

**(2019) 01 RAJ CK 0334**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 9090 Of 2018**

M/s Ultratech Cement Ltd And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

**Date of Decision : 11-01-2019**

**Acts Referred:**

Income Tax Act, 1961 — Section 263  
Rajasthan Value Added Tax Act, 2003 — Section 33  
Constitution Of India, 1950 — Article 14, 19(1)(g), 265

**Citation : (2019) 01 RAJ CK 0334**

**Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J**

**Bench : Division Bench**

**Advocate : S. Ganesh, Ujjwal Rana, M.L. Patodi, Anant Kasliwal, Vaibhav Kasliwal, Rajendra Prasad, Karan Tibrewal, Madhusudan Shiromani Sharma, R.B. Mathur, Nikhil Simlote, Tanvi Sahai, Prateek Kedavat, Hitesh Mishra, Prabhansh Sharma, Ankit Popli**

**Final Decision : Dismissed**

## Judgement

M/s. Ultratech Cement Limited and its Senior General Manager have filed this writ petition challenging the order dated 12.03.2018 passed by the Additional Chief Secretary, Finance Department, Government of Rajasthan, Jaipur with the prayer that revised entitlement certificate dated 02.04.2018 granted pursuant to the decision of the State Level Screening Committee (for short 'the SLSC') dated 28.03.2018 be quashed and set aside and consequential order dated 04.04.2018 demanding amount of Rs. 15,96,37,794/- with interest in the sum of Rs. 17,18,33,816/- be quashed and set aside. The petitioners have also challenged constitutional validity of Clause 13 of the Rajasthan Invest Promotion Scheme-2013 (for short 'the RIPS-2003') with the prayer that the same be declared arbitrary, unconstitutional, illegal, bad in law and null and void, being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India.

The petitioner is a public limited company incorporated and registered under Companies Act, 1956 and is engaged in the business of manufacturing and

marketing of cement and allied products. Clause 13 of the RIPS-2003 empowers the State Government in its Finance Department to suo motu or otherwise revise an order passed by any Screening Committee wherever it is found to be erroneous and prejudicial to the interest of the State revenue, after affording an opportunity of hearing to the beneficiary industrial unit. The Additional Chief Secretary, Finance, Government of Rajasthan invoked that provision and revised orders dated 17.03.2011 and 17.10.2011 passed by the SLSC whereby the petitioner-company was granted investment subsidy of 75%. By impugned order dated 12.03.2018 it was held that the petitioner-company is entitled to investment subsidy of maximum 50% of the amount payable or deposited by the Unit under Clause 7(i)(a) of the RIPS-2003. As a consequence of the revisional order dated 12.03.2018, the entitlement certificate dated 29.04.2011 granted subsequent to the SLSC meeting dated 17.03.2011 and the revised entitlement certificate dated 24.11.2011 granted subsequent to the SLSC meeting dated 17.10.2011, were also cancelled and the SLSC was directed to issue fresh entitlement certificate granting 50% subsidy to the unit.

We have heard Mr. S. Ganesh, learned Senior Counsel appearing on behalf of the petitioners; Mr. Rajendra Prasad, learned Additional Advocate General appearing on behalf of the respondents-State Government and Mr. R.B. Mathur, learned counsel appearing on behalf respondent-Commercial Taxes Department.

Mr. S. Ganesh, learned Senior Counsel argued that the Board of Infrastructure Development and Investment Promotion (for short 'the BIDI') under Clause 7(i) (a) and 7(i)(b) of the RIPS- 2003 was fully competent to grant sales tax subsidy up to 75% to a new industrial unit with a capital investment of over Rs. 400 crores. This 75% subsidy consisted of only wage subsidy and interest subsidy and did not include any upfront subsidy. The RIPS was amended on 02.12.2005 to introduce a new package of sales tax subsidy at 75% for new cement units with a total investment of more than Rs. 400 crores under Clause 7(vi) of the RIPS-2003. The subsidy could be granted only by the SLSC and not by the BIDI and 75% subsidy included 45% upfront subsidy and the wage/interest subsidy was only 30% and not 75% as per Clause 7(i)(b) of the RIPS-2003. The BIDI in its meeting held on 01.04.2006 held that the recently announced cement package in RIPS 2003 will be applicable to the petitioner-company. It was thus crystal clear that the BIDI had granted to the petitioner 75% sales tax subsidy, which was the recently announced cement package. The petitioners entered into an MOU with the respondent-State during Resurgent Rajasthan Partnership Summit in which the petitioner-company undertook to set up a new cement plant at Kotputli with a capacity of 4 million tons per annum. Clause 7(iii) of the RIPS-2003 was amended on 30.09.2008 to protect investments made under MOU signed during Resurgent Rajasthan Summit, provided commercial production was started by 31.03.2011. The Kotputli project fulfills all the requirements of this amendment. Substantial investment was made after and in view of the MOU and the assurance given thereby read with the earlier decision of the BIDI dated 01.04.2006. The SLSC in its meeting dated 17.03.2011

