of the additional counter affidavit filed on behalf of the first respondent-company in respect of the supporting affidavit of the first petitioner that the first respondent irretrievably altered its position based on the promise of the first petitioner is not correct. The further allegation in para 30 and 34 of the counter affidavit that higher crushing was undertaken by the company with a view to reduce the scarcity of sugar resulting in additional expenditure to the sugar mill by way of transport charges, service charges, additional labour cost acting on the promise in G.O.Ms.No.1414 Industries Department dated 30.11.1984 thereby irretrievably altering its position is not correct. The further allegation in para 35 that drawing of large part of cane from such long distance with attendant high cost was rendered commercially feasible only because of the availability of incentive benefits is not correct. It is submitted that the first respondent company procured large quantity of cane from various places other than the reserved area with a view to keep their operation and to earn more profit. The extensive procurement of cane only resulted in the first respondent company earning handsome profits. The first respondent-company's annual report revealed that for the sugar year that ended on 30.9.1985, the company earned a net profit of Rs.2,88,41,593/- and even declared dividend for its shareholders. In the year that ended on 30.9.1986, the company earned a profit of Rs.3,59,18,809/-. In the year that ended on 30.9.1987, the company earned a profit of Rs.1,75,09,915/-. In the financial year that ended on 31.3.1989 the first respondent company's net profit was Rs.2,27,77,932/-. Thus the extensive



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procurement and crushing of sugar cane resulted in enormous profits and for all the years and declared dividends to its shareholders. While the first respondent company was in a position to earn handsome profits there was no justification for extending unlimited subsidy for full five years at the expenses of the public exchequer.'

68. We find absolutely no justification in the withdrawal , as the State has not put forth any legitimate explanation for the same, save stating that there would be 'revenue loss'. The withdrawal has been peremptory and there has been no warning that the subsidy granted would be terminated. There are no factors that would justify such an abrupt and unprovoked move on the part of the State. Unpredictability in financial regime is a red flag on the conduct of business, both domestically and internationally, and hence, such an approach of the State cannot be countenanced or accepted. While the State is fully entitled to frame policy for its initiatives, and as a consequence, terminate, modify, rescind or reverse such policy, there be placed in public domain proper justification for such amendment, rescinding, reversal or termination in the absence of which, abrupt termination of the same is not proper.

69. The assessee has filed a statement setting out the details of purchase tax subsidy, which is as follows:

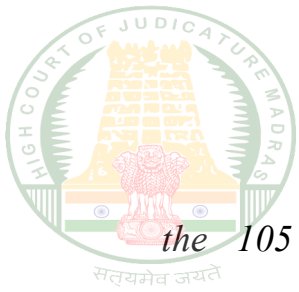
STATEMENT OF PURCHASE TAX SUBSIDY DUE

<i>Details</i>	<i>1983-84</i>	<i>84-85</i>	<i>85-86</i>	<i>86-87</i>	<i>87-88</i>	<i>1.4.88 to 31.8.88</i>	<i>1.9.88 to 26.1.89</i>	<i>Total</i>
<i>Sugarcane</i>	<i>30481</i>	<i>115099</i>	<i>323292</i>	<i>357893</i>	<i>345780</i>	<i>139649</i>	<i>178910</i>	<i>1491104</i>



<i>Purchased (T)</i>								
<i>Purchase Tax Originally paid/adjusted</i>	7.27	32.13	94.36	118.55	113.12	43.68	68.75	477.86
<i>Addl. Purchase Tax Payment on subsidies</i>	-	-	2.86	-	2.52	0.20	2.09	7.67
<i>Addl. Purchase Tax Payment on Transport Charges</i>	-	-	-	-	16.68	6.98	8.99	32.65
<i>Total Subsidy due</i>	7.27	32.13	97.22	118.55	132.32	50.86	79.83	518.18
<i>Subsidy received /adjusted</i>	7.27	32.13	97.22	118.5	113.12	-	-	368.29
<i>Balance subsidy due</i>	-	-	-	-	19.20	50.86	89.83	149.89

70. In light of the discussion above, we conclude that the assessee is entitled to the full benefit of subsidy as set out in the Government Orders issued in 1984. Incidentally, post 1990, the State has revived the subsidy scheme partially in preference to continuing solely the deferral scheme. Two such schemes are *G.O.Ms.No.500 Dated: 14.5.1990 issued by the INDUSTRIES (MIG-II) DEPARTMENT* which states that *the Government directed that 30 taluks, from among*



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the 105 industrially backward taluks, be declared as industrially most backward taluks, holding them eligible, apart from other existing concessions, for full waiver of sales tax dues for a period of five years upto a ceiling of the total investment made in fixed assets.

71. Additionally, G.O.Ms.No.43 dated 13.12.1992 also introduces an Incentive Scheme for large industries by way of State capital subsidy and S.T.waiver/deferral and several revised concessions have been issued by the Industries (MIG-II) Department on 13.12.1992.

72. This writ petition is dismissed with no order as to costs.

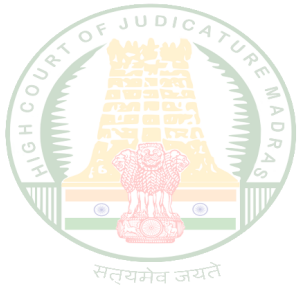
[A.S.M., J] [C.K., J]

26.08.2025

Index: Yes
Speaking Order
Neutral Citation: Yes
Sli/sl

To

The Tamil Nadu Taxation Special Tribunal,
Rajaji Salai,
Chennai-600 001.



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DR. ANITA SUMANTH.,J.
and
C.KUMARAPPAN.,J.

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