
(2001) 03 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1141 of 2000

J.K. Udaipur Udyog Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)
Civil Procedure Code, 1908 (CPC) — Section 152
Customs Act, 1962 — Section 25
General Clauses Act, 1897 — Section 6
Income Tax Act, 1961 — Section 154
Rajasthan Sales Tax Act, 1954 — Section 4(2)
Rajasthan Sales Tax Act, 1994 — Section 15

Citation : (2001) 3 RLW 1736 : (2003) 131 STC 88 : (2002) 2 WLC 106 : (2001) 3 WLN 112

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : S. Ganesh, Rajendra Mehta and Vineet Kothari, for the Appellant; Sagar Mal Mehta, General, Sanjeev Johari and Sandeep Bhandawat, for the Respondent

Final Decision : Partly Allowed

Judgement

Chauhan, J.

(1). The instant writ petition has been filed for quashing the Notification (corrigendum) dated 30.9.99 (Annx. 7) and/or in the alternative to hold that the said notification has no application to the petitioner and also for quashing the consequential provisional assessment orders and notices and further to quash the order of the State Level Screening Committee dated 13.12.1999 as well as the eligibility certificate dated 29.2.2000 in so far as the same restricted the petitioner's benefits to 25% instead of full benefits as per the original incentive scheme.

(2). The facts and circumstances giving rise to this case are that petitioner is a

public limited company incorporated under the Companies Act, 1956 and is engaged in manufacturing and selling of Portland cement and clinker. The State Government notified the Rajasthan Sales Tax/Central Sales Tax Exemption Scheme for Industries, 1998 (for short, "the Exemption Scheme") vide Gazette Notification dated 7.4.98, in exercise of the powers conferred by Section 15 of the Rajasthan Sales Tax Act, 1994 (for short, "R.S.T. Act") read with Section 8(5) of the Central Sales Tax Act, 1956 (for short, "C.S.T. Act") providing for exemption to industrial units from payment of tax on the intra-State/inter-State sales of goods manufactured by them within the State in the manner, to the extent and for the period, specified therein.

(3). The salient features of the scheme have been that the exemption scheme shall be operative from 1.4.98 to 31.3.2003. It shall confer benefits to industrial units which commence commercial production during the said operative period. Para 2(a) of the scheme defines "Banned Area", as the areas under the urban agglomeration limits of cities, as notified by the Competent Authority. Explanation thereto provides that sick units, located anywhere in the State, shall be eligible for the benefits under the Scheme. Para 2(h) defines "ineligible industries" as industries included in Annx. A to the said notification and the same shall not be eligible for the benefits under the scheme. It further explains that such restriction shall not apply to sick industrial units as defined in that clause. Para 2 (j) defines "large scale unit" and Para 2 (k) (i) defines "new industrial unit" as industrial unit which commences commercial production during the operation of the scheme. Para 2(k) (ii) reads as under:-

"New Industrial Unit" shall also include a sick unit-

(a) which has not availed of any benefits of exemption from tax or deferment of tax;

....."

(4). Sub-Clauses (1), (m) and (n) of Para 2 of the Scheme define different kinds of units depending upon the fixed capital investment and the number of persons employed (herein as "Pioneering Unit," "Premier Unit" and Prestigious Unit" and Para 2 (g) defines the "sick industrial unit."

(5). Para 3 of the Scheme provides for "Applicability of the Exemption Scheme" and Clause (a) (iv) thereof provides that it shall also apply to "sick industrial units". Clause (c) of the said para provides that the industrial units established in the banned area shall not be eligible for claiming benefit, however, this restriction would not apply to sick industrial units. Para 4 of the said Scheme provides for "Sanction of benefits under the Exemption Scheme and issue of Eligibility Certificate by the State Level Screening Committee (for short, "SLSC") or District Level Screening Committee (for short, "DLSC"), as the case maybe. It further provides that it shall act as quasi-judicial authority and its decision shall be final. Clause (h) of Para 4 provides that the benefit under the "scheme shall be available "from the date of application filed by the applicant unit complete in

all respects" as certified by the Secretary of the Appropriate Screening Committee. Para 5 provides for general terms and conditions for exemption from the sales tax and Clause (g) thereof provides that if during the operation of the Scheme, an industry is included in the list of ineligible industries, i.e. Annx. A, but the same has fulfilled the conditions incorporated in either of its three Sub-clauses, it shall be entitled to avail the benefits.

(6). Annx. A to the said Scheme contains the list of industries not eligible for exemption from the tax under the scheme. It includes the mini cement plants upto the manufacturing capacity of 200 tonnes per day. Annx. B to the said scheme provides for eligibility and extent of exemption from tax in a tapering manner for a period of eleven years. Para 3 of Annx. B provides for types of units eligible for exemption and includes all categories of cement units including pioneering, prestigious, very prestigious and premier units except the mini cement plants which have been made ineligible vide Annx. A. Clause (a) of Para 4 of Annx. B provides that a sick unit which had not availed benefits of exemption from tax or deferment of tax previously, would be entitled for the same benefits for eleven years which are available to new units at Serial No. 1 Clause (b) thereof provides that other sick units which have availed of the benefits of exemption from the tax or deferment of tax can avail the benefit for eleven years but in a tapering manner as it shall start in the first year with 80% and shall be only 10% for the 8th, 9th, 10th and 11th years.

