

(1975) 05 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1588 of 1972

Amrit Vanaspati Company Limited and another	APPELLANT
Vs	
The State of Punjab and another	RESPONDENT

Date of Decision : 09-05-1975

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (1975) 05 P&H CK 0018

Hon'ble Judges : Muni Lal Verma, J

Bench : Single Bench

Advocate : H.L. Sibal, Mr. L.M. Suri, Mr. U.K. Khaitan and Mr. N.R. Khaitan, for the Appellant; J.S. Wasu, Advocate-General, Punjab and Mr. S.K. Sayal, for the Respondent

Final Decision : Allowed

Judgement

Muni Lal Verma, J.—The petitioner No. 1 (hereinafter referred to as the petitioner) is an existing Company within the meaning of the Companies Act, 1956, It had been running a factory for manufacturing vegetable products, including vanaspati, at Gaziabad (U.P.). In month of December, 1966, with a view to develop large-scale industries in the State, the State of Punjab (Respondent 1) promulgated and published a new policy for industrial development (copy Annexure A hereinafter referred to as the policy). It (the policy) declared various concession and incentives with a view to encourage the installation of new industries and for expansion of the existing ones. Besides several concessions, the policy declared to the public that purchase and sales tax, including inter-State sales would be refunded for a period of 5 years to the new and expanding industries. Attracted by the concessions and incentives offered by the policy, the petitioner addressed a letter on June 1, 1968, to the Chief Minister, Punjab, indicating that. It was interested in setting up vanaspati plant in the vicinity or Ludhiana, and requested for information respecting concessions and facilities which would be allowed to it. The said letter was replied to by the Director of

Industries, Punjab (Respondent 2). A copy of the policy was furnished with the said reply, indicating to the petitioner that the concessions contained therein, including exemption from sales tax and inter-State sales tax for five years would be granted to it besides all other reasonable facilities. Thereafter, there had been exchange of letters between the petitioner and Respondent 2 and there had been meetings between the representative of the petitioner and the Secretary of Industries of Punjab. At all relevant times as well as in the letters the petitioner was assured that concessions and incentives declared by the policy would be available to it- The petitioner was, however, persuaded to set up the vanaspati plant at Rajpura. Therefore, the petitioner had purchased 22 acres of land by the month of January, 1969. The said land was later on included within the limits of focal point by respondent No. 1 at Rajpura. The petitioner addressed letter (copy Annexure D) on October 25, 1968, to the Secretary of Industries, Punjab, that it was on the assurances made to it in the matter of grant of concessions and incentives, referred to in the policy, that it had agreed to set up the vanaspati plant. It had further addressed other letters and telegram to the Secretary of Industries for obtaining confirmation of the concessions allowed to it. It received letter (Annexure H) dated June 16, 1959, from the Director of Industries, Punjab, confirming that concessions and incentives admissible under the policy would be available to it, though it was added that it (the petitioner) would set up the vanaspati plant on 12 acres of land out of 22 acres which had been purchased by it. In the month of March, 1969, the Governor of Punjab, while laying the foundation stone of the factory, too emphasised the affording of the concessions and incentives contained in the policy. By investing huge amount, i.e. more than rupees one crore, the petitioner constructed and set up the factory on area of 12 acres of land in the focal point, Rajpura and it was commissioned on December 18, 1969. The said factory commenced production on and from January 10, 1970. During the period from January, 1970 to March, 1970, the petitioner manufactured in the factory various quantities of vanaspati and sold the same in the State of Punjab and it had to pay sales tax to the tune of Rs. 8.85.139.00 (hereinafter called the sales tax) under the provisions of the Punjab Central Sales Tax Act, 1948, on the sales of vanaspati made during the said period of three months. The petitioner had purchased various raw materials for the use and consumption in the factory during the said period and on the said purchases it had to pay inter-State sales tax to the tune of Rs. 35,141.32 under the Central Sales Tax Act, 1956 (hereinafter referred to as inter State Sales tax). Since its accordance with the assurances given and the concessions afforded by the policy the petitioner was entitled to refund of the aforesaid amounts of sales tax, it applied to the respondents on July 16, 1971, for refund of the same and it also applied to the respondents on April 6, 1972, for refund of the amount of inter-State Sales tax. As required by the Rules, the necessary applications for refund of the said amounts had been submitted by the petitioner to the District Excise and Taxation Officer, Patiala. The District Excise and Taxation Officer had forwarded the application submitted by the petitioner for refund of the amount of sales tax to the Director of Industries, but the aforesaid amounts of sales tax and

