
(1989) 02 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 52 of 1982, 822 of 1984 and 711 of 1987

K.C. Vanaspati

APPELLANT

Vs

Assessing Authority and Another

RESPONDENT

Date of Decision : 22-02-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1989) 74 STC 349

Hon'ble Judges : A.S. Anand, C.J.;M.A. Shah, J

Bench : Division Bench

Advocate : V.K. Gupta, for the Appellant; Altaf Ahmed, Advocate-General and D.C. Reina, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Anand, C.J.—A common question arising for determination in all the three petitions preferred by the petitioner is : whether, after it has

been found, as a fact, that the petitioner has collected sales tax on the sale of vanaspati manufactured by it and such a finding of fact is recorded by

a statutory authority designated for the purpose under the Jammu and Kashmir General Sales Tax Act ("the Act", for short hereafter), could a

petition to determine the abstract question of the availability or otherwise of the exemption granted under a particular Government Order, to which

a reference is to be presently made, or the application of the doctrine of promissory estoppel, which alone is the basis for claiming relief, be

maintainable? To appreciate this a brief resume of the facts on which the main challenge is founded, becomes inevitable.

2. In Writ Petition No. 52 of 1982, order No. STG/168 dated 16th January, 1982 passed by respondent No. 1 assessing the petitioner to the

sales tax for the period ending September, 1981, is sought to be quashed, inter alia, on the grounds that Government Order No. 159-Ind. of 1971

dated 26th March, 1971 read with Government Order No. 414-Ind. of 1971 dated 25th August, 1971, is by itself an outright exemption from

payment of sales tax and consequently the assessment made and the order for recovery of sales tax made by the assessing authority cannot be

allowed to stand. Alternatively, it has been pleaded that even if for any reason the 1971 Orders are not held to be the orders of exemption u/s 5 of

the Act, the same unmistakably contain a representation, holding a clear promise for grant of exemption from the payment of sales tax for the

period of five years from the date the unit of the petitioner went into production and the respondents are on the basis of the doctrine of promissory

estoppel, estopped from claiming payment of sales tax being bound by the representation. To invoke, the doctrine of promissory estoppel, the plea

put forward in nutshell is that but for the promised concessions as contained in the 1971 Orders, to exempt the products manufactured by the

petitioner, as also the raw material used therein, from levy of sales tax, the petitioner would not have ventured to set up the factory after making

huge investments and since the petitioner had altered its position, it was entitled to bind the respondents by the doctrine and was not liable to pay

the sales tax.

3. This petition has been resisted by the State on various pleas including the pleas that the interpretation placed on the Government Orders under

reference, is not correct as the Orders of 1971 cannot be construed to be orders of exemption issued u/s 6 of the Act; that the doctrine of

promissory estoppel is not attracted to the facts and circumstances of the case as the petitioner has, in fact, been found to have collected sales tax

from the consumers on the sales of its product from the very beginning it went into production and, therefore, u/s 8-B of the Act it was under a

statutory obligation to deposit the same. It is also maintained that the factory was set up by the petitioner de hors the alleged representation and

relying upon the correspondence between the petitioner and the sales tax authorities, ending with the letter dated 12th August, 1981, it is averred

that the petitioner understood the position very well and collected the sales tax from the very beginning. It is further pleaded that as no order of

exemption has been issued u/s 6 of the Act, the petitioner could not escape its liability to account for the sales tax found due from it. These

averments have not been countered by any rejoinder.

4. In Writ Petition No. 822 of 1984, the challenge is again to the assessment order dated 1st October, 1984, whereby the petitioner has been

assessed to sales tax, surcharge, interest and penalty. However, some improvements in the grounds on which Writ Petition No. 52 of 1982 was

based to attract the doctrine of promissory estoppel were also incorporated.

5. Controverting the averments contained in this petition on behalf of the State, Mr. J.A. Khan, Commissioner-cum-Secretary to Government,

Finance Department, has, in his counter-affidavit not only rebutted the factual assertions made by the petitioner for invoking the doctrine of

promissory estoppel but has very emphatically maintained that the Government Order No. 159-Ind. of 1971 read with Government Order No.

