

(2008) 06 GUJ CK 0021
In the Gujarat High Court

Case No : Special Civil Application No's. 15730 of 2007 and 19369 of 2006

Bharat Foods Co-Operative Ltd. and Another	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 27-06-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Gujarat Sales Tax Act, 1969 — Section 49, 49(2), 62
Multi-State Cooperative Societies Act, 2002 — Section 29

Citation : (2008) 3 GLR 2116

Hon'ble Judges : Y.R. Meena, C.J.; J.C. Upadhyaya, J

Bench : Division Bench

Advocate : K.S. Nanavati, for Nanavati Associates for Petitioners 1 - 2, for the Appellant; Kamal Trivedi, General and Snageeta Vishen, AGP for Respondent 1, for the Respondent

Judgement

J.C. Upadhyaya, J.—Rule. Service of rule is waived by Ms. Sangeeta Vishen, LD. AGP for the respondents.

Learned Counsels for the parties requested to hear and decide both the matters by way of common judgment as the facts and issues involved in the petitions are identical and common. Hence both the petitions are being decided and disposed by this CAV Common Judgment.

The petitioners filed present petition Special Civil Application No. 15730 of 2007 under Article 226 of the Constitution of India to seek the following reliefs against the respondents:

(A) Your Lordships may be pleased to issue a writ of mandamus or writ in the nature of mandamus or direction or order quashing and setting aside the decision taken by the State Level Committee, respondent No. 3, in its meeting dated 5.6.2007 [Annexure-Y] and conveyed to the society by the Additional Industries Commissioner, vide its letter dated 5.6.2007 [Annexure-A] and be further pleased to direct the respondents to grant Sales Tax exemption to the

petitioners for the amount of Eligible Capital Investment made by the petitioners.

(A1) Your Lordships may be pleased to quash and set aside the resolution dated 9.11.2005 [Annexure-M1] or in the alternative be pleased to hold and declare that the said resolution is not applicable to the case of the present petitioners.

(B) Pending admission and final disposal of this petition, Your Lordships may be pleased to restrain the respondent No. 4 from levying and collecting or recovering sales tax from the petitioners;

1.1. The petitioner No. 1 is Bharat Foods Cooperative Ltd., and petitioner No. 2 Mr. S.K. Handa, is Member and Managing Director of the petitioner No. 1 Cooperative Ltd.

2. The facts leading to the petition, in nut-shell, are as under:

2.1. The petitioner No. 1 is a Cooperative Society registered and incorporated under the Multi State Cooperative Societies Act, 2002 [for short "the Act"]. On 26.01.2001 there was a devastating earthquake which hit District Kutch of the State of Gujarat. Because of the said natural calamity, the economic activities in Kutch District came to a standstill. With a view to create new employment opportunity and for attracting industries in Kutch District, the respondent No. 1 State of Gujarat and its Department of Industries and Mines, by way of resolution No. INC-10200-903-1 dated 9.11.2001 announced a scheme of sales tax incentive titled as "Incentive Scheme 2001 for the Economic Development of Kutch District" and by way of the said scheme, any existing industrial undertaking or a new industry setting up a unit in Kutch District was eligible for the benefit of sales tax exemption or sales tax deferment on eligible fixed capital investment. As per the scheme, a cooperative society setting up a unit for refining of edible oil/hydrogenation of edible oil is eligible for sales tax incentive. Initially the scheme was operative till 31.12.2004. However, by subsequent resolution, it was extended till 31.12.2005.

2.2. The Government of Gujarat issued notification u/s 49 of the Gujarat Sales Tax Act [for short "GST Act"] on 31.12.2001 whereby exemption from sales tax was granted to eligible unit as defined in the scheme. The petitioner No. 1 society was registered and incorporated on 11.09.2003 under the Act. The area of operation of the society extended up to the States of Gujarat, Maharashtra and Madhya Pradesh. On 10.11.2003 the petitioner society applied to the State Government for obtaining certain clarifications regarding the scheme before constructing a plant for refining of edible oil/hydrogenation of edible oil in Kutch District. Pursuant to the application of the petitioner, vide order dated 10.11.2003 passed in exercise of powers u/s 62 of the GST Act, the Deputy Commissioner of Sales Tax [Legal] held that the petitioner was eligible for availing the sales tax incentives under the scheme. Thereupon, on 16.09.2004 the petitioner society applied for registration under the scheme. Since no prompt action was taken by the State, the petitioner society sent reminders for registration on 1.11.2004, 2.11.2004, 28.1.2005, 9.2.2005, 16.2.2005,

7.3.2005, 29.4.2005, 2.5.2005, 13.6.2005, etc. Yet the respondents did not grant registration to the petitioner society to avail the benefits of the scheme. However, in the month of December 2004, the plant of the petitioner society was ready to start commercial production. The plant was set up by investing more than Rs. 32 crore. The State Level Committee [for short "SLC"] in its meeting held on 5.5.2005 held that Industries Commissioner would send a proposal to the State Government to amend the scheme so as to restrict the benefits only to the cooperative societies of edible seed growers. Accordingly, Industries Commissioner had sent a proposal to the State Government, but no such amendment was made by the State Government in its original scheme. As no decision was taken by the respondent State on application for registration made by the petitioners, the petitioners were constrained to prefer Special Civil Application No. 13040 of 2005. In the said petition, on 21.07.2005 a statement was made by the Ld. AGP who was representing the respondents, upon instructions from the Joint Industries Commissioner that the Government will take decision in the matter as early as possible and preferably by 31.08.2005. Thereafter, vide different letters, respondents sought for certain information from the petitioner society regarding the members of the society, their vocation, source of earnings of the society, etc. The said details were immediately supplied to the respondents. Despite this, no decision was taken till 30.09.2005. In the result, the petitioners preferred Civil Application No. 9355 of 2005 in Special Civil Application No. 13040 of 2005. In the said Civil Application, this Court directed that the petitioners would be entitled to enter into commercial production without payment of any sales tax till final disposal of the main petition. Pursuant to the said order passed by this Court, the petitioner society commissioned the plant and vide letter dated 21.10.2005 applied for eligibility certificate for eligible capital investment of Rs. 30,93,76,043/-. However, on 21.10.2005 the respondent No. 2 Joint Industries Commissioner informed the petitioners that their application for registration under the scheme was rejected by the respondent No. 3 SLC on the ground that u/s 29 of the Act, a person whose business is in conflict or competitive with business of society is not eligible to be a member of the society. However, in the pending petition, the aforesaid decision of the respondent No. 3 SLC was withdrawn by the respondents by way of a statement made before this Court on 28.10.2005 and this Court disposed of Special Civil Application No. 13040 of 2005 on 28.10.2005 with a direction that the Industries Commissioner shall issue eligibility certificate to the petitioner latest by 11.11.2005 and thereafter, the parties would be entitled to proceed in accordance with law.