inter-State sales tax had not been refunded to the petitioner. Thereafter the petitioner had been addressing letters and submitting representations to the respondents to expedite the refund of the aforesaid amounts, but nothing fruitful came out of it. So, complaining that the respondents had failed to refund the aforesaid amounts without any cause or reason, the petitioner came to this Court through this writ petition for a declaration that the respondents were bound to abide by the representation and assurances contained in the policy and to grant the concessions contained therein and for a writ of mandamus or any other appropriate order or direction in the like nature commanding the respondents to refund the aforesaid amounts of Rs. 8,85,139.00 and Rs. 35,141.32.

2. Shri L.R. Khosla, Officer on Special Duty, Director of Industries, Punjab, filed affidavit in opposition by way of written statement. The broad facts averred in the writ petition were admitted. It was pleaded, *inter alia*, that on May 14, 1969, the policy was revised by the State of Punjab and it was the revised policy that governed the case and according to the said revised policy the petitioner was entitled to the refund of sales tax on the direct sales of the vanaspati to the consumers and, therefore, its right to claim refund of the sales tax was contested on the ground that the relevant sales of the vanaspati had not been made direct to the consumers but had been made to the registered dealers and depot-holders and other shopkeepers. The right of the petitioner to claim refund of the inter State sales tax was not opposed. It was, however, pleaded that the claim of the petitioner for the same had not been received through the channel through which it was to be submitted and the claim for refund of the sales tax had not been duly verified by the District Excise and Taxation Officer, Patiala, as required by the Rules. SO, it was stated on behalf of the respondents that the petitioner was not entitled to claim any relief.

3. The material facts are not very much in dispute. There is no opposition to the petitioner's claim for the refund of inter-State sales tax. The explanation given for its not having been refunded so far, was that the claim of the petitioner in that respect had not been received by the respondents after due verification from officers concerned. The principal point in controversy between the parties is as to whether the petitioner is entitled to refund of the sales tax which had been paid by ii on the sales of vanaspati during the months of January, February and March. 1970. The decision of the said matter mainly depends on the answer to the question as to whether the petitioner's case is governed by the policy, (copy annexure "A") which was promulgated and published by respondent No. 1 in the month of December, 1966, or by the revised policy (copy annexures "R1") appended to the written statement) allegedly sanctioned by respondent No. 1 on May 14, 1969. Mr. H.L. Sibal the Learned Counsel for the petitioner, relying on the principle of promissory estoppel, argued that it was on the representation made and assurance given by respondent No. 1 to the petitioner that the concessions including the refund of sales tax and inter-State sales tax for five years, stated in the policy, that it (the petitioner) had ventured to come to Rajpura and purchased land, material and machinery and set up the vanaspati

plant, therefore, respondent No. 1 was bound to refund both the amounts which had been paid by it as sales tax and inter-State sales tax which had been assessed on June 2, 1971. Promissory estoppel, as I understand, is recent development. It is something beyond the ordinary rule of estoppel which is contained in section 115, Evidence Act. It is a new estoppel which affects legal relations. This new estoppel applies to representations as to future. The assurances given may not amount to contract binding in law but these are assurances as to future and are intended to be acted on and when the same are acted on by one of the parties, it must be held binding on the other party especially when the said other party is the Government who had made the same. In this view, I am guided by *The Union of India and others v, Messrs Anglo Afghan Agencies etc.* AIR 1968 S.C. 718 *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd., and Union of India (UOI) Vs. K.P. Joseph and Others*,