414-Ind. of 1971, was only a sanction to the grant of incentives by the Industries Department which could not be a substitute for an order of

exemption u/s 5 of the Act. Counter-affidavit also contains the positive averment that the petitioner having collected the sales tax on the sales made

by it, cannot be allowed to retain the same and that having not acted upon the so-called representation and collected the sales tax, there was no

equity in its favour to allow retention of the amount of sales tax collected on behalf of the State.

6. Significantly no rejoinder to this counter was filed by the petitioner and the factual statement made by the State supported by the finding of fact

recorded by the statutory authority, remains uncontroverted.

7. The argument of Mr. V.K. Gupta, learned counsel for the petitioner in both the petitions (Nos. 52 of 1982 and 822 of 1984) is twofold: (i) that

the Government Order No. 159-Ind. of 1971 (read with Government Order No. 414-Ind. of 1971) is by itself an order of outright exemption

from the payment of sales tax both on the raw material as also on the finished products and the petitioner having set up the factory pursuant to this

order, it was obligatory on the State and its other functionaries to exempt the product manufactured by the petitioner from sales tax and, (ii) that in

case the order is not held to be an order of exemption u/s 5 of the Act, the sanction to the grant of exemption of sales tax, contained in the

Government Orders (supra) being not only a representation but a promise to grant exemption, the respondents are estopped from claiming sales

tax on the basis of promissory estoppel-a principle based on equity which has been recognised and applied in such like cases by the courts in the

country. The respondents, therefore, cannot be allowed to retract from the promise held out by the respondent-State to exempt the products

manufactured by the perspective industrialists covered by the order and the petitioner being one such industrialist, cannot be denied the promised

exemption.

8. Mr. Altaf Ahmed, learned Advocate-General, in reply submitted that the Government Orders so vehemently relied upon by the petitioner is not

and cannot be construed as an outright exemption from sales tax in the absence of any notification issued u/s 5 of the Act and that in any event the

petitioner itself having never understood the import of the order to be so, as would be evident from its own actions, was not entitled to the relief as

claimed by it. Even if it be assumed, argued Mr. Altaf Ahmed, that the aforesaid orders are representations promising grant of exemption from

sales tax, such a promise was never acted upon by the petitioner because when it was specifically informed vide communication dated 12th

August, 1981 in reply to its letter dated 10th August, 1981 that no exemption was available to it under the above orders, it not only went ahead

with the production, without applying for exemption u/s 5 of the Act, but also started collecting sales tax on the products from the consumers.

Furthermore, according to the learned Advocate-General, even though no writ could be issued to the State to exercise legislative power by

granting exemption, the petitioner having collected sales tax, as found by the assessing authority and averred in the unrebutted counter-affidavit of

the State, is by its own conduct not entitled to maintain the present petition let alone invoke the equitable doctrine of promissory estoppel.

9. Section 5 of the Act empowers the Government to grant exemption from payment of sales tax. That section reads as follows :

Exemption from taxation.-The Government may, subject to such restrictions and conditions as may be prescribed, including conditions as to

licence and licence fees, by order exempt in whole or in part from payment of tax any class of dealers or any goods or class or description of

goods.

10. On a plain reading the section does not speak of a general order of exemption, as the power to grant exemption is limited to a class of dealers

or goods and that too subject to such restrictions and conditions as may be prescribed. The section does not envisage a general order of

exemption and, postulates the need of a specific notification of exemption issued under this section in favour of the party claiming the benefit.

11. As to what is the true nature of Government Orders No. 169-Ind. of 1971 and No. 414-Ind. of 1971, came up for consideration by a

Division Bench of this Court in *Pine Chemicals v. Assessing Authority* 1988 KLJ 697. The Bench, after considering the provisions of Section 5 of

the Act (supra) and the contents of the two orders, noticed above, opined:

The combined reading of the section and the order which deals with grant of exemptions under various statutes would unmistakably show that the

order as such is not an exemption but only a policy decision to be followed by the party claiming exemption by establishing that it is covered by the

order and entitled to exemption. In other words, to apply the Government Order an industrialist has to establish that he had set up an industry in

the State which conforms to the intent of the 1971 Order and is, therefore, entitled to be granted exemption from sales tax as well as refund of the

sales tax paid on the raw material. The order is just an enabling provision and unless this minimum is done, exemption would not be available

because the Government has to be satisfied that the party claiming exemption has done everything what was required to be done under the 1971

Order and thus, entitled to exemption. Any other interpretation would be doing grave violence to the plain language of the order and the section.