(7). In the instant case, petitioner company- a sick industrial unit within the meaning of para 2(q) (1)(i) of the Scheme asserts that sick units have been classified as a separate class or category of the units for the purpose of the scheme and, thus, entitled for exemption of tax as provided under the Scheme originally, petitioner submitted its application complete in all respects with the SLSC claiming the benefits under the said scheme as a sick unit on 17.6.99. The SLSC, the sanctioning authority classified petitioner company as a sick unit under serial No. 4 of Annx. B vide order dated 10.8.1999. The State Government issued a notification (corrigendum) dated 30.9.99, published in the Gazette on 7.1.2000, by which the sick units have been brought from Serial No. 4 to Serial No. 3 in Annex. B. The impugned notices/provisional assessment orders have been made/issued on the basis of the said corrigendum giving exemption only upto 25%. Hence this petition.

(8). Learned counsel for the petitioner has raised various issues, inter alia, that the petitioner company, being a sick unit, a separate and distinct category, i.e. the class in itself, was covered by Serial No. 4 of Annx. B of the Scheme prior to the corrigendum and it had been declared so by the SLSC and that order attained finality as the same had not been challenged by the State before the appointment forum. By the said corrigendum, it has not only reduced the benefits, rather taken away the vested or accrued rights/entitlement of the petitioner under the Scheme. The corrigendum does not provide for any correction in the scheme rather-tentamounts to an amendment in the Scheme

which can be, at the most, applicable with prospective effect but cannot take away the existing/accrued or vested rights of the assesseees. According to Mr.

Ganesh, learned counsel for the petitioner, it may be applicable only after 7.1.2000, i.e. date of publication of the corrigendum in the Gazette, or in any event after 30.9.99, date of corrigendum, but it cannot take away the accrued rights of the assesseees with retrospective effect.

(9). Mr. Mehta, learned Advocate General, contended that Clause 8 of the Scheme provides for revision by the State of any order passed by the Committee and Clause 9 of the same provides for review or modification of the exemption scheme as such whenever it is needed in public Interest, therefore, the scheme does not confer any vested right on the petitioner or any other industrial unit and whenever public interest requires, the scheme may be modified/amended. Needless to say that whenever revenues are required for development of the State and the Government takes a decision to modify such a scheme, the industrial units cannot have any grievance against it. Clause (g) of para 5 does not provide for benefits of the scheme only for those units which fulfil the conditions incorporated in either of the Sub-clauses thereof and it shall be applicable only in a case where an industry, though included in Annx. A on any date during the period of operation of the scheme and further fulfils either of the terms in either of the three clauses, e.g. in Clause (i) the industries of which the applications for grant of benefits are pending before any Committee on the said date, i.e. the date on which the industry stood included in Annex. A and it does not apply to the units which stood included in Annx. A on the date of promulgation of the scheme as Clauses (g) and (i) of para 1 of the scheme makes it clear that it has taken into consideration the earlier incentive or deferment Scheme of 1987 and 1989. Clause (4) thereof provides that the "benefits" if sanctioned, shall be restricted to the extent of benefits which would be available to such unit in the incentive or deferment Schemes of 1987 and 1989, as the case may be. Therefore, according to Mr. Mehta, it is not applicable in the case of all the sick industrial units irrespective of its nature and inclusion in Annx. A or Annx. B. In the earlier incentive/deferment schemes of 1987 and 1989, "cement industry" was not put at the par with other industries as different criteria had been laid down under the said schemes. The corrigendum dated 30.9.99 (Annx. 7) provides for correction, which might have resulted in withdrawing certain benefits conferred upon certain-industries. Thus, petitioner is not entitled for any relief in equity jurisdiction.

(10). Mr. Mehta has raised the preliminary objection that the issue should be left to be determined by the Assessing Authority and in view of the availability of the alternative/statutory remedies, the matter does not require to be entertained by this Court at all. Moreso, the matter is pending before the Assessing Authority, thus, the issue can not be agitated in two parallel proceedings. In order to forliffy the submission, reliance has been placed upon the Constitution Bench judgment of the Hon'ble Supreme Court in Sales Tax Officer, Jodhpur v. Shivratn G.

Mohata CO, wherein the Court observed that the tendency on the part of the assessee to rush to the High Court should not be encouraged and in taxing matters, the High Court should entertain a petition only after an assessment order has been made, in exceptional circumstances.