In *Messrs Anglo Afghan Agencies*" case (supra) it was on the basis of the scheme called the Export Promotion Scheme published by the Textile Commissioner on October 10, 1962, and extended on January 1, 1963, to the export of woollen goods to Afghanistan, that Messrs Anglo Afghan Agencies had claimed Import Entitlement Certificate for the f.o.b. value of woollen goods exported to Afghanistan. The Textile Commissioner imposed certain cut while granting the said Certificate and the representation made by Messrs Anglo Afghan Agencies to the Central Government had failed. On a writ petition moved by them (Messrs Anglo Afghan Agencies) under Articles 226 of the Constitution, this Court set aside the aforesaid orders of the Textile Commissioner and the Central Government imposing cut on the Import Entitlement Certificate claimed by the said Agencies and they, viz., the Textile Commissioner and the Central Government were directed to issue Import Entitlement Certificate for the full f.o.b. value of the goods exported, On appeal, the judgment of this Court was upheld and it was observed by the Supreme Court that the claim of Messrs Anglo Afghan Agencies was appropriately founded upon the equity which arose in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by them acting upon that representation under the belief that the Government would carry out the representation made by it has been further observed there that even though the case may not fall within the terms of section 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution. The principle laid down in the said judgment is that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice relying on the representation as to its future conduct made by the Government. The said principle was approved in *Century Spinning and Manufacturing Company Limited*"s case (supra), and it was held that a public

body was not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen had altered his position to his prejudice. The aforesaid principle was again approved in *Turner Morrison and Company Limited's* case (supra), and it has been observed there that "Estoppel" is a rule of equity and that rule has gained new dimensions in recent years. A new class of estoppel i.e. promissory estoppel has come to be recognised by the Courts in this country as well as in England. Where one party has, by his words or conduct, made to the other a promise or assurance which was intended to effect the legal relation between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as of no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word. The observations made in *Messers Anglo Afghan Agencies* case (supra) that "Granting that it (the scheme) is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities" were approved in *K.P. Joseph's* case (supra), and it was observed that "to say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties."

4. When the circumstances of the instant case are studied and viewed in the light of observations made by the Supreme Court in the aforesaid four judgments, I feel inclined to agree with the Learned Counsel for the petitioner that it is a case where respondent No. 1 should honour the representations made and the assurances given by it that sales tax would be refunded to the petitioner for a period of five years, on the principle of promissory estoppel. The policy (annexure "A") promulgated and published by respondent No. 1 in December, 1966, declared certain concessions and incentives One of the said concessions related to refund of taxes and read as under :

Purchase and Sales Tax including inter-State sales tax will be refunded for a period of five years to new and expanding units.

It is pertinent to note that the words "Sales Tax" mentioned there were unqualified. The said concession did not provide any limitation in the sense that the sales tax would be refunded only on sales of vanaspati made directly to the consumers and not on the sales made to registered dealers, depot-holders and shop-keepers. The concessions and incentive declared by the said policy attracted the petitioner to set up the vanaspati plant at Rajpura. It wrote letter (copy annexure "B"), to the Chief Minister, Punjab, for obtaining information as to what facilities and concessions would be available to it for setting up vanaspati manufacturing unit. The said letter was replied to by the Director of Industries, Punjab (copy annexure "C"). A copy of the policy (annexure "A") was enclosed in