2.3. On 29.10.2005 the registration was granted to the petitioner society as contemplated under the scheme and on 11.11.2005 eligibility certificate was issued in favour of the petitioner. Eligible investment was considered to the tune of Rs. 27,76,06,000/- However, in para. 4 of the eligibility certificate it was mentioned that the certificate was issued provisionally at the rate of 25% of the tentative eligibility as detailed verification of assets was to be carried out. On

30.11.2005 exemption certificate u/s 49(2) of the GST Act was issued by the Sales Tax Commissioner in favour of the petitioners. Thereafter, a team comprising of Additional Industries Commissioner, Joint Industries Commissioner, etc., visited the plant of the petitioner at Kutch and its registered office situated at Mumbai and administrative office situated at Indore for inspection. They also visited and met the members of the petitioners, the financial institution that had granted loans, dealers, etc., and recorded their statements. On the basis of the said inquiry, report was submitted by the team to SLC on 27.09.2006. From the report, it was evident that an extensive and detailed inquiry was conducted by the respondents to find out whether the society was genuine or was promoted by any company as a firm to obtain tax exemption benefits. At the end of such inquiry, the committee concluded that it has not found that the society was not genuine or it has been set up by any company or group. Despite the fact that the petitioner society was found to be genuine, the SLC in its meeting dated 30.03.2007 decided that prima-facie the petitioner society was not entitled to the benefits under the scheme, there was only one farmer member in the society and the purpose of the scheme was to give benefit to the society formed by farmers. Despite the fact that the SLC took the said decision on 30.03.2007, the Industries Commissioner did not convey the same nor called the petitioner No. 2 for hearing. Thereafter, on 16.5.2007 the Industries Commissioner informed the petitioners that the SLC was of the prima-facie opinion that the petitioner society was not eligible for the benefit under the scheme as it had no farmer member. Meanwhile, the petitioners were constrained to file Special Civil Application No. 12776 of 2007 and in said petition, on behalf of respondents, statement was made before this Court that the petitioners shall be heard on 31.5.2007 by the Industries Commissioner and till then, the respondents will not make any coercive recovery. This Court in its order observed that it was accepted that the order passed by the SLC would be communicated to the petitioners and before initiating coercive recovery, the petitioners would be granted reasonable time for challenging order of the committee in case the same was adverse to the petitioners. The petitioners appeared before the Industries Commissioner and submitted its reply/representation. On 8.7.2007 the petitioner society received a letter from the Additional Industries Commissioner stating that the representation of the petitioners was considered by the SLC on 5.6.2007 and the SLC was of the opinion that the benefit under the scheme was available only to such cooperative society of farmer members and as there was no agriculturist member in the petitioner society, the petitioner society was not eligible under the scheme and, therefore, the application of the petitioner under the scheme was rejected. Hence, the present petition is filed.

3. Learned senior counsel Mr. K.S. Nanavati for the petitioners submitted that the impugned decision of the SLC taken in its meeting held on 5.6.2007 holding that the petitioners are not eligible for the incentives under the scheme is not only contrary to the scheme itself but the same is illegal, void and violative of Article 14 of the Constitution of India. That by impugned decision, the SLC tried to

interpret the scheme in the manner not provided in the scheme itself, but contrary to the objectives of the scheme. That the main ground on which the petitioners are denied the benefits under the scheme is that none of the members of the petitioner society are farmers. That as a matter of fact, considering the scheme, copy of which is produced at Annexure-C in this petition, in the definition of "industrial enterprises," "registered cooperative society" is also included. Annexure-C attached to the scheme contains list of banned industries. As per entry No. 3 solvent extraction of oil from edible seed/edible oil cake processing and/or hydrogenation of edible oil falls within the purview of "banned industries". But the exception is, "a cooperative sector". Therefore, if the unit is a cooperative sector, dealing with the item referred in item No. 3 in the schedule, such cooperative society is eligible for the benefit of the scheme. That neither in the scheme itself nor in any of the schedules attached to the scheme, it is referred that the cooperative society having farmers as its members can only avail benefits of the scheme. Considering the objects behind introducing the scheme, it is clearly set forth in the scheme itself that because of the devastating earthquake occurred on 26.1.2001 in the State of Gujarat, the adversely affected area was district of Kutch. That in the area of Kutch new employment opportunities could be created if new investment takes place. That the Government was committed to attract the industries in Kutch district to make industrial and economic environment live. That even Government of India has announced excise duty exemption for new industries to promote large-scale investment in the district. That, therefore, State Government has also decided to announce the scheme of sales tax incentives. It is further stated in the scheme that since the scheme is aimed at making economic environment of Kutch district live, it has been decided to confine the same only to Kutch district. That, therefore, the object behind the scheme was not to promote agricultural activities in the district or to render benefits only to farmers adversely affected by earthquake in the district. The main object was to create new employment opportunities and to make the industrial and economic environment live in the district. That therefore, to deny the benefits of the scheme solely on the ground that none of the members of the petitioner society is farmer can be said to be an illegal and arbitrary exercise of powers by the State contrary to the scheme promulgated by the State itself. That if at all the object behind floating of the incentive scheme was to give benefits to such cooperative society having farmer members, then there was no reason whatsoever by subsequent amendment in the scheme dated 9.11.2005 to delete cooperative sector mentioned at item No. 3 in Annexure-C attached to the scheme. If at all the intention of the State was to benefit the farmers, instead of deleting the cooperative sector as a whole dealing in oil seeds unit, the State could have further qualified the word "cooperative sector" by stating that such cooperative sector having farmers as its members dealing in oil seeds unit, are only entitled to the benefits of the scheme. That instead of this, by subsequent amendment in item No. 3 of list of banned industries Annexure-C attached to the scheme, the entire cooperative sector itself is deleted.