(11). A Constitution Bench of the Hon"ble Supreme Court, in *G. Veerappa Filial v. Raman & Raman Ltd.*, (2), observed as under:-

"Such writs, as are referred to in Article 226, are obviously intended to enable the High Court to issue them in grave cases where the subordinate Tribunal or Bodies or Officers act wholly without Jurisdiction, or in excess of it, or in violation of principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of record, and such act, omission, error or excess has resulted in manifest injustice. However extensive jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned....Thus, we have before us a complete and precise scheme for regulating the issue of permit provided what matters are to be taken into consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances for the correctness of errors are found in the statute itself and it is to these remedies that resort must generally be had."

(12). Similar view has been reiterated in *Assistant Collector of Central Excise v. Dunlop India Ltd.* (3), *R. Kishore Biswas v. State of Tripura* (4) and *Shivgovinda Anna Patil v. State of Maharastra* (5).

(13). In *C.A. Ibrahim v. I.T.O.* (6) and *H.B. Gandhi v. Gopinath & Sons* (7), the Hon"ble Apex Court held that where hierarchy of appeals is provided by the Statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

(14). A Constitution Bench of the Hon"ble Supreme Court, in *K.S. Venkataraman & Co. v. State of Madras* (8), considered the Privy Council judgment in *Raleigh Investment Co. Ltd. v. Governor General in Council* (9), and held that the writ court can entertain the petition provided the order is alleged to be without jurisdiction or has been passed in flagrant violation of the principles of natural justice, or the provisions of the Act/Rules is under challenge.

(15). In *Titaghur Paper Mills Co. Ltd. v. State of Orissa and Anr.* (10), the Hon"ble Supreme Court refused to extend the ratio of its earlier judgment in *State of U.P. v. Mohammed Nooh* (11), wherein the Court had held that prerogative writ can be issued to correct the error of the Court or Tribunal below even if an appeal is provided under the Statute under certain circumstances, i.e. the order is without jurisdiction, or principles of natural justice have not been followed, and held that in case of assessment under the Taxing Statute, the principle laid down by the Privy Council in *Raleigh Investment Co. Ltd.* (supra) would be applicable for the reason that "the use of the machinery provided by

the Act, not the result of that use, is the test."

(16). While deciding the said case, the Hon"ble Supreme Court placed reliance on large number of judgments, particularly *New Water Works Co. v. Hawkes Ford* (12), *Neville v. London Express Newspapers Ltd.* (13) and *Attorney General of Trinidad & Taboco v. Gordon Grant & Co.* (14), and *Secretary of State v. Mask & Co.* (15), wherein it had consistently been emphasised that the remedy provided by the statute must be followed and writ should not generally be entertained unless the statutory remedies are exhausted.

(17). In *Sheela Devi v. Jaspal Singh* (16), the Hon"ble Apex Court has held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked.

(18). In *Jai Singh v. Union of India* (17), the Apex Court deprecated the practice and tendency of a party approaching two different forums for the same relief. In that case the party had filed a suit and when it could not get interim relief, it approached the Writ Court by filing the writ petition, claiming the same relief. The Apex Court held that in such a situation, it is not permissible for the party to pursue two parallel remedies in respect of the same matter at the same time.

(19). In *J.S. Rawat v. National Air Port Authority and Ors.* (18), *Mangi Lal v. R.S.R.T.C. and Ors.* (19), and *Ramcharan Das v. State of Rajaslhan and Ors.* (20), this Court held that no person can be permitted to choose two forums for the same relief as it amounts to abuse of process of the Court.

(20). In *B.S.L. Ltd. Bhilwara v. State of Rajasthan and Ors.* (21), this Court relegated the parties to the appropriate forum observing that parties should approach the Writ Court only after exhausting the statutory remedies.

(21). A Division Bench of this Court in *Jodhpur Chartered Accountants Society and Anr. v. State of Rajasthan* (22), dismissed the petition only on the ground of not exhausting the statutory remedies by the petitioner.

(22). In the instant case, the validity of the notification itself is under challenge and relief of quashing the same is sought. Undoubtedly, such a relief cannot be granted by the assessing authority or the appellate authority. The writ petition cannot be dismissed at this stage only on the ground that statutory remedies have not been exhausted or matter has been seized by the Statutory Authority. Thus, the preliminary objection raised by Mr. Mehta is not worth acceptance and the matter requires to be decided on merit.