that letter indicating in its paragraph 3 that concessions and facilities available under the said policy would be given. It was specifically mentioned in (i) of paragraph 3 of that letter (annexure "C") that exemption from sales tax, purchase tax, and interstate sales tax would be allowed for five years. Here again, the words "Sales Tax" were unqualified and were not restricted to give an idea that sales tax would be refundable only on the sales of vanaspati made directly to the consumers. So, the assurance given in the said letter (annexure "C") is also to the effect that sales tax would be refundable for five years irrespective of the status of the person to whom vanaspati had been sold by the petitioner. In letter dated October 9, 1968 (copy annexure "C-1") which was addressed to the Secretary of Industries, Punjab, the petitioner accepted the facilities and the concessions mentioned in the aforesaid letter (annexure "C") offered to it. Again in letter dated October 25, 1968 (copy annexure "D"), the petitioner wrote to the Secretary of Industries, Punjab, stating that the concessions offered to it included refund of sales tax for five years and had stated at (b) in paragraph 6 of that letter that the said period of five years would commence from the date of production. The petitioner was informed by the respondents to arrange to purchase the land itself because no plot measuring 12 acres was available in the focal point. Believing the representations and the assurances, referred to above, held out by the respondents with regard to the concessions including the refund of sales tax for five years, the petitioner spent money in purchasing land in and before the month of January, 1969 and had completed the purchases of land before January, 23, 1969, The petitioner had also purchased various materials required for construction of the factory and equipments and had placed orders for the supply of plant and machinery of the value of more than Rs. 35,000 00/-. The petitioner informed the Secretary of Industries, Punjab, all about it by letter dated January 23, 1969 (copy annexure "F") and restated there that they had taken all necessary steps for setting up the vanaspati plant because the concessions including the refund of sales tax for five years and other incentives had been offered to it. In March, 1969, the foundation stone of the factory for manufacturing of vanaspati was laid by the Governor of Punjab. In his speech delivered while laying the foundation stone, the Governor of Punjab also declared that the concessions including the refund of sales tax, purchase tax and inter-State sales tax would be allowed for a period of five years ; and that rules regulating the grant of those concessions would be finalised. The said rules (annexure "G") were framed and the same came into force on April 1, 1969. The narration of these facts, therefore, points out unmistakably that it (the petitioner) was induced and promoted to set up vanaspati plant at Rajpura by the concessions and incentives offered by respondent No. 1 and stated in the policy (annexure "A") The said concessions included the refund of sales-tax without any strings restricting the same on the sides to consumers only. The said concessions were affirmed and re-affirmed, by Director of Industries respondent No. 2 and also by the Secretary of Industries, Punjab, on behalf of respondent No. 1. While extending the concessions and incentives given out in the policy (annexure "A"), respondent No. 1 knew that

the same were intended to be acted upon and it further knew that (the petitioner believed and accepted the representations and assurances in the matter of allowing concessions and incentives and acting upon the same, it had invested huge amount in purchasing the land, the material for construction of the factory and other machinery and equipments. So, it is a case of promises which were intended to create legal relation which in the knowledge of respondent No. 1 was to be acted on by the petitioner. So, the promise; or the assurances made by respondent No. 1 respecting the grant of concessions including the refund of sales tax for five years must be honoured by respondent No 1. I am, therefore, of the opinion that the insurances made by respondent No. 1 regarding the refund of the sales tax besides other concessions may not amount; to contract in the strict sense but it was an assurance as to the future and it was intended to be acted on. So, it must be held to be binding on respondent No. 1 who gave it. It is a case where the parties acted and adopted a definite course. It was planned, deliberate and well thought of course of action on the part of respondent No. 1 to attract the petitioner and to prompt it to set up the vanaspati plant at Rajpura after investing money. Therefore, the conclusion is inescapable that the principle of promissory estoppel which has been discussed above and which may be described as quasi estoppel is attracted and must govern the present case.

5. Respondent No. 2 wrote latter (copy annexure "H") on June 16, 1969 to the petitioner that the State Government (respondent No. I) had agreed to give the concessions and incentives admissible to an unit in the focal point, to the vanaspati plant proposed to be set up by it (the petitioner). The said letter, however, did not specify the nature and extent of the concessions and incentives which were admissible to an unit in the focal point. It made reference neither to the policy (annexure "A") nor to the revised policy (annexure "R-II") Therefore, when the said letter (annexure "H") is read in the context of the letters previously exchanged between the parties and the circumstances referred to in the preceding paragraph, the petitioner could and was justified in believing that concessions and incentives allowed to it were the one admissible under the policy (annexure "A"). True, as suggested by Mr. Wasu, the learned Advocate-General, Punjab, the said policy (annexure "A") was changed or amended by the revised policy (annexure "R-II") on May 14, 1969. The said revised policy (annexure R-1F) provided that refund of sales tax would be admissible on the sales of finished goods made directly to the consumers. Therefore, Mr. Wasu argued that since letter (annexure "H") was addressed to the petitioner after revision of the policy, it should be presumed that the concessions and incentives which were allowed to it (the petitioner) were the one admissible under the revised policy (annexure "R-II") and as such it (the petitioner) could not claim refund of sales tax which had been paid by it on the sales of vanaspati viz., to any person other than the consumers. Torn of the context, his argument may appear to be attractive but in the circumstances of the case, I find it difficult to accept the same. The situation in the instant case is different. As indicated above in the