granted 75% sales tax subsidy to the petitioner's Kotputli plant. The SLSC specifically stated that it was acting in pursuance of the decision of the BIDI approving grant of 75% subsidy under Clause 7(i)(a) and (b) of the RIPS-2003. Entitlement certificate dated 29.04.2011 issued to the petitioner clearly shows that the grant of subsidy was under Clause 7(i)(a) and 7(i)(b) and not under Clause 7(vi) and 7(vii) of the RIPS-2003 because there was no upfront subsidy of 45% and the wage and interest subsidy aggregated to 75% and not to 30%. The petitioner-company already availed 75% subsidy for the full period of seven years from 05.02.2010 up to 04.02.2017. The subsidy did not come out of the pocket of the State Government. In fact, it came out of the total amount of sales tax paid by the new Kotputli Plant. 75% thereof was given back in the next quarter and that too by adjustment and set off in the sales tax assessment order of the next month and the assessment was completed accordingly. Contention of the respondents that since the BIDI did not grant 75% subsidy to the petitioner-company, it would only be entitled to 50% of the subsidy is wholly incorrect. Only ground set out in the show cause notice was that the BIDI did not grant 75% subsidy which was contrary to SLSC's own understanding of the BIDI order dated 01.04.2006. Further, if the show cause notice is right, the BIDI's decision of 01.04.2006 becomes a meaningless exercise in futility.

Mr. S. Ganesh, learned Senior Counsel argued that since the decision to grant 75% sales tax subsidy to the petitioner-company was principally taken by the BIDI, entitlement certificate issued by the SLSC was only a consequence thereof. The BIDI was a very high powered body presided over by the Chief Minister of the State. The basic order being of the BIDI is not open to revision by the State Government. The order was passed by the BIDI but it was given effect to by the SLSC in March, 2011 only because the BIDI was not in existence at that point of time. The impugned revisional order thus in fact sets aside BIDI's decision which is illegal and without the authority of law. It is argued that decision of the BIDI dated 01.04.2006 was best understood by the SLSC having regard to its constitution. SLSC's understanding of the RIPS and of BIDI's decision thereunder is squarely covered by the doctrine of *Contemporanea Expositio*. Reliance in this connection has been placed upon the judgment of the Supreme Court in *Desh Bandhu Gupta & Co. & Others Vs. Delhi Stock Exchange Association Ltd.*, AIR 1979 SC 1049 and *Spentex Industries Ltd. Vs. Commissioner of Central Excise & Another*, (2016) 1 SCC 780.

Learned Senior Counsel argued that the revisional order could not in law be based on any ground or material which was not set out in the show cause notice. In the present case, the only ground set out in the show cause notice was that the BIDI did not pass any order granting 75% subsidy to the petitioner-company, which is patently untenable. Reliance in support of this argument has been placed on judgment of the Supreme Court in *Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd.*, (2006) 7 SCC 592 and judgment of Delhi High Court in *Commissioner of Income Tax, Delhi Vs. Contimeters Electrical Pvt. Ltd.*, (2009) 317 ITR 249 (Delhi). It is further argued that it is well settled