(23). The Constitution Bench of the Hon"ble Supreme Court in *S. Kodar v. State of Kerala* (23), held that as the sales tax is imposed upon the sale of goods and is not in the nature of confiscation, the provisions of the Sales Tax Act do not impose any unreasonable restrictions upon the right of a citizen to carry on trade. Every tax imposes some restrictions upon the right to carry on a business but it does not tantamount to unreasonable restriction upon the fundamental rights of a citizen to carry on a trade or business. The Court held that "the

amount or rate of tax is a matter exclusively within the legislative judgment and as long as the tax retains its avowed character and does not confiscate property to the State under the guise of a tax, its reasonableness is outside the judicial ken." Even in a case the dealer could not pass on the liability on the incidence of tax to the purchaser, the dealer could not escape the liability of tax for the reason that it is not the essential characteristics of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of legislature to impose the tax on sales conditions on its making a provision for sellers to collect the tax from the purchasers. While deciding the said case, the Hon'ble Supreme Court placed reliance upon its earlier judgments in *Tata Iron & Steel Co. Ltd. v. State of Bihar* (24), *Kanduri Buchirajalingam v. State of Hyderabad* (25) and *J.K. Jute Mills Co. v. State of U.P. and Ors.* (26). Thus, even in a case where a dealer, for one reason or the other, could not pass on the liability to consumers, he cannot plead that he is not liable to pay tax. Moreover, the dealer can add the tax to the price of the goods sold and thus pass the tax liability to the purchaser but it is not necessary that the dealer should be enabled to pass on the incidence of tax on sale to the purchaser in order that it might be a tax on the sale of goods.

(24). The legal maxim "*Quado jus domini regis et subditi concurrent, jus regis praeferri debet*" i.e. where the title of the King and that of a subject concur, the King's title must be preferred, has always been recognised. In *Dena Bank v. Bhikabhai Prabhudas Parekh and Ors.* (27), the Hon'ble Supreme Court held that the sovereign dues have to be given preference over other charges for the reason that it requires money for the development of the State and such a principle is founded on the Rule of Necessity and Public Policy for the reason that it is essential that as a sovereign, the State should be able to discharge its primary Governmental Functions and in order to discharge such functions efficiently, it must be in possession of necessary funds and, therefore, it must be given priority in respect of its tax dues over other kind of dues. Similar view has been reiterated by the Hon'ble Apex Court in *Builders Supply Corporation v. Union of India* (28), *Collector of Aurangabad v. Central Bank of India* (29), *Dattatraya Shankar Mote v. Anand Chintaman Datar* (30), *RIICO v. State of Rajasthan and Ors.* (31), *State Bank of Bikaner & Jaipur v. National Iron Steel Rolling Corporation and Ors.* (32), and *State of Bihar v. Bihar Chamber of Commerce* (33).

(25). In view of the above, it is evident that even if the assessee for one reason or the other could not pass on the tax liability to consumers, he cannot plead that he is not liable to pay the tax dues.

(26). Mr. Ganesh has urged that sick industry has always been treated as a different class and given treatment for its revival. In *Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra and Anr.* (34), the Hon'ble Apex Court considered the scope of application of two Special Acts, i.e. Sick Industrial Companies (Special Provisions) Act, 1985 and State Financial

Corporation Act, 1951, as in the said case the financial institution had claimed over-riding effect of provisions of (he Act, 1951, while the assessee claimed the over- riding effect of the 1985 Act, providing relief for sick industries also being a Special Act. The Apex Court held that the 1985 Act provided for the revival and rehabilitation of the sick industrial units, it would have an overriding effect over oilier statutes. Thus, the said judgment is an authority that the provisions of 1985 Act would have overriding effect over other Statutes as it provides for revival/rehabilitation of sick units.

(27). The Committee, vide its order dated 13.12.99 (Annx. 4) sanctioned for the issuance of the eligibility certificate and subsequently it was issued on 24.1.2000 (Annx. 5) making it clear that the same was granted to the petitioner unit under the Exemption/Deferment Scheme, 1998 as a sick unit under Clause 2 (q)(1)(i) of the Scheme and was valid from 26.7.99, i.e. the date of filing of the complete application in all respects for a period of eleven years. However, the benefits have been granted to the unit considering the corrigendum dated 30.9.99 restricting the quantum of benefits to sick cement units only to the extent of 25% of the tax liability instead of 100% as provided in the original scheme and the Authority further issued directions to the Assessing Authority to recover the difference.

(28). It is only because of the corrigendum that the benefit has been reduced from 100% to 25%. The decision of the Committee under Clause 4(a) of the Scheme providing that petitioner had filed the complete application in all respects on 17.6.99 and was a sick unit attained finality. Thus, questions arise as to whether the Corrigendum provides for a correction of the earlier notification or it amounts to its amendment and in case it falls in latter category, it is to be determined as what rights stood accrued in favour of the petitioner as State/ Revenue Department has not gone into appeal, revision or review thereof under paragraphs 8 and 9 of the Scheme and whether same have been taken away.

(29). In Commissioner of Sales Tax, U.P. v. Dunlop India Ltd. (35), the Allahabad High Court had to deal with the issue of corrigendum and held that corrigendum, when issued to correct a notification, would relate back to the date of issue of the original notification.

