(1995) 03 AHC CK 0126

In the Allahabad High Court

Case No : C.M.W.P. No. 916 of 1988

Krisons Electronic Systems (P.) Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Constitution of India, 1950 — Article 141, 162, 166, 265, 299
Income Tax Act, 1961 — Section 81, 81(1)
Uttar Pradesh Sales Tax Act, 1948 — Section 10, 11, 3, 4A, 8

Citation : (1996) AWC 106 Supp

Hon'ble Judges : S.H.A. Raza, J;G.S.N. Tripathi, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—Petitioner has filed the present writ petition challenging the validity of the action of the Chairman, New Okhla Industrial Development Authority, Noida Complex, Ghaziabad (Convenor, Divisional Level Committee u/s 4A of the U.P. Sales Tax Act) Respondent No. 2 in granting exemption from payment of sales-tax to the Petitioner for the period of four years instead of six years. The Petitioner has also challenged the validity of the order dated 15.4.1988 passed by Area Development Officer, Noida by means of which, review application of the Petitioner was rejected.

2. Factual matrix as set out in the writ petition in short compass is that the Petitioner is a private limited company incorporated under the Indian Companies Act, 1956, having its registered office at N-2 Cannaught Place, New Delhi, while its factory is situate at D-100, Sector-2, Noida, District Ghaziabad. The Petitioner is registered both under U.P. as well as Central Sales Tax Act. The Petitioner has taken factory premises including the land on lease and thereafter installed various machineries. It was alleged that he established and expanded its industry with the sole view to get exemption from payment of sale-tax for a period of six

years, from the date of its first sale in terms of notification dated 27.8.1984 as superseded/amended by notification dated 29.1.1985 and 26.12.1985. The Petitioner has made all efforts and has invested huge amounts with the sole purpose of getting exemption from payment of sale-tax. It was averred that had the Petitioner been aware that the Petitioner would not get the full benefit of sales-tax exemption, then the Petitioner would not have established and expanded its factory.

3. It was averred that the Petitioner had fulfilled all the requirements for the grant of eligibility/exemption certificate from payment of sales-tax u/s 4A of the U.P. Sales Tax Act (hereinafter referred to as the Act). The Petitioner applied for registration with the Director of Industries as a small scale industry. In the said registration certificate, 23.5.1984 was mentioned as the date of the commencement of the production. Petitioner also applied for registration under the Factories Act and the requisite registration was granted to the Petitioner under the Factories Act with effect from 2.4.1984. Petitioner is also registered with the Central Excise authorities vide Excise Licence No. L-4 No. 1/37 BB/ NOIDA/85 and L-4 No. 1/12/33A/NOIDA/85. Petitioner is also registered under the Employees'' State Insurance Act and Employees'' Provident Fund Act.

4. It was submitted that after completing all the formalities as required under the Act, the Petitioner applied for exemption from payment of sales-tax in the prescribed proforma u/s 4A of the Act before the Area Development Officer, NOIDA. Petitioner''s application was considered by the District Level Committee and thereafter the case was recommended to the Chairman, NOIDA. The Chairman, NOIDA-Respondent-2, after considering the Petitioner''s application for exemption, on 31.8.87 granted the eligibility certificate to the Petitioner, exempting the Petitioner-unit from payment of sales-tax for a period of four years with effect from 21.4.1984 to 20.4.1988.

5. As the Petitioner staked his claim for exemption from payment of sales-tax for a period of six years instead of four years, he preferred a representation/review application before the Chairman, NOIDA. On 15.4.1988 the Petitioner was informed that his review application was rejected on the ground that the investment of the Petitioner-unit was below rupees three lacs as on the date of starting production, hence the said unit was entitled for exemption only for a period of four years.

6. It was stated that since the notification dated 27.8.1984 covered all new units established in the State of U.P. between the period from 1.10.1982 to 31.3.1990, the units which were in production prior to 27.8.1984 and which had Increased the investment to over Rs 3 lacs subsequently were also entitled to exemption for the full period in terms of the said notification. It was urged that the notification dated 27.8.1984 did not provide as to at what point of time the investment in the unit should be rupees three lacs or more and hence, the Respondent No. 2 was not Justified in law in taking the view that the investment in the new unit of rupees three lacs should be completed on the date of starting

production. The different periods of exemption relatable to investment came for the first time on 27.8.1984, with the issuance of notification dated 27.8.1984 and so the unit already in production required certain time to complete the investment to the tune of rupees three lacs or more, hence by no stretch of imagination, the investment of rupees three lacs could be taken to complete on the date of starting production, especially in respect of the units which had already been established before the issuance of the aforementioned notification dated 27.8.1984. As the notification dated 27.8.1984 for the first time provided for different periods of exemption according to investment, hence the Petitioner immediately took steps for increasing investment on machineries, etc., in the unit and that was subsequently enhanced to well over to rupees three lacs, and remained so for a very substantial period of exemption. It was submitted that Respondent No. 2 acted illegally in exercise of its Jurisdiction in not considering the case of the Petitioner from that aspect of the matter.

7. On 12.5.1988 Dr. Ravindra Sharma, Sales Tax Officer filed a counter-affidavit. in which he stated that for the units established after 1.10.1982, for the first time, rules with regard to exemption were framed under notification dated 30.9.1982 in accordance with which exemption was to be granted to the units which had capital Investment of more than Rs 3. lacs and for the units which had capital investment of less than rupees three lacs were to be granted exemption as per notification issued on 27.8.1984. The date on which the unit is installed and for the first time started production on that date, the capital investment made up to the date of production by the unit, has to be taken into account while considering exemption application, but it would not apply if the investment increased subsequently to three lacs or more. Since on the date of starting Petitioner''s unit, the Petitioner''s unit had capital investment of less than rupees three lacs and as such was not entitled for exemption and was entitled for exemption only for four years as per notification dated 27.8.1984.

8. In the counter-affidavit dated 29.7.1988 filed by Sri R. P. Singh, Deputy Commissioner (Executive) Sales Tax, Ghaziabad, it had been averred that under Government Order No. 8244 dated 30.9.1982 the units whose capital investment was below rupees three lacs, were not entitled for exemption. However, by notification dated 27.8.1984 even such units whose investment was below rupees three lacs became entitled for exemption of fulfilment of the conditions mentioned in the said notification dated 27.8.1984 and the exemption was to take effect from the date of starting production. in case of industries established in NOIDA, this exemption was for a period of four years under the notification dated 27.8.1984. According to Section 4-A, the date of the first purchase of raw material or the date of installation of power connection, whichsoever is later, would be the date of starting production. However, in pursuance of Act No. 6 of 1985, which was prospective in nature and was enforced w.e.f. 19.1.1985, the exemption was to be granted from the date of first sale, if the first sale took place within six months from the date of starting production. in pursuance to the said Act, notifications dated 29.1.1985 and 26.12.1985, which contemplated

exemption from the date of first sale, if the sale took place within six months from the date of starting production, were issued. Notifications dated 29.1.85 and 26.12.1985 will apply only to those units which were established from 29.1.1985 to 26.12.1985. It will not apply to those units, that were established prior to 29.1.1985, which was governed by notification dated 27.8.1984. The Petitioner was, therefore, granted exemption for a period of four years from the date of starting production, which in the instant case was 21.4.1984 under the notification dated 27.8.1984, hence the application of the Petitioner for granting exemption for payment of sales-tax for a period of six years, was rightly rejected by the Chairman, NOIDA.