preceding paragraph the petitioner was induced and prompted to come to Rajpura and set up vanaspati plant there because of the assurances given to it (the petitioner) by and on behalf of respondent No. 1 that concessions admissible under policy (annexure "A") would be allowed to it. One of the said concessions undoubtedly of supreme benefit to the petitioner was that sales tax and also purchase and inter-State sales tax would be refunded for a period of five years. As remarked above in the preceding paragraph the expression "Sales Tax" was unqualified. Never before May 14, 1969, it was said or represented by the respondents that sales tax would be refunded only on sales made directly to the consumers. Copy of the policy (annexure "A") had been sent to the petitioner with a letter (copy annexure "C") where it was represented on behalf of respondent No. 1 that concessions and incentives admissible under that policy would be allowed to it (the petitioner) Believing the said representation the petitioner spent huge amount in purchasing land, material for construction of the factory and machinery etc. much prior to May 14, 1959. The Governor of Punjab while laying foundation stone of the factory on March 6, 1969, i.e. more than two months prior to the revision of the policy on May 14, 1969, declared in his speech (annexure "A" at page 151 appended to the rejoinder filed by the petitioner) that the sales tax as well as purchase and inter-State tax would be refunded for a period of five years In these circumstances, it is futile, and indeed inequitable, to urge that respondent No. 1 intended to grant to the petitioner the concessions admissible under the revised policy (annexure "R-II"). The said revised policy never existed when in the closing months of 1968 and in the beginning of the year 1969, it was represented to the petitioner more than once that sales tax, purchase tax and inter-State tax would be refunded under policy (annexure "A") for a period of five years. The said representation and assurances had also been affirmed, as indicated above, by the Governor of Punjab in his speech on March 6, 1969. Nothing more than the words from the Governor of Punjab was needed by the petitioner to believe and act on the representation that the sales tax which was not restricted to the sales made directly to the consumers, would be refunded for a period of five years. The revised policy annexure "R-II") which was sanctioned later could not affect the rights of the petitioner and would not deprive it (the petitioner) of the benefits to which it is entitled on the principle of promissory estoppel, arising out of assurances and representations made by and on behalf of respondent No. 1. True, in letter (annexure "D") dated October 25, 1968, the petitioner wrote to the Secretary of Industries, Punjab, to confirm the various concessions including the refund of sales tax for five years in accordance with the requirements of the Constitution, but it would not mean that the concessions offered to the petitioner had to be approved, much less that the same were not offered or that the petitioner had not accepted the same. On the other hand, the said letter, when read in the context of the previous correspondence and dealings between the parties, reveals that the aforesaid concessions had been offered to the petitioner and it had accepted the same and it proceeded to request (in the said letter) for confirmation of the said concessions in accordance with the requirements of the

Constitution. No deed as required by the provisos of the Constitution confirming the concessions either as contained in policy (annexure "A") or in revised policy (annexure "R-II") has so far been prepared or issued. Therefore, it would not be reasonable or proper to infer from the aforesaid letter that the concessions admissible under policy (annexure "A") were not available to the petitioner. It, thus, follows from the above that the petitioner's case is governed by policy (annexure "A") and not by revised policy (annexure "R-II"). As such, it is entitled to refund of sales tax paid by it on the sales of vanaspati irrespective of the consideration as to whether the said sales had been made to the consumers, registered dealers, depot-holders or shop-keepers.