The order, at the best, is only an expression of intention....

* * *

...Accordingly, the order under reference is not by itself an order of exemption but had to be followed by a notification u/s 5 of the Act....

12. The argument of Mr. Gupta to the contrary, thus, stands concluded as no new ground has been urged for the reconsideration of the view in

Pine Chemicals' case 1988 KLJ 697.

13. In *Pine Chemicals'* case 1988 KLJ 697 the court also dealt at length with the plea of the application of doctrine of promissory estoppel

emerging out of the representation contained in the two orders and after noticing the following observations of the summit court in Union of India

(UOI) and Others Vs. Godfrey Philips India Ltd., :

...The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise

or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be

acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or

representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to

do so, having regard to the dealings which have taken place between the parties....

14. Opined that though the 1971 Orders amount to a representation made by the State promising, inter alia, exemption from sales tax but in order

to bind the respondents, it was necessary for the party to establish that the representation/promise had been so understood and acted upon by it.

15. The petitioner in the instant cases had been informed as early as on 12th August, 1981, before its unit went into production, that it was not

entitled to exemption from payment of sales tax on the raw material or the finished products and that the two Government orders were not orders

of exemption u/s 5 of the Act and that without a notification issued u/s 5 of the Act, no exemption could be granted to the petitioner. It would be

advantageous to refer to the contents of that communication which is on the departmental file, produced before the court by the Advocate-General:

Office of the Assessing Authority, Sales Tax Circle 'G', Jammu.

K.C. Vanaspati,

Bari Brahmana,

Jammu (Tawi).

No. 546-47/STG Dated: 12-8-1981

Sub :-Exemption from payment of sales tax on the raw material and finished products produced by us.

Sir,

Kindly refer to your application No. KC/81-82 dated 10th August, 1981 on the

subject cited above. In this connection I have the honour to say that while going through the Blue Book issued by the Industries Department you stressed on two Government Orders 159-Ind. of 1971 dated 26th March, 1971 and 414-Ind. of 1971 dated 25th August, 1971 as laid down in the Blue Book and claimed exemption on the sales of finished products by your medium-large scale industries.

this regard I am to say that Cabinet decision taken in Government Order No. 159-Ind. of 1971 dated 26th March, 1971 and Government Order

No. 414-Ind. of 1971 dated 25th August, 1971 cannot be construed to be the notification issued u/s 5 of the Jammu and Kashmir General Sales

Tax Act, 1961.

Further in order that your firm is not liable to sales tax, you are bound to follow certain procedure in accordance with the law. The exemption

available to the industries would be allowed only after valid exemption certificate is available to you in accordance with the Government

notification. The exemption licence can be issued to you by the assessing authority only if the Government had issued a S.R.O. u/s 5 of the Jammu

and Kashmir General Sales Tax Act, 1962 or u/s 8(5) of the Central Sales Tax Act, 1956.

Further, Government Order No. 414-Ind. of 1971 dated 25th August, 1971 has not laid down the manner under which such exemption may be

granted to you as envisaged under Rule 4-A of the Jammu and Kashmir General Sales Tax Rules, 1962, as amended.

Under the above-noted legal implications I hold no power and jurisdiction to grant exemption certificate as desired. Accordingly your application

dated 10th August, 1981 claiming exemption of sales tax on the finished goods is hereby not accepted.

Yours faithfully,

Sd/- (C.L. Gupta)

Assessing Authority,

Sales Tax Circle 'G', Jammu.

