
(2020) 06 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 3162 Of 2019

Hindustan Unilever Ltd.

APPELLANT

Vs

Union Of India And 2 Ors

RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:

Central Excise Act, 1944 — Section 5A, 25(1)
Constitution Of India, 1950 — Article 229

Citation : (2020) 06 GAU CK 0014

Hon'ble Judges : Soumitra Saikia, J

Bench : Single Bench

Advocate : G.N. Sahewalla, M. Sahewalla, C. S. Lodha, S. C. Keyal, P. Das

Final Decision : Disposed Off

Judgement

1. The petitioner, namely, Hindustan Unilever Limited is a company within the meaning of Companies Act, 1956 and is, inter alia engaged in the

manufacture of soaps, detergents, toilet preparations and similar articles and for the said purpose has factories in different parts of the country.

2. The Government of India announced an Industrial Policy in 1997, comprising of a package of Special Incentives with a view to achieve accelerated

Industrial growth in the North Eastern Region. Amongst others, a 10 yearsâ?? tax holiday from payment of central excise and income tax was

granted to new units established in North-East on Region. The said exemption was available for a period of 10 years from the date of commencement

of commercial production. The petitioner, pursuant to the said Policy, set up industrial units in North-East at Tinsukia (Unit-I) and Tinsukia (Unit-II) on

24th August, 2001 and 4th April, 2003 respectively for manufacture of Shampoo, Conditioner & White Petroleum Jelly (Unit-I) and Tooth Paste (Unit-

II).

3. The petitioner company states that the present petition involves determination of the question, namely, whether Respondent No. 3 is justified in

ignoring a specific judgment of this Honâ??ble Court in Petitioners' own case and disregarding the fact that those very demands were quashed and

set aside by this Honâ??ble Court by judgment dated 07.03.2018, raise the demands again in utter disregard of the said judgment.

4. In this matter by order dated 17.05.2019, this Court directed that instructions be placed by the learned counsel for the respondents and that till the

next date it was directed that the respondents shall not take any coercive measures against the petitioners. By order dated 22.05.2019. Notice was

issued in the matter and till the Returnable date it was directed that the respondents shall not coercive measures against the petitioner pertaining to the

impugned communications dated 26.02.2019 (Annexure-T to the writ petition) and 02.04.2019 (Annexure-V to the writ petition). Thereafter, the

matter came up on several dates and on the prayer of the learned counsel for the parties adjournments were granted and the interim order passed

earlier was extended. This matter was listed again on 22.06.2020 and it was pointed out by the learned ASGI appearing for the respondents that this

matter is covered by the Judgment of the Supreme Court rendered in the case of Union of India Vs. VVF Limited. Accordingly, the matter was fixed

on 24.06.2020 and was heard finally in the presence of all counsels.

5. The brief facts giving rise to the present petition as narrated are extracted as under:-

a) On 20th November 1997, the Central Government announced an Industrial Policy inviting entrepreneurs to set up new industrial units in North-East

and promised that such units would be exempt from payment of central excise duty and income tax for a period of 10 years from the date of

commencement of commercial production. The Ministry of Industry notified this policy on 24th December 1997.

b) Pursuant to the said policy, Notifications No. 32/99 and 33/99 for implementing the policy were issued on 08.07.1999 by the Central Government

granting 100% Central Excise duty exemptions to the industrial units set up in pursuance of Industrial Policy. The mechanism devised for grant of such

exemption was that industrial units would receive duty paid raw materials from

various sources, take cenvat credit of the duty so paid on the raw materials, produce finished goods and while paying duty on finished products first utilize the cenvat credit availed in respect of raw materials and then pay the balance through Personal Ledger Account(PLA). The amount so paid through PLA, after due verification, was to be refunded back to the unit next month. The procedure so contemplated thus required that cenvat credit be first utilized, that Unit should make payment through PLA, the assessee should take self-credit of the amount so paid, that Department should verify the correctness of payment and if any amount is found to be in excess, it may direct the unit to pay back the amount. This procedure ensured grant of complete exemption to the product so manufactured. The notification thus envisaged self-credit by a manufacturer assessee under the Cenvat Credit Rules, 2004 for the goods cleared in a month by the 7th of the next month and in the event of excess self-credit the Revenue Officer (the respondent No. 3) is at liberty to order refund by the 15th of the next month under sub-Clause 2D(e) of Notification No. 32/99 dated 08.07.1999.

c) Pursuant to the above invitation, the petitioner company set up two units on 24th August, 2001 and 4th April, 2003 and was granted the benefit of the notification. For improving the operational efficiency of the procedure and to clarify certain aspects, the said notification was amended from time to time. However, for the purposes of present petition, these amendments are not relevant.

d) Enthused by the success of the said scheme and satisfied with the pace of Industrialization which changed the social landscape of North-East, the Central Government issued another Industrial Policy in 2007 which granted further extension for a period of 10 years from payment of central excise duty and income tax. The New North East Industrial and Investment Promotion Policy (NEIIPP) 2007 also allowed 100% excise duty exemption as was allowed as per the earlier policy.

e) Under the 2007 Policy, the petitioner company substantially expanded the unit-I on 25.05.2011 and unit-II on 01.02.2012 and also established a new unit- III on 27th March, 2013.

f) The Central Government, thereafter, issued Notification No. 17/2008 dated 27th March, 2008, whereby the earlier Notification No. 32/99 dated 08.07.1999 was amended. Thereafter, vide Notifications No. 31/2008 and

32/2008 both dated 10th June, 2008, the Central Government further amended Notification Nos. 32/99 and 33/99 thereby fixing different rates of central excise exemption for different units. Insofar as the petitioner is concerned instead of 100% exemption, the exemption to goods produced by the Petitioner company was curtailed to 56%. Thus according to the petitioner, the Government reduced the exemption by 44% in case of petitioner company's goods.

g) Being aggrieved by the amended Notifications curtailing the exemptions granted earlier, various writ petitions were filed before this Hon'ble

Court assailing the amendment notifications as according to those petitioners the notifications clearly violated the principle of promissory estoppel and

since various units which were set up in North-East pursuant to the promise contained in the 1997 Policy and 2007 Policy as implemented by the

notifications were put in a precarious situation. A learned Single Judge of this Hon'ble Court allowed the writ petitions vide Judgment and Order dated

21st August, 2012, passed in WP(C) 2143/2008 and the connected batch of writ petitions thereby, setting aside the subsequent amendment

notifications and holding the petitioners to be entitled to the benefits conferred under the Industrial Policy of 1997.

h) Aggrieved by the said judgment, the Government of India filed appeals before the Division Bench of this Hon'ble Court being W.A. No.

243/2009 and other connected Writ Appeals. The Division Bench initially passed an interim order on 11.08.2009 whereby the refund in terms of the

verdict in the writ petition was directed to be limited initially to the amount offered by the excise authorities. Subsequently, upon a Misc. Case being

filed in the W.A. No. 243/2009, being M.C. No. 1999/2012, the interim order was modified, in terms of an interim order passed by the Apex Court in a

similar case arising from the State of Gujarat and pending before the Apex Court. The interim order was modified and the Union of India was directed

to release 50% of the amount due in terms of the impugned Judgment and Order passed by the learned Single Judge. Pursuant to this order, the

second respondent granted refund to the petitioner in October, 2013.

i) This Hon'ble High Court finally heard the appeals and by Judgment and Order dated 20th November, 2014 quashed the amending notifications and

allowed complete relief to the petitioner therein by upholding the Judgment

passed by the learned Single Judge and dismissing the appeals filed by the Government.

j) Although the present petitioner was not a party before the Hon'ble Division Bench, since relief was granted by the Division Bench of this

Hon'ble Court in W.A. No. 243/2009 to the respondents (original writ petitioners) the present Petitioner approached the respondent No. 3 for

granting relief to the petitioner for the balance amount. The petitioner took self-credit of the balance amount of exemption in October, 2015. Thus, the

balance 22% which was denied to the petitioner was granted in October, 2015.

k) Thereafter, being aggrieved by the Judgment passed by the Division Bench of this Hon'ble Court, the Union of India preferred an appeal

before the Supreme Court assailing the Judgment and Order dated 20.11.2014 passed by the Division bench of the High Court in W.A. No. 243/2009.

l) It seems that in respect of some of the units, no relief whatsoever was granted by the respondents despite the orders passed by the Division Bench

of this Hon'ble Court W.A. No. 243/2009. As a result, contempt petitions were filed by some of those units. The petitioner not being an affected

party did not file any contempt petition as there was no occasion to do so.

m) Faced with contempt petitions filed by those units, the Union of India, filed an application before the Hon'ble Supreme Court in the SLPs

pending praying for stay of the operation of the Judgment. In those cases, the Hon'ble Supreme Court, on 7th December, 2015 ordered stay of the

operation of the judgment provided 50% of the exemption was given by the Department to those units.

n) The Hon'ble Supreme Court by order dated 07.12.2015 passed in I.A. 3/2005 which is as follows:-

â??ORDER

Heard.

Pending further orders, we direct that subject to the petitioners releasing 50% of the amount due to the respondent in terms of the impugned judgment

on the respondents furnishing solvent surety to the satisfaction of the jurisdictional commissioner, the operation of the impugned judgment shall remain stayed.

We further direct that contempt proceedings initiated against the petitioners shall

subject to their releasing 50% of the amount as stated above remain stayed.

The needful shall be done within four weeks from today.

I.A No. 3 of 2015 is accordingly allowed and disposed of??.

Pursuant to the order dated 07.12.2015 passed by the Apex Court in I.A. 03/2015, the respondent No. 3 by communication dated 19.02.2016 called

upon the petitioner to Reserve Bank an amount of Rs.24,98,00,940/- taken by the petitioner as self-credit. According to the Department, the self-credit

taken by the petitioner was found to be in excess of the actual benefit available to the petitioner for the month of October, 2015 under Clause 4(4)(e)

of the notification No. 20/2007-CE dated 25.04.2007

o) In response to the communication dated 19.02.2016, the petitioner by letter dated 24th February, 2016, pointed out firstly that such order was

passed only in those cases where those units had complained and filed contempt petitions and the petitioner was not even a party in those proceedings

and secondly, that in any event after the order of the Supreme Court passed on 7th December, 2015, at best, the operation of the judgment would be

stayed on and from that date. Therefore, till that the Division Bench judgment continued to hold the ground and whatever relief was granted or availed

of would continue to remain with the respective units.

p) Despite the submissions, the respondent No. 3 passed Order No. Div/SC-21/AC/TSK/2016-17 and Div/SC-22/AC/TSK/2016-17 both dated 6th

July, 2016 (received on 9th July, 2016) directing the petitioner to reverse the excise refund/credits which was availed of by the petitioner as per the

Division Bench judgment of this Hon'ble Court passed on 20th November, 2014 in W.A. No. 243/2009.

q) Aggrieved by the aforesaid orders passed by the respondent No. 3 directing the petitioner to reverse the excise credit availed of by the petitioner to

the Department despite the fact that the credit was taken and granted in terms of the Division Bench Judgment of this Hon'ble High Court, the

petitioner filed a petition before this Hon'ble Court, being WP No. 5379/2016.

r) A Division Bench of this Hon'ble High Court comprising of Hon'ble Mr. Justice Hrishikesh Roy and Hon'ble Mr. Justice P. K. Phukan

passed an interim order on 8th September, 2016 as under:

Heard Mr. C. S. Lodha the learned Counsel appearing for the petitioner. Also heard Mr. S. C. Keyal, the learned Asst. Solicitor General of India representing the respondents.

The petitioners are beneficiaries of the judgment rendered on 20.11.2014 (Annexure-I) in the W.A. No. 243/2009 under which the North East based industries are held entitled to full exemption benefit of Excise duty in pursuant to the declared Industrial Policy of 1997 and 2007. Following the judgment, the industry claimed self credit of excise duty but now the respondent authorities have declared though the impugned order dated 6.7.2016 (Annexure-O) that excess self credit was drawn by the industry and accordingly two orders were passed both on 6.7.2016 (Annexure O & P) whereby the alleged excess credit to the tune of Rs. 24,98,00,940/-and Rs. 10,76,42,993/-) respectively was ordered to be refunded back to the Revenue authorities.

Assailing the impugned orders, Mr. C. S. Lodha, the learned Counsel submitted that the petitioner has not claimed 100% tax exemption benefit after interim order was passed by the Supreme Court on 07.12.2015 [Annexure J]. But the CENVAT credit the refund of which is now demanded is for the period between the Division Bench judgment dated 20.11.2014 and 07.12.2015 when the Supreme Court passed the interim order. The petitioner contends that once the Division Bench judgment was not stayed by the Apex Court until 07.12.2015 the manufacturer is entitled to claim 100% tax exemption of duty for the concerned period.

In view of above, let notice returnable in for weeks be Issued. Mr. S. C. Keyal, the learned Asst. Solicitor General of India accept notice for all the respondents. Necessary extra copies be furnished to him.

In the interim, coercive measures should not be taken against the petitioner in pursuant to the two impugned orders dated 6.7.2016 (Annexures O and P)??.

s) While the petitioner was granted the benefit in terms of the Division Bench Judgment of this Honâ??ble Court on 20th November 2014 in W.A.

No. 243/2009, there were many other assesses in whose cases the refundable excise duty was partially withheld by the Department on one ground or

the other. Various petitions as well as many contempt petitions were filed before this Honâ??ble Court against such withholding of the duty payable

to those petitioners after the stay order passed by the Honâ??ble Supreme Court. Those batches of cases were heard and decided by a common

judgment by a Division Bench of this Honâ??ble Court in the case of Raj Coke Industries Vs. Union of India [2017 (349) ELT 120], decided on 1st

December, 2016.

t) The Petitionerâ??s earlier writ petition WP(C)No. 5379/2016 came up before a Co-ordinate Bench of this Court. By order dated 07.03.2018, by

placing reliance in the Order passed by a Division Bench in the Case of â??Raj Cokeâ? this court set aside and quashed both the impugned demand

notices No. Div/SC-21/AC/TSK/2016-17 and No. Div/SC-22/AC/TSK/2016-17 dated 06.07.2016, issued by the Department.

u) On 27.03.2019, the petitioner addressed a communication recounting the correct factual position and narrated the sequence of events and pointed

out that in view of the specific directions in the petitionerâ??s case, the communication of the Department was issued without appreciating the

specific facts of the petitionerâ??s case. The petitioner, therefore, requested the 3rd respondent to withdraw his letter.

v) On 2nd April, 2019 the 3rd respondent again reiterated his views and required the appellant to reverse the alleged excess credit taken by the

petitioner.

w) On 18th April, 2019 the petitioner again reiterated itâ??s submissions and specifically pointed out that the judgment of the Division Bench of this

High Court dated 20.11.2014 continued to hold the ground till it was stayed on 07.12.2015 by the Honâ??ble Supreme Court prospectively. There

was no order by the Honâ??ble Supreme Court to undo what was legally and validly done under the said judgment prior to order dated 07.12.2015. It

was pointed that despite the facts narrated above the Central Excise Authorities had passed orders on 06.07.2016 making exactly the same demands

as were made by the 3rd respondent now, namely, directing return of the amounts which were paid to the petitioner. This was exactly what was

challenged by Writ Petition No. 5379/2015 and the demand notice was quashed by this Honâ??ble Court vide its order dated 07.03.2018. The

petitioner pointed out that by making the same demand, once again, despite the judgment of this Honâ??ble Court amounts to contempt of the

Honâ??ble High Court.

x) Despite providing complete clarification and despite pointing out that the action of the 3rd respondent would amount to contempt of this Hon'ble

Court, the 3rd respondent by order No. C. No. V(19)04/Misc. Corres/HUL/TECH/ACT/17-18/434 dated 02.05.2019 directed the petitioner to pay the

alleged excess amount.

6. Aggrieved by the aforesaid orders passed by the respondent on 26.02.2019, 02.04.2019 & 02.05.2019 directing the petitioner to reverse the self-

credit which according to the Department was in excess of the amount actually entitled, the petitioner has challenged these orders in the present

proceedings.

7. The respondent department filed its affidavit and contested the case. The respondents stated that the issue involved in this writ petition was covered

by the judgment and order dated 01.12.2016, passed by a Division Bench of this Court in the case of Raj Coke Industries vs. Union of India and 6

others and 25 other connected matters. According to the Department, the petitioner company had only gone through the portion of the judgment dated

07.03.2018 where their interest lies and ignoring the last paragraph of the said judgment as the same is against their interest.

8. The Department denied the contention of the petitioner that the order of the Honâ??ble Supreme Court is only applicable to those units which have

filed contempt petition against the respondent and as the petitioner company did not file contempt proceeding hence the same is not applicable to them.

But as the order of the Honâ??ble Apex court is applicable on pan India basis, hence it is applicable to them also. The Department contended that

the petitioner company also took refund of the 50% of the due amount as per the Hon'ble Apex Court order but in the petition they mentioned that this

is not applicable to them and hence the stand of the petitioner company is self-contradictory.

9. The Department contended that when the petitioner took the amount as self-credit the same was already pending at Honâ??ble Apex Court hence

the excess self-credit was denied by the competent authority. As per the Notification No. 20/2007 CE dated 25.04.2007, as amended, the self-credit

amount was also required to be sanctioned by the competent authority and if the authority orders to reverse the excess credit availed then the party

has to reverse the amount. But in the present case the petitioner did not reverse

the amount till date, though the Honâ??ble Apex Court clearly ordered stay of the operation of the Honâ??ble High Court judgement & order dated 20.11.2014, provided 50% of the exemption was given by the Department to those units. According to the Department the decision in the case of Raj Coke Industries â??Vs- Union of India was primarily about the computation of the due amount and not like as the petitioner described.

10. The Department disputed the contention of the petitioner that the directions in judgment dated 20.11.2014 passed by the Division Bench of the Honâ??ble Gauhati High Court will continue to operate till the order of the Honâ??ble Apex Court dated 07.12.2015. The respondents disputed the contentions of the petitioner that the judgment in Raj Coke Industries â??Vs- Union of India dealt with only the petitioners therein and does not apply in relation to the present case.

11. The Department also denied that in earlier letter under even No. 882 dated 26.02.2019 and 071 dated 02.04.2019 that any demand mentioning the earlier demand notices were ever raised.

12. The Department contended that in the present case excess amount of refund was availed as self-credit by the petitioner as they were never granted/sanctioned such refund by the competent authority.

13. The department contended that there was no bar to claim the 100% tax exemption but availing the same while the claim was rejected is contrary to the law. If the same was sanctioned before 07.12.2015 then the Department would not have asked them to reverse the excess amount but as the same was not sanctioned prior to 07.12.2015 the same needs to be reversed by the petitioner company.

14. The petitioner filed the re-joinder affidavit in response to the affidavit-in â??opposition filed by the respondent Department and reiterated its case as stated in the petition.

15. This Writ Petition was filed by the petitioner during the pendency of the SLPs filed by the Union of India before the Apex Court. The said SLPs have since been allowed by the Judgment of the Apex Court rendered in the case of Union of India â??Vs- VVF Limited and other connected matters reported in 2020 SCC Online SC 378. The controversy relating to the correctness of the issuance of the subsequent notifications by the CE

Department amending the terms & conditions relating to refunds available under the Original notifications i.e. 32/01 & 33/01 are no longer res integra.

The Apex Court by Judgment and Order dated 22.4.2020 have allowed the Appeals preferred by Union of India upholding the subsequent notifications

issued by the Department amending the manner of issuing refunds. The claims raised in this matter will now have to be seen in terms of the directions

issued by the Apex court by Judgment and Order dated 22.04.2020. The communications issued by the Department and impugned in the Writ petition

will also have to be seen keeping in view of the directions issued by the Apex Court.

16. As discussed above, the matter which was pending before the Apex Court and in which the interim order dated 07.12.2015 was passed, came to

be finally heard by the Apex Court along with others connected similar appeals. The Apex Court by Judgment and Order dated 22.04.2020 disposed

of all the civil appeals pending in which the lead case was Union of India Vs. VVF Limited and Anr,. By this Judgment, the Apex Court allowed the

appeals filed by the Union of India against various judgments rendered by several different High Courts, including the Honâ??ble Gauhati High

Court. By this judgment, the impugned judgments and orders passed by the respective High Courts, quashing and set aside the subsequent

notification/Industrial policies impugned in the respective writ petitions before the respective High Court, were all set aside and quashed by the Apex

Court. Consequently, the original writ petitions filed by the respective original writ petitioners before the respective High Courts (including the

Honâ??ble Gauhati High Court) challenging the respective subsequent Notifications/Industrial Policies stood disposed of and for the reasons stated

(in the judgment of the Apex Court,) the challenge to the respective subsequent Notifications/Industrial Policies impugned before the respective High

Court failed. However, the Apex Court clarified that the present Judgment will not affect the amount of excise duty already refunded, meaning

thereby, that the cases in which excise duty was already refunded prior to the subsequent Notifications/Industrial Policies impugned before the

respective High Courts, are not to be re-opened. It is further clarified that the pending refund applications shall be decided as per the subsequent

Notifications/Industrial Policies which were impugned before the respective High Court and that they shall be decided in accordance with Law and on

merits and as per the subsequent Notifications/Industrial Policies impugned before the respective High Courts.

17. The relevant paragraphs by the Apex Court Judgment are extracted herein below:-

10. By the impugned Judgment and Order, the High Court has set aside the subsequent notification No. 16 of 2008 dated 27.03.2008 mainly on the

ground that the same is retrospective and not retro-active in nature and the same is hit by the Doctrine of Promissory Estoppel. It is the case on behalf

of the Union of India that the subsequent notification is as such in continuation of the earlier notification and the same is clarificatory and therefore can

be made applicable retrospectively. It is also the case on behalf of the Union of India that the subsequent notification/amendment in the original

notification did not in any way alter the basis of the original first notification of 2001. It is also the case on behalf of the Union of India that the

subsequent notification of 2008 has been issued in the public interest and has been issued in exercise of the powers conferred under Section 5A of the

Central Excise Act. Therefore, the questions which are posed for consideration of this Court are whether in the facts and circumstances of the case

the subsequent notification which has been quashed and set aside by the High Court being notification No. 16 of 2008 dated 27.03.2008 can be said to

be clarificatory in nature and can it be said that it takes away the vested right conferred pursuant to the earlier notification of 2001 and whether the

same can be made applicable retrospectively and whether the same has been issued in the public interest and whether the same is hit by the Doctrine

of Promissory Estoppel?

11. While considering the aforesaid questions and before considering the nature of the subsequent notification of 2008, few decisions of this Court on

retrospectivity/clarificatory/applicability of promissory estoppel in the fiscal statute are required to be referred to, which are as under:

11.1 In the case of Kasinka Trading (supra), in paragraphs 12, 20 and 23, it is observed and held as follows:-

12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is

necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority

to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or

of the public authority to make. There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and

positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the

effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would

not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are

bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the

doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the

applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of

the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

20. The facts of the appeals before us are not analogous to the facts in Indo-Afghan Agencies [(1968) 2 SCR 366 : AIR 1968 SC 718] or M.P. Sugar

Mills [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] . In the first case the petitioner therein had acted upon the unequivocal promises

held out to it and exported goods on the specific assurance given to it and it was in that fact situation that it was held that Textile Commissioner who

had enunciated the scheme was bound by the assurance thereof and obliged to carry out the promise made thereunder. As already noticed, in the

present batch of cases neither the notification is of an executive character nor does it represent a scheme designed to achieve a particular purpose. It

was a notification issued in public interest and again withdrawn in public interest. So far as the second case (M.P. Sugar Mills case [(1979) 2 SCC

409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641]) is concerned the facts were totally different. In the correspondence exchanged between the State

and the petitioners therein it was held out to the petitioners that the industry would be exempted from sales tax for a particular number of initial years

but when the State sought to levy the sales tax it was held by this Court that it was precluded from doing so because of the categorical representation

made by it to the petitioners through letters in writing, who had relied upon the same and set up the industry.

23. The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have

been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had

been issued. The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy

decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public

interest". The courts, do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bona

fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act

in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act."

Thus, it can be seen that this Court has specifically and clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the

courts are bound to consider all aspects including the objective to be achieved and the public good at large. It has been held that while considering the

applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present to the mind of the court,

while considering the applicability of the doctrine. It is further held that the doctrine must yield when the equity so demands if it can be shown having

regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance

or representation. It is further held that an exemption notification does not make items which are subject to levy of customs duty etc. as items not

leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid

down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified

or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory

power of the State under the law itself. It has been further held that under the General Clauses Act an authority which has the power to issue a

notification has the undoubted power to rescind or modify the notification in a like manner. It has been observed that the withdrawal of exemption

“in public interest” is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of

the satisfaction of the Government that a change in the policy was necessary in the “public interest”. It has been held that where the Government

acts in “public interest” and neither any fraud or lack of bonafides is alleged, much less established, it would not be appropriate for the court to

interfere with the same.

11.2 In the case of Shrijee Sales Corporation (supra), it is observed and held that the principle of promissory estoppel may be applicable against the

Government. But the determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or

“public interest”. In case there is a supervening public interest, the Government would be allowed to change its stand; it would then be able to

withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on

account of such withdrawal. Once public interest is accepted as the superior equity which can override individual equity, the aforesaid principle should

be applicable even in cases where a period has been indicated for operation of the promise.

11.3 In the case of Shree Durga OH Mills (supra), it has been held that when the withdrawal of exemption is in public interest, the public interest must

override any consideration of private loss or gain. In the said case, the change in policy and withdrawal of the exemption on the ground of severe

resource crunch have been found to be a valid ground and to be in public interest.

11.4 In the case of Mahaveer Oil Industries (supra), after considering the decision of this Court in the case of Kasinka Trading (supra), a similar view

has been taken and it has been observed that public interest requires that the State be held bound by the promise held out by it in such a situation. But

this does not preclude the State from withdrawing the benefit prospectively even during the period of the Scheme, if public interest so requires. Even

in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the

scheme be modified, that supervening public interest would prevail over any

promissory estoppel.

11.5 In the case of Shree Sidhali Steels Ltd. (supra), in paragraphs 32 and 33, it has been observed and held as follows:-

32. The doctrine of promissory estoppel is by now well recognised and well defined by a catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.

33. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the court would not raise an equity in favour of the promisee and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. The Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to

law.â??

Thus, as held by this Court, when the public interest warrants, the principles of promissory estoppel cannot be invoked.

It is further held that the rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-

fast rule but an elastic one, the objective of which is to do Justice between the parties and to extend an equitable treatment to them.

12. Now, so far as the decisions relied upon by the learned counsel appearing on behalf of the respective original writ petitioners-respondents herein

are concerned, once it is held that the subsequent notifications/industrial policies impugned before the respective High Court are clarificatory in nature

and it does not take away any vested rights conferred under the earlier notifications/industrial policies, none of the decisions relied upon shall be

applicable to the facts of the case on hand.

â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|..

14. Applying the law laid down by this Court in the aforesaid decisions to the subsequent notifications/industrial policies which were the subject-matter

before the High Court and for the reasons stated hereinbelow, we are of the opinion that the respective notifications/industrial policies impugned

before the High Courts can be said to be clarificatory in nature and it can be defined as an Act to remove doubts. It cannot be said that by the

subsequent notifications/industrial policies the benefits which were accrued/ granted under the earlier notifications were sought to be taken away. It

also cannot be said that by the subsequent notifications/industrial policies, the rights which have been accrued under the earlier notifications had been

taken away.

14.1 The main objective of the earlier respective notifications/industrial policies was to encourage the entrepreneurs to put new industries in the area

so as to generate employment and for that an incentive was offered to get back by way of refund the excise duty paid either in cash or PLA, namely,

the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization paid by CENVAT credit. The same was

subject to conditions that it will be applied to the new industrial units, i.e. the units which are set up on and after the publication of the said notification

in the Official Gazette, i.e. not later than 31.07.2003. The notification was

modified from time to time. However, during the operation of the earlier notifications, it was noticed that the provision of granting refund of cash paid portion of duty and eligibility of credit the entire amount of duty to the buyers of such excisable goods had prompted certain unscrupulous manufacturers to indulge in different types of tax evasion tactics. It was revealed on analysis of cases booked by the Excise Department and even the representations received from the Industry Association about misuse of exemptions granted by the Government, which was meant to be available only for genuine manufacturers. It was noticed as under:-

i) Reporting of bogus production by mere issuance of sale invoices without actual production of goods and supply/clearance of excisable goods. This

would result in availment of CENVAT credit by buyers of such excisable goods in other parts of the country without actual production being carried

out and in absence of actual receipt of goods.

ii) Reporting of bogus production by such units in these areas where actual production takes place elsewhere in the country.

iii) Over valuation of goods resulting in availment of excess credit by buyers.

iv) Goods are supplied by manufacturers, importers to these units without issuance of sales invoice and these are backed by bogus sale invoices issued

by traders who do not undertake actual supply of goods. The actual supplier of these goods issue bogus duty paid invoices to other manufacturers who

take credit based on such invoices without receipt of goods.

Therefore, the Government came out with the impugned notifications/industrial policies that the refund of excise duty shall be provided on actual and

calculated on the basis of actual value addition. On a fair reading of the earlier notifications/industrial policies, it is clear that the object of granting the

refund was to refund the excise duty paid on genuine manufacturing activities. The intention would not have been that irrespective of actual

manufacturing/manufacturing activities and even if the goods are not actually manufactured, but are manufactured on paper, there shall be refund of

excise duty which are manufactured on paper. Therefore, it can be said that the object of the subsequent notifications/industrial policies was the

prevention of tax evasion. It can be said that by the subsequent notifications/industrial policies, they only rationalizes the quantum of exemption and

proposing rate of refund on the total duty payable on the genuine manufactured

goods. At the time when the earlier notifications were issued, the Government did not visualize that such a modus operandi would be followed by the unscrupulous manufacturers who indulge in different types of tax evasion tactics. It is only by experience and on analysis of cases detected the Excise Department the Government came to know about such tax evasion tactics being followed by the unscrupulous manufacturers which prompted the Government to come out with the subsequent notifications which, as observed hereinabove, was to clarify the refund mechanism so as to provide that excise duty refund would be allowed only to the extent of duty payable on actual value addition made by the manufacturer undertaking manufacturing activities in the concerned areas. The entire genesis of the policy manifesting the intention of the Government to grant excise duty exemption/refund of excise duty paid was to provide such exemption only to actual value addition made in the respective areas. As it was found that there was misuse of excise duty exemption it was considered expedient in the public interest and with a laudable object of having genuine industrialization in backward areas or the concerned areas, the subsequent notifications/industrial policies have been issued by the Government. Therefore, the subsequent notifications/industrial policies impugned before the respective High Courts were in the public interest and even issued after thorough analysis of the cases of tax evasion and even after receipt of the reports. The earlier notifications were issued under Section 5A of the Central Excise Act and even the subsequent notifications which were issued in public interest and in the interest of Revenue were also issued under Section 5A of the Central Excise Act, which can not be said to be bad in law, arbitrary and/or hit by the doctrine of promissory estoppel.

14.2 The purpose of the original scheme was not to give benefit of refund of the excise duty paid on the goods manufactured only on paper or in fact not manufactured at all. As the purpose of the original notifications/incentive schemes was being frustrated by such unscrupulous manufacturers who had indulged in different types of tax evasion tactics, the subsequent notifications/industrial policies have been issued allowing refund of excise duty only to the extent of duty payable on the actual value addition made by the manufacturers undertaking manufacturing activities in these areas which is absolutely in consonance with the incentive scheme and the intention of the

Government to provide the excise duty exemption only in respect of genuine manufacturing activities carried out in these areas.

14.3 As observed hereinabove, the subsequent notifications/industrial policies do not take away any vested right conferred under the earlier

notifications/industrial policies. Under the subsequent notifications/industrial policies, the persons who establish the new undertakings shall be continue

to get the refund of the excise duty. However, it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual

excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities. Therefore, it cannot be said that subsequent

notifications/industrial policies are hit by the doctrine of promissory estoppel. The respective High Courts have committed grave error in holding that

the subsequent notifications/industrial policies impugned before the respective High Courts were hit by the doctrine of promissory estoppel. As

observed and held hereinabove, the subsequent notifications/industrial policies which were impugned before the respective High Court can be said to

be clarificatory in nature and the same have been issued in the larger public interest and in the interest of the Revenue, the same can be made

applicable retrospectively, otherwise the object and purpose and the intention of the Government to provide excise duty exemption only in respect of

genuine manufacturing activities carried out in the concerned areas shall be frustrated. As the subsequent notifications/industrial policies are to

explain the earlier notifications/industrial policies, it would be without object unless construed retrospectively. The subsequent notifications impugned

before the respective High Courts as such provide the manner and method of calculating the amount of refund of excise duty paid on actual

manufacturing of goods. The notifications impugned before the respective High Courts can be said to be providing mode on determination of the

refund of excise duty to achieve the object and purpose of providing incentive/exemption. As observed hereinabove, they do not take away any vested

right conferred under the earlier notifications. The subsequent notifications therefore are clarificatory in nature, since it declares the refund of excise

duty paid genuinely and paid on actual manufacturing of goods and not on the duty paid on the goods manufactured only on paper and without

undertaking any manufacturing activities of such goods.

â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|

â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|

16. Under the circumstances, the respective High Courts have committed a grave error in quashing and setting aside the subsequent

notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and

that they are retrospective and not retroactive. Consequently, all these appeals are ALLOWED. The impugned Judgments and Orders passed by the

respective High Courts, which are impugned in the present appeals, quashing and setting aside the subsequent notifications/industrial policies impugned

in the respective writ petitions before the respective High Courts, are hereby quashed and set aside. Consequently, the original writ petitions filed by

the respective original writ petitioners before the respective High Courts challenging the respective subsequent notifications/industrial policies stand

dismissed and for the reasons stated hereinabove, the challenge to the respective subsequent notifications/industrial policies impugned before the

respective High Courts FAIL. However, it is CLARIFIED that the present judgment shall not affect the amount of excise duty already refunded,

meaning thereby, the cases in which the excise duty is already refunded prior to the subsequent notifications/industrial policies impugned before the

respective High Court, they are not to be reopened. However, it is further CLARIFIED that the pending refund applications shall be decided as per

the subsequent notifications/industrial policies which were impugned before the respective High Courts and they shall be decided in accordance with

the law and on merits and as per the subsequent notifications/industrial policies impugned before the respective High Courts. All these appeals stand

disposed of accordingly. NO COSTSâ??.

18. It is the contention of the petitioner before this Court that notwithstanding the Judgment rendered by the Apex Court; as understood by the

petitioner the claims of the industries eligible under the original Notification like the petitioner are still maintainable and the same are required to be

considered by the respondents authorities in terms of the original notifications read with the judgment of the Apex Court rendered on 22.04.2020. The

learned counsel for the petitioner, therefore, submits that as per their

calculations, if the policy is applied then the petitioner is entitled to a refund of about Rs.88.01/- Crores. However, even if the entitlements of the petitioners are to be adjudicated and/or curtailed as per the subsequent notifications, which notifications were upheld by the Apex Court even then the petitioner would be entitled to a refund of about Rs.27/- Crores. Consequently, the communications dated 22.06.2019 (Annexure-T to the writ petition), 02.04.2019 (Annexure- V) and 02.05.2019 (Annexure-X) respectively are required to be interfered with and the petitioner be afforded an opportunity to present their claims seeking refund before the authorities. It is also the further case of the petitioners that these communications are only a sequel to the order passed earlier being order No. DIV/SC-21/AC/TSK/2016-17 dated 06.07.2016 by the Assistant Commissioner, Central Excise and Service Tax whereby the self-credit claimed by the petitioner was rejected and thereby ordering the petitioner to reverse excess credit stated to have been claimed by the petitioner, as well as the order dated 06.07.2016 vide order No. DIV/SC-22/AC/TSK/2016-17 passed by the Assistant Commissioner, Central Excise and Service Tax. Both these orders were set aside by this Honâ??ble Courtâ??s earlier order dated 07.03.2018 passed in WP(C) No. 5379/2016. Consequently, the petitioner submits that the impugned communications dated 26.02.2019 (Annexure-T to the writ petition), 02.04.2019 (Annexure-V) and 02.05.2019 (Annexure-X) are completely illegal and unsustainable in law and therefore, the same be suitably interfered with and set aside by this Court.

19. On a pointed query made to learned ASGI, he has fairly submitted that the Department has not preferred any appeal against the order dated 07.03.2018 passed in WP(C) No. 5379/2016 and the same has therefore attained finality in law.

20. Under the circumstances and in view of the discussions made above, it will be appropriate to direct the respondents to re-visit the issue regarding the claims sought for by the petitioner in view of the judgment and order dated 22.04.2020 rendered by the Apex Court in the case of Union of India Vs. VVF Limited and thereafter take into consideration all the claims made by the petitioner as regards their entitlements to refund as sought for in terms of the excise notification. The respondent authority will also take into consideration the effect of the order dated 07.03.2018 passed in WP(C)

No. 5379/2016 against which the Department has admittedly not filed any appeal. The respondent Department upon hearing the petitioner afresh may decide to pass appropriate orders on the refund claimed to be available to the petitioners under the said Industrial Policy. The impugned communications dated 26.02.2019 (Annexure-T to the writ petition), 02.04.2019 (Annexure-V) and 02.05.2019 (Annexure-X) will not be acted upon by the respondents till the matter is re-visited by the Department in terms of the directions contained in the Judgment dated 22.04.2020, passed by the Apex Court in the case of Union of India & Vs- V.V.F. Limited while taking into account the claims made by the petitioner. The Department upon hearing the petitioner and upon re-deciding the matter afresh in terms of the directives issued by the Judgment dated 22.04.2020, passed by the Apex Court in the matter of & VVF Limited, will be at liberty to recall the earlier communications, if it feels justified to do so. Till the matter is re-visited as directed above and till the Department passes necessary orders communicating it to the petitioner, the communications impugned namely communications dated 22.02.2019 (Annexure-T to the writ petition), 02.04.2019 (Annexure-V) and 02.05.2019 (Annexure- X) will remain suspended and be not acted upon by the Department.

21. The entire exercise as directed above will be completed within a period of 4(four) months from the date of this order.

22. This writ petition is accordingly disposed of.

23. No order as to cost.