9. In the rejoinder-affidavit dated 17.8.1988, Mr. R. K. Suri, Managing Director of the Petitioner''s company, it was averred that the State Government by G.O. No. 8244 dated 30.9.1982 has provided for exemption from payment of sales-tax to all the units, which were situated in different districts as mentioned in Annexure-A and B to the said Government Order. The exemption was granted with reference to the district in which the unit is established without any reference whatsoever to the investment in the said unit. In para 2 of the said Government Order dated 30.9.1982, various districts and the corresponding period of exemption of the said districts have been mentioned. It was provided in para 2 that the industrial units set up in the State of Uttar Pradesh which were small, medium or large units, shall be entitled to exemption from sales-tax u/s 4A for different periods based on districts in which they are set up. According to the said para, the units set up in NOIDA, Tehsil Dadri. District Ghaziabad, were entitled to exemption for six years. It was specifically explained under the said para that for the purpose of this scheme industrial units would mean the units which are registered either with the Controller of Iron and Steel, DGTD, Director of Industries or under the Factories Act. In the said Government notification, it has nowhere been stated that small scale units with investment of less than rupees three lacs, would not be entitled to exemption, and consequently the assertion made in the counter-affidavit was totally incorrect and baseless. The said assertion was made on the basis of rules framed in pursuance of para 4 of the Government Order dated 30.9.1982, wherein a small scale unit has been defined as one wherein capital investment in land, building plant and machinery exceeded rupees three lacs. It was averred that the Government Order dated 30.9.1982 under Rule 4 alone provides for framing of rules, which stated that rules would be prepared shortly pertaining to the scheme for providing exemption to pioneer and prestige units. Consequently, the rules were to be prepared only in relation to such pioneer and prestige units and thus, the extension of scope of such rules to small scale industries was ultra vires and to that extent the rules dated 16.10.1982 have no bearing and deserve to be ignored.

10. The rejoinder-affidavit dated 18.8.1988 filed by the Managing Director, Sri R. K. Suri against the counter-affidavit of Sri Dr. Ravindra Sharma, Sales Tax Officer, Sector-I, NOIDA, Respondent-3, it was indicated that under Government Order

No. 8244 dated 30.9.82 it was announced that all those units, which shall be established in the State of Uttar Pradesh, shall be entitled for exemption from payment of sales tax. Accordingly, the Petitioner also established a new unit in pursuance of the Government Order No. 8244 dated 30.9.1982 and is entitled for exemption from payment of sales tax for a period of six years as provided in the said Government Order. Petitioner set up and established the industry on the basis of the clear representation made and held out by the State Government that the industry was entitled to exemption from payment of sales tax for a period of six years under G.O. No. 8244 of 30.9.1982. Subsequently, by means of the notification No. 6460 of 27.8.1984, a condition was introduced for the first time that in case of a new unit in Tehsil Dadri, District Ghaziabad with capital investment not exceeding rupees three lacs, the period of exemption shall be four years from the date of starting production. The Petitioner has set up its new industry on the basis of the representation made by the State Government under earlier notification dated 30.9.1982 and the State Government is stopped from withdrawing the said exemption to the detriment of the Petitioner by a subsequent notification. It was further averred that the exemption u/s 4A of the Act was allowed to all those units which were established in the State of Uttar Pradesh after 1.10.82 and which were registered under the Factories Act. In addition to such industries, exemption was also granted to those units, which were not registered under Factories Act and their investment was more than rupees three lacs. According to various Government Orders and circulars which were issued from time to time, the units which have been established between 1.10.82 and 31st March, 1983 were entitled to exemption from payment of sales tax and they were classified in two groups of units:

1. Those units which were registered with the Director of Industries and were also registered under the Factories Act; and

2. All other industries were also entitled for exemption from payment of sales tax which were not registered under the Factories Act, but whose Investment was more than rupees 3 lacs.

11. It was also averred that since there was doubt earlier, hence for the removal of the doubt, the Government order dated 16.3.1983 was issued and it was clearly mentioned in para 1 of the said Government Order that all those units which were registered with the Director of Industries as small scale Industry and were also registered under Factories Act, would be entitled for exemption Irrespective of their investment. There was another group of units which were also entitled for exemption from payment of sales tax, whose investment was more than three lacs, but were not registered under the Factories Act. Thus, the registration under the Factories Act was not at all necessary for all the units, but was necessary only for those units, whose investment was less than three lacs prior to 27.8.84, which were clarified by means of the Government Order dated 29.9.1986. In the Government Order dated 26.9.1986. a reference has been made to the earlier Government Order dated 16.3.1983 that those units whose

investment was more than rupees three lacs, but were not registered under the Factories Act, were entitled for exemption. Government order dated 16.3.1983 and 26.9.1986 clearly established that all the units which were established between the period 1.10.1982 and 31.3.1985 had been put into two different categories:

1. Whose investment was less than rupees three lacs but were registered under the Factories Act apart from being registered with the Director of Industries.

2. The other units whose investment was more than rupees three lacs but were not registered under the Factories Act.

12. On 9.5.1991 Sri A. K. Darbari, Addl. Sales Tax Officer, Sector-I, NOIDA, District Ghaziabad filed supplementary counter-affidavit, in which he stated that the issue that notification dated 27.8.1984 does not provide at what point of time the investment in the unit should be rupees three lacs or more, is settled by the U.P. Gazette Extraordinary dated April 3, 1991 U.P. Sarkar Vidhi Anubhag-7 No. 682(2)/XVII-V-1-2-(Ka)28/1991, dated Lucknow April 3, 1991. Clause 8 (c) Explanation 1 (e) of the above gazette notification clearly provides that fulfilling all the conditions specified in this Act or rules or notification made thereunder in regard to grant of facility under this section on the date from which such facility may be granted to him. The Investment made by the Petitioner on or before the date of starting production (23.5.1984) or on the date of first sale (26.5.1984) was less than rupees three lacs and as such the Petitioner was entitled for sales tax exemption only for four years from the date of starting production. in view of the fact that the Petitioner himself admitted that the Investment in land, building and machinery exceeded rupees three lacs after October, 1985.

13. In reply to para 2 of the supplementary counter-affidavit filed by Sri A. K. Darbari, Sri Akhil Gupta filed supplementary rejoinder-affidavit on behalf of the Petitioner on 4.3.1992, wherein it was indicated that U.P. Ordinance No. 26 of 1991 published in the U.P. Gazette dated 23.4.1991 was replaced by U.P. Act No. 28 of 1991. It was submitted that Section 8(a) Explanation 1 (e) of the Ordinance, only provides for fulfilment of the conditions as were prescribed on the date from which the facility might be granted to the unit. It is erroneous to interpret the said Explanation so as to mean that the conditions have to be necessarily fulfilled as on the date from which the facility is to be granted to the unit. This is clear from the comparison of the wordings of the present Explanation and the wordings of Ordinance No. 10 of 1990 (reported in May, 1990, issue of the U.P. Tax Cases) u/s 3 dealing with the amendment of Section 4A, which reads as under:

For the words ''subject to such conditions as may be specified'' the following be substituted:

and subject to its fulfilling on the date of starting production such conditions as may be specified.

14. As against the above Explanation referred to in the supplementary counter-affidavit, reads as under:

Fulfilling all the conditions specified in this Act or rules or notification made thereunder, from which such facility may be granted to him.

15. It was averred that a reading of the two would clearly establish that whereas as per the Ordinance No. 10 what was sought was the fulfilment on the date of starting production all conditions as may be specified, what is sought by the present Explanation is that all the conditions which were specified by Act or the rules or the notification on the date from which the facility of sales tax exemption is to be granted to the unit must be fulfilled for a unit to qualify for the term of new units. in other words, the Explanation is merely a clarification of the general law which requires an Assessee to actually fulfil the condition which could have been specified for him at the beginning and not to expect the impossible out of him by requiring him to fulfil the condition which have been specified later. Hence, the emphasis laid down in the counter-affidavit, on any condition as may be required to be fulfilled on the date from which the facility was granted in view of the Explanation contained in U.P. Ordinance No. 26 of 1991 is incorrect. If it is presumed that the interpretation contained in the counter-affidavit regarding the necessity of the condition to be fulfilled on the date from which the facility may be granted to unit is correct, even then the amendment as per the Explanation has no relevance in the present writ petition. The purpose of the amendment at the best could be that in cases where the condition was specified but no specific date/time for its fulfilment was given in the Act or in the amendment, then, the confusion in this regard was sought to be set at rest by clearly specifying the point of time at which such specified condition was to be fulfilled by the unit. in the case of the Petitioner, the condition regarding investment being over rupees three lacs as has been mentioned in the counter-affidavit under para 3 was totally non-existence in view of the fact that (i) the unit was set up in April 1984 and the date of starting production as per the definition contained u/s 8(vi) Explanation 3 is 23.5.84. The reasons for the date of commencement of production being 23.5.84 have been given in the supplementary affidavit filed by the Petitioner, on 30.4.1991. It was reiterated that as per Government Order dated 30.9.82. all the small scale industries set up after 1.10.82 in the State of U.P. District Ghaziabad, Tehsil Dadri were entitled for the exemption for a period of :six years from the date of commencement of production. The said Government Order also provided for framing rules in respect of prestige and pioneer units. However, under Niyamawali made under Government Order dated 30.9.1982, it was stated that those units which were established between 1.10.1982 and 31.5.1982 and were either registered under Factories Act and whose investment on land, plot and machinery and equipment was more than three lacs, would be entitled to exemption from payment of sales tax from the date of starting production, under paragraph 4 (1) of the said Niyamawali under heading ''Paribhasha'' the small scale industries are defined to be such units whose investment in land and building, machinery and equipment was not less

than rupees three lacs and more than rupees twenty lacs. As there was a confusion as to the small scale units, which would be entitled to exemption from payment of sales tax, in view of what was stated in paragraph 1 and paragraph 4 (1) of the Niyamawali, the confusion was set at rest by letter dated 16th March, 1983 issued by the Directorate of Industries wherein it was clarified that all those small scale units who were registered as such with the Directorate of Industries and are also registered under the Factories Act would be entitled to the exemption from payment of sales tax and that in addition to such units, those which were not registered under the Factories Act but whose investment in land and building, machinery and equipment was more than rupees three lacs would also be entitled to same exemption.

16. Main question, which has arisen for consideration before this Court in the Instant matter, is that as to whether by subsequent Government notification dated 27.8.84, the period of exemption could be reduced. Same question cropped up before this Court in the case of Bajaj Packwell, Kotla Meerut and Anr. v. The State of U.P. and Ors. Civil Misc. Writ Petition No. 49 of 1988 decided on 24.11.1988 by a Division Bench of this Court, whereto the facts were more or less Identical. M/s. Packwell, which was a proprietorship concern and was registered under U.P. and Central Sales Tax Act. In pursuance to Government Order No. 8244 dated 30.9.1982 it established a new small scale industrial unit in the District of Meerut for the manufacturing and sale of blended tea. Initial investment of the Petitioner was less than rupees three lacs. The said concern was granted registration certificate by the Directorate of Industries on 17/21.4.1984. The Petitioner was also registered under Factories Act. On its application, the Petitioner was granted eligibility certificate on 9.11.1984 for exemption from payment of sales tax for a period of five years with effect from 2.11.1984. On 20.6.1987, the Petitioner was served with a notice dated 20.6.87 to show-cause why the period of exemption be not reduced. Petitioner submitted explanation against the said show-cause notice. However, on 18.9.1987, Addl. Director of Industries reduced the period of exemption from five years to three years on the ground that the Petitioner''s investment in its industry-unit was less than rupees three lacs. The Petitioner was informed that the exemption would be effective from 20.3.1984, the date of its registration under Factories Act till 22.12.1986. The Petitioner being aggrieved invoked the Jurisdiction of this Court by filing a writ petition, in which he asserted that the Petitioner had established its unit on specific and clear promise made by the State Government for grant of exemption for a period of five years by virtue of Government Order No. 8244 dated 30.9.1982 and hence, it was not open to the State Government to reduce the period of exemption, subsequently from five years to three years under notification No. 6460 dated 27.8.84. Relying upon the judgment of Hon''ble Supreme Court in Pournami Oil Mills and Others Vs. State of Kerala and Another, , which was affirmed by a larger bench of Hon''ble Supreme Court in the case of State of Bihar and Anr. v. Usha Martin Industries Ltd. 1987 (65) STC 430, the order dated 10.9.1987 and 18.12.1987 were quashed and proceedings, if

any, for the imposition of any tax for a period of five years w.e.f. 1.1.1984 were also quashed. It was held that the Petitioner was entitled to exemption from payment of sales tax for a period of five years, w.e.f. 1.1.1984 as initially granted under eligibility certificate dated 9.11.1984.

17. Considering the effect of the order dated 30.9.1982 read with Niyamawall and the clarification dated 16.3.1985 issued by the Directorate of Industries it was held that the tax exemption was available to units as that of the Petitioner for a longer period than the period provided under Government notification dated 27.8.1984. It was held that the Petitioner established or set up the new unit acting under the representation made by the State Government. Accordingly, it was held, that the doctrine of promissory estoppel was attracted to the facts of that case on the strength of the principles decided by the Hon''ble Supreme Court in the aforesaid two cases. Similar observations were made in Padam Polypack and Anr. v. State of U.P. and Ors. 1991 UPTC 1327; Wilson Electronics v. State of U.P. and Ors. Civil Misc. W.P. No. 48/88 decided on 24.11.1992, Ms. Jyotsna Industries v. Commissioner of Sales Tax, U.P., Lucknow S.T. Revision No. 1260/1988 decided on 15.2.89. in M/s. Jyotsna Industries (supra), a revision was filed before High Court u/s 11 of U.P. Sales Tax Act. According to the revisionist, the unit was established on 1.10.1982. Joint Director of Industries granted eligibility certificate on 13.6.1984 for a period of six years w.e.f. 16.12.1983. Subsequently the Commissioner of Sales Tax. U.P. on enquiry found that since the investment in the new unit was less than three lacs, he reduced the period of exemption from six years to four years and also changed the effectiveness of eligibility certificate from 16.12.1983 to 17. Feeling aggrieved against the said order passed by the Commissioner, Sales Tax an appeal was preferred before sales tax tribunal, which modified the order to A.W.C. 8 the extent that the eligibility certificate dated 13.6.1984 be made effective from 10.12.1983 to 15.12.1987. Thereafter M/s. Jyotsna Industries filed revision before this Court. Hon''ble Single Judge of this Court while allowing the revision held:

Words used in the Niyamawall and the G.O. dated 30.9.1982, which have been referred to in the judgment of the Division Bench of this Court M/s. Bajaj Packwell and the clarification dated March 16, 1983 issued by the Director of Industries clearly indicated that either the unit should be registered under Factories Act or investment should be more than three lacs and as such if either of the conditions are fulfilled, the unit will be entitled to exemption. in the instant case the fact that the unit has been registered under Factories Act is not disputed and the registration certificate was issued by Deputy Director of Factories U.P. Zone, Bareilly, along with this revision. It is also not disputed that Assessee was registered with Director of Industries. For the reasons stated above, I am of the opinion that the order passed by the Tribunal cannot be sustained and in view of the decision of the Division Bench of this Court in W.P. No. 49/1988 Bajaj Packwell v. State of U.P. decided on 29.11.1988, the period of six years could not be curtailed to four years". Commissioner of Sales Tax thereafter filed a SLP bearing No. 16609/1990 before Hon''ble Supreme Court. On 29.1.1990, a

Division Bench of Hon''ble Supreme Court consisting of two Hon''ble Judges after hearing the parties, dismissed the SLP by indicating that there was no merit in the special leave petition.

18. Mr. Rakesh Dwevedi, Addl. Advocate General appearing on behalf of the Respondents, submitted that the decisions of this Court in Bajaj Packwell Kotla, Meerut v. State of U.P., Accurate Electronics (P.) Ltd. v. State of U.P., Jyotsna Industries v. Commissioner of Sales Tax, Wilson Electronics v. State of U.P. are per incuriam. Hence, they deserve to be ignored. It was also contended that dismissal of the SLP by Hon. Supreme Court filed by the Commissioner of sales tax in M/s Jyotsana Industries is not on merit, as no reason has been indicated in the said order. Hence, it is not binding precedent under Article 141 of the Constitution of India. In that regard, he formulated the following questions for consideration:

1. Whether any relief can be granted in absence of specific pleadings and foundation required for promissory estoppel.

2. Government Order dated 30.9.1982 has to be read with rules made by the Government. Sales Tax Officers have no right to issue clarificatory letters and on the basis of those clarificatory letters, Petitioner cannot stake his claim for exemption.

3. Section 4A, since beginning provided grant of exemption by the State Government through notification meaning thereby that as the Government Order dated 30.9.82 was not notified or published in official Gazette, it cannot be relied upon by the Petitioner.

4. Notification dated 27.8.1984 was issued in pursuance of the legislative amendment introduced by U.P. Ordinance No. 46 of 1983, which was replaced by U.P. Act No. 22 of 1984, which permits notification to be issued from 1.10.1982. The said notification is retrospective by legislative mode.

19. As far as the contention of Mr. Dwivedi regarding the absence of specific pleadings in the writ petition and foundation required for promissory estoppel is concerned, we have to look into the averments made in the writ petition and the affidavits filed by the Petitioners.

20. In para 4 of the writ petition, it has been stated by the Petitioner that the unit was established and expanded with the sole view to get exemption from payment of sales tax for a period of six years. The Petitioner has made all efforts and invested huge amount for the sole purpose of getting exemption from payment of sales tax. Had the Petitioner been aware that the Petitioner would not get full benefit of sales tax exemption, then the unit would not have established and expanded. Nowhere in the writ petition, the Petitioner staked its claim for exemption on the basis of Government Order dated 30.9.1982. But, it staked claim for exemption u/s 4A of the U.P. Sales Tax Act for a period of six years from the date of its first sale in terms of notification dated 27.8.1984, as

superseded/amended by notification dated 29.1.1985 and 26.12.1985. But, in paras 3 and 10 of the rejoinder-affidavit and in some other affidavits Petitioner claimed exemption on the basis of Government Order No. 8244, dated 30.9.1982. Reiterating the contents of para 4 of the writ petition, the Petitioner in its rejoinder-affidavit dated 17.8.1988 submitted that the Petitioner established and expanded its industry on specific promise of the State Government by its order dated 30.9.82 and that it would be entitled for exemption for a period of six years. As the Petitioner fulfilled all the conditions imposed by Government Order dated 30.9.1982 they are entitled for exemption for a period of six years and accordingly the State Government was not empowered to go back from its promise in this regard. Similar averments have been made in paras 4 and 5 of the rejoinder affidavit dated 18.8.1988 filed by the Managing Director of the company against the affidavit of Sales Tax Officer, wherein it was stated that the Petitioner established new unit on the basis of clear representation made in Government Order No. 8244 dated 30.9.1982 wherein no such condition existed, which was for the first time introduced by notification No. 6468 dated 27.8.1984 that in case of a new unit in Tehsil Dadri, District Ghaziabad, the exemption from payment of sales tax will be limited for four years in those units, the investment of which has not exceeded rupees three lacs. Regarding the plea of promissory estoppel raised by the Petitioner, in para 4 of the writ petition, the Respondents in their counter-affidavit filed by S.R. Singh on 29.7.1988 did not say a word about it. In para 6 of the counter-affidavit a cryptic reply was given that the contents of para 4 of the writ petition needed no comments. In all the counter-affidavits, either filed by Dr. Ravindra Sharma, R. P. Singh or Darbari Lal, the plea of promissory estoppel set up by the Petitioner was not denied.

21. It was vehemently argued that the plea, which has not been raised in the writ petition and subsequently raised in the rejoinder-affidavits or supplementary-affidavits, cannot be read. This is not a case where the Respondents have been taken in surprise by the Petitioner by taking a new plea. Rejoinder-affidavits and supplementary-affidavits were filed in the year 1988. Writ petition came up for hearing in the month of July, 1994. There was ample time for the Respondents to have filed supplementary counter-affidavit, but that was not done. Even during the course of argument either orally or in writing, no such prayer was made. Hence, it cannot be said that the Petitioner had not raised the plea of promissory estoppel. Even when the writ petition was filed, in para 4 of the writ petition, the plea of promissory estoppel was raised, which was not denied by the Respondents in any of the counter-affidavits. It may be that in the writ petition, the plea of promissory estoppel on the basis of G.O. No. 2248 dated 30.9.1982 was not raised, which was raised in subsequent affidavits filed by the Petitioner, which has gone unrebutted, hence the plea of Additional Advocate General fails.

22. The next submission on behalf of the Respondents that plea of promissory estoppel cannot be taken against law in the present case is grounded upon a legal fiction, that the G.O. dated 30.9.1982 has to be read along with rules

framed by the State Government as well as provisions of Section 4A of the U.P. Sales Tax Act and the notification dated 27.8.1984, which was issued in pursuance of the legislative amendment Introduced by U.P. Ordinance No. 46 of 1983, which was replaced by Act No. 28 of 1984, which permitted issue of notification with retrospective effect. The aforesaid questions are interlinked with the plea of promissory estoppel, which has been raised by the Petitioner.

23. Doctrine of promissory estoppel is equitable doctrine, which was first applied by Denning, J. in High Trees case (1947) 1 KB 130, when during the second world war, the people started living in London owing to bombing and flats were getting empty, the landlord, who had let out the flats on 99 years leases at ? 2,500 a year, agreed to reduce it by half and accept ? 1,250 a year. After the bombing was over, the tenants came back and the landlord sought to recover full ? 2,500 a year. in that circumstance, Lord Denning, J. observed:

There has been a series of decisions over the last 50 years which although, they are said to be cases of estoppel, are not really such. They are cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person malting the promise, was going to be acted on by the person to whom it was made, and which was in fact so acted upon. in such cases the courts have said that the promise must be honoured. As I have said they are not cases of estoppel in the strict sense. They are really promise-promises intended to be binding, intended to be acted on, and in fact acted on. The logical consequence is that a promise to act at a smaller sum in discharge of a larger sum, if acted upon, is binding notwithstanding the absence of consideration, and if the fusion of law and equity leads to this result, so much the better.

24. Subsequently, it was applied to a case where the representation consisted of conduct in Charles Rickwards Ltd. v. Oppenhaim (1950) 1 KB 616. In India, Hon''ble Supreme Court in Union of India v. Indo-Afghan Agencies AIR 1968 SC 718 , the doctrine was applied. It was expanded in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . In the said case a news item was published in certain newspapers in October, 1968 to the effect that the State of U.P. had decided to give exemption from sales tax for a period of three years u/s 4A of the U.P. Sales Tax Act to all new industrial units in the State of U.P. with a view to enable them to get a firm foothold at the initial stage of their industry. The news item was based upon a statement made by the Secretary to the Industries Department. The Appellant Sugar Mills addressed a letter to the Director of Industries stating that in view of the said policy announcement, it intended to set up a plant for manufacture of Vanaspati and sought confirmation that when set up, it would be entitled to sales tax holiday for a period of three years. The Director of Industries confirmed the same. The same was also confirmed by the Chief Secretary to the Government. Thereafter, the Appellant placed orders for machinery and set up the plant. U.P. Finance Corporation also granted loan to the Appellant being convinced of the said benefit assured to the Appellant. However, while the factory was still under

process of being set up, the Government had second thoughts, certain discussions took place between the Government and the Appellant and the Government did, in fact, go back upon its assurance and decided to disallow the concession to new Vanaspati units, including the Appellant''s unit. Thereupon the Appellant approached this Court by way of writ petition mainly relying upon the doctrine of promissory estoppel, which was rejected by this Court. Thereafter, the jurisdiction of Hon''ble Supreme Court was invoked by the Petitioner. After considering various English and Indian cases, Hon''ble Bhagwati, J. observed:

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promise, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government, at the Instance of the promise, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is indeed difficult to see on what principle can Government, committed to the rule of law. claim immunity from the doctrine of promissory estoppel? Can the Government say that it is under no obligation to act in a manner that is fair and Just or that it is not bound by considerations of honesty and good faith"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its constructual obligations, but, let it be said to be eternal glory of this Court, this doctrine was emphatically negatived in the Indo Afghan Agencies case AIR 1988 SC 718 and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promises and the promisee would alter his position relying upon it. But, if the Government makes such promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promisee like any other private individual.

25. However, it was clarified that since this is an equitable doctrine, it must yield when the equity so requires. If the Government shows that having regard to the facts as they have subsequently transpired, it would be inequitable to hold it to its promise, it can be freed from the promise, but this decision must be taken by the Court, and not by the Government. The burden would lie upon the Government to establish that the public interest requires that it should not be bound to its promise. It was also clarified that this doctrine cannot be invoked to prevent the Government from acting in discharge of its duty under the law and that the doctrine cannot be applied in teeth of an obligation or liability imposed by law. It was also explained that doctrine of promissory estoppel cannot be

invoked to compel the Government or even a private party to do an act prohibited by law. In particular, it was stated there can also be no promissory estoppel against the exercise of legislative power. The legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel, vide State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., .

It was further observed:

That for invoking this doctrine it is not necessary that the promisee should establish that acting in reliance of the promise, he has suffered any detriment. It is sufficient if he shows that he has altered his position in reliance on the promise." Another statement which is relevant to note, is that the Government cannot plead the doctrine of executive necessity to wriggle out of the plea. Applying the said principle it was held in that case that inasmuch as the Appellant had clearly altered its position by borrowing moneys from serious financial institutions, purchasing plant and machinery and setting up a vanaspati plant, in the belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the commencement of production, the Government was bound to make good the promisee.

It was further observed:

Had the U.P. Sales tax Act, 1948 not contained a provision enabling the Government to grant exemption, it was not possible to enforce the said representation, but since such a power was indeed contained in the Act, the Government could legitimately be held bound by its promise. No distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government so far as the doctrine of promissory estoppel is concerned.

26. Doctrine of promissory estoppel received a set back in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . In the case of M/s Jit Ram Shiv Kumar (supra) Municipal Committee decided that Fatehpur Mandi shall remain immune from Octroi duty. This was, of course, not within the powers of the committee under the Punjab Municipal Act. The said resolution was, however, confirmed by the State Government of Punjab. The committee subsequently changed its mind and decided to levy Octroi on goods brought into the Mandi. That resolution of the committee was annulled by the Government of Punjab. Later on reorganisation of the State of Punjab, the State of Haryana chose to approve the resolution of the committee bringing the Mandi within the purview of Octroi duty. Thereupon, the committee started charging Octroi on goods brought into the Mandi which was challenged before Hon. Supreme Court. In the aforesaid circumstance, it was held:

That the doctrine of promissory estoppel is not available against the State in exercise of Us executive or statutory function and the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law.

27. But, in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . Hon''ble Supreme Court expressed disagreement with the observation which were made in the case of M/s. Jit Ram Shiv Kumar (supra) and relying upon the observations made by Hon. Supreme Court in the case of Motital Sugar Mill v. State of U.P. (supra), boundaries of the promissory estoppel have been demarcated. It was observed:

Of course, we must take it clear that and that is also laid down in Moti Lal Sugar Mills case AIR 1978 SC 621, that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so required, it can be shown by the Government or the 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. This aspect has been dealt with fully in Moti Lal Sugar Mills case, and we find ourselves wholly in agreement with what has been said in that decision on this point.

28. In the light of the facts and circumstances of the case, the aforesaid observations were made in Union of India v. Godfrey Philips India Ltd. (supra), in which on a representation made by the Central Board of Excise and Customs, approved and accepted by the Government that the cost of corrugated fibre board containers would not be includible in the value of the cigarettes for the purpose of assessment to excise duty. The Company acting upon the said representation, continued the use of corrugated fibre board containers for packing cigarettes and did not recover from the wholesale dealers the amounts of excise duty attributed to the cost of the corrugated fibre board containers during the period in question. in these circumstances, it was held that it would be Inequitable to allow the excise authorities to assess excise duty on the basis that the value of cigarette should include the cost of corrugated fibre board containers.

29. In Pournami Oil Mills and Others Vs. State of Kerala and Another, , which also pertains to representation of the State Government for sales tax holiday, the Government of Kerala had issued two notifications one dated. 11.4.1979 and the second 29.4.1980 (which was published in the State Gazette on 21.10.1980,

granting exemption from payment of sales tax to new industrial units under the small scale Industries. Section 10 of the Kerala General Sales Tax empowered the Government to grant exemption with respect to specified goods or specified class of persons, as the case may be, if it considered it necessary in public interest. The first notification/order did not say specifically that it was issued u/s 10, but the second notification did say so specifically. The Appellants set up an industry and claimed the benefit of the said orders. Their claim was allowed by the Supreme Court by observing:

Under the order dated 11.4.1979, new small scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently.

30. In Pournami Oil Mills Case (supra), it was not disputed that the first order namely the one dated 11.4.1979 gave more of tax exemption than the second one. The second notification withdrew the exemption relating to purchase tax and confirmed the exemption from sales tax to the limit specified in the proviso to the notification. in the light of the aforesaid circumstances it was indicated:

All parties before us who in response to the order of April 11, 1979 set up their Industries prior to 21.10.1980 within the State of Kerala would thus, be entitled to the exemption extended as promised under that Order. Such exemption would continue for the full period of five years from the date they started production. New Industries set up after 21.10.1980 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries.

31. Case of Pournami Oil Mills (supra) is in tune with the decisions of Hon. Supreme Court in M.P. Sugar Mill and Godfrey Philips India Ltd. From the perusal of the precedents mentioned herein above, it is evident that the plea of promissory estoppel is available with respect to Government orders and notifications if the same has been issued in exercise of powers conferred by Statute.

32. In M.P. Sugar Mill, the representation of U.P. Government related to the power of exemption as provided by Section 4A of the U.P. Sales Tax Act. in Pournami Oil Mills representation of the Government of Kerala related to the power of exemption as provided u/s 10 of the Kerala General Sales Tax Act.

33. Present case also relates to the power of exemption as provided by Section 4-A of the U.P. Sales Tax Act. Hence, the law laid down by Hon''ble Supreme Court in M.P. Sugar Mill and Pournami Oil Mill (supra) is fully applicable to the facts of

the present case.

34. The decisions of this Court in Bajaj Packwell v. State of U.P. (supra). Accurate Electronic Private Limited v. State of U.P. and Ors. (supra) and Jyotsna Industries v. Commissioner of Sales Tax (which was confirmed by Hon. Supreme Court) and Wilson Electronics v. State of U.P. (supra) were given in the light of the decisions of Hon''ble Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , Pournami Oil Mills and Others Vs. State of Kerala and Another, ; State of Bihar and Ors. v. Usha Martin Ltd. (1987) 65 STC 430, and it cannot be said that the aforesaid decisions of this Court are per incuriam.

35. As far as the contention of Additional Advocate General with regard to the effect of the subsequent amendment in Section 4A is concerned, by the U.P. Act No. 28 of 1991 Section 4A was amended with effect from 12th October, 1983 by means of which the following amendment was made:

(C) For the Explanation, the following Explanation shall be substituted and be deemed to have been substituted on October 12, 1983 namely:

Explanation.--For the purpose of this section:

(1) ''new unit during the period ending with March 31, 1990 means an industrial undertaking set up by a dealer on or after October, 1, 1982 but not later than March 31, 1990.

(a) ...

(b) ...

(c) ...

(d) ...

(e) fulfilling all the conditions specified in this Act or the rules; or notifications made thereunder in regard to grant of facility under this section on the date from which such facility may be granted to him.

36. In view of Clause (e) of the aforesaid Explanation, an Assessee is required to fulfil the conditions which were specified on the date from which the facility of exemption was to be granted.

37. The purpose of the amendment at best could be that in cases where the condition was specified but no specific date/time for its fulfilment was given in the Act or in the amendment, then, the confusion in that regard was sought to be set at rest by clearly specifying the point of time at which such specified condition was to be fulfilled by the unit.

38. In the present case, the condition regarding investment being over Rs. 3 lacs was totally non-existent in view of the following:

(i) The Petitioner''s unit was set up in April, 1984 and the date of starting production as per the definition contained u/s 4A is 23rd of May, 1984. The reasons for the date of commencement of production being 23rd May, 1984 have been given in the supplementary affidavit dated 30.4.1991.

(ii) That accordingly, the case of the Petitioner is covered by G.O. No. 8244 dated 30.9.1982.

(iii) That as per the said Government order the small scale industries set up after 1st October, 1982 in the State of U.P. District Ghaziabad, Tehsil Dadri (in which the units set up at NOIDA fall), were entitled for the exemption for a period of six years from the date of commencement of production. The said G.O. dated 30.9.1982 also provided for framing rules in respect of prestige and pioneer units. However, under the Niyamawali made under the Government order dated 30.9.1982 though paragraph 1 stated that those units which were established between 1.10.1982 and 31.5.1985 and were either registered under the Factories Act or whose investment in land and building, machinery and equipment is more than Rs. 3 lacs would be entitled to the exemption from payment of sales tax from the date of starting production, under paragraph 4 (1) of the said Niyamawali under the heading ''Paribhasha,'' the small scale industries are defined to be such units whose investment in land and building, machinery and equipment was not less than Rs. 3 lacs and more than Rs. 20 lacs. Thus there was some confusion as to the small scale units which would be entitled to the exemption from payment of sales tax in view of what was stated in paragraph 1 and paragraph 4 (1) of the Niyamawali. This confusion was set at rest by letter dated 16th March, 1983 which has been annexed as Annexure SA-2, to the supplementary affidavit issued by the Director of Industries wherein it was clarified that all those small scale units which were registered as such with the Directorate of Industries and are also registered under the Factories Act would be entitled to the exemption from payment of sales tax and that in addition to such units, those which were not registered under the Factories Act but whose investment in land and buildings, machinery and equipment was more than Rs. 3 lacs would also be entitled to same exemption.

(iv) As a result, a question had arisen for consideration of the Hon''ble Allahabad High Court in several writ petitions including ST. Revision No. 260/1988, Jyotsna Industries v. Commissioner of Sales Tax, whether by a subsequent Government Notification dated 27.8.1984 the period of exemption could be reduced from 5 years to 3 years to the detriment of the Petitioner. It was held by the Hon''ble High Court on the basis of the above mentioned facts as also on principle of promissory estoppel that notification dated 27.8.1984 would not apply to unit set up prior to that date and that on the strength of such notification the exemption could not be curtailed /granted for a period less than what was stipulated in the Government Order No. 8244. That decision has been relied upon by this Court in:

(a) Bajaj Packwell v. State of U.P.

(b) Accurate Electronic Pvt. Ltd. v. State of U.P. and Ors..

(c) Jyotsna Industries v. Commissioner of Sales Tax.

39. It is significant to note that the SLP filed by the Commissioner of Sales Tax in the Supreme Court of India in the case of Jyotsna Industries filed as Annexure RA-4 shows that the same has been dismissed by the Hon''ble Supreme Court vide order dated 29.1.1990. in other words, the decision of Hon''ble Allahabad High Court has already been affirmed by the Hon''ble Supreme Court of India.

40. It is evident that the units which were set up prior to 27.8.1984 did not carry any condition whatsoever regarding the limitation of its investment, provided the unit was registered under the Factories Act and also under the Directorate of Industries. Since no condition in this regard had ever been prescribed for the units set up prior to 27.8.1984, there can be no question of the unit being required to fulfil such non-existing condition at any point of time.

41. In fact, this point has been acknowledged and accepted under the amendment Act itself, namely, that the investment of Rs. 3 lacs was not a condition necessary for availment of exemption u/s 4A of the U.P. Sales Tax Act in respect of units which were set up before 7th August, 1984, since after the said Explanation referred to in the counter-affidavit, the second proviso states that:

In relation to a new unit whose date of starting production falls before 27th August, 1984 and the capital investment wherein is not less than Rs. 3 lacs, condition of the registration or application for registration under the Factories Act, 1948, shall not apply.

The only interpretation of this proviso can be that units which were registered under the Factories Act, 1948, or which had applied for registration under the said Act, were not subjected to the condition of investment being more than Rs. 3 lacs in case such units were set up prior to 27th August, 1984. in view of this, the said amendment does not in any way affect the case of the Petitioner since his unit was set up on 24th April 1984 i.e., prior to 27th August, 1984 and it was registered under the Factories Act and with Directorate of Industries as SSI; fact which are on record and are not disputed by the Department. (Emphasis ours).

42. As the amendment made by U.P. Act No. 28 of 1991 only requires the Assessee to fulfil the conditions which were provided for and which were specified at the point of time when the production was started, it cannot be said that by means of the aforesaid amendment, the Petitioner will not be entitled to the benefits as provided in Government Order No. 8244, dated 30.9.1982.

43. An attempt was made by Mr. Dwivedi, learned Advocate General to show that the doctrine of promissory estoppel cannot be applied to the present facts for the reason that promise extended by Government Order dated 30.9.1982 was not communicated. It is needless to emphasize that the said Government order was published in law books pertaining to sales tax and on the basis of the said

Government order, exemption from payment of sales tax was granted to Innumerable small scale industrial units. Para 6 of the said Government order, Itself indicated that the Governor asked the official to give wide publicity to the said Government order. Unless proved to the contrary, there existed a presumption that the Governor''s order must have been given effect to and wide publicity must have been given to the said Government order to attract the persons to establish new Industrial units in those backward districts.

44. In the present case, in pursuance of the Government Order No. 8244 dated 30.9.1982, the Petitioner established its industrial unit, which provided exemption from payment of sales tax although at the relevant time Petitioner''s investment in the industrial unit was less than rupees three lacs. Director of Industries registered the said small scale industrial unit on 24.7.1984. in the said registration certificate, date of commencement of production was mentioned as 23.5.84. Petitioner was also granted registration under Factories Act with effect from 2.4.1984. As the Petitioner has completed formalities, lie was entitled for exemption from payment of sales tax for six years in pursuance of Government Order No. 8244 dated September 30, 1982.

45. Said Government order was issued in the name of the Governor of Uttar Pradesh and was signed by the Secretary (Industries), Government of U.P. meaning thereby that it was issued under Article 166 of the Constitution and hence, it cannot be called in question on the ground that it was not made or executed by the Governor. Under Article 162 of the Constitution, the executive power of the State is also extended to the matters with respect to which Legislature of the State has the power to make laws, meaning thereby that the executive power of the State are co-terminus with the legislative power of the State, which is subject to other provisions of the Constitution.

46. It was also contended by learned Addl. Advocate General that as Section 4-A, since beginning, provided grant of exemption by the State Government through notification, no reliance can be placed upon Government Order dated 30.9.1982 as it was not notified or published in Official Gazette. It is not disputed that the said Government order dated 27.8.1984 was not notified or published in Official Gazette. Relying upon several precedents of Hon''ble Supreme Court mentioned below, it was contended that where no notification was issued for grant of exemption, the Government order being against law, cannot be given effect to and the doctrine of promissory estoppel cannot be attracted.

1. AIR 1950 SC 296 (300).

2. AIR 1965 SC 732.

3. AIR 1019 SC 45.

4. AIR SC 956.

5. AIR SC 2399, Para 7.

47. Most of the cases referred to above relate to withdrawal of concession in taxing statute which were given earlier by notification, without being notified in the Gazette, hence, in those circumstances, Hon''ble Supreme Court was of the view that where a particular mode has been provided for the exercise of the power, then it should be done according to procedure prescribed.

48. In K.M. Chikkaputtaswamy and Others Vs. State of Andhra Pradesh and Others, , Hon''ble Supreme Court held that State Government can grant exemption from payment of tax or cancel an exemption already granted only in accordance with Section 9(1) of the Andhra Pradesh Motor Vehicles Act, 1963. It was indicated that it was legislative mandate, and as no notification was 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). The High Court erred in holding that the learned Counsel for the Appellant had not drawn its attention to any statutory provision or rule which provided that a concession of this nature could be given only under a notification. A mere perusal of the provisions of Section 9 and the notification which is issued thereunder would have made it very clear that no exemption from the payment of tax due under the Act, would be granted except by the issue of a notification. It is hazardous to depend on one''s memory while construing a statutory provisions and this case serves as a good illustration of this statement. Having held, that it was not necessary to issue a notification for granting an exemption, the High Court misled itself into thinking that the issue of a notification for the purpose of withdrawing the concession already granted was also unnecessary. The reason given by the High Court for rejecting this contention of the Appellant, is, therefore, wholly untenable.

Under Section 9(2) of the Act, it was provided:

Any notification issued under Sub-section (1) shall be laid, as soon as may be after it is issued, on the table of the Legislative Assembly of the State while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions.

49. In the instant case, Section 4A of the U.P. Sales Tax Act does not provide that notification for granting exemption from payment of sales tax should be laid on the table of the legislative assembly of the State.

50. It is settled position that Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Hence, levy of tax can only be done by authority of law and not by any executive order unless the executive is specifically empowered by law to give exemption, it cannot say, that it will not enforce the law as against a particular person. In M. P. Sugar Mills v. State of U.P. (supra) it was observed that had the U.P. Sales Tax Act, 1948 not contained a provision enabling the Government to grant exemption, it was not possible to enforce the said representation but since such a power is indeed contained in the Act, the Government could legitimately be held bound by its

promise. Similar, observations were made in Pournami Oil Mills v. State of Kerala (supra). Undoubtedly, the State has been vested with a power u/s 4A of the U.P. Sales Tax Act to grant exemption to new small scale industrial units from the payment of sales tax. The aforesaid Government Order dated 30.9.1982 was issued by the State Government u/s 4A of the U.P. Sales Tax Act. Although Section 4A provides that the State Government may, by ''notification'' extend exemption from payment of sales tax for certain units. But, for the reason of fact that since Government order has been issued under the authority of the Governor of State by specifically mentioning that the same is being issued in terms of Section 4A of the U.P. Sales Tax Act, it cannot be said that procedural lapse on the part of the State Government, not to get it notified or published in the Official Gazette, will nullify the effect of the Government Order dated 30.9.1982, particularly when several small scale industrial units were benefited by the said Government Order and they were granted exemption from payment of sales tax in pursuance of the Government Order dated 30.9.1982. It would be futile effort on the part of the State to deny to the Petitioner a benefit of exemption, which has been given and availed of, by numerous small scale industrial units in the State because such an action would not only be arbitrary but discriminatory too. in these circumstances, the lapse can best be termed as procedural lapse, which cannot render the said Government order as invalid, for the reason of the fact that it was given effect to and the benefit was availed by several small scale Industrial units. The said Government Order was reiterated and clarified by the letter dated 16.3.1983 Issued by the Directorate of Industries in explicit term that all the Industries which were set up in the State prior to 27.8.1984 and which were registered with the Directorate of Industries or other specified authorities and also under Factories Act, would be entitled for exemption under Government Order No. 8244 dated 30.9.1982 for certain specified period and in the case of the Petitioner, unit situate at Dadri District Ghaziabad, for a period of six years. Due to non-notification and non-publication of the said Government Order in the Gazette, another view might have been taken that as the exemption as provided in the said Government Order was against law, the promissory estoppel would not be applicable, but as we have stated above, it was not only given effect to, but numerous units availed of that benefit and in pursuance of the said Government Order, several writ petition:) were allowed and atleast in one case the judgment of this Court was affirmed by Hon''ble Supreme Court, we cannot take a view that the Petitioner is not entitled for exemption from payment of sales tax for a period of six years because it would amount discrimination between two in the same class of persons.

51. Only, for the first time by means of the notification dated 27.8.1984, different periods of exemption for industries where capital investment was more than three lacs or less than three lacs, were provided. Prior to the said notification, there existed no condition regarding capital investment, i.e., less than or more than rupees three lacs. We find from the notification that while mentioning having capital investment of less than or more than three lacs, there

is no mention as to the point of time at which such capital investment has been presumed. An attempt on the part of the Respondents is to read words "at the time of commencement of production" along with these words in the notification. This would be a clear case of "casus omissus," whereby the words which are not there in the Act or Rules are deemed to be present. As has been held by Hon''ble Supreme Court in the case of Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders, ; CED v. Kanakasabal (1973) 89 ITR 257, the law does not permit the reading of the words which are not there in the taxing provisions. This is particularly true that where reading of such words would be detrimental to the interest of the citizens. We feel that in the absence of any specification as to the time at which the said capital investment was to exceed rupees three lacs, a reasonable interpretation would be that if a unit has subsequently increased its investment to more than rupees three lacs and the same exceeded for a substantial period of exemption or where the average capital Investment during the entire period for which it could have possibly claimed the exemption was more than Rs. 3 lacs, the same would be entitled for exemption for a larger period. A strict interpretation that the capital investment must have exceeded Rs. 3 lacs on the date of commencement of production would lead to an absurd result. It would even entitle, a unit which is set up with a capital investment of more than rupees three lacs but which sells its assets shortly thereafter so as to reduce its total Investment far below Rs. 3 lacs for exemption for a higher period as per the department. On the other hand, an entreprenuer, who though having started small, decides to expand his unit by bringing fresh investment or ploughing back the profits so as to increase the capital investment beyond rupees three lacs over a period of time, would be disentitled to exemptions for a higher period. This could not have been the Intention of the said Government notification.

52. In the case of Bajaj Tempo Ltd., Bombay v. Commissioner of Income Tax, Bombay 1992 UPTC 857, in Civil Appeal Nos. 1211, 1257 and 1258 to 1260 (NT) of 1982, Hon''ble Mr. Justice R.M. Sahay, speaking on behalf of a Division Bench of Hon''ble Supreme Court, indicated:

A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally.

53. In Broach Distt. Co-operative Cotton Sales Ginning and Pressing Society Limited Vs. Commissioner of Income Tax, Ahmedabad, , the Assessee a co-operative society claimed that the receipts from the ginning and pressing activities was exempt u/s 81 of the Income Tax Act. The question for interpretation was whether the cooperative society which carried on the business of ginning and pressing was a society engaged in ''marketing'' of the agricultural produce of its members. The Court held that object of Section 81(1) was to encourage and promote the growth of co-operative societies and consequently a liberal construction must be given to the operation of that provision and since ginning and pressing was incidental or ancillary to the activities mentioned in

Section 81(1), the Assessee was entitled to exemption and the proviso did not stand in the way. In Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., it was held that the law providing for concession for tax purposes to encourage industrial activity should be liberally construed.

It was further held that since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it. But, that turned out to be the unintended, consequence of construing the clause liberally, as was done by the High Court for which it cannot be blamed as the provision is susceptible of such construction if the purpose behind its enactment, the objective it sought to achieve and the mischief it Intended to control are lost sight of. It cannot be doubted that object of the provisions contained in Section 4A of the U.P. Sales Tax Act is meant for promoting industrial and economic growth for industrially backward districts of the State. The exemption from payment of sales tax for a specified period; say four or six years, is just a sort of incentive to the entreprenuers to set up their industrial units in such backward districts of the State. in pursuance of the said objective, the Government Order dated 30.9.1982 was issued, which did not put a rider that the small scale industrial units, the Investment of which was less than rupees three lacs, would not be entitled for exemption from payment of sales tax. Learned Additional Advocate General wanted this Court to construe the provisions of Section 4A of the U.P. Sales Tax Act, literally meaning thereby that for want of notification published in the Gazette, the Government Order dated 30.9.1982 would be invalid. Such an interpretation, if not construed liberally, would defeat and frustrate the objective behind Section 4A of the U.P. Sales Tax Act.

54. A similar view was taken by Hon''ble Supreme Court in Commissioner of Income Tax, Amritsar v. Strawboard Manufacturing Company Ltd. (Civil Appeal No. 519-21 of 1975 decided on 28.4.1989 reported in 1989 UPTC 1300, wherein Hon''ble Mr. Justice R.S. Pathak, CJ, (as he then was) speaking for the Bench indicated in para 5 of the report; "It is necessary to remember that when a provision is made in the context of a law providing for concessional rates of tax for the purpose of encouraging an industrial activity, a liberal construction should be put upon the language of that Statute."

55. In view of the aforesaid dictum of Hon. Supreme Court, we are of the view that the restriction imposed by Section 4A of the U.P. Sales Tax Act, that the exemption can be granted by notification, would not come in the way before the executive authority to grant exemption from payment of sales tax to new industrial units in backward areas of the State for specified periods and if such an exemption has been granted by an executive order, which has been acted upon and concessions of exemption were given effect to, that cannot be said to be against law.

56. As the case of the Petitioner is identical and similar to the cases, which have been decided by this Court, we are of the view that the period of exemption in

the case of the Petitioner from payment of sales tax would still be same, Le., six years from the date of production that is April 21, 1984 as stated by the Petitioner in para 10 of the writ petition and not from any subsequent date as claimed by the Petitioner, in some of the supplementary affidavits.

57. In view of what has been stated herein above, this writ petition succeeds. A writ in the nature of mandamus is issued commanding the Respondent No. 2 to modify the eligibility certificate dated 31.8.1987, issued by Respondent No. 2 for grant of eligibility certificate for a period of six years instead of four years with effect from the date of production, that is April 21, 1984. Sales Tax Officer, Sector-I, NOIDA, Respondent 3 is directed to pass provisional assessment order in accordance with the observations made above.