16. On being so informed by the assessing authority, the petitioner not only took no steps for the issuance of the requisite notification by

approaching the competent authority but went ahead with the production and

charged and collected the sales tax from the customers as found by the assessing authority, respondent No. 1. However, instead of paying it to the State revenues, retained it to augment its profits-a situation which equity frowns upon. Thus, the petitioner never acted upon the representation either before setting up the factory or when it went into production and being conscious of the Government's stand, it started collecting the sales tax from the very beginning but retained the sales tax so collected and did not deposit with the department even when called upon to do so.

17. From the impugned assessment order it emerges that an understanding had been reached between the Vanaspati Manufacturers' Associations and the Government and the price of vanaspati, which is a controlled item, at Jammu, was fixed inclusive of sales tax, surcharge and other levies.

The assessment orders impugned in these petitions contain a finding of fact recorded by the assessing authority to the effect that the petitioner had charged sales tax from the consumers. The assessing authority in its order observed that even if Government Orders of 1971, on which the petitioner was relying, were construed as promises, the assessee himself had not acted upon the alleged promises as it had collected the sales tax from consumers. Relying upon the profit and loss account of the petitioner-company as also its balance-sheet and the price structure of the product, the assessing authority, on facts, found that the petitioner had included the element of sales tax and surcharge in its price structure and had been collecting the sales tax from the consumers. It recorded :

...It is pertinent to mention that the assessee has not acted upon the alleged promise inasmuch as he has collected the tax from the persons to whom the goods have been sold. It may be that the assessee has not charged sales tax and surcharge. The information supplied by the dealer of vanaspati to the Director, Food and Supply, also shows that the price includes the element of sales tax and surcharge.

18. This finding of fact has not been challenged in appeal a right available under the statute, but instead, recourse to Article 226 of the Constitution was preferred apparently to circumvent the law rather than to enforce a right for which the provision of Article 226 is meant and stay order, which operates till date, was obtained. It is precisely such like situations, which had made their Lordships of the Supreme Court to deprecate the practice

of granting interim orders in exercise of the writ jurisdiction, by-passing the statutory remedies, particularly in the case of indirect taxation where the

burden has already been passed on to the consumer on occasions more than one.

19. In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, , their Lordships held that where the statute itself provides the

petitioners with an efficacious alternative remedy by way of an appeal to the prescribed authority, it was not for the High Court to exercise its

extraordinary jurisdiction under Article 226 of the Constitution ignoring, as it were, the complete statutory machinery. Again, noticing that the

tendency on the part of some of the litigants to shortcircuit and circumvent statutory procedures by taking recourse to Article 226 despite

admonitions by the apex court was continuing, their Lordships in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop*

India Ltd. and Others, , once again, almost in anguish, observed :

...Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the

demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so

inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of

the Constitution. But then the court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters

involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority

of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the

proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

20. We need say no further on this aspect of the case as the facts already noticed speak volumes.

21. The respondents have specifically and emphatically stated that the petitioner had collected the sales tax from the consumers as is clear from

para 4 of the counter-affidavit which reads :

That as per the provisions of the Jammu and Kashmir General Sales Tax Act, if an assessee collects sales tax from the customers then such tax is

liable to be paid to the Government. A perusal of the balancesheet filed by the petitioner before respondent No. 1 (the copies of which are enclosed as annexures R-1 and R-2) will clearly show that the petitioner has collected sales tax from the customers. Thus, even if for the sake of arguments (though this is denied by the replying respondent), it is admitted that the petitioner has a case for exemption even then the petitioner is bound to pay sales tax which he has collected from the customers. In this respect, Section 8-B(3) is clear which provides as under:

8-B. (3) The amount realised by any registered dealer by way of tax in excess of the tax that is payable under this Act shall, notwithstanding anything contained in any other provisions of this Act, be deposited with the Government within the time specified in Sub-section (2) of Section 7 of this Act.

22. If ultimately the petitioner is held to be exempt from tax the Section 10 of the Jammu and Kashmir General Sales Tax Act, 1962 empowers

respondent No. 1 to refund the tax along with interest from the date of deposit of tax to the date of refund but the refund shall be paid to the

person from whom the tax has been recovered. The said provision provides adequate protection to the persons from whom the petitioner has

recovered tax under the authority of Section 8(1) of the Act. And yet, no rejoinder has been filed to controvert this stand. Thus, the finding of fact

recorded by the assessing authority coupled with the unrebutted assertion of the respondents in their counter-affidavits, unmistakably go to show

that having not acted on the so-called promise or representation and on the contrary, having collected the sales tax by including it in the price

structure of the product, it cannot avoid depositing the same by invoking the otherwise inapplicable equitable doctrine of promissory estoppel.