legal position that a tax incentive granted to and fully availed of by the assessee cannot be withdrawn subsequently with retrospective effect so as to demand back the benefit already availed of. In the present case, 75% subsidy was fully availed of by the petitioner by February, 2017, long before issuance of the show cause notice. Reliance in support of this argument has been placed upon the judgments in *Birla Jute & Industries Ltd. Vs. State of M.P.*, 119 STC 14 (S.C.); *CCT Vs. Rajasthan Tax Tribunal (Raj.)*, 38 Tax U-Date 131; *CST Vs. Elopac Paper Converter*, 104 STC 2 (S.C.) and; *C.T.O. Vs. Shiv Agrevo* (Rajasthan Tax Board). Learned Senior Counsel further argued that recognising the above- mentioned settled legal position, the revisional order itself states that it did not propose to take away the benefits already granted. However, the operative part of the revisional order purports to cancel the petitioners' entitlement certificate with retrospective effect and demand back the differential 25% subsidy amount which is patently illegal.

Mr. S. Ganesh, learned Senior Counsel argued that the revisional order is contrary to the doctrine and principle of promissory and equitable estoppel. Acting on the assurance contained in the BIDI's decision dated 01.04.2006 and thereafter in Resurgent Rajasthan Agreement dated 30.11.2007, the petitioner-company made total investment of Rs. 1700 crores in establishing the Kotputli Cement Plant. The said promise and assurance was in fact given effect to and acted upon by granting 75% sales tax subsidy to the petitioners during the period from February, 2010 to February, 2017. The impugned revisional order constitutes a blatant breach and violation of the said promise and assurance, which was binding on the respondents by virtue of doctrine of promissory and equitable estoppel. It is argued that the revisional order also seeks to contend that the petitioners could claim 75% subsidy only under Clause 7(vi) of the RIPS-2003 which was withdrawn on 28.04.2006, which contention is factually untenable because no such allegation is found in the show cause notice and the revisional order could not go beyond the grounds set out in the show cause notice. Moreover, the petitioners' right to 75% subsidy is based on Clause 7(i)(a) and 7(i)(b) of the RIPS- 2003 which was not withdrawn or amended on 28.04.2006 or at any subsequent point of time. It is argued that petitioner's right to 75% subsidy is also based on the RIPS amendment dated 30.09.2008 read with the MOU dated 30.11.2007, which fact has been completely disregarded by the revisional authority.

Mr. S. Ganesh, learned Senior Counsel argued that wording of Clause 13 of the RIPS-2003 is identical to that of Section 263 of the Income Tax Act, 1961 which has been interpreted in detail by the Supreme Court in *Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, Kerala State*, (2000) 2 SCC 718 and *Commissioner of Income Tax, (Central) Ludhiana Vs. Max India Limited* (2007) 15 SCC 401 wherein the Supreme Court has held that the phrase "prejudicial to the interest of the revenue" under Section 263 has to be read in conjunction with the expression "erroneous" order passed by the assessing officer. These decisions state that every loss of revenue as a consequence of an order of the subordinate

authority cannot be treated as prejudicial to the interest of the revenue. It has also been held that where two views are possible and the subordinate authority has taken one view, with which the revisional authority does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the subordinate authority is unsustainable in law. In the present case, the decision taken by the SLSC was based on the decision of the BIDI and their view is certainly a possible view, which was in fact adhered to for more than seven years.

Learned Senior Counsel argued that Clause 9B(viii) of the RIPS-2003 lays down that where subsidy has been granted by mistake, it can be rectified by the jurisdictional assessing officer as per the provisions of Section 33 of the Rajasthan Value Added Tax Act, 2003, which lays down a period of limitation of four years. In the present case, the revisional order has not been passed by the assessing officer and further it was passed well after the expiry of the period of four years. Learned Senior Counsel argued that Clause 13 of the RIPS-2003 which enables a revision order to be passed as long as five years after the expiry of seven years period is highly unreasonable, arbitrary, oppressive and violative of fundamental rights of the petitioners under Articles 14 and 19(1)(g) of the Constitution of India because the subsidy can be demanded back as long as 12 years after it has been availed of by a unit.