(30). In Piara Singh v. State of Punjab and Ors. (36), the Hon'ble Apex Court considered the scope and application of a corrigendum and held as under:-

"In any case, in the present case it cannot be said that there is a clerical or arilhmelical error in mentioned Khasra number or its area in the sale certificate.....Considering the long lapse of lime and the fact that there is no question of a clerical or arithmetical error, the aulhorilies ought not to have exercised jurisdiction u/s 25(2) of the Act which only empowers the authority to correct clerical or arithmetical mistake in any order or errors arising therein from any accidental slip or omission. Under the guise of corrigendum authorities have passed an order handing over possession of addilional land in favour of

respondent No.2. It is also apparent that the Chief Settlement Commissioner has not applied his mind to the facts of the case and has only observed that there is no bar on issuing the second corrigendum or more corrigenda in correcting the arithmetical error."

(31). Therefore, it was held that the corrigendum can be used only to rectify a mistake of clerical or typographical error crept in because of omission or accidental slip but in case it amounts to amendment, the corrigendum is not permissible. Law cannot be amended by issuing corrigendum. Corrigendum may be used only for rectification of a mistake as permissible u/s 152 of the CPC or Section 154 of the Income Tax Act but it cannot be used to amend a provision.

(32). This Court also considered a similar case in *Kandoi Kabliwala v. Assistant Commercial Taxes Officer, Pali* (37), wherein a notification granting exemption to the "Deshi sweetmeats" and "Namkins" was issued. By a subsequent notification, exemption of lax in respect of "Namkin" was withdrawn and after some time, a corrigendum was issued to the notification withdrawing the exemption of tax in respect of "Namkin" making it applicable also to the case of "Deshi Sweetmeats." This Court quashed the said corrigendum observing as under:-

"The said corrigendum notification dated October 5, 1972 is in fact an addendum to the Notification dated April 26, 1972 and not a corrigendum.....Two notifications dealt with two different commodities, number 13 dealt with "desi sweetmeats" and number 14 dealt with "namkins". There was no question of any correction to the notification relating to "namkins." These two commodities namely "desi sweetmeants" and "namkins" were exempted through two different notifications....Similar notification could be issued on this date rescinding notification relating to the "desi sweetmeanls" and admittedly this was not done. By issuing Notification dated October 5, 1972, the exemption from the payment of tax on the sale of "desi sweetmeats" could not be withdrawn with retrospective effect."

(33). Similarly, in *Citadel Fine Pharmaceuticals v. State of Tamil Nadu and Ors.* (38), the Tamil Nadu Taxation Special Tribunal considered a case in which by issuing an errata, certain exemptions were withdrawn. The Tribunal held as under:-

"The learned counsel for the petitioner would contended that, errata is meant correction of the typographical mistakes, but it cannot have the effect of law to take away the vested rights of a citizen and therefore except for the purpose of correcting the typographical errors like spelling mistakes, it cannot have the effect of nullifying the concession given under the original notification.....In view of these reasons, we hold that the two erratas to the notifications, are illegal in so far as they affect the vested right of the petitioner..."

(34). In view of the above, it cannot be held that the impugned corrigendum has been issued to correct any typographical error or omission therein. It tantamounts to amendment of the Scheme. Thus, the question requires

consideration is whether the said amendment has taken away the vested rights of the petitioner.

(35). In *Health Guard Laboratory v. Assistant Commissioner, Commercial Taxes, Special Cell and Ors.* (39), the Tax Tribunal of Calcutta considered the application of the amendment of a scheme, wherein the maximum period of tax holiday was enhanced from five years to seven years after the assessee therein started getting the benefits of the scheme. It was observed as under:-

"Thus, the nature of statutory right as to the tax holiday being dependent on the rule prevailing on the date the person becomes eligible to the right, it cannot be moulded by the promptitude or the procrastination of the officer in disposing of the application praying the benefit under Rule 99....The nature of such right gets settled according to the relevant provisions of the law prevailing on the date. Subsequent amendment, if any shall not change its nature unless the amending Act/Rules make express provisions otherwise. In the instant case, the amended rule does not expressly touch the nature of the existing right. Hence, it cannot be said that because of new Rule 99 the applicant is entitled to 7 years tax holiday even though the first sale of the unit's product took place before the amended Rule 99 came into force."

(36). In a similar case, in *Ajit Ram Mehta v. Additional Commissioner of Commercial Taxes* (40), the West Bengal Taxation Tribunal, Calcutta considered a case where after filing the complete application in all respects, the duration of the scheme stood altered. The Tribunal held that "once the period of eligibility and the commencement thereof was settled under the statutory provision applicable at that point of time, the status of the company in regard to such benefits got fixed and was not dependent on any subsequent amendment changing the period or the extent of amount. In other words, the company's substantive right to enjoy the benefits requires to be determined on the basis of the rule as existed on the date it became eligible. Therefore, any subsequent amendment to the provision by way of enlargement or reduction of the prescribed period will not affect this right unless the amended provision itself provides otherwise."

(37). So far as the issue of retrospective application of an amendment is concerned, the Courts have considered it time and again. In *Mohd. Rashid Ahmad v. State of U.P.* (41), the Apex Court held as under-

"Perhaps no rule of construction is more firmly established than this that retrospective operation is not to be given to a statute so as to impair an existing right or obligation other than as regards the matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. But where, as here, it is expressly stated that an enactment shall be retrospective, the courts will give it such an operation. It is obviously competent for the legislature, in its

wisdom, to make the provisions of an Act of Parliament retrospective. That is precisely the case here. In *Aquinn v. Prairiedale*, (1958) 25 WWR 241, where a subsequent enactment, provided that the relevant Section should be deemed never to have been contained in the earlier statute, it was held to be sufficient to rebut the presumption against retrospectivity... In *State of Punjab Vs. Mohar Singh*, and in *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, this Court had to consider the effect of repeal of an enactment followed by re-enactment in the light of Section 6 of the General Clauses Act, 1897. The line of enquiry, as observed in *Mohan Singh's* case, would be not whether the new Act expressly keeps alive old rights and liabilities, but whether it "manifests an intention to destroy them." It was held that Section 6 of the General Clauses Act was not entirely rules out when there was a repeal of the enactment followed by a fresh legislation unless the new legislation manifested an intention to the contrary. Such incompatibility had to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause was, by itself, not conclusive."

(38). Similarly, In *Municipal Corporation for the City of Pune v. Bijlee Products* (42) the Hon"ble Supreme Court considered the scope of withdrawal of exemption on Octroi duty and held that the withdrawal would not effect existing concessions. The Court observed as under: -

"Even assuming that the order of the Government deleted Rule 5 (8) without any condition and without retaining the exemption granted to the respondents, the order would suffer from a very serious legal infirmity. Section 149(2) of the Act empowers the Government to modify the recommendation of the Corporation provided it does not involve any increase in the rate or rates of the levy or the extent thereof. There can be no doubt that if the concession of exemption, from octroi duty given to the respondents is unconditionally withdrawn with effect from 1.9.1968 then this would have the effect of extending the application of the Rules to an area where they did not apply. This is yet another reason why the Govt. Impugned order should be read down so as to provide for deletion of Rule 5(8) with the exception that the concession already granted will continue."

(39). A Division Bench of this Court in *Union of India and Ors. v. State of Rajasthan and Ors.* (43), also considered the scope of withdrawal of exemption with retrospective effect and held as under:-

"From a bare perusal of Section 4(2) of the Rajasthan Sales Tax Act, 1954, it would be evident that the State Government has power to issue a notification in the Official Gazette to exempt from tax the sale or purchase of any goods, person or class of goods or persons on such conditions and on payment of such fees as may be specified in the notification. This power could be exercised prospectively or retrospectively. The exercise of the power for granting exemption could be with certain conditions but those conditions must be mentioned in the notification granting the exemption. If the notification is issued granting the exemption and any person acts upon it, subsequent issue of a

notification with retrospective effect putting conditions on the grant of exemption may result in denial of the exemption and thus the effect would be levy of tax on the transaction. This is not contemplated by the power conferred u/Section 4(2) of the Act. u/s 4(2) of the Act, therefore, the State Govt. can issue the notification granting the exemption retrospectively with any condition it likes but the said Section does not contemplate withdrawal of the exemption retrospectively but putting any condition."

(40). In *Arvind Industries and Ors. v. State of Gujarat and Ors.* (44), the Hon''ble Apex Court considered the application of doctrine of promissory estoppel in respect of the Incentive scheme and held that the incentive scheme does not contain any promise that the benefits given to the new industries will not be altered from time to time. The Government is entitled to grant exemption to Industries having regard to the industrial Policy of the Government. The Government is "equally free" to modify its industrial policy and grant, withdraw or modify fiscal benefits from time to time.

(41). In *Kasinka Trading and Anr. v. Union of India and Anr.* (45), the Apex Court, after considering a large number of its judgments, held as under:-

"Power to grant exemption, as u/s 25 of the Customs Act, 1962, comprehends implicit power to rescind, revoke or withdraw the exemption. Effect of exemption is not to render the tax item untaxable. Exemption notification issued in exercise of statutory power only suspends the levy and collection of tax or duty, wholly or partially, subject to conditions set out in the notification. Such exemption notification can be revoked, modified or superseded by a subsequent notification in exercise of the same statutory power in public interest even prior to the period of its operation specified therein. Such exemption notification is not in the nature of any incentive and does not hold out any unequivocal representation or promise. Withdrawal of exemption in public interest Is a matter of Government Policy, with which courts would not interfere in absence of any manifest injustice, malafide or fraud."

(42). Similarly, in *State of Rajasthan and Anr. v. Mahaveer Oil Industries and Ors.* (46), the Hon''ble Apex Court considered a large number of its earlier judgments and held that incentive scheme may be withdrawn in public interest if the public interest so requires and the promulgation of incentive scheme does not preclude the State to withdraw the scheme prospectively even during the period of scheme if public interest so requires. Even in a case where a party has acted on the promise if there is supervening public interest which requires that the benefits be withdrawn or the scheme be modified, the supervening public interest would prevail over any promissory estoppel.

(43). In *Union of India v. Godhwani Brothers* (47), the Hon''ble Apex Court categorically held that an incentive scheme can always be withdrawn if it is so required in public interest and in such an eventuality, principle of promissory estoppel is not attracted.

(44). In *State of Rajasthan and Ors. v. Bhatnagar Cement Co. (P) Ltd.* (48), the Hon''ble Supreme Court considered the case where the exemption granted in tax had been withdrawn with retrospective effect. The Court held that the State Government was free to alter the incentive scheme but that would only be with prospective effect. The Court further observed as under:-

"Promissory estoppel has to be pleaded and established...it is only if these factual particulars are pleaded that the other side had an opportunity to answer the same. The withdrawal of exemption shall be effective from the date it is withdrawn and not with retrospective effect."

(45). In *Shree Chemical & Minerals v. State of Rajasthan* (49), this Court, placing reliance upon a large number of judgments of the Supreme Court, interpreted the provisions of Sub-Clause (g) of Clause (5) of the Scheme which provided that the benefits of the scheme shall be available from the date of application filed by the applicant unit complete in all respects.

(46). In *V.V.S. Sugars v. Government of Andhra Pradesh* (50), the Hon''ble Supreme Court observed that while interpreting the tax statute, the literal and strict construction is to be applied. The Court has to read a fiscal statute with no addition and no subtraction on the ground of legislative intent and reading it" otherwise would defeat the legislative intent. Similar view has been reiterated in *Shyam Kishori Devi v. Patna Municipal Corporation* (51) and *Gulam Yasin Khan v. Sahebrao Yaswantrao Walaskar and Anr.* (52).

(47). In *Orissa State Warehousing Corporation v. Commissioner of Income Tax* (53), the Apex Court held as under:-

"A fiscal statute has to be interpreted on the basis of language used therein and not dehors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislature. The Court is to ascribe natural and ordinary meaning to the words used by the legislature and ought not, under any circumstances, substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions. Individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction."

(48). Similar view has been reiterated in *Arulnadar v. Authorised Officer, Land Reforms* (54) and *Jagdish Chandra Pathak v. State of Orissa* (55).

(49). In *Karamchari Union, Agra v. Union of India and Ors.* (56), the Hon''ble Supreme Court has held that while interpreting the fiscal statute, general and plain meaning of the words have to be given by the Court. Equity and hardship to an individual assessee are out of place in interpretation of tax statutes. Similar view has been reiterated in *Commissioner of Income Tax, Bhopal v. Hindustan Elector Graphi-ties Ltd., Indore*, (57) and *Travencore Rubber & Tea Co. Ltd. v. Commissioner of Income Tax, Trivendrum* (58):

(50). In *Molarmal v. K.Y. Iron Works Pvt. Ltd.* (59), the Hon"ble Supreme Court held that unless the statute, read as a whole, indicate a different meaning or provides for inconsistency, the Court has to interpret the language of the provisions literally and merely because a law causes hardship, it cannot be read otherwise.

(51). Reliance has been placed upon the letter dated 9.3.2000 of the Director, Industries, who was a Member of the SLSC, whereby it was clearly expressed by her that as sick units had been given benefit of exemption of tax on tapering basis and the same had to be given by dint of issue of completion certificate and the unit did not charge the sales tax from the buyers, operation of the corrigendum would aggravate the problem of the sick units, therefore, she asked the Secretary, Finance Department that corrigendum issued on 30.9.99 may be made effective from the date of its issuance. The Director of Industries was a Member Secretary of the SLSC. Her view must be given due importance and in view of this, it has been suggested that atleast this Court must give due consideration to the administrative interpretation, i.e. the Doctrine of Contemporenea Exporitio.

(52). It is well settled principle of interpretation of statute that it should be read with reference to the exposition it has received from contemporary authority. However, the said rule has exception and such a rule must give way where the language of the statute is plain and unambiguous or the rule being interpreted is not very old or the understanding of department itself runs counter to the law or it is found to be dehors the rules, (*Vide Senior Electric Inspector v. Laxminarain Chopra and Ors.* (60), *K.P. Varghese v. Income Tax Officer, Ernakulam*, (61), *Collector of Central Excise, Bombay and Anr. v. Parley Export (P) Ltd.* (62), *J.K. Cotton Spinning & Weaving Mills Ltd. Vs. Union of India and Ors.* (63), *Indian Model & Ferry Alloy Ltd. v. Collector of Central Excise* (64), *State of M.P. v. G.S. Daal & Flour Mill* (65), *Y.R. Chawla v. M.P. Tiwari and Anr.* (66), *N. Suresh Nathan v. Union of India and Ors.* (67), *M.B. Joshi and Ors. v. Satish Kumary Pandey* (68) and *Deshbandhu Gupta v. Delhi Administration* (69).

(53). However, if Courts come to the conclusion that the practice has wrongly been followed by the department, it should be disapproved for the reason that "wrong practice does not make the law." (*Vide Municipal Corporation for the City of Pune v. Bharat Forge Co. Ltd.* (70) and *D. Stiphen Joseph v. Union of India and Ors.* (71),

(54). Thus, the said doctrine has to be applied in a given case after considering all pros and cons of the case and after examining whether the Act is old and has been consistently followed by the Authorities concerned and also whether the administrative interpretation is in consonance with statute. The Scheme is not so old that it would require the consideration of administrative interpretation.

(55), Thus, in view of the above, I am of the considered opinion that as the language of the Scheme is plain and simple having no ambiguity and the Scheme

read as a whole does not provide for a different meaning, it has to be construed strictly and interpreted literally. The Scheme has been altered by issuing the amendment and altering the contents of the Scheme was within the competence of the Authority. As there was nothing in the scheme that it would not be altered/modified, petitioner cannot claim to enjoy the benefits granted under the original scheme. It was merely a Notification granting relief of tax exemption to certain industries on fulfilment of conditions incorporated therein. The learned Advocate General has informed that the Scheme itself had been abandoned vide Notification dated 19.1.2000; however, it has protected the interest of the industrial units which had already been conferred benefits. It was within the competence of the State Government to alter/modify the same as required in public interest. Petitioner is held entitled for the relief as per the original scheme upto the date of amendment and subsequent thereto as provided in the corrigendum.

(56). Much has been argued regarding the application of a notification, i.e. whether it would apply from the date of its issuance or from the date of its publication in the gazette or from the date it becomes available to the public at large.

(57). In *Pankaj Jain Agencies v. Union of India and Ors.* (72), a Bench of two Hon'ble Judges of the Supreme Court held that the notification for exemption of duty etc. shall become operative from the date of publication in the official gazette and the failure to make the law known would not acquire the element of operativeness and enforceability.

(58). In *State of Maharashtra v. Mayor Hens George* (73), the three Judges Bench of the Hon'ble Supreme Court held that the law in India becomes operative and effective in its territory from the date of publication and made known in India by publication in the gazette.

(59). In *Collector of Central Excise v. New Tobacco Co.* (74), the Hon'ble Supreme Court held as under:-

"It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a gazette, then mere printing of it in the gazette would not be enough. Unless the gazette containing the notification is made available to the public, the notification cannot be said to have been duly published."

(60). A Five Judges Bench of the Allahabad High Court, in *Avdesh Singh v. Bikasama Aheer* (75), considered a similar issue and hold that "a publication of the notification in itself implies that the notification must be effective so that all concern may have notice thereof and unless it is determined on facts that the persons interested had an occasion to know the notification, it could not be made effective.

(61). Therefore, considering the aforesaid settled legal position, it cannot be held

that the corrigendum can be made applicable prior to its publication in the official gazette, i.e. 7th January, 2000.

(62) In totality of the facts and circumstances of the case, petitioner cannot be deprived of hearing of the petition by this Court on the ground of availability of an alternative remedy or that the matter has been seized by the Statutory Authority and petitioner cannot agitate the issue before this Court without exhausting the statutory remedies as quashing of the notification has been sought in this petition. Sales tax is imposed in public interest so that the State may meet its obligation of development of the State and it is for this reason that the sovereign dues can be recovered on preferential basis. The sales tax may impose certain restrictions on the rights of the trader to some extent but so long it remains valid even if for one reason or the other, the assessee could not pass on the liability on the consumers. He cannot be permitted to plead that he was not liable to pay the taxes. While promulgating an incentive scheme, the State does not make any promise that the same would not be withdrawn, altered or modified, rather it is a scheme to attract the industrial units in a particular area for its development. The State Government is competent enough to alter or modify the scheme as required in public interest and in such a way the concept of promissory estoppel is not applicable at all. The corrigendum issued in this case does not provide for any correction of a typographical mistake or any omission in the original scheme, therefore, it amounts to amendment of the incentive scheme. The language used in the notification does not suggest that it would apply with retrospective effect, therefore, any alteration/modification of the original scheme would apply prospectively. Notification comes into effect only on the date of its publication in the Official Gazette, therefore, petitioner shall be entitled to the relief as provided under the original scheme upto the date of publication of the notification in the Gazette, i.e. 7.1.2000 and subsequent thereto as per the amended scheme.

(63). With the above observations, the petition partly succeeds and is allowed to that extent only. The interim order passed earlier shall continue for a period upto 30th April, 2001. Presently, petitioner, if so advised, may file an appeal, if not already filed, within a period of four weeks and if the assessee does so, the Appellate Authority may entertain the appeal on merit without insisting on the issue of limitation. For a further period, petitioner may request the Appellate Authority for interim relief, if any. In the facts and circumstances of the case, there shall be no order as to costs.