3.1. Mr. Nanavati further submitted that before erecting a plant in Kutch district the petitioner society sought for further clarification from the State Government and as a matter of fact, the Deputy Commissioner of Sales Tax in an order dated 10.11.2003 passed u/s 62 of the GST Act, has determined that the benefit of the scheme was available to the petitioner cooperative society. The petitioner society has complied with all the conditions incorporated in the scheme. That, therefore, the respondents cannot deny the benefits of the scheme. Even the respondent State is estopped from denying the benefits to the petitioner society. That even doubt was raised by the respondents regarding the genuineness of the formation of the petitioner cooperative society, but upon inquiry it was revealed that the petitioner society was genuinely formed cooperative society and was not backed by any company. Mr. Nanavati further submitted that the impugned order dated 6-8.6.2007 is also illegal in view of the fact that the same was passed contrary to the statement made by the Industries Commissioner before this Court on 28.10.2005. The Special Civil Application No. 13040 of 2005 was pending. While disposing of said petition by order dated 28.10.2005 Mr. Agarwal, Industries Commissioner and Mr. Mehta, Joint Commissioner Industries, submit that the eligibility certificate shall be issued in favour of the petitioners latest by 11.11.2005. It was further stated before this Court that earlier order passed by the SLC may be ignored and the authorities be allowed to proceed in the matter as suggested by them. That surprisingly thereafter, by the impugned order the benefit was denied to the petitioner by the State authorities. That relying upon the scheme as well as the clear opinion expressed in writing by the responsible officer of the Sales Tax Department of the State, the petitioner invested more than Rs. 32 crore in erecting the plant. The plant was ready for production by December 2004. Subsequently, despite the fact that clear directions were issued by this Court in earlier writ petition and unconditional statements made by responsible officers of the State Government before this Court, by virtue of the impugned decision, the State denied the benefits of the scheme to the petitioner. That the authorities of the State acted upon the order passed by this Court on 28.10.2005 in earlier writ petition and eligibility certificate was issued, said order was not challenged by the State before the Hon'ble Apex Court, therefore, said order has become final. Yet surprisingly the request of the petitioner to accord sales tax benefits to the petitioner society in accordance with the scheme was denied solely on the flimsy ground that its members are not farmers. That thus, a very discriminatory treatment is given to the petitioners by the State. Therefore, it is submitted that the petition be allowed as prayed for.

4. Learned Advocate General Mr. Kamal Trivedi vehemently opposing the petitions, submitted that the petitioners are not at all entitled to obtain the relief as prayed for by them in the petition. In this petition, this Court is concerned with the scheme dated 9.11.2001. The very object behind the scheme was to motivate the cooperative societies, which are formed by the farmers connected with/engaged in the activities of agricultural production of oil seeds in Kutch district. In para. 9 of the scheme, it is clearly provided that the resolution with

regard to any interpretation, dispute or argument of the scheme shall be made by the SLC. That therefore, any interpretation of the scheme made by any officer of the Sales Tax Department of the State cannot be looked into. The only power was that of the SLC to interpret any of the provisions of the scheme and its decision can be said to be final. In the instant case, denying the benefits of the scheme to the petitioner society, SLC in its meeting dated 5.6.2007 clearly opined that none of the members of the petitioner society is connected with or engaged in the agricultural production of oil seeds and, therefore, even though the petitioner society is a cooperative society having solvent extraction plant, it is not entitled to the incentive benefits. That this interpretation is final and given by the authority empowered to interpret in the scheme itself. That while exercising judicial review under Article 226 of the Constitution, this Court cannot substitute its own interpretation that the provision of the scheme should have been interpreted in the manner requested by the petitioners. That subsequently, the cooperative sector was removed as a whole from the purview of the scheme by amendment dated 9.11.2005. That the interpretation of the scheme made by the SLC in its 3rd meeting held on 5.5.2005 was immediately conveyed to the petitioner society. That thus, the petitioner society was conveyed right from the inception that it would not be entitled to the said incentive benefits. That therefore, in the instant case there is no question of any promissory estoppel to be applied against the respondents.

4.1. Mr. Trivedi further submitted that the scheme promulgated by the Government Resolution dated 9.11.2001 is not a notification issued under any statutory provisions and that therefore, the same cannot by any stretch of imagination be considered to be a statutory instruction granting exemption. That while interpreting any non-statutory instruction like the present Government Resolution, the understanding of the authority issuing such an instruction or the authority responsible for executing the policy, propounded by such instruction, should always be relied upon, as per the well established rule of "contemporanea exposition." It is submitted that even otherwise public interest requires that a cooperative society like the petitioner society should not be allowed to earn the incentive benefits of sales tax exemption since the same is not meant for such a cooperative society. That the doctrine of promissory estoppel shall not apply in the present case, but assuming without admitting that doctrine of promissory estoppel is applicable, then in that case also, such a direction would not be enforceable against the State Government when it comes in the way of public interest, since public interest has to prevail over the private interest. That in a judicial review, this Court cannot sit in appeal over the decision of the SLC regarding the interpretation of the scheme. This Court cannot examine whether particular policy is desirable or not.

4.2. Mr. Trivedi further submitted that admittedly the figures given in the ad-hoc eligibility certificate in respect of capital investment made by the petitioner society in its solvent extraction plant are figures supplied by the petitioner society itself and no inquiry as regards its correctness or otherwise has so far

been made and, therefore, such figures should not be presumed to be correct figures unless inquired into and certified to that effect by the State authorities, which may have to be done only in the event of the petitioner finally succeeding in this petition. While concluding the arguments, Mr. Trivedi submitted that none of the actions on the part of the State Government and its authorities is violative of Article 14 of the Constitution and, therefore, the petition does not survive. It would be in the public interest to reject the petition since other cooperative societies which have also applied during the pendency of the scheme for the incentive benefits of sales tax exemption are waiting for the outcome of the proceedings and that, therefore, grant of any relief in favour of the petitioners would open up the flood gate and also would invite huge burden on the State exchequer. Therefore, it is submitted that the petition be rejected.

5. Considering the petition as well as reply affidavit filed by Mr. G.C. Bhavsar, Under Secretary to the Government of Gujarat, Industries and Mines Department and the scheme dated 9.11.2001, the admitted fact is that in the scheme it is nowhere expressly provided that so far as the cooperative sector is concerned, only such cooperative sector having farmers as its members can only avail of the benefits of the scheme. Considering para. 3 of the scheme, definitions are given and while defining "industrial enterprises", "a legally registered cooperative society" is also included in the definition of "industrial enterprises". There is also no dispute that the petitioner No. 1 society is a registered society, registered and incorporated under the Act. The petitioner No. 1 society was registered as such on 11.9.2003 under the Act. Annexure-C attached to the scheme contains list of banned industries. Item No. 3 reads as under:

1. xxx xxx xxx 2. xxx xxx xxx 3. Solvent extraction of oil from edible seed/edible oil cake processing and/or hydrogenation or edible oil (except in co-operative sector),

4. To 10. xxx xxx xxx

5.1. Thus, the solvent extraction of oil from edible seed/edible oil cake processing and/or hydrogenation of edible oil falls within the sweep of "banned industries" contained in Annexure-C, but the only exception is if the unit dealing in such items is a cooperative sector, then such cooperative sector will not fall within the purview of "banned industries".

6. There is no dispute that before the petitioner No. 1 society commenced establishment of its unit in Kutch district, on 25.9.2003, petitioner sought for certain clarifications regarding its eligibility to get sales tax exemption in accordance with the scheme and, therefore, an application was forwarded by it to the concerned Department of the State Government. The application was replied by the Deputy Commissioner of Sales Tax [Legal], Government of Gujarat, on 10.11.2003, copy of which is produced at Annexure-E at page 63 along with the petition. It is stated therein that although the industries manufacturing products specified in item 2 and 3 referred to in Annexure-C containing list of "banned

industries" attached to the scheme dated 9.11.2001 fall within the purview of "banned industries", but if the unit is in cooperative sector, then production by such cooperative sector cannot be construed as "banned industries". That the applicant [petitioner No. 1 society herein] was engaged in manufacturing of Vanaspati [hydrogenated oil], Soyabean oil, edible refined oil and allied products which commodities prima-facie fall under the list of banned industries as specified in Annexure-C to the scheme dated 9.11.2001, but if the products specified in item 2 and item 3 of the list are manufactured by a unit which is in a cooperative sector, then such unit shall not be construed as banned industries. Thus, the query raised by the petitioner society regarding applicability of the provisions of the scheme to the petitioner society was satisfactorily replied by the competent authority of the State Government and the petitioner society was held to be entitled to the benefits of the scheme.

7. In the rejoinder affidavit, much is said that as per the scheme only the SLC is competent to interpret any of the provisions of the scheme as per para. 9 of the scheme and, therefore, any interpretation of the scheme arrived at by any authority of the State other than the SLC shall have to be ignored. Perusing para. 9 contained in the scheme, it is true that SLC is authorized to interpret any provision contained in the scheme. In the instant case, considering Annexure-E page 63 annexed with the petition, clarificatory application of the petitioner was replied by the Deputy Commissioner of Sales Tax [Legal], Government of Gujarat vide its letter dated 10.11.2003. The matter pertains to the scheme regarding the sales tax exemption and the reply was given by none other than the competent authority of the Sales Tax Department of the State itself. The concerned Deputy Commissioner of the Sales Tax Department interpreted the scheme as it is revealed by the bare reading of the scheme itself and reproduced only certain averments made in the scheme as well as in item No. 2 and item No. 3 in Annexure-C containing list of banned industries. We need not repeat here the relevant contents of Annexure-C attached to the scheme, but suffice it to say that solvent extraction of oil from edible seed/edible oil cake processing and/or hydrogenation of edible oil fall within the purview of banned industries, but the only exception is a cooperative sector. In other words, cooperative sector manufacturing products as specified above cannot be construed as banned industries.

8. Ld. Advocate General Mr. Trivedi for the respondents relied upon a case of *Bavishi & Sons v. State of Gujarat* reported in 1992 Sales Tax Cases page 161, wherein this Court, in a sales tax reference pertaining to certain order passed by the Deputy Commissioner, Sales Tax, in a particular assessment period, observed as under:

Each assessment period is distinct and a decision in respect of one cannot operate as *res judicata* in respect of another period. Therefore, the determination of the rate of tax payable on a particular sale, on an application made to the Deputy Commissioner u/s 62 of the Gujarat Sales Tax Act, 1969, would not be

final for all time to come.

There cannot be any dispute regarding the principle established by this Court in this ruling. However, the facts of our case are totally different. As stated above, by way of caution, before setting up the unit, petitioner sought for clarification regarding the applicability of the scheme. The query was replied by the competent authority of the Sales Tax Department itself. It is true that as per para. 9 of the scheme, SLC is the final authority to interpret any provision of the scheme. However, as stated above, the competent authority, who replied the query did nothing more than reproducing certain averments made in the scheme as well as in the list attached to the scheme containing list of banned industries. Therefore, there is no question of interpretation of any of the provisions of the scheme. Despite this, if at all the competent authority who replied the query of the petitioner felt that some interpretation was required to be made pertaining to any provision of the scheme, then before replying the query, said authority could have referred the matter to the SLC. Since nothing whatsoever was done and the query was replied in the form of only reproduction of certain clauses contained in the scheme and contained in the list of banned industries. As there was no question of interpreting any of such provisions, instead of referring the matter to SLC, the competent authority of the Sales Tax Department itself thought it fit to reply the query. Therefore, for such act of the competent authority of the Sales Tax Department, can the petitioner society be blamed?

9. Perusing the reply affidavit, it transpires that the only short controversy which is involved in this petition is as to whether such cooperative sector should be consisting of farmers as its members or not. According to the stand taken by the respondents, it is submitted that it is not sufficient that any cooperative sector is entitled to the exemption from the sales tax, but it is further qualified that only such cooperative sector having farmers or agriculturists as its members, then only such cooperative sector is entitled to the exemption of sales tax dealing in the production of solvent extraction of oil from edible seed/edible oil cake processing and/or hydrogenation of edible oil. Therefore, the question of controversy centers round the objectives sought to be achieved by the scheme itself. Whether the scheme was promulgated by the State for any agrarian reforms? Or whether the scheme was promoted for industrialization?

10. To reply this, it is necessary again to consider the opening paragraph of the scheme dated 9.11.2001, copy annexed at Annexure-C at page 38/1 with this petition. The very reason for launching the scheme was the devastating earthquake occurred on 26.1.2001 which caused comparatively serious damage in the district of Kutch. Therefore, it is stated that the entire financial activities of Kutch district came to a standstill. The State Government thought that new employment opportunities could be created if new investment takes place. The State Government was committed to attracting industries in Kutch district to make the industrial and economic environment live. Reference was also made to certain steps which were taken by the Government of India and it is stated that

Government of India has announced excise duty exemption for new industries to promote large scale investment in Kutch district. Therefore, the State Government has also decided to announce the scheme of sales tax incentives. Since the scheme was aimed at making economic environment of Kutch district live, it has been decided to confine the same only to Kutch district.

10.1. Therefore, it can very well be said that the object of the scheme was to create new employment opportunities and that object can be achieved if new investment takes place. By giving such sales tax incentives, the new investment can be attracted to and thereby the industrial and economic environment in Kutch district would become live. Therefore, neither in the preamble of the scheme nor in the entire incentive scheme, there is any mention of giving the benefit only to cooperative societies of farmer members. Further it is pertinent to note that as submitted by Ld. Senior Counsel Mr. Nanavati for the petitioners, if the object behind introducing the scheme was agrarian reform as suggested by the respondents, then the respondents could have introduced suitable amendment in the scheme as well as in the list of "banned industries" attached to the scheme to the effect that the cooperative sector should be such having only farmer members. That nothing whatsoever was done, but on the contrary, by resolution dated 9.11.2005 [Annexure-M-1 at page 87/B annexed with the petition], the scheme was amended and the words mentioned at serial Nos. (2), (3) and (5) in the list of "banned industries" attached to the scheme "except in cooperative sector" were deleted. Thus, the cooperative sector itself was deleted by the amendment dated 9.11.2005. However, the amendment was operative with immediate effect i.e., from 9.11.2005 and onwards. How far this amendment would concern to the petitioners shall be discussed hereafter in this judgment, but in context with the present discussion as to whether the object behind introducing the scheme was to promote such cooperative sector having farmer members or not, it would be pertinent to note that the State Government deleted the entire cooperative sector by introducing the amendment dated 9.11.2005. Thus, instead of making suitable amendment in the scheme by further qualifying the cooperative sector having farmer members only, the entire cooperative sector was deleted out from the purview of the scheme. Therefore, if at all the object behind introducing the scheme was to promote cooperative sector having only farmer members as suggested by the respondents, then suitable amendment to that effect would have been carried out in the scheme. But here is a case wherein on one hand the respondents interpreted the words "cooperative sector" as such sector having farmer members only and on the other hand by subsequent amendment the cooperative sector as a whole has been deleted out from the purview of the scheme. Therefore, this amendment, which is subsequently carried out in the scheme, acts counter to the arguments advanced by the respondents that the object of the scheme was to promote cooperative sector having farmer members and certain agrarian reforms.

10.2. Ld. Advocate General Mr. Trivedi for the respondents relied upon a case of Hind Plastics and Another Vs. Collector of Customs, Bombay and Another, In

para. 17 of said judgment it is observed as under about interpretation of statutes and legislative intent:

17. In this connection, it is well to remind ourselves that every instrument, statutory or otherwise, has to be so interpreted as to accord with the intention of its maker having regard to the language used. True, one cannot ignore the actual words used and go after the supposed intention of the maker as pointed out in *Hansraj Gordhandas v. H.H. Dave*, Assistant Collector of Central Excise and Customs since that would amount to entering the arena of speculation but all the same the principle is unexceptionable that whether it is statute, statutory instrument or an ordinary instrument, the interpretation placed has to accord with the intention of the maker as evidenced by the words/language used. The decision in *Hansraj Gordhandas* does not lay down any contrary proposition.

10.3. Thus, according to the ratio laid down in this case by the Hon'ble Apex Court, it is true that every instrument, statutory or otherwise, has to be so interpreted as to accord with the intention of its maker, but at the same time such interpretation has to be arrived at having regard to the language used. It has also been observed by the Hon'ble Apex Court that one cannot ignore the actual words used and go after the supposed intention of the maker. In the present case on hand, as discussed in detail above, considering the plain language used in the scheme, there is nothing that the words "cooperative sector" are defined as the sector having only farmer members. Needless to say that the arguments advanced by the respondents that the object and intention of the scheme was to promote cooperative sector having farmer members only go contrary to the subsequent amendment carried out in the scheme by deleting the words "cooperative sector" as a whole from the scheme. The plain reading of the scheme, as discussed above, would clearly establish that the main object or intention of the scheme was to create new employment opportunities in Kutch district by attracting industries to be established in the district and thereby to make the industrial and economic environment live in Kutch district. Therefore, the principle established in the case of *Hind Plastics* [supra] does not help the respondents considering the facts of our case.

10.4. Mr. Trivedi, Ld. Advocate General relied upon a case of *State of Karnataka and Others Vs. Balaji Computers and Others*, In the said case, the State of Karnataka issued certain notification under the Karnataka Sales Tax Act, 1957 regarding certain tax exemption wherein "computer and parts of computer peripherals" was the subject matter of controversy. Hon'ble the Apex Court held that the parts of computer and parts of computer peripherals were covered and, therefore, stand exempted from turnover tax. In para. 39 the Hon'ble Apex Court observed as under:

39. This Court in *K.P. Varghese v. ITO* while considering the binding nature of the circulars issued by the Central Board of Direct Taxes on the Department, has also observed that the rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to exposition it has

received from contemporary authorities, though it must give way where a language of the statute is plain and unambiguous....

10.5. Thus, though the Hon''ble Apex Court observed that contemporanea expositio is a well established rule for interpreting the statute by reference to exposition it has received from contemporary authorities, it is further observed that it must give way where a language of the statute is plain and unambiguous. IN the case on hand, as stated above, there is no ambiguity whatsoever in the language used in the scheme dated 9.11.2001. Cooperative sector simplicitor is made eligible for avail of the incentive benefits. The object behind introduction of the scheme was to create new employment opportunities by attracting new investment by giving incentives to certain industries referred in the scheme including the cooperative sector. Thus, in the present case on hand, there is nothing that there is any ambiguity or any confusion in any of the words used in the scheme which will require any further interpretation. What is required to be read is the plain language used in the scheme.

11. Ld. Senior Counsel Mr. Nanavati for the petitioners relied upon a case Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others, In that case, certain notification was issued under the Central Excise Rules, 1944, granting exemption from excise duty on cotton fabrics. As revealed from the plain reading of said notification, for claiming exemption the cotton fabrics must be produced on power-looms owned by a cooperative society. However, the Customs Department intended to interpret the notification in the manner that such cotton fabrics should be produced by cooperative society "for itself". On behalf of the Customs Department it was also argued that the object of granting exemption was to encourage the formation of cooperative societies which not only produced cotton fabrics, but which also consisted of members, not only owning but having actually operated not more than four power looms during the three years immediately preceding their having joined the society. The Hon''ble Apex Court observed in para. 5 of the judgment as under:

...We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications dated 31 July, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the co-operative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-operative Society on the power looms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority....

11.1. Almost identical is the factual scenario in our case. In Hansraj Gordhandas [supra], the Department wanted to interpret the words "cooperative society" as

such having produced cotton fabrics "for itself." As per the notification the only requirement was that the cotton fabrics must be produced on power looms owned by the cooperative society. The production may be "for itself" or for any third party. Interpreting language used in the notification, the Hon'ble Apex Court held that the cotton fabrics must be produced on power looms by the cooperative society and there was no further requirement under the notification that the cotton fabrics must be produced by the cooperative society on power looms "for itself". The Hon'ble Apex Court, therefore, held that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. That the entire matter is governed wholly by the language of notification. Therefore, ultimately the Hon'ble Apex Court held that if the tax payer is within the plain terms of the exemption, it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. Under such circumstances, in our case, the plain reading of the scheme clearly reveals that the only requirement for exemption is that the unit must be cooperative sector and nothing more. There cannot be any supposed intention as suggested by the respondents that such cooperative sector must be Shaving farmer members only.

12. Therefore, in the nut-shell, the scheme is required to be considered in accordance with the language used in the scheme. Hence the words "cooperative sector" should be considered in accordance with their plain meaning. Under such circumstances the report of the SLC stating that out of the total 215 members of the petitioner No. 1 cooperative society, 117 members are businessmen, 87 members are doing job, 5 members are housewives, 4 members are professionals, 1 member is retired person and only 1 member is agriculturist and, therefore, the petitioner society is not entitled to the sales tax incentives, cannot be accepted as a correct interpretation of the scheme. In the scheme nothing whatsoever is mentioned about the qualification of a member of the cooperative society made eligible for the sales tax incentives.

13. It is pertinent to note that the genuineness of the petitioner No. 1 cooperative society was also doubted by the respondents. Thorough investigation was carried out by the respondents. Verification was made as to whether the said cooperative society is constituted only for getting the benefit of the benevolent scheme by any big industry or not. Detailed report was prepared and as per the agenda note regarding the meeting No. 8 of the SLC dated 3.8.2006, copy produced at Annexure-S at page 112/1 with the petition, it was observed that during the inquiry nothing had come-out against the genuineness of the petitioner society or that it was established and backed by any big industrial unit so as to get the benefit of the scheme. Under such circumstances, by this report itself it becomes clear that the petitioner society was genuinely formed society and was not backed by any big industrial undertaking only with a view to illegally or improperly get benefit of the scheme.

14. Perusing the papers produced along with the petition, it transpires that even in past the petitioners were constrained to file petition in this Court. Considering

the copy of order dated 4.10.2005 passed in Civil Application No. 9355 of 2005 in Special Civil Application No. 13040 of 2005, this Court observed that Joint Industries Commissioner [Sales Tax] and Industries Commissioner had assured this Court that preferably by 31.8.2005 the orders regarding entitlement of the present petitioner would be passed. Despite such assurance, nothing whatsoever was done and, therefore, the present petitioners had to prefer Civil Application No. 9355 of 2005. Hence in para. 4 of the said order dated 4.10.2005 this Court ordered that the petitioner would be entitled to enter into commercial production without payment of any sales tax till final disposal of the writ petition [Special Civil Application No. 13040 of 2005]. Ultimately, Special Civil Application No. 13040 of 2005 came to be disposed of by this Court by order dated 28.10.2005 [copy annexed at Annexure at page 86]. Considering para. 3 of said order, it transpires that Mr. Agrawal, Industries Commissioner and Mr. Mehta, Joint Commissioner Industries stated that the eligibility certificate shall be issued in favour of the present petitioners latest by 11.11.2005. They also submitted that after issuing eligibility certificate, the petitioners, in accordance with the scheme, may make an application for grant of permanent certificate to the SLC and the SLC in its discretion may pass final orders. Ld. Advocate General submitted that earlier order passed by the Committee may be ignored and the authorities be allowed to proceed in the matters, as suggested by them. Accordingly, the petition was disposed of with direction that latest by 11.11.2005 the Industries Commissioner shall issue necessary eligibility certificate and thereafter the parties would be entitled to proceed in accordance with law and the rule was made absolute. Thus, it is pertinent to note that as per the assurance given by the competent authorities of the State Government, the eligibility certificate in favour of the petitioners was stated to be issued by 11.11.2005 with further assurance that the earlier order passed by the SLC shall be ignored and the authorities shall proceed in the matters as suggested by them. Ld. Senior Counsel Mr. Nanavati for the petitioners submitted that the said order has become final and was not challenged by the respondents before the Hon'ble Apex Court. Upon unconditional statements made by the competent authorities, this Court disposed of said Special Civil Application No. 13040 of 2005 on 28.10.2005.

15. Perusing the papers produced along with the petition and more particularly Annexure at page 89 being copy of eligibility certificate for sales tax incentive dated 11.11.2005, it is certified that the petitioner No. 1 M/s. Bharat Foods Coop. Ltd., has started new unit at Mithi Rohar in Taluka Gandhidham, Dist. Bhuj for sales tax incentives under the scheme. It is further clearly mentioned that the unit has commenced commercial production from 22.10.2005. The marketable items produced by the unit are "refined edible oil". It is further stated in para. 5 of the certificate that this eligibility certificate is effective for the period from 22.10.2005 to 21.10.2012. However, in para. 4 of said certificate, it is stated that this certificate is issued provisionally at the rate of 25% of its tentative eligibility since the detailed verification of the assets is to be carried out. Thus, the

eligibility certificate was issued on 11.11.2005. On behalf of respondents it was submitted that since the certificate was issued pursuant to the direction issued by this Court, therefore it was issued provisionally and on ad-hoc basis. However, there is nothing mentioned in the certificate that it is issued subject to the directions issued by this Court vide order dated 28.10.2005 passed in Special Civil Application No. 13040 of 2005. On the contrary, as stated above, considering the said order dated 28.10.2005 the competent authorities stated before this Court that the eligibility certificate shall be issued on or before 11.11.2005. Relying upon the statements of the competent authorities, the above Special Civil Application came to be disposed of. However, considering para. 4 of the eligibility certificate, it clearly transpires that since the detailed verification of assets of the petitioner No. 1 society was yet to be carried out and, therefore, on the basis of the figures of the assets provided by the petitioner, the certificate was issued provisionally at the rate of 25% of its tentative eligibility. Ld. Senior Counsel Mr. Nanavati submitted that nothing prevented to the respondents till date to carry out detailed verification of assets, but even after issuance of eligibility certificate dated 11.11.2005 vide impugned directive dated 6-8.6.2007 as per the decision taken by SLC in its meeting dated 5.6.2007, the incentive benefits to the petitioner was denied solely on the ground that the members of the petitioner society are not farmers.

15.1. However, the important aspect which emerges from the eligibility certificate dated 11.11.2005 is that the respondents accepted the factual position that the petitioner unit has commenced the commercial production from 22.10.2005. As observed earlier in this judgment, with effect from 9.11.2005 the respondent - State amended the scheme by deleting the words "cooperative sector" from the list of banned industries attached to the scheme. However, while refusing the benefits of the scheme to the petitioners, considering the letter dated 6-8.6.2007 addressed to the petitioner by the Additional Industries Commissioner and Member Secretary, SLC, the only reason for denying the benefit of the scheme to the petitioner assigned is that the members of the petitioner society are not farmer members. The benefit is not denied on the ground that by virtue of the resolution dated 9.11.2005 regarding the amendment in the scheme, now the cooperative sector as a whole came to be deleted and, therefore, the petitioners are not entitled to the incentive benefits. As stated earlier, considering the resolution dated 9.11.2005, it is clearly stated that the amendment in the scheme regarding deletion of cooperative sector as a whole from the purview of the scheme shall be implemented with immediate effect, meaning thereby from 9.11.2005 and thereafter. As stated above, in our case the petitioner society had applied for the tax exemption and for registration under the scheme on 16.9.2004. Thus, when the petitioner society applied for the registration under the scheme, there was no such amendment and the amendment was subsequently made on 9.11.2005. Moreover, no retrospective effect was given to the resolution dated 9.11.2005 carrying out amendment in the scheme. Prospective effect was given to the amendment. Under such circumstances, it

can very well be said that since the petitioner society had applied much earlier from 9.11.2005 for registration under the scheme, it can very well be said that the said resolution containing the amendment is not applicable to the case of the petitioner society. When such is the situation, we are of the opinion that it is not necessary to enter into arena of discussion as to whether the amendment dated 9.11.2005 resolved by the respondents can be said to be illegal, improper and violative of any of the fundamental rights of the petitioner or not since the case of the petitioner is required to be adjudicated in accordance with the scheme which was in effect at pre-amendment stage. Even considering the letter Annexure Q at page 96/1 produced along with the petition, addressed to the petitioner by Commissioner for Industries dated 6.12.2005 and in the letter it is clearly stated that the petitioner unit has been registered from 29.10.2005 for motivation of sales tax incentives. Under such circumstances, not only the petitioner society had applied for registration under the scheme before the date of amendment, but even the petitioner society was registered under the scheme with effect from 29.10.2005, which is also before the date of the amendment in the scheme.