Learned Senior Counsel argued that as per Clause 6A of the RIPS-2003, only the BIDI had the power to take a decision on an application for a customised package. It was open to the BIDI to take any decision it wanted on such an application. The BIDI could either grant all the benefits asked for or grant only one of them such as 'the recently announced cement package' i.e. 75% sales tax subsidy granted only to the cement industry on 02.12.2005. If the BIDI decided to grant that 75% subsidy to the petitioners, it would still be a decision of the BIDI on the application for a customised package and such a decision could not be revised by the Additional Chief Secretary, Finance under Clause 13 of the RIPS-2003. Since the direction of the BIDI for grant of subsidy to recently announced cement package was specific, it could not be considered as one under Clause 7(vi) or 7(vii) of the RIPS-2003 because the only authority to take a decision under that Clause of RIPS was the SLSC and not the BIDI. The view taken by the BIDI was a possible view and therefore it cannot be revised under Clause 13 of the RIPS-2003.

As regards reliance placed by the respondents on the judgment of Co-ordinate Bench of this Court at Principal Seat at Jodhpur in State of Rajasthan & Others Vs. Shree Cement Limited & Others (D.B. Special Appeal (Writ) No. 1719/2011 and other connected matters decided on 06.12.2016), Mr. S. Ganesh, learned Senior Counsel argued that the aforesaid case stands entirely on a different footing as compared to the present case because in that case, there was no decision whatsoever for grant of any subsidy by the BIDI and there was only a decision by SLSC which specifically granted subsidy only under Clause 7(vi) and

7(vii) of the RIPS-2003 which was withdrawn on 28.04.2006. Reliance placed by the respondents on the judgment of the Supreme Court in Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company & Others, (2018) 9 SCC 1 is wholly misconceived as this judgment only lays down that an exemption notification has to be construed strictly and only if there is any ambiguity therein, the benefit thereof has to go to the revenue. This principle does not have any applicability whatsoever to the present case where there is no ambiguity in respect of any exemption notification.

Mr. Rajendra Prasad, learned Additional Advocate General appearing on behalf of the respondent-State opposed the writ petition and argued that the matter has been listed before the Division Bench only because of challenge to Clause 13 of the RIPS-2003 and if the challenge to the aforesaid Clause fails, the writ petition with respect to other prayers is liable to be listed before the Single Bench. It is argued that the RIPS-2003 is a policy in the nature of offer to the entrepreneurs inviting them to invest in the State of Rajasthan. The petitioners having accepted the said policy with open eyes never objected to any of its clauses and availed the benefits under it fully except objection to the deletion of sub-clause (vi) to Clause 7 of the RIPS-2003. According to the policy, a person desirous to get benefits under it has to apply as per clause 9(B) to the concerned Screening Committee which could only sanction subsidy up to maximum limit of 50% [as per Clause 7(i)(a)] and also to apply to the BIDI for raising the limit up to 75% under proviso to the said clause. The petitioners initially did not apply under the scheme and applied for a better customised package to the Government. Their request was not accepted and it was only directed by the BIDI that the recently announced cement package and RIPS-2003 will be applicable on the company. The cement package was announced on 05.12.2005 which only inserted sub-clause (vi) and (vii) to Clause 7 which were quite different than the sub-clause (i) to Clause 7 of the RIPS-2003. Apart from it, the cement package did not have any independent existence but became part of the RIPS- 2003 on 05.12.2005. It was clearly communicated on 17.06.2006 with regard to the customised package that the company would be eligible for the concessions as contained in the RIPS-2003. It is worthwhile to note that the amendment made on 05.12.2005 was deleted on 28.04.2006 and the clarification dated 22.05.2008 clearly indicated that the company will not be eligible for any benefit under sub-clause (vi) and (vii) which have been deleted on 28.04.2006. Thus, the option submitted on 26.04.2006 became infructuous and the request of the petitioners to withdraw the notification dated 28.04.2006 clearly stood rejected firstly vide communication dated 17.06.2006 and later on vide clarification dated 22.05.2008.