23. On the established facts of the instant case, in our opinion, it would be inequitable to bind the respondents to the promise contained in the 1971

Orders when there exists no equity in favour of the petitioner; firstly, because it had been informed even before the unit went into production that

the 1971 Orders do not grant exemption to it and that to avail of exemption a notification u/s 6 of the Act had to be issued which was never issued

as the petitioner did not apply for it; secondly, because in the absence of such a notification sales tax had to be collected and the petitioner

understood it very clearly and the assessing authority has found, on facts, that sales tax had, in fact, been collected on the sales made to the

consumers and, thirdly, because the petitioner could invoke the doctrine only if the finding of fact recorded by the assessing authority, respondent

No. 1, was reversed by the appellate or revisional authorities where the assessment orders impugned herein could be challenged and yet the

recoveries were ordered from it, which is not the case here and so long as the finding of fact is not displaced, the petitioner cannot avoid depositing

the sales tax collected by it as an agent of the sales tax department. It will be wholly inequitable and even atrocious to allow the petitioner to retain

the amount of sales tax charged and collected by it from the consumers as an agent of the sales tax department of the Government. Even

otherwise, the sales tax being an incidence of sales and the burden being always on the consumers, there is no equity in favour of the petitioner who

acts as an agent of the department to collect on its behalf, to retain the sales tax collected by it as held in *Bharat Steel Tubes Ltd. and Another Vs.*

State of Haryana and Another, , where Ranganath Misra, J., speaking for the court opined :

In the case of a registered dealer who collects sales tax on behalf of the State, there is no justification for him to withhold the payment of the tax so

collected.

24. Again, in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, their Lordships voiced :

...We often wonder why in the case (of) indirect taxation where the burden has already been passed on to the consumer, any interim relief should

at all be given to the manufacturer, dealer and the like.

25. What holds true for ""interim relief"" holds equally good for the ""final relief"". In the instant cases, having passed on the burden to the consumer,

both by adding the sales tax on the finished products in the price structure and including the sales tax paid on the raw material, there was no

justification for the petitioner to retain the same. The petitioner in the instant cases, does not run any risk of incurring any loss as per the material on

record as it shall be paying the collected sales tax to the department to which it rightfully belongs. The recovery of the sales tax from the petitioner,

in the facts and circumstances of the case, will, in our opinion, advance the

cause of justice rather than impede it and in view of the following law

laid down in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., :

...We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be

shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the

Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom

the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of

promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority

should be held bound by the promise or representation made by it....

26. which applies with full force to the facts of the instant case, we hold that the doctrine of promissory estoppel stands squarely displaced in the

facts and circumstances of the present cases as the petitioner has failed to lay down even the minimum acceptable foundation for invoking the

equitable doctrine.

27. Since, it is on facts that the petitioner is being non-suited to invoke the equitable doctrine of promissory estoppel, it is not necessary for us to

deal with the argument of the learned Advocate-General that even if the doctrine of equitable estoppel was attracted, no command could be issued

to the State to grant exemption from payment of sales tax to the petitioner, as that would amount to mandating the State to bring forth a legislation

and we leave that question open.

28. From the aforesaid discussion it follows that the answer to the question posed in the opening part of this judgment has to be in the negative and

it is answered accordingly. Consequently both the writ petitions (Nos. 52 of 1982 and 822 of 1984), fail and are hereby dismissed. The interim

directions staying the recovery of sales tax, surcharge, interest, penalty, etc., are hereby vacated.

