
(2002) 11 GAU CK 0023
In the Gauhati High Court
Case No : Civil Rule No. 1223 of 1997

Maruti Tea Industries and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 11-11-2002

Acts Referred:

Citation : AIR 2001 Guw 174 : (2003) 129 STC 479

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.K. Saraf, K.K. Gupta and R.K. Agarwal, for the Appellant;
Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—The petitioner No. 1 is a partnership firm having its place of business at Dibrugarh. The Government of Assam announced the Industrial Policy of Assam, 1991 and pursuant to the said policy certain notifications were issued, providing certain incentives to the new industrial undertakings and to the existing undertakings also. Pursuant to the benefits provided by the said notifications, the petitioner established an industrial unit at Jyoti Nagar in the district of Dibrugarh and the production commenced on September 21, 1993. The petitioner was granted eligibility certificate by the appropriate authority, which was valid from January 21, 1993 to September 20, 2000. The petitioner was using tea as a raw material and the tax on such raw material was included under the said concession scheme. The petitioner approached the sales tax authorities for grant of the benefits, as the item black tea was included in the eligibility certificate. It may, however, be mentioned that with effect from August 16, 1995 tea was excluded for use as raw material for production of the finished products. The Superintendent of Taxes however, refused to include tea in the list of raw materials in the authorisation certificate issued to the petitioner.

2. The case of the petitioner is that once the Government of Assam promised sale tax exemption on the finished products as well as on the raw material to

new industrial units established after April 1st 1991 and the petitioner having acted on the said policy, established the said industry, the respondent-State is bound under the law on the basis of doctrine of promissory estoppels and the petitioner cannot be denied the benefits of the said scheme.

3. The broad facts of the case as stated above, are not in dispute. The respondent-State has not filed any affidavit-in-opposition, although sufficient opportunity was given to them.

4. In view of the above and on consideration of the documents filed by the petitioner, we find that the petitioner had established an industrial undertaking and commercial production had commenced as stated above. Further as per the said scheme, tea was included in the list of raw materials for which exemption was available to the petitioner at the time of establishment of the said industrial unit. The question that crops up for determination is whether the subsequent notification shall affect the petitioner adversely or not.

5. The petitioner has raised the plea of promissory estoppels and in support of his submissions, have placed the decision of the Gujarat High Court in the case of *Shri Guru Ashish Wire Industries v. State of Gujarat* [1994] 92 STC 286. The Gujarat High Court held as follows :

"Held, allowing the petition, that even though it is true that a concession by way of exemption from payment of tax granted can always be withdrawn by means of legislation, such a power has to be regarded as subject to one limitation that the power cannot be exercised in violation of the rule of promissory estoppel. On the admitted facts of the case, the petitioner could validly invoke the doctrine of promissory estoppel. As the exemption notification was issued by the Government solely for the purpose of giving effect to the sales tax incentive scheme declared by it by its resolution dated August 27, 1980 the subsequent notification dated August 17, 1982, which had the effect of withdrawing the exemption formerly available to certain industries, could have no application to those industries, which were set up pursuant to the promise contained in the Government resolution dated August 27, 1980 and the notification dated February 5, 1981. The petitioner was entitled to get all the benefits available under the scheme as stipulated in the eligibility certificate and the sales tax exemption certificate."

6. It is seen that the Gujarat High Court had relied on the observation of the apex Court in the case of *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*,

7. In a recent case of *State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others*, the apex Court took a similar view and held that it is not open for the Government to issue notifications which may override the incentive policy itself. In this case we find that although the Director of Industries had granted the exemption to the petitioner in the light of the Industrial Policy, 1991, the sales tax authorities refused to comply with the same and tried to override the

policy decision in view of the subsequent notification of 1995, whereby tea was excluded in the list of raw material available for sales tax exemption. This Court had the occasion to examine the Assam Industries (Sales Tax Concessions) Scheme, 1995 in the case of *Manjushree Extrusions Limited v. State of Assam* [2001] 123 STC 366 : (2001) 2 GLB 218. Although the two learned Judges of the division Bench differed on certain aspects of the matter, there was consensus on promissory estoppels. The learned Judges held as follows (see para 42 in STC ; para 43 in GLR) :

"The learned counsel for the respondents in their arguments did not dispute the validity of the contentions of the appellants that the incentives granted under the industrial policy cannot be curtailed/ denied by framing a scheme, in the instant case, the Scheme, 1995. The ratio enunciated in the judicial pronouncement mentioned above is that principle of promissory estoppel and legitimate expectation require regularity, predictability and certainty in the Government's dealing with the public. These principles may not be source of constitutional Code, but are the consequences of rights of individual/ public on substantive effect of Government action as defined and enforced by the courts. As submitted by Dr. Saraf, promissory estoppel has arisen with legitimate expectation on the decision of the respondent-State Government from the incentives already given by the 1991 industrial policy and that by the subsequent Scheme, 1995 the same benefit be given to them. It is an admitted fact that the industrial units of the appellants were in production prior to April 1, 1991 and they undertook expansion, modernisation and diversification of their existing industries and have received the benefits with promise till end of seven years. Hence, in our view, when the appellants are in receipt of the benefits as per the Scheme 1991 it cannot be curtailed by another scheme.

..... I have seen the judgment written by my sister Mrs. M. Sharma, J. I fully agree to the principles of law as discussed by her. There is no controversy that the State cannot resile from the promise it makes through its industrial policy for extending benefits like exemption of payment of taxes, rebate in rent for land and subsidies in different forms when the investors in pursuance of the said promise set up industrial units. Promise once held by the State cannot be withdrawn, except in certain exceptional circumstances, to the detriment of the investors. Therefore, I fully agree to the conclusion arrived at by my sister Mrs. Sharma, J. that the incentives proposed in the Industrial Policy of Assam, 1991 cannot be taken away or abridged in any manner before the expiry of the period of concession promised to the industrial units. On this context, it has to be seen whether the Assam Industries (Sales Tax Concessions) Scheme, 1995 in any manner has adversely affected the concessions proposed in the Industrial Policy of 1991."

8. In view of the above, I am of the considered view that the respondent-State is bound by the promissory estoppels and the petitioner cannot be denied the benefits. The petitioner is entitled to tax concessions under the Assam Industries

(Sales Tax Concessions) Scheme, 1995 for the raw materials namely, black tea from the date of commercial production and till the expiry of the eligibility certificate issued by the Director of Industries. The respondent-sales tax authority shall do the needful.

9. The writ petition stands allowed.