Mr. Rajendra Prasad, learned Additional Advocate General submitted that even in the MOU dated 30.11.2007 Government committed nothing more than project incentives permissible to the project under the RIPS-2003 as amended from time to time. The amendment dated 30.09.2008 thus had no bearing upon the outer limit of subsidy permissible under the Scheme. It is argued that the decision of

the BIDI was in the context of application for customised package which is nothing more than declaring the eligibility of company under the provisions of the RIPS-2003. Neither any specific application under the RIPS-2003 was pending nor any application for raising the limit of subsidy under Clause 7(i)(a) was under consideration before the BIDI nor the company ever applied to the BIDI even after 28.04.2006 for raising the limit to 75% till the BIDI remained in existence i.e. up to 07.06.2009. It is important to note that irrespective of disbanding of the BIDI, the provisions of Clause 7(i)(a) of the RIPS-2003, its proviso and the provisions of Clause 5 relating to eligibility and Clause 6 of the RIPS-2003 with regard to authority to grant benefits and Clause 9 with regard to claim of capital investment subsidy have not been amended, so as to authorise the SLSC to raise the limit of subsidy up to 75%. The petitioners admittedly for the first time applied to SLSC under Clause 7 of the RIPS-2003 on 12.02.2010 and that too making a request for grant under deleted sub-clause (vii) making wholly untenable submissions with regard to the amendment dated 30.09.2008, MOU and notification dated 02.12.2005. The SLSC however, accepted the application of the petitioners under proviso to Clause 7(i)(a) by incorrectly relying upon the decision of BIDI dated 01.04.2006 as raising of limit under Clause 7(i)(a) to 75%. The entitlement certificate was accordingly issued and the benefit was availed upto 75% by the petitioner. The petitioners accepted the benefits under the RIPS-2003 with all its conditions and clauses and never raised any objection to Clause 13 of the RIPS- 2003 either in the Court or with the Government at any stage before or after applying for the benefit and before availing the same. The validity of the clause has been questioned for the first time after the jurisdiction under Clause 13 of the RIPS-2003 has been exercised by passing the order in proceedings in which the petitioners duly participated.

Mr. Rajendra Prasad, learned Additional Advocate General submitted that the submissions made on behalf of the petitioners that impugned order passed by the revisional authority would tantamount to revising the order of the BIDI is wholly misconceived. The BIDI never had an occasion to consider an application under Clause 7(i)(a) or its proviso as it was only considering the request for customised package different than the provisions of RIPS-2003 and did not accept the proposal of the petitioners. It rather only declared that the provisions of the RIPS-2003 will be applicable, which did include at that point of time the sub-clause (vi) also as cement package, which itself was quite different than the provisions under Clause 7(i)(a) and its proviso. Sub-clause (vi) of Clause 7 stood deleted on 28.04.2006 for all including the petitioners.

Mr. Rajendra Prasad, learned Additional Advocate General further submitted that doctrine of Contemporenea Expositio has absolutely no application in the present case. This is not at all a question of interpreting the provisions of the scheme, but construing the decision of the BIDI, which does not have any ambiguity whatsoever, particularly when it is read in the context as mentioned above. Thus, no issue with regard to constructing an ambiguous statute or document arises in this case. The BIDI never explained subsequently its understanding about

decision dated 01.04.2006, nor the government ever explained its understanding about the said decision at any point of time to mean grant of enhanced subsidy of 75% under Clause 7(i)(a) of the RIPS-2003. However, the SLSC misunderstood the decision as there was no material before it to reach to this conclusion. The construction of decision of the BIDI has no bearing because the scheme itself does not give its understanding any finality, rather it negates it by insertion of Clause 13 of the RIPS-2003. The understanding of the SLSC cannot be binding upon the Government. The interpretation given by an authority can be invoked in a given situation, but it will not always be decisive on the question of construction which is what the judgments cited by the petitioners also state so. Other contention raised on behalf of the petitioners that the impugned revisional order has gone beyond the show cause notice is also wholly misconceived. It is submitted that the notice clearly stated that in the decision of the BIDI, there is no reference of enhancement of the limit of subsidy to 75% under proviso to Clause 7(i)(a) and (b) of the RIPS-2003 and that is the only reason for which the impugned order has been passed.

