
(2003) 01 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11941 of 2002

Iris Electronics India Pvt. Ltd. and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Citation : (2003) 01 PAT CK 0037

Judgement

R.S. Garg, J.—By this writ application the petitioners seek to challenge the applicability of Notification S.O. No. 85 dated July 17, 2002 to the industries who have secured/obtained sales tax exemption certificate/order in their favour u/s 7(3)(b) of the Bihar Finance Act, 1981.

2. The petitioner No. 1, M/s. Iris Electronics India, a private limited company incorporated under the Companies Act, 1956 is engaged in manufacture of television sets. The petitioner No. 2 is one of the directors of the petitioner No. 1 while petitioners Nos. 3, 4 and 5 are the dealers of the petitioner No. 1, and according to the petitioners, are directly affected by the interpretation of the notification S.O. No. 85 made by the respondents-authorities regarding its applicability to make payment of tax on the sale of exempted product manufactured by the petitioner No. 1.

3. The petitioner No. 1 claims to be a small-scale industrial unit registered with the General Manager, District Industries Centre, Patna, having its permanent registration certificate granted to it vide memo No. 2353 dated December 20, 1997. The petitioner No. 1 is also a registered dealer under the provisions of the Bihar Finance Act, 1981 ("the Finance Act", for short) as well as the Central Sales Tax Act, 1956.

4. The petitioners say that the State Government for accelerating the slow pace of industrial and economic development and in order to boost industrialisation in the State allowed time to time various incentives for setting up new industries in Bihar.

5. The State Government to achieve its policy and goal announced the Industrial Policy in the year 1993 which was made applicable to the industries commencing their production with effect from April 1, 1993 to March 31, 1998. Yet another Industrial Policy was announced in the year 1995. According to the petitioners, the present matter relates to the Industrial Policy Resolution, 1993. The policy was approved by the cabinet.

6. Undisputedly as per different clauses of the Industrial Policy Resolution, a new industrial unit which commenced its commercial production between April 1, 1993 to March 31, 1998 is entitled to different types of incentives for a period of 8/10 years depending upon the location of the industrial units and different categories of the Districts specified in Clause 10.1 of the Policy. According to the petitioner, its industrial unit falls within zone of Category-B, therefore, it is entitled to exemption of tax on sale of finished products for a period of 8 years. It is not disputed before us that according to the Industrial Policy of 1993 ("the 1993 Policy", for short) various incentives for grant of sales tax exemption were also commenced which intended exemption from sales tax on the sale of finished products of the said units under Clause 10.2 of the 1993 Policy. The petitioners say that to give effect to the said Policy/promise, the State Government issued notification bearing S.O. No. 96 dated April 4, 1994 in exercise of powers conferred u/s 7(3)(b) of the Finance Act prescribing the details of the procedure and the conditions for grant of exemption from payment of tax on the products of the new industrial units which had obtained exemption certificate in form II enclosed with S.O. No. 96.

7. The petitioner says that in view of the said policy of 1993, it took steps for setting up its unit but the industrialisation/production was delayed for some reasons but, however, the unit commenced its commercial production from November 1, 1997. The petitioner No. 1 thereafter in terms of S.O. No. 96 applied for grant of exemption from payment of sales tax on its finished products before the competent authority, i.e., Circle in-charge of Patliputra Circle, Patna where the petitioner No. 1 is registered as a dealer. After due enquiries and finding that the petitioner is entitled to exemption, the Deputy Commissioner, Commercial Taxes, Patliputra Circle, Patna issued necessary exemption certificate in form kha-1 on August 4, 1999 certifying that the goods/finished products produced by the petitioner No. 1 will be exempted from sales tax for the period between November 1, 1997 and October 30, 2005. The petitioner contends that subsequent to grant of exemption certificate the goods/ finished products produced by the petitioner-unit have been exempted from payment of sales tax subject to the conditions certified in the notification S.O. No. 96 dated April 4, 1994. It is not in dispute before us that Clause 18 of the notification specifically required that the owner/proprietor of the industrial unit will be under obligation to issue serially printed cash/credit memos on sale of its finished products, containing name and address of the purchaser, description of the goods, tax exemption certificate number, period of its validity which must also bear the signatures of the seller. The petitioner says that a conjoint reading of Clause (18)

and Clause (21) of the Notification S.O. No. 96 would make it clear that the sale of products specified in the notification is exempted from sales tax and all subsequent sales of the product are not under liability of sales tax nor the exemption can be restricted to a sale between the industries and the first purchaser. The petitioner says that form Ch a part of the Notification S.O. No. 96, in fact, is a declaration by selling dealer who is effecting sale of the exempted goods manufactured by the unit which possesses the exemption certificate and that would also show that the exemption is granted to the products of the industrial unit and the same is not confined to the manufacturer of the product. The petitioner No. 1 says that it made huge investment in setting up its industrial unit in view of the allotment made and the promises expressed in the Industrial Policy and as such the State Government is obliged and duty-bound to respect their assurances and the promises made and, the State cannot be allowed to circumvent the exemption granted to the industrial unit in relation to its products and make the product chargeable to sales tax at a subsequent stage making the product subject to sales tax and withdrawing of the benefits which were provided to the unit so that it may compete in the market against the established products.

8. The petitioners say that the respondent-State issued S.O. No. 85 on July 17, 2002 in exercise of its power conferred u/s 11(3) of the Finance Act by which the respondents have specified to levy multi-point tax (tax at every stage after adding value) on certain goods mentioned in the Schedule of the notification. Television sets produced by the petitioner No. 1 have been included in the said Schedule. After issuance of the said notification, the sales tax authorities did not issue notices to the petitioner No. 1 that they intended to nullify the exemption in view of S.O. No. 85, however, some officers of the Commercial Tax Department started discouraging the dealers including petitioners Nos. 3, 4 and 5 and others from purchasing and selling the television sets manufactured by the petitioner No. 1 by extending the threat that such dealers would be liable to pay tax on the T.V. sets on a subsequent sale in view of the Notification S.O. No. 85 dated July 17, 2002. The petitioners say that petitioner No. 1 brought this matter to the notice of the Commissioner of Commercial Taxes, Bihar that the whole object of the Industrial Policy and the promises made in it would be frustrated if the purchaser-cum-dealers from the petitioner No. 1 were discouraged or were obliged to pay sales tax on such exempted products in case of further sale by them. According to the petitioners, the respondent-Commissioner, Commercial Taxes vide his letter No. Bikri Kar/ Vividh/254/2002-5015 dated October 18, 2002 issued a direction to all the Joint Commissioners of Commercial Taxes (Admn.) and Circle in-charge to levy and impose tax on second/subsequent sales even on the product of the petitioner No. 1. The said letter is annexed with the writ application as annexure 8.

9. In view of the directions contained in annexure 8, the Circle in-charge of Patliputra Circle, Patna issued directions to the dealer-petitioners Nos. 3, 4 and 5 to deposit tax on sale of the product manufactured by the petitioner No. 1.

10. The petitioners say that a fair reading of S.O. No. 96 would make it clear that the sales tax exemption cannot be restricted to a sale effected between the manufacturer and the first purchaser-cum-dealer because according to the Policy and form Ch, the product is exempt from sales tax and every sale of the said product shall be exempt from the sales tax to the extent of sale price paid by the first purchaser to the industrial unit.

11. The petitioners say that the Notification S.O. No. 85 dated July 17, 2002 deals with the point of taxation and does not deal with the exemption notification nor can it control the scope of and the benefits flowing from the Industrial Policy and S.O. No. 96. According to the petitioners, S.O. No. 85 would not have any overriding effect on the exemption certificate issued u/s 7(3)(b) of the Finance Act or the Industrial Policy but shall govern the ordinary sales of unexempted products or at best can control the levy of sales tax on basis of the value added derivative provided the purchaser-dealer adds its profit to the first purchased price. According to them the first sale price, if is exempted and continues to be so then according to the notification, the subsequent sale would only attract the sales tax to the additional value added to the product and not to the full value of the product so sold.

12. It is also contended by the petitioners that any order/notification issued u/s 11(3) of the Act in fact is the intention of the State Government contained u/s 11(1) but notified u/s 11(3) of the Act. It is contended that the department officials have misinterpreted S.O. No. 85 dated July 17, 2002 and are trying to withdraw the benefits conferred upon the petitioners under S.O. No. 96 dated April 4, 1994 because the exemption now in view of the illegal interpretation would not be available to any subsequent sale of the said product. It is contended that S.O. No. 85 is indirect conflict with S.O. No. 96 and is arbitrary, discriminatory and violative of Articles 14 and 19(1)(g) of the Constitution of India.

13. It is also contended that when the petitioner opted for benefit of exemption, S.O. No. 85 dated July 17, 2002 was not in existence and therefore once the option is exercised, neither the petitioner nor the State Government can be allowed to change their status/position because the petitioner now cannot change and opt for deferment of tax.

14. The submission of the petitioners in fact is that Section 11(3) of the Act would apply to the goods or class of goods which are liable to sales tax on all points including the sale on the first point, and, if there is no first point sales tax then the exempted price cannot be taken up for fixing the sales tax liability. The submission of the petitioners is that the respondent-Commissioner has no authority to issue any direction to his subordinate authorities to interpret the notification in a particular manner. According to them it is for the authority to interpret the notification in exercise of their quasi-judicial functions and any interference by the Commissioner would amount to interference with the course of dispensation of justice. The petitioners say that the petitioner No. 1 is

manufacturing particular products at the instance of the customer and even if the products bear the brand name of the customers, the exemption Notification S.O. No. 96 cannot be nullified by saying that the petitioners are pseudo producers for the big and international companies. The petitioners say and submit that S.O. No. 85 dated July 17, 2002 be declared that the same in no way can take away the exemption on sale of finished products of the petitioner's industry and finished products of the petitioner's industry cannot be subjected to tax on its subsequent sales by the aforesaid notification. They have also prayed that S.O. No. 85 be declared not to have overriding/superseding effect over the exemption granted to the petitioner No. 1 under Notification S.O. No. 96. They have also asked for a writ against the respondent-Commissioner of Commercial Taxes that his letter No. Bikri Kar/ Vividh/254/2002-5015 dated October 18, 2002 be declared as wholly without jurisdiction and not binding. The petitioners have also prayed that the respondents be restrained from raising any demand of tax on sale of products of the petitioner by its dealers.

15. The respondents in their return have referred to the scheme of the Act and have tried to submit that a notification issued u/s 7(3)(b) of the Act in fact is in favour of the industrial unit and not in relation to the product of the said unit. According to them the exemption granted in favour of the industrial unit will subsist because the manufacturer unit is not required to pay any sales tax on its products. According to the State, the purchaser-cum-dealer if is effecting the sale of the product then he cannot seek shelter under the exemption granted to the industrial unit. They have also submitted that Section 11 of the Act authorises the State Government to fix the point of tax and if the State Government has put certain articles under multi-point tax Schedule then the petitioner No. 1 being a manufacturer cannot feel dissatisfied and similarly the purchaser-dealer also cannot feel dissatisfied. They have submitted that Section 7 and Section 11 work in different fields and in the present matter, Notification S.O. No. 85 of 2002 in any case is not affecting the manufacturing activity of the petitioner No. 1.

16. The petitioner No. 2 has filed an additional affidavit as a reply to the counter-affidavit, inter alia, submitting that the petitioner No. 1 is availing of cash credit facility from the Central Bank of India and is maintaining regular accounts. It is also contended in the additional affidavit that the petitioner No. 1 is not a defaulter.

17. A supplementary counter-affidavit has also been filed by the respondent No. 4, inter alia, submitting that the Industrial Policy, 1993 never intended to confer general exemption to the goods manufactured and sold by the petitioner No. 1 and as such the question of superseding the exemption granted to the petitioner No. 1 does not arise. It is also contended by them that even after assuming that the Industrial Policy, 1993 intended to give general exemption to the petitioner, it was never intended to extend the facility to non-eligible dealers like L.G. Electronics and Samsung. According to them, the petitioner was misusing and

misutilising the benefit by manufacturing goods for and on behalf of such non-eligible dealers. It is contended by the respondents that by manufacturing the products for such multi-national companies which are otherwise not exempted from sales tax, the petitioner was causing a loss of revenue to the State. It is also contended that exempting the first sale and thereafter charging sales tax at different point is not permissible under the Act, and therefore, the petitioner cannot seek such a direction from this Court. According to them, in a case of multi-point taxation, the tax paid is to be adjusted but if no tax is paid then there is nothing to be adjusted and any subsequent sale would be subject to levy of full sales tax. It is also contended that the manufacturing unit is still enjoying the benefit of sales tax exemption, therefore, the subsequent Notification S.O. No. 85 is valid and being a valid piece of legislation cannot be held to be invalid or illegal.

18. We have heard the parties at length and have perused the pleadings of the parties and the documents annexed with their pleadings.

19. As both the parties have interpreted Section 7 and Section 11 of the Act, according to their benefits and are placing hard reliance on Clause 10.2 of the Industrial Incentive Policy, 1993, it would be profitable to refer to the said provision. Even before referring to the arguments of the parties, we would prefer to look into the scheme of the Act.

20. Section 3 of the Finance Act is the charging section. It refers to incidence and levy of tax. It requires every dealer whose turnover is above a particular amount so specified, to pay sales tax or purchase tax.

21. Section 6 relates to charge of additional tax. It provides that every dealer having a gross turnover exceeding the specified quantum as laid down in Section 3 shall, with effect from a date to be specified by the State Government by a notification published in Official Gazette, pay an additional tax at such rate, not exceeding two per centum of his gross turnover, etc. Section 7 of the Act deals with the exemption. It specifies the circumstances under which no tax shall be payable under the Act in spite of liability to pay tax under the charging provision. Section 7 of the Act reads as under :

"7. Exemption.--(1) No tax shall be payable under this part on sales or purchases of goods which have taken place--

(a) in the course of inter-State trade or commerce;

(b) outside the State ;

(c) in the course of import of goods into, or export of the goods out of the territory of India.

(2) The provisions of the Central Sales Tax Act, 1956 (LXXIV of 1956) shall apply for determining when a sale or purchase of goods shall be deemed to have taken place in any of the ways mentioned in Clause (a), (b) or (c) of Sub-section (1).

(3) The State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from the sales tax or purchase tax--

(a) sales of any goods or class or description of goods ;

(b) sales of any goods or class or description of goods to or by any class of dealers ;

(c) any sale or category or description of sales ; and

(d) purchase of any goods by any class of dealers or any purchase or category or description of purchases of such goods.

(4) Where exemption from the levy of tax under this part on any sale or purchase of goods is claimed by a dealer under the provisions of this section or Section 21, the burden of proof shall lie on such dealer and prescribed authority may require the dealer to substantiate the claim in the prescribed manner."

22. A perusal of the language contained in Sub-section (1) of Section 7 would make it clear that it mandates that no tax shall be payable under that part on sales or purchases of goods which have taken place (a) in the course of inter-State trade or commerce ; (b) outside the State ; (c) in the course of import of goods into, or export of the goods out of the territory of India. In view of the said mandate the said transactions are outside the legislative competence of the State Legislature.

23. Sub-section (2) of Section 7 stipulates and lays down the modalities for determining whether a transaction falls within Sub-section (1) of Section 7 or not.

24. Sub-section (3) of Section 7 contrary to Sub-section (1) gives a discretion to the State Government to exempt from sales tax or purchase tax by issuing notification and subject to such conditions or restrictions as it may impose.

25. Sub-section (3) of Section 7 has four clauses. Clause (a) empowers the State Government to exempt sales of any goods or class or description of goods. Clause (a) can be read to mean that the State Government can exempt from the sales tax or purchase tax sales of any goods or sales of any class of goods or sales of any description of goods.

26. Clause (b) says that the State Government may exempt from the sales tax or purchase tax sales of any goods or class or description of goods to or by any class of dealers. We shall mainly be dealing with Clause (b) later on. Clause (c) of Sub-section (3) says that the State Government may exempt from the sales tax or purchase tax any sale or category of sale or description of sales. Clause (d) of Sub-section (3) of Section 7 says that the State Government may exempt from the sales tax or purchase tax, purchase of any goods by any class of dealers or any purchase or category or description of purchases of such goods.

27. Sub-section (4) simply says that where exemption from the levy of tax under this part on any sale or purchase of goods is claimed by the dealer u/s 7 or

Section 21 of the Act, the burden of proof shall lie on such dealer and the prescribed authority may require the dealer to substantiate the claim in the prescribed manner. Reverting back to Clause (b) of Sub-section (3) of Section 7 we would again like to say that Sub-section (3), Clause (b) authorises the State Government to exempt from the sales tax or purchase tax sales of any goods or class of goods or description of goods to any class of dealers. It also allows the State Government to exempt from the sales tax or purchase tax, sales of any goods or class of goods or description of goods by any class of dealers.

28. According to the State Government and rightly that there are only two provisions which deal with general exemptions, i.e., Sub-section (1) of Section 7 which according to us is a statutory mandate, and, Clause (a) of Sub-section (3) of Section 7. Undisputedly Clauses (b) (c) and (d) are conditional exemptions and are contingent upon certain set of circumstances. The State Government is absolutely right in saying that in so far as the levy of tax is concerned there are two essential elements to it--first one is the rate of tax and the other one is the point of levy. Section 12 of the Act refers to the rate of tax to be applied.

29. Section 11 of the Act reads as under :

"11. Point or points in the series of sales at which the sales tax shall be levied.--
(1) The sales tax on goods shall be levied only at that point or points in the series of sales as may be specified by the State Government by a notification published in the Official Gazette.

(2) Where by a notification published under Sub-section (1), the State Government specifies in respect of any goods, class or description of goods that the sales tax shall be levied at the first point of sale in Bihar either by an importer, or a manufacturer or a wholesaler, subsequent sale of the same: goods shall not be levied to tax, if the dealer making the subsequent sale produces before the prescribed authority u/s 17, original copy of cash memo, invoice or bill issued to him and files true and complete declaration in the form and in the manner prescribed.

(3) Where by a notification published under Sub-section (1) the State Government specifies in respect of any goods or class or description of goods that the sales tax shall be levied at more than one point or on all the points, the amount of sales tax paid at each preceding stage of sale shall be adjusted against the amount of tax payable at each subsequent stage of sale in the prescribed manner.

(4) Where no specification is made in respect of any goods or class or description of goods under Sub-section (1), the sales tax shall be levied at the point of sale by a registered dealer to a person other than a registered dealer. Each preceding sale by a registered dealer to another registered dealer in whose registration certificate such goods or class or description of goods are specified as being required for resale by him shall not be levied to tax, if the selling dealer produces a declaration from the buying dealer in the prescribed form and manner to the

authority prescribed u/s 17."

30. A fair perusal of Sub-section (1) of Section 11 would reveal that the sales tax on goods shall be levied only at that point or points in the series of sales as may be specified by the State Government by notification published in the Official Gazette. Sub-sections (2), (3) and (4) of Section 11 take into consideration the different contingencies.

31. Sub-section (2) is in relation to first point levy. Under this system, goods are subject to tax on the first point of their sale in the State ; the burden is placed on the dealer effecting the first sale of the taxable goods in the State. Sub-section (2) further provides that if the goods have been notified for first point levy then no tax shall be leviable on subsequent sales on fulfilment of certain conditions by the subsequent seller.

32. Sub-section (3) of Section 11 relates to multi-point levy. According to this system, such goods as may be notified under Sub-section (3) of Section 11 are subject to levy of tax on further point of their sale in the State and in case of such goods, from the tax payable at any point of sale, the tax paid at the preceding point of its sale shall be adjusted. This provision makes it clear that any value added to the tax paid goods shall be chargeable to further sales tax but to avoid double taxation, the adjustment of earlier paid sales tax would be extended.

33. Sub-section (4) of Section 11 relates to last point levy. In fact it is a residuary clause under which the goods not so specified under Sub-section (2) or Sub-section (3) are subject to tax at the point of their sale to an unregistered dealer or the final customer/ consumer. All sales of the said goods effected between registered dealers are not leviable to tax on fulfilment of certain conditions by the selling dealers. For the purpose of the present writ application, we are not concerned with Sub-section (2) and Sub-section (4) of Section 11 of the Act. We are concerned with the multi-point levy of sales tax which has given rise to the present dispute. The State appears to be justified in submitting that the point of levy of tax is determined by (a) the commodity itself together with any prescription regarding its point of levy by the State Government and (b) the position occupied by a particular transcription in the production-distribution chain obtaining in the State. It is also correct to say that the Act envisages no third factor for determining the point of levy.

34. For purposes of attraction of sales tax, the taxable event is the sale by dealer of goods. In the course of the business, every transaction would be liable to tax as a matter of course/routine. It cannot be disputed that Section 11 of the Act determines the point of levy and provides for its specifications. The parties would be right and justified in saying that under the scheme of the Act, if the goods are notified to be taxed at the first point of sale then the said goods cannot be taxed at subsequent point or points of sale. The State Government submits that the essential difference between a general exemption of goods as envisaged under

Clause (a) of Sub-section (3) of Section 7 and a conditional exemption as provided under Clause (b) of Sub-section (3) of Section 7 is that while in the former, the goods are exempt in general while under the latter, only sales to or by such dealers who qualify for it by virtue of fulfilling the conditions laid down in this regard are entitled to the exemption. According to the State, the additional exemption is restricted to the person to whom it is granted while the general exemption operates in the case of the goods irrespective of the person selling or buying it. The State also says that exemptions granted under Clause (b) of Sub-section (3) of Section 7 of the Act do not apply to every provision of the Act. Referring to Section 6 of the Act it is contended that though the goods sold by exempted units are exempted from levy of sales tax nevertheless bear the liability of additional tax. The State also says that the general exemptions are patently different and cannot be confused with the conditional exemptions granted u/s 7 of the Act. On the other hand the petitioners say that a perusal of Clause (b) of Sub-section (3) of Section 7 of the Act would make it clear that the exemption is on the products/goods manufactured by a particular unit and if the interpretation put forth by the State Government is accepted then it would lead to a chaotic situation because the State would be granting exemption by one hand and would be withdrawing its effect by another hand. They say that if the dealer has to sell the goods manufactured and produced by the industrial unit after adding sales tax to it then the goods manufactured by the present petitioner No. 1 would not attract any customer. According to them the imposition of less tax or non-levy of the tax in fact attracts a dealer/customer/consumer to purchase the goods manufactured or produced by the petitioner No. 1.

35. Section 11(3), if understood in its right perspective, would show that on the sale price, if the goods are leviable to tax, then tax is to be paid. The price for a further sale now would be the original price plus sales tax. To this would be added the profit of the dealer and this would now become the selling price for the subsequent dealer. While calculating tax on this final or current selling price, the sales tax would be calculated on the total amount but the tax already paid would be given adjustment. Virtually this means that the selling dealer wherever he adds value to the price which he himself had added then sales tax is to be paid on the value added or on the additional price.

36. At this stage it would also be profitable to refer to the Industrial Policy. The Industrial Policy of 1993 was for rapid growth of industrialisation in the State of Bihar. It was declared with a laudable object of accelerating the industrial progress in the State. The object was that some incentive be given by the State Government so that the new industries are installed or set up and after achieving the industrial growth not only the revenue is earned but the public at large is benefited and the hands are given work to achieve the constitutional obligations of the State.

37. Clause 10.2 of the Industrial Incentive Policy, 1993 reads as under :

"10.2. Facility of sales tax exemption / deferment on finished products :

The facility of exemption from payment of sales tax on finished products in lieu of deferment shall be admissible only to the industrial units mentioned in annexure VI of this policy. This facility would be available to those units only which have capital investment of not more than Rs. 15 crores in plant and machinery. The sales tax exemption benefit for the districts under category "A" (para 10.1) would be for 10 years and for the districts under category "B" (para 10.1) would be for 8 years. All other industrial units which enter into production between April 1, 1993 to March 31, 1998 will get only this facility of deferment of sales tax payable on finished goods. It means that the units going into production between April 1, 1993 to March 31, 1998 except those mentioned in annexure VI shall have the facility of deferment of sales tax only as per the Rules."

38. Clause 10.1 is in relation to facility of sales tax deferment on finished goods while Clause 10.2 is facility of sales tax exemption/ deferment on finished products. According to Clause 10.2, facility of exemption from payment of sales tax on finished products in view of deferment shall be admissible only to the industrial units mentioned in annexure VI of the said policy. Annexure VI of the said policy at Sl. No. 1 includes electronics and telecommunication industry. Undisputedly the television falls under the said category. The said facility would be available to those units only which have capital investment of not more than Rs. 15 crores in plant and machinery. The sales tax exemption benefit for the districts under category A would be for 10 years and for the districts under category B would be for 8 years. It further says that all other industrial units which enter into production between April 1, 1993 to March 31, 1998 will get only the facility of deferment of sales tax payable on finished goods.

39. At this stage it would be profitable to refer to judgment of the Supreme Court in the matter of State of Bihar v. Suprabhat Steel Ltd. [1999] 112 STC 258. In the said matter though Clause 10.2 of the said policy was not under consideration but the guidance given by the Supreme Court in the matter relating to Clause 10.4 of the said policy would be profitable. Clause 10.4(j)(a) (b) read as under :

"10.4. Sales tax exemption on the purchase of raw material.--(i) This facility will be admissible to the industrial units mentioned in annexure V in the following manner :

(a) Industrial units coming into production between April 1, 1993 to March 31, 1998 whose investment on plant and machinery does not exceed Rs. 15.00 crores shall be entitled for this facility for a period of seven years from the date of production.

(b) Such old industrial units whose investment on plant and machinery does not exceed Rs. 15.00 crores on April 1, 1993 shall be entitled for this facility for a period of seven years from April 1, 1993."

40. Clause (b) of the said policy says that industrial unit mentioned in annexure 5 which are old industrial units whose investment on plant and machinery does not exceed Rs. 15.00 crores on April 1, 1993 shall be entitled to this facility for a period of 7 years from April 1, 1993. This facility was in relation to sales tax exemption on the purchase of raw material. The State Government later on finding that the policy was not happily worded in relation to Clause 10.4(i)(b) issued a notification withdrawing certain benefits from the said policy. The said notification was challenged in the High Court of Patna. The High Court allowed the writ application and quashed the notification. The State being aggrieved by the judgment of this Court took up the matter in appeal to the Supreme Court. The Supreme Court while affirming the decision of the High Court observed that while generally the incentives under the 1993 policy would be available to the industrial units coming into production between April 1, 1993 and March 31, 1998, so far as sales tax exemption on the purchase of raw material was concerned, which was provided under Clause 10.4, old units, whose investment on plant and machinery did not exceed Rs. 15 crores on April 1, 1993 even though they had started production prior to April 1, 1993 would be entitled to the facility for a period of 7 years. The apex Court further observed that it was not open to the State Government to issue a notification u/s 7 of the Act overriding the Industrial Incentive Policy itself. It was also observed that the expression--"such conditions and restrictions as it may impose" appearing in Section 7(3) did not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the General Policy Resolution itself. The Supreme Court observed that the policy was making a distinction between new industrial units covered by sub-paragraph (a) and old industrial units covered by sub-paragraph (b) of Clause 10.4(i). Upholding the judgment of the High Court, the apex Court observed that issuance of a notification u/s 7 of the Act entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own Industrial Incentives Policy but in exercise of such power it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. It was observed that the Industrial Incentive Policy is issued by the State Government after such policy is approved by the cabinet itself. The Supreme Court added that issuance of the notification u/s 7 of the Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decision taken in the Industrial Policy itself.

41. From the judgment of the Supreme Court it would clearly appear that if certain benefits flow from a particular promise/policy of the State Government then it would not be possible for the State Government to withdraw those benefits after an industrial unit or any other person relying on the said promise/policy changes its position irretrievably. In the present matter it is not the case of the State Government that the petitioner is not a newly set up industry. It is also not the case of the State Government that the petitioner No. 1 is not entitled to

the facility of sales tax exemption. The dispute before us is whether the State Government can provide multi-point levy of sales tax bringing within its sweep finished product/finished goods which do not attract the sales tax levy under the Industrial Policy/Tax Exemption Certificate.

42. The question relating to promissory estoppel would also assume importance at this stage. In the matter of Usha Martin Industries Ltd. Vs. The Additional Superintendent of Commercial Taxes and Others, , the question of estoppel came up for consideration. The Government of Bihar in the Industries Department adopted a resolution dated September 29, 1973 which was duly published in the Bihar Gazette, this was amended by resolution dated June 29, 1976 and November 28, 1976 by which the State Government decided to grant certain incentives to new large and medium industrial units. The question in the said matter was that the petitioner of the said matter would be entitled to the incentives or not. The Supreme Court in the said matter observed that in view of the letter written by the Directorate of Industries the said petitioner was entitled to incentives for 10 years therefore the petitioner certainly would be entitled to exemption for 10 years on basis of the said resolution. It was submitted before the High Court that the State was overburdened with overdraft and deficit budget, therefore, the public interest was shown in issuing the notification in question under the Sales Tax Act. Negating the said contention, the High Court observed that the State would not be relieved from carrying out the promise. The High Court also observed that the equity was in favour of the petitioner and the petitioner was entitled to the incentives under the sales tax legislation in terms of the letter dated March 17, 1981.

43. The said matter was taken up to the Supreme Court. The Supreme Court in the matter of State of Bihar v. Usha Martin Industries Ltd. [1987] 65 STC 430 relying upon its earlier judgments in the matter of Pournami Oil Mills v. State of Kerala [1987] 65 STC 1 and Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh [1979] 44 STC 42 observed that the question raised in the appeal was concluded by the said two judgments. The appeal filed by the State Government was dismissed.

44. In the matter of Mahabir Flour Mills Vs. Commissioner of Commercial Taxes and Another, the question relating to the effect of a taxing notification was considered. In the said matter the question before the Supreme Court was that wheat bran (chokar) would be attracted to the sales tax liability or not in view of the taxing notification fixing a particular rate of tax on the wheat bran. The Supreme Court upholding the contention of the said petitioner/ industrialist observed that the taxing notification fixing a particular rate of tax on a particular item has no overriding effect on the exemption notification which expressly exempted the particular item from levying of tax. It was observed that the Notification No. 3320 issued on March 9, 1978 making bran exigible to tax retrospectively with effect from December 26, 1977 would not nullify entry No. 35 of the exemption notification dated December 26, 1977 so far as exclusion of

cattle feed and poultry feed from sales tax was concerned for the simple reason that fields of operation of the two notifications under the different sections of the Act are altogether different. It was also observed that while construing taxing statute, if two interpretations are possible, effect must be given to the one that favours the citizens and not to the one that imposes a burden on them.

45. In the matter of Pournami Oil Mills and Others Vs. State of Kerala and Another, on which reliance was placed in the matter of State of Bihar and Another Vs. Usha Martin Industries Ltd., , the question of promissory estoppel against the small-scale industries was considered in detail. In the said matter the Government of the State of Kerala on April 11, 1979 passed an order to the effect that new industrial units under small-scale industries set up after April 1, 1979 would be exempted from payment of sales tax for a period of five years from the date of production. The order was passed without reference to statutory provision and no limits were placed on the exemption. On October 21, 1980, the Government published a notification u/s 10 of the Kerala General Sales Tax Act, 1963 granting exemption but some limits were imposed on the concession. The units were required to obtain eligibility certificate and the cumulative sales tax concessions were not to exceed 90 per cent of the gross fixed capital investment of the unit. Any tax calculated was to be paid over to the Government and any tax already paid was not to be refunded. The notification was deemed to have come into force with retrospective effect from April 1, 1979. The Supreme Court observed that the order dated April 11, 1979 was covered by the provisions of Section 10 and was made under that section, though there was no reference therein to Section 10. It also observed that if in response to the said order and in terms of the concessions made available, any small-scale industrial units were set up within the State of Kerala, they were entitled to plead the rule of estoppel in their favour when the State purported to act differently.

46. From the aforesaid discussions it would be clear that whenever a promise is made by the State Government, or a policy is floated providing certain benefits or incentives and, some person/ manufacturer/industry relying upon the said promise or policy sets up an industry in response to the notification and the concessions made available then in case of withdrawal of the benefits/incentives, rule of promissory estoppel can always be shown to the State Government. In such a case the State would not be entitled to plead that there would be no estoppel against the statute. In the matter of Pournami Oil Mills [1987] 65 STC 1 (SO, the Supreme Court has observed that though the policy/promise did not refer to a particular provision of the general sales tax but if the policy/promise falls within the ambit/sweep of a particular section of the taxing statute then it cannot be argued that the opposite party was seeking promissory estoppel against the statute. When the action of the State Government is under the Act itself and it does not reserve any right unto itself then it shall be bound by the promise made or the policy floated.

47. In the matter of K.M. Chikkaputtaswamy and Others Vs. State of Andhra

Pradesh and Others, , the Supreme Court was faced with the question that where no notification was issued for withdrawing the tax exemption granted earlier by notification issued u/s 9(1) of the Andhra Pradesh Motor Vehicles Taxation Act, the withdrawal of the said exemption would be valid or not. The Supreme Court observed that a notification issued u/s 9 being a statutory instrument can be cancelled or modified in the manner prescribed by the Act and in no other way. It was further observed that the State Government can grant exemption from payment of tax or cancel an exemption already granted only in accordance with Section 9(1) of the Act. The Supreme Court observed ;

"When once a notification is issued u/s 3 of the Act in respect of any motor vehicle, the tax becomes payable by the registered owner of the motor vehicle or any other person having possession or control thereof. Such person can be exempted from the payment of the tax so levied only by a notification issued u/s 9(1) of the Act. A notification issued u/s 9 being a statutory instrument can be cancelled or modified in the manner prescribed by the Act and in no other way. It is significant that any notification issued u/s 9(1) of the Act either granting exemption or cancelling or varying such exemption has got to be placed on the table of the Legislative Assembly. Both the notification issued u/s 3 of the Act and the notification issued u/s 9(1) thereof fall within the meaning of the expression "law" referred to in Article 265 of the Constitution. The State Government can grant exemption from payment of tax or cancel an exemption already granted only in accordance with Section 9(1) of the Act. That is the legislative mandate. In the instant case, admittedly no notification is issued as provided by Clause (b) of Section 9(1) of the Act either cancelling or withdrawing or varying the exemption granted earlier by the notification issued u/s 9(1)."

48. It would thus be clear from the catena of authorities that the State Government is empowered to grant an exemption and once it grants an exemption, it cannot withdraw the same except in accordance with law. An Industrial Policy issued by the State Government in fact is an action of the State and so long as the said policy is in vogue, the State Government cannot act contrary to the said policy.

49. The State Government vehemently submitted before us that Section 11 and Section 7 of the Finance Act cover different fields and as the industrial unit, i.e., petitioner No. 1 is still enjoying all the benefits of sales tax exemption, this Court should not interfere and must hold that the State Government is justified and has validly issued S.O. No. 85 of 2002.

50. Reverting back to Section 11 we would simply observe that Section 11 is in relation to point of levy. Whether the tax would be levied at the first point or at multiple points, i.e., more than one point or at all the points or the tax shall be levied under the residuary clause on the last point, Section 11 has nothing to do with the exemption granted u/s 7(3)(b) of the Act, Section 11 provides that if a tax is leviable on a particular commodity then the State Government may provide the point of the levy. It would always be within the discretion of the State

Government to fix the point of the levy. Section 11 has nothing to do with the rate of tax, the incidence of tax or the exemption provided under the Act. Section 11 would only control the point of levy. We would again repeat that Section 11 would relate to the first point levy, multiple point levy or the last point levy. A commodity which is taxable at the first point has to be taxed only at the first point. It cannot be held that if a commodity, taxable at the first point, has not borne the incidence of the sales tax at the first stage, the incidence will shift to subsequent stage. The last point levy would not permit any dealer to charge sales tax unless the goods are sold to an unregistered dealer/ consumer/ customer.

51. The opening words of Sub-section (1) of Section 11 in fact would provide the key to open the lock. The opening words are "the sales tax on goods shall be levied only at that point or points in the series of sales as may be specified by the State Government". A fair reading of this provision would show that when the goods fall within the category of taxable goods then the sales tax on such goods shall be levied at the point or points in the series of sales as may be specified by the State Government. Section 11 cannot fix the rate of tax nor can it deal with the exemption nor with the incidence of taxation. It only has to fix the point/ points for levy of the sales tax.

52. Section 3 of the Act provides that subject to the provisions of that part of the Act, the sales tax or the purchase tax, as the case may be, shall be paid by every dealer. Section 3 is the charging section. Section 7 is contra-indication of Section 3 of the Act. Though Section 3 says that sales tax or the purchase tax, as the case may be, shall be paid by every dealer, but the mandate contained under Sub-section (1) of Section 7 prohibits levying or recovery of the sales tax under that part of the Act on sales or purchases of goods which have taken place in the course of inter-State trade or commerce; outside the State; in the course of import of goods into, or export of the goods out of the territory of India. The charging section cannot be invoked by the State Government to say that because Section 3 empowers the State Government to charge sales tax or purchase tax, Sub-section (1) of Section 7 would not override Section 3 of the Act. In view of the scheme of the Act, Section 3 though is charging section but would always be subject to the exemptions granted under the Act itself or the promises made by the Government or the policies floated and implemented by the State Government. Sub-section (3) of Section 7 of the Act, which we have already considered in detail, authorises the State Government rather gives a discretion to the State Government that the State Government may by notification and subject to such conditions or restrictions, as it may impose, exempt from the sales tax or purchase tax particular sales, etc. The words "subject to such conditions or restrictions as it may impose" have been considered by the Supreme Court in the matter of Suprabhat Steel Ltd. [1999] 112 STC 258. According to the apex Court this phrase will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the General Policy Resolution itself. Clause (b) of Sub-

section (3) of Section 7 provides that the State Government may, by notification and subject to such conditions or restrictions, as it may impose, exempt from the sales tax or purchase tax sales of any goods or class or description of goods to or by any class of dealers then the exemption notification shall take its full force. A particular dealer selling or purchasing is falling within a class or not will not be decided u/s 7 of the Act but would be decided under the Industrial Policy. When the Industrial Policy says that the facility of exemption from payment of sales tax on finished products in lieu of deferment shall be admissible only to the industrial units mentioned, in annexure VI of the Policy then it must be held that any industrial unit falling within annexure 6 of the said policy would become a class of industries/dealers for the purpose of sales tax exemption. When such class of dealers are selling any, goods or class or description of goods then they would be exempted from the sales tax. In the present matter, television set is falling within a class or is under the particular description of the goods. The exemption notification is in relation to those goods which are sold or purchased by particular class of dealers. In the present matter the petitioner is an industrial unit which has commenced its production after coming into force of the 1993 Industrial Policy and the goods produced by it do fall within the sweep of annexure VI annexed to the Industrial Policy, 1993. When the petitioner No. 1 comes under a particular class and is producing a particular description of goods then the exemption notification has to be given its full effect. It cannot be argued that the exemption is granted to the industrial unit and not to the goods.

53. In our considered opinion, the State Government would be absolutely unjustified in holding that the S.O. No. 85 of 2002 would cover different fields. In our opinion, S.O. No. 85 is making a trespass over the exemption when it is interpreted to mean that the exemption is in relation to the industrial unit and not in relation to the goods.

54. The effect of S.O. No. 85 as understood by the Commissioner of Commercial Taxes is that it is requiring all its subordinates to charge sales tax on all subsequent sales. In our opinion, if sales tax is charged on any subsequent sale effected by dealer, who has purchased the sales tax exempted goods from the manufacturer then it would nullify the exemption and would be contrary to the Industrial Incentive Policy, 1993. If an article of Rs. 100 is produced by the manufacturer, and securing sales tax exemption it sells the article to the purchasing dealer for Rs. 100 only then the purchasing dealer would be happy because it is not required to pay tax, but if the purchasing dealer is required to sell the article inclusive of the full sales tax then the real problem would start. Any other dealer who purchases the sales tax paid goods would also sell his articles at a price on which the first dealer would be selling. If both the dealers have to sell the goods at the same rate, then the exemption policy would not be providing any incentive or benefit to an industrial unit whose goods are otherwise exempted from payment of the sales tax.

55. The Incentive Policy in fact is a policy to allure and induce those small-scale

industries who are in fact earning their profits by not paying the sales tax. When an article is sold for Rs. 100 and is ultimately sold to the consumer for Rs. 100 then consumers may be attracted to purchase his articles in comparison to the articles which are sold in the market with the sales tax.

56. The notification fixing multi-point levy, in our considered opinion, would not attract the case of an exempted sale to a limited extent. The incidence of levy of tax is provided u/s 3 while the point of levy is provided u/s 11. In between, Section 7, if intervenes, and seeks an exemption from application of Section 3 for the limited period as provided under the Industrial Policy then to the extent of the exemption, no sales tax can be imposed. We are not saying that the Notification S.O. No. 85 of 2002 is invalid or bad. What we only wish to say that to the extent of the first price, no tax can be imposed till the goods pass on to the consumer. We would put an example to make the things straight. If the goods are exempted from the sales tax then it must reach the dealer without payment of the sales tax. If the purchasing dealer adds profit to it then to the extent of the value added by the dealer, sales tax must be paid. The first price, i.e., Rs. 100 (we assume) would not be taxable even at any other stage or any other point but any value later on added to the first price would always be subject to tax. By putting this interpretation we feel that the Notification S.O. No. 85 would be saved under the Act and would not become ultra vires. The submission of the State that multi-point levy would be attracted to any tax exempted goods cannot be accepted.

57. So far as the submission of the State Government that the petitioner No. 1 is manufacturing goods for multi-national or big companies is concerned, we must say that the Industrial Policy is for the benefit of the small-scale industries. These small-scale industries cannot work as underdog for multi-national companies. The policy is for the development of the industrial units and not for securing the sales tax exemption only. It would be too much to say that an industrial unit after exploiting the fullest investments, if closes itself then too industrial growth would be benefited. In fact the industrial growth would be benefited and the State in its revenue would also be benefited that after availing of the entire exemption for the fixed period the industrial unit continues to operate and starts paying revenue. It is the development of the industrial unit for the rapid growth of industrialisation and not the avoidance of the sales tax under the exemption clause. The State Government certainly would be justified in saying that if an industrial unit is not manufacturing its own goods but is working as a helping hand to the big industries then it would adversely affect the industrial growth. In any case the question will have to be decided by the State Government after giving due opportunity of hearing to the petitioner. If the State Government comes to the conclusion that the benefits flowing from the industrial Policy are being misused or misutilised by the industrial unit then it can certainly withdraw the exemption on that count. But without coming to a positive conclusion that a particular industrial unit is misusing or misutilising the exemption facility, the State cannot issue a general notification/circular. Such a

circular would not affect such industries only but would affect those honest industries which are trying to survive by saving the sales tax as their profits. If within the ambit of the Industrial Policy or provisions of the Sales Tax Act or S.O. No. 96, the State can make an enquiry and decide the question regarding misutilisation or misuse of the exemption facility then the State certainly is free to proceed in the matter.

58. In view of the discussions aforesaid the circular issued by the Commissioner, Commercial Taxes cannot be allowed to stand. The circular dated October 18, 2002 issued by the respondent-Commissioner bearing No. Bikri Kar/Vividh/254/2002/5015 dated October 18, 2002 so far as it runs contrary to our discussions is held to be illegal.

59. As a sequel of the aforesaid, we allow the writ application to the limited extent that to the extent of the price at which the industrial unit is selling its finished products with sales tax exemption, the said finished products shall not be subjected to sales tax till it reaches the unregistered dealer/consumer/customer.

60. The petition is allowed to the extent indicated above.

Nagendra Rai, J.

61. I agree.