29. This takes us to the third writ petition filed by the petitioner.

30. Writ Petition No. 711 of 1987 is rather of a general nature challenging the validity of Notification No. S.R.O. 448 of 1982 dated 22nd

October, 1982 by which the recovery of the sales tax on vanaspati and edible oils manufactured in the State was altered from the first point of sales to the second point, where the sale was made by the dealer to the consumer after purchasing it from the manufacturer, though retaining it as the first point where the sale is directly made to the consumer by the manufacturer. The impugned S.R.O. amended S.R.O. 195 of 1978 dated 31st March, 1978 and altered the point of levy of sales tax. Thus, it is only when the sale is made by the manufacturer (petitioner) direct to the consumer that the sales tax is payable at the first sale itself and the petitioner becomes liable to recover it which it is not even alleged in the petition to be the case. Basically the challenge to S.R.O. 448 of 1982 is that since the products of the petitioner were exempt from sales tax in view of Government Order No. 159-Ind. of 1971 as amended by Government Order No. 414-Ind. of 1971 and the respondents were bound by promissory estoppel not to charge sales tax on the products manufactured by the petitioner, by shifting the recovery of sales tax to the second point, i.e., when the sale is made by dealer to the consumer, the respondents were, in fact, trying to circumvent the effect of the stay orders granted in Writ Petitions Nos. 52 of 1982 and 822 of 1984 because ultimately the payment of sales tax affects the petitioner whose product has to compete in the market.

31. In the counter, the respondents have, inter alia, asserted that S.R.O. 448 of 1982 was constitutionally valid and that it was open to the authorities to fix the point of sales where the sales tax could be levied and collected and since that power had been exercised by the Government in the manner prescribed by the statute, no fault could be found with S.R.O. 448 of 1982. It is also asserted that the petitioner had no locus standi to invoke the writ jurisdiction questioning the validity of S.R.O. 448 of 1982 as on its own showing, the petitioner is a manufacturer and not a dealer and that the burden of sales tax being on the consumer from whom it is charged and recovered by the dealer, not even the dealer much less the manufacturer could maintain a petition. It is maintained that S.R.O. 448 of 1982 does not in any way prejudice the manufacturer like the petitioner and, therefore, the writ petition was not maintainable.

32. Mr. V.K. Gupta, appearing for the petitioner, challenged S.R.O. 448 on the

grounds : firstly, that vanaspati manufactured by the petitioner being clearly exempt from payment of general sales tax under Government Order No. 159-Ind. of 1971 read with Order No. 414-Ind. of 1971, no sales tax could be charged on its products either at the first or the second point of sale; secondly, that the State Government in terms of the aforesaid orders had promised to exempt the petitioner's product from levy of sales tax and was bound by the doctrine of promissory estoppel and could not be permitted to resile from the promise and assurances contained in the Government Orders on the basis of which the petitioner had changed its position; thirdly, that the impugned S.R.O. had been issued with the object of circumventing the effect of the stay order granted by this Court in the writ petition filed by the petitioner earlier; and, fourthly, that the provisions of Section 4(7) of the Act under which the notification has been issued were violative of Article 14 of the Constitution of India and, therefore, unconstitutional.

33. According to the learned Advocate-General, the grievance of the petitioner has no substance because by changing the point of levy of sales tax no right whatsoever of the petitioner has been affected. Mr. Altaf vehemently argued that the incidence of sales tax which ultimately passes on to the consumer, does not in any way prejudice the manufacturer. He further submitted that the petition was based on misconception of the fact that the product of the petitioner was exempt from the payment of sales tax or that the doctrine of promissory estoppel was attracted to the facts and circumstances of the cases and that in any event, having collected the sales tax from the consumer, neither the dealer nor the manufacturer making direct sales to the consumer, could be permitted to retain the sales tax so collected. The charge of discrimination as also to the validity of Section 4(7) of the Act have been vehemently denied. The learned Advocate-General further submitted that the petitioner had not been able to spell out any prejudice caused to it in the writ petition and the argument of the learned counsel that the S.R.O. in question was issued to circumvent the stay orders granted by this Court holds no water.

34. S.R.O. 448 of 1982 was issued on 22nd October, 1982 by the Finance Department in exercise of the powers conferred by Sub-section (7) of Section 4 of the Act. It amended S.R.O. 195 of 1978 dated 31st March, 1978

and the point of levy of sales tax was altered from the first point to the second point where the sale is made by the manufacturer to another dealer in the State for resale to the consumer.

35. In *Ram Singh Wine Shop v. State of Jammu and Kashmir* 1987 KLJ 286 a Division Bench of this Court considered the validity of S.R.O. 247 whereby S.R.O. 195 of 1978 dated 31st March, 1978 had been amended and the point of levy of sales tax on liquor was altered from the first point to the last point. The court relying upon the judgment of the apex court in *Khazan Chand and Others Vs. State of Jammu and Kashmir and Others*, and the statutory provisions, held that it was within the competence of the State Legislature to provide for all matters "ancillary and incidental" to the levy and collection of sales tax and that the legislature had by Section 4(7) of the Act, authorised the State Government to choose the point of levy and collection of sales tax. It was held that the Government had the power u/s 4(7) of the Act to notify the point or points of sale at which goods or class of goods may be taxed subject to the embargo contained in the proviso. The Bench also held that Section 4(7) of the Act was constitutionally valid and that the State Government had the discretion to fix and notify the point of levy of sales tax and it was for the State to decide how and in what manner it would levy and collect the sales tax. The court observed that the object of the provision was to enable the Government, in its own judgment, to select the levy point so as to further the object of the Act, viz., generation of maximum revenue for the State by permissible taxation in accordance with law. The challenge to the vires of S.R.O. 247 failed in *Ram Singh's* case 1987 KLJ 286 and *Mr. Gupta* was unable to satisfy the court as to how, on the parity of reasoning in *Ram Singh's* case 1987 KLJ 286, the constitutional validity of S.R.O. 448 could be challenged. The question of the vires of S.R.O. 448 is, therefore, no longer *res integra*. The argument of *Mr. V.K. Gupta*, that by charging sales tax, the sale of the product of the petitioner in the competitive market would be affected is untenable and without any factual foundation having been laid down in the petition for raising it. There is not even a whisper in the petition as to what effect the S.R.O. would have on the price structure and the price fixed for sale of *vanaspati*. Since, we are disposing of the writ petition itself, we need not dwell on the submission

of the learned Advocate-General that though no dealer of the petitioner had come forward to obtain the stay of the operation of the impugned

S.R.O. and the petitioner, without even contending that it was engaged in direct sale to the consumer, had obtained a stay order the effect of which

is that the recovery of the sales tax even from the dealers, who charged it from the consumers, has been stayed resulting in a loss of almost one

crore per year as revenue.

36. What has been noticed above apart, a perusal of the writ petition shows that the challenge to the vires is based on vague allegations. While

deciding Writ Petitions Nos. 52 of 1982 and 822 of 1984, we have already held that neither the 1971 Government Orders by themselves were

orders of exemption nor on the facts and circumstances of the case, was the petitioner entitled to retain the sales tax collected by it and that the

doctrine of promissory estoppel was not attracted to the case. Thus, the very basis on which the petitioner has called in question the validity of

S.R.O. 448 does not survive for consideration.

37. Moreover, the petitioner on its own showing had earlier filed Writ Petition No. 832 of 1982 specifically challenging the validity of S.R.O. 448.

That writ petition was dismissed by this Court vide order dated 25th November, 1982 and the validity of S.R.O. 448 was upheld. That order was

not questioned by the petitioner through any appeal, etc. It is, therefore, even otherwise not open to it to raise a fresh challenge to the said S.R.O.

through the present petition on some non-existent, undisclosed and imaginary additional grounds. On that account also the present petition is not

maintainable and must fail. Moreover, the petitioner has not questioned the validity of S.R.O. 195 of 1978 vide which vanaspati was not one of the

products exempted from payment of sales tax. The challenge to the amendment of that S.R.O., vide S.R.O. 448, is, therefore, futile.

38. Thus, in view of the above discussion and nothing having been brought to the notice of the court to persuade it to take a different view with

regard to the validity of amendment of S.R.O. 195 of 1978 by S.R.O. 448, particularly in the facts and circumstances of the case, this third writ

petition (No. 711 of 1987) also merits dismissal and is hereby dismissed. The stay orders issued by the court shall stand vacated. There shall,

however, be no order as to costs in all the three petitions.