Learned Additional Advocate General argued that in some of the matters cited relating to earlier schemes, provisions of revision were there, but in those matters also it was not indicated that the benefit by revision can be withdrawn after being availed and apart from that, those orders have no value as binding precedents. The Division Bench of this Court at Principal Seat at Jodhpur in State of Rajasthan & Others Vs. Shree Cement Limited & Others (supra), considered these very issues and turned down such objections being raised by the petitioners in the present writ petition. It is argued that the submissions made on behalf of the petitioners with regard to applicability of Clause 7(vi) is wholly misconceived. The impugned order passed by the revisional authority only means that if the said clause would not have been deleted, the SLSC could have granted it. The parity being claimed by the petitioners of Clause 13 of the RIPS-2003 with Section 263 of the Income Tax Act is baseless and erroneous. The view taken by the SLSC was not at all a possible view in the context in which it has been taken. It is argued that Clause 9(B) of the RIPS-2003 has no application in the present case as that is power of rectification by the assessing authority which happens to be nodal officer also to correct error apparent with regard to grant of benefit contrary to the directions of the Government (SLSC).

With regard to challenge to the constitutional validity of Clause 13 of the RIPS-2003, learned Additional Advocate General submitted that the petitioner-company is not entitled to challenge any condition including Clause 13 of the RIPS-2003 after having applied for and availed the entire benefits under the Scheme. The petitioner-company is estopped from making any such challenge particularly when it never objected to this clause before applying or availing the benefits. Even otherwise, the petitioners have not made any submissions whatsoever with regard to competence of the Government to enact such clause or breach of any provisions of statute nor they have pointed out any prohibitory provision under the Constitution.



Mr. R.B. Mathur, learned counsel appearing on behalf of the respondents-Commercial Taxes Department also opposed the writ petition and argued that the petitioners applied for benefit of customisd package to the BIDI. In response to the application of the petitioners, the BIDI in its 21st meeting held on 01.04.2006 directed that the petitioner-company would be entitled for cement package in the light of notification dated 02.12.2005. It was pursuant to this cement package that sub-clauses (vi) and (vii) were added in Clause 7 of the RIPS-2003. Being aware of this fact, the petitioner-company got itself registered with the SLSC vide letter dated 26.04.2006 specifically making a request for granting the benefits according to the cement package. The Bureau of Investment Promotion Rajasthan vide letter dated 17.06.2006 informed the petitioners that they will be eligible for the benefits only as per the scheme of the RIPS-2003. The State of Rajathan subsequently vide notification dated 02.12.2005 amended the RIPS-2003 by inserting sub-clauses (vi) and (vii) to Clause 7 whereby benefits were extended to cement plants. Aforesaid two sub-clauses were deleted soon thereafter vide notification dated 28.04.2006 and further clarification was issued on 22.05.2008 rescinding the privileges granted to the cement plants. The petitioners however on 26.04.2006 submitted an application for availing benefits of the said cement package. Thereafter, vide communication dated 04.02.2010, the petitioners again made a similar request for grant of benefits under the cement package with the specific reference to notification dated 02.12.2005 and requested for issuance of entitlement certificate on the premise that it has already started commercial production on 20.01.2010. Till this stage, the petitioners never made any assertion as to any conscious decision by the BIDI under proviso to Clause 7 of the RIPS-2003. It was rather continuously pressing for cement package. Had the BIDI taken any specific decision in the matter, it would have certainly indicated as to what extent the petitioner-company was entitled to the subsidy. The BIDI never considered its case under the proviso to Clause 7 of the RIPS- 2003 and in fact the BIDI has not considered the case as by that time the notification dated 02.12.2005, i.e. of cement package had come into force and in fact, the application of the petitioners was returned with the remark that they would be entitled to subsidy under the cement package as per the RIPS-2003.

Learned counsel further argued that case of the petitioners was taken up by the SLSC in its meeting dated 17.03.2011 whereby the SLSC ignoring the fact that no specific order/direction was even given by the BIDI, went on to grant a benefit of subsidy up to 75% to the petitioner-company. Benefits in excess of 50% were thus granted to the petitioner contrary to the provisions of the RIPS-2003. When this matter came to light, the SLSC in its meeting dated 22.05.2017 reviewed the matter and realising its mistake that no benefit of proviso to Clause 7 or customised package was ever given by the BIDI in its meeting dated 01.04.2006 and the benefit was extended to the petitioner-company contrary to the provisions of the RIPS-2003, the decision was taken to recommend to the Finance Department for taking action under Clause 13 of the

RIPS-2003. A bare reading of Clause 13 of the RIPS-2003 makes it clear that the State Government can revise any order, which is prejudicial to the interest of the State revenue. The petitioners having taken benefit of the scheme cannot be allowed to challenge the validity of Clause 13 of the RIPS-2003. Once the petitioners decided to contest the matter before the Additional Chief Secretary, they are estopped from challenging Clause 13 at this stage. It is argued that Clause 13 has been considered by Division Bench of this Court at Principal Seat at Jodhpur in *State of Rajasthan & Others Vs. Shree Cement Limited & Others* (supra).