16. Ld. Senior Counsel Mr. Nanavati for the petitioners relied upon a case of MRF Ltd., Kottayam v. Asstt. Commissioner [Assessment], Sales Tax reported in [2006] 8 S.C.C. 702. According to the facts of said case, certain sales tax exemption was granted by notification, but subsequently by subsequent notification the earlier exemption notification came to be amended. The question of applicability of principle of promissory estoppel against the State and the doctrine of legitimate expectation arose in said case. As per the initial notification granting exemption for expansion in the manufacture of certain products including rubber based goods, the appellant started commercial production after investing huge amount. Eligibility certificate was also obtained by said appellant from the competent authority. Exemption certificate was also granted for a fixed period of 7 years. In the eligibility certificate the date of commencement of the production was specifically stated. During the currency of the period of exemption, the State Government issued amendment notification excluding the formation of a compound rubber from the definition of "manufacture" for the purpose of the original exemption notification. The Hon'ble Apex Court held that in such circumstances the enforcement of the said subsequent notification from the date of issuance thereof to the assessee manufacturer in the present case was barred by the principle of promissory estoppel as well as by doctrine of legitimate expectation. Moreover, such premature deprivation to the assessee manufacturer of the benefit of excise was held to be arbitrary, unjust, unreasonable and violative of Article 14 of the Constitution of India. One important aspect which emerges perusing said case is that on behalf of the respondents Assistant Commissioner, it was submitted before the Hon'ble Apex Court that Section 10(3) of the Kerala General Sales Tax Act enabled the State to withdraw or cancel any exemption even retrospectively. It was also submitted that where public interest was involved, no rule of estoppel could bind the

Government. The Hon'ble Apex Court observed that commercial production of the appellant had already commenced prior to the date of subsequent notification. That by virtue of the certificate of eligibility, the appellant MRF Ltd., had acquired right to avail tax exemption for a fixed period of 7 years from 30.12.1996 to 29.12.2003 in respect of products manufactured from raw rubber including compound rubber. That in the eligibility certificate the date of commencement of the production was stated to be 30.12.1996. Thus, the Government itself had recognized that the benefit of tax exemption for the fixed period of 7 years would remain available to the units which had fulfilled the prescribed conditions and had obtained the eligibility certificate, etc., and had commenced commercial production before the date of any amendment. It was observed that the principle underlying legitimate expectation was based on Article 14 of the Constitution.

17. Considering the facts of our case, it is clear that the petitioner society had applied for registration on 16.9.2004. The petitioner unit was registered with effect from 29.10.2005. In the eligibility certificate issued in favour of the petitioner, it is clearly stated that the petitioner unit commenced commercial production from 22.10.2005. It is further stated in para. 5 of the eligibility certificate that this eligibility certificate was effective for the period of 7 years from 22.10.2005 to 21.10.2012. However, the resolution regarding the amendment was subsequently passed on 9.11.2005. Thus, the facts and circumstances of our case are almost identical to the facts and circumstances of the case of MRF Ltd. [supra]. Under such circumstances, it can very well be said that the said resolution of amendment is not applicable to the case of the present petitioners.

18. Ld. Advocate General Mr. Trivedi for the respondents submitted that it would be in public interest to reject the petition since other cooperative societies which have also applied during the currency of the scheme for the incentive benefits of sales tax exemption, are waiting for the out-come of this proceedings and that, therefore, grant of any relief in favour of the petitioners would open up the flood gate and also would invite huge burden on the State exchequer. In this respect so far as the present petition is concerned, we have observed that the language used in the scheme shall have to be considered in its true perspective. We need not repeat here the entire above discussion, but suffice it to say that the reasons assigned by the State Government in refusing to grant the sales tax exemption to the petitioner society that there are no farmer members in the society and, therefore, the benefits are not admissible to the petitioner society, cannot be accepted. Such decision of the State Government can very well be said to be illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Even such decision can be said to be contrary to the averments made in the scheme itself. No detailed particulars are supplied by the respondents as to how many other cooperative societies have been denied the benefits of the scheme. Of-course, there may not be any relevance in this petition of such details for the simple reason that each case has to be decided on its own merits.

19. In the result, the decision taken by the State Level Committee respondent No. 3 in its meeting dated 5.6.2007 [Annexure-Y page 140/1 annexed with the petition] and conveyed to the petitioner No. 1 society by the Additional Industries Commissioner and Member Secretary, State Level Committee, vide its letter dated 6-8.6.2007 [Annexure-A page 23/1 annexed with the petition], is hereby quashed and set aside; and the petitioner No. 1 society is hereby held to be entitled to the sales tax exemption in accordance with the scheme of the State of Gujarat, respondent No. 1, titled as SIncentive Scheme 2001 for Economic Development of Kutch District dated 9.11.2001.

It is hereby declared that the resolution dated 9.11.2005 passed by Section Officer, Mines and Industry Department of the State of Gujarat, pertaining to the amendment in the scheme [AnnexureM/1 page 87/B annexed with the petition] is not applicable to the case of the present petitioner No. 1 society. However, the entitlement of the petitioner No. 1 society to get the benefits of the "scheme" is subject to strict compliance of all the terms and conditions laid down in the said scheme dated 9.11.2001 as well as subject to the strict compliance of the terms and conditions laid down in eligibility certificate for sales tax incentives dated 11.11.2005 and in the annexure attached to said certificate [Annexure O pages 89 to 91 annexed with the petition], by the petitioner No. 1 society. The respondent No. 1 State through its competent authority is empowered to carry out due enquiry for detailed verification of assets of the petitioner No. 1 society as referred to in para. (4) of the eligibility certificate for sales tax incentives [Annexure O referred above]. The sales tax exemption benefits which the petitioner No. 1 society shall be entitled to get in accordance with the "scheme" and the "eligibility certificate" referred to above, shall be subject to the adjustment of any such benefits, the petitioner No. 1 society received in pursuance of any interim orders passed by this Court.

Special Civil Application No. 15730 of 2007 is allowed to the aforesaid extent. Rule made absolute accordingly.

20. The petitioner filed Special Civil Application No. 19369 of 2006 on 14.8.2006 mainly challenging the resolution pertaining to the amendment of the scheme passed by the respondent No. 1 State Government dated 9.11.2005. As discussed in detail in this judgment above, after such petition was filed, the exemption certificate was issued in favour of the petitioner society on 13.11.2005. We have also discussed in this judgment that the resolution regarding amendment of the scheme dated 9.11.2005 cannot be made applicable to the case of the present petitioner society. In short, in view of the detailed discussion made in this judgment, according to our opinion, the Special Civil Application No. 19369 of 2006 does not survive. Hence it is disposed of accordingly.