6. The second contention raised by Mr. Wasu was that the writ petition was belated I am unable to agree with him. The sales tax was assessed on June 2, 1971. Application for its refund was made on July 16, 1971, i.e. about one and a half months after its assessment. There after, the petitioner submitted representation (annexure "L") to the Governor of Punjab for refund of the sales tax on October 27, 1971. It also made application (annexure "M") on December 28, 1971, for refund of the sales tax, to respondent No. 2. Then it gave notice (annexure "N") to respondent No. 2 and Secretary of Industries, Punjab, on April 17, 1972, for refund of the sales tax Ultimately, it filed the present writ petition on May 19, 1972. It is, thus, clear that the petitioner had been taking prompt and necessary steps for claiming the refund of the sales tax and it had come to this Court when its request were not acceded to and it cannot be maintained that there had been any delay on its (petitioner's) part in filing the writ petition So, there is no merit in the aforesaid contention of Mr. Wasu and the same is overruled.

7. The third and the last contention advanced by Mr. Wasu was that for the relief of declaration and also for the relief of refund of sales tax the remedy was regular suit and the same could not be allowed to the petitioner in the writ jurisdiction. In support of his contention, he cited *Burmah Construction Co. Vs. The State of Orissa and Others*, *Sri Satya Narain Singh Vs. District Engineer, P.W.D. and Another*, *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, *Suganmal Vs. State of Madhya Pradesh and Others*, and *Ram Niwas Gupta and Others Vs. State of Haryana and Another*, The ratio deducible from the said judgments relied upon by Mr. Wasu is that the special remedy provided in Art. 226 of the Constitution would not intend to supersede completely the modes of claiming relief by an action in a civil Court or to deny defences legitimately open in such actions. Therefore, ordinarily a petition under Article 226 of the Constitution to enforce civil liability arising out of a breach of contract or tort, to pay an amount of money due to the claimants would not be entertainable and it should be left to the aggrieved party to agitate the question in a civil suit. An order for payment of money may sometimes be, however, made in a petition under Article 226 of the Constitution against the State or against an officer of the State to enforce a statutory obligation. In *Messrs Burmah Construction Company's case (supra)*, refund of sales tax though limited to the amounts

which had been paid within twenty four months prior to the date when the writ petition was filed, had been allowed. In Satya Narain Singh's case (supra), a writ in the nature of Mandamus had been issued directing payment of full tolls by the respondents who were departments of the State with respect to every crossing of the Roadways buses over the ferry, to Satya Narain Singh who was at the relevant time a lessee of the right to collect tolls. In Bhailal Bhai and others' case (supra) refund of tax assessed on the sales of tobacco and collected from some of them had been allowed. In Sughanmal's case (supra) the claim for refund of tax wrongly realised was dismissed on the finding that there was no statutory obligation on the State to refund the same. It was observed in Ram Niwas Gupta's case (supra) that the extraordinary remedy under Article 226 of the Constitution should not be resorted to enforce contractual rights but was only meant for redress of grievances arising out of the violation of non-contractual legal rights of the person making the petition. It was held on the facts of that case that Ram Niwas Gupta and others were not entitled to claim exemption from the payment of octroi duty on the goods which were being imported by them in Fateh Mandi on the basis of the terms of auction which had been approved by the Municipality because the contract was void and it was not executed in accordance with section 47 of the Municipalities Act. In the case reported in N. Balaraju and Others Vs. The Hyderabad Municipal Corporation and Others, , also relied upon by Mr. Wasu, Balaraju and others had paid octroi duty while importing today and sendhi within the municipal limits of Hyderabad under protest, and they claimed the refund of the same by moving writ petitions under Article 226 of the Constitution of India alleging that the law and rules did not permit the imposition of the said octroi duty, and the vires of the said law and rules was challenged. With the conclusion that the said law or rules were not invalid those petitions were dismissed and it was however further observed that the High Court in the exercise of jurisdiction under Article 226 of the Constitution would not grant declaration or direct the refund of the amount collected from Balaraju and others for any one of them seeking such relief should have recourse to the ordinary Courts of law. The propositions deducible from the aforesaid judgments are that (a) whenever an order imposing or assessing some tax is challenged and the same is quashed as illegal, refund of the tax collected can be directed as consequential relief, (b) when there is a breach of statutory obligation, refund of money or tax collected by the State may be directed to be paid, and (c) in the eventuality of breach of contractual obligation, no refund of amount alleged to have been collected by the state can be ordered but (d) when there is violation of non-contractual legal rights refund of money may be allowed, it is, thus, clear that a petition solely praying for issue of writ of Mandamus directing the State to refund the money alleged to have been illegally collected or withheld by it (the state) is not ordinarily maintainable under Article 226 of the Constitution, for the simple reason that a claim for such refund can be made in a suit, but as the powers to give relief under Article 226 of the Constitution are wide and discretionary, there can be no rule of universal application that in no case refund of money wrongly withheld by the State can at all be directed, in an

appropriate and deserving case, this Court may, when the interests of justice so require, direct the refund of money in exercise of its aforesaid powers. The nature of controversy of facts and law may make out an appropriate case for the grant of such, a relief. So the exercise of discretion to direct refund of money wrongly withheld by the State would necessarily depend in each case on its own facts and circumstances. As a general rule, if there has been unreasonable delay in approaching this Court to claim writ of Mandamus for refund of any such money, or if there is prima facie triable issue with regard to the availability of such relief on the ground of limitation or the like this Court would ordinarily decline to issue the writ for refund of such money. But where the writ petition does not suffer from delay or laches or from the bar of limitation or the like and this Court finds that there is no equity in favour of the State for withholding any such amount and the equity rather favours the refund of the same, it can issue the writ on the grounds of compelling necessity and in the interest of justice and equity.

8. As indicated above, the principle of promissory estoppel is fully applicable to the instant case and the petitioner's claim is governed by the policy (Annexure "A") and not by the revised policy (annexure "R-II"). As such, it (the petitioner) is entitled to refund of the sales tax. Respondent No. 1, on whose representation and assurances the petitioner had to invest huge amount in setting up the vanaspati plant, must honour its commitments and assurances given by it with regard to the refund of sales tax and inter State sales tax. The petitioner approached this Court for the reliefs without any delay, much less un-reasonable. Therefore, in the peculiar circumstances of the case, when there has been violation of non-contractual legal rights, the discretion under Article 226 of the Constitution dictates that appropriate direction should be issued to respondent No. 1 to refund the sales tax and inter-State tax to the petitioner in accordance with the policy (annexure "A"). The said direction would necessarily include the declaration that the petitioner is entitled to refund of the same. I do not think that the writ of Mandamus can be issued directing respondent No. 1 to refund Rs. 8,85,139/- by way of sales tax and Rs. 35,141.32 paise as inter-State sales tax to the petitioner. The reasons are that the applications moved by the petitioner for refund of the said amounts have to be accompanied by certain documents and have to be verified by the District Excise and Taxation Officer, as provided by the rules (annexure "G"), before the refund of the said amounts can be granted. At the same time, the refund of the said amounts which had already been delayed cannot be allowed to be further delayed simply because respondent No. 2 did not receive the applications already moved by the petitioner after verification or the like from the District Excise and Taxation Officer. Respondent (sic) 2 and the District Excise and Taxation Officer are employees of respondent No. 1. They are under its control. Therefore, it can direct them to expedite the matter. So, the relief which is being granted to the petitioner would, in my opinion, be appropriate in the circumstances of the case, and I am unable to accept the contention of Mr. Wasu that the said relief cannot be granted in this

petition and I over rule the same, to that extent.

9. Consequently, I direct by issuing a writ of Mandamus that respondent No. 2 shall decide the applications moved by the petitioner for refund of the sales tax and the inter-State sales tax in the light of observations made above expeditiously, and at the most, within three months from today and he will be responsible for obtaining the said applications from the District Excise and Taxation Officer if the same are pending with him ; and, thereafter, respondent No. 1 shall refund the amounts of sales tax and inter-State sales tax, so sanctioned by respondent No. 2, as refundable, to the petitioner immediately after deciding the said applications of the petitioner. The writ petition is allowed to that extent. In the peculiar circumstances of the case, I leave the parties to bear their own costs.