Mr. R.B. Mathur, learned counsel argued that it is settled principle of law that while interpreting exemption notification, the court has to adopt principle of strict interpretation and any ambiguity shall be decided in favour of the revenue. Once an exemption is granted it eats out of the public exchequer and no person shall be allowed to take undue advantage of the benefits granted to him/her. Learned counsel in support of this argument relied upon recent judgment of the Supreme Court in *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company & Others*, (2018) 9 SCC 1 wherein it has been held that the exemption notification should be interpreted strictly. Relying on the judgment of the Supreme Court in *State of Rajasthan Vs. J.K. Udaipur Udyog*, (2004) 7 SCC 673, learned counsel argued that even in the cases where the assessee is not found entitled under the exemption schemes, the Apex Court directed them to make payment irrespective of the fact that they were not collected from the consumer. Relying on the judgment of Division Bench of this Court in *State of Rajasthan & Others Vs. Shree Cement Limited & Others* (supra), learned counsel argued that therein all the issues like promissory estoppels, legitimate expectation, contemporanea exposito and validity of Clause 13 of the RIPS-2003 were examined and the arguments similar to the one being raised by the petitioners in the present case have been rejected. It is argued that any special benefit given to the petitioners contrary to any decision of the BIDI will amount to discrimination with same class of industries.

We have given our anxious consideration to rival submissions and carefully perused the material on record.

The respondents have produced before the Court entire minutes of pre-BIDI meeting as also minutes of 21st meeting of the BIDI held on 01.04.2006. Case of the petitioner-company, which was then known as Grasim Industries, was considered at Agenda Item No. 13 in 21st meeting of the BIDI held on 01.04.2006. It was recommended that "the recently announced cement package and RIPS-2003 will be applicable on the company". Any changes post VAT regime will also be available to other units. Contention that the respondents could have rectified the mistake with reference to Clause 9(B)(viii) of the RIPS-2003 only within a period of four years, which is the limitation prescribed under Section 33 of the Rajasthan Value Added Tax Act, 2003, is noted to be rejected. Clause 9(B)(viii) of the RIPS-2003 inter alia provides that with a view to rectify mistake

apparent on the record, subsidy sanctioned by the assessing authority of the Commercial Taxes Department, under this scheme may be rectified suo motu or otherwise any order passed by the assessing officer as per the provision of Section 33 of the Rajasthan Value Added Tax Act-2003. This is thus clear that this provision has been intended to be applied by the assessing officer of the Commercial Taxes Department. Meaning thereby, had the assessing officer initiated the action to rectify the mistake, he could do so only within a period of limitation of four years prescribed under Section 33 of the Rajasthan Value Added Tax Act, 2003. This provision cannot therefore create any impediment for the State to invoke Clause 13 of the RIPS-2003.

Clause 7 of the RIPS-2003 is the relevant provision relating to Capital Investment Subsidy with which we are concerned in the present matter. Clause 7(i)(a) of the RIPS-2003 provides that in case of new investments made, the sum total of Capital Investment Subsidy (Interest component) and Capital Investment Subsidy (wage component) would be subject to a maximum limit of fifty percent of the tax payable and deposited under the Rajasthan Sales Tax Act, 1994, the Central Sales Tax Act, 1956 and Rajasthan Value Added Tax Act, 2003. Clause 7(i)(b) of the RIPS-2003 inter alia provides that in case of investment made in the Modernization/Expansion, the amount of Capital Investment Subsidy shall be subject to a maximum of fifty percent of the amount of the Central Sales Tax and VAT payable or deposited by the unit on its additional capacity, so created over and above the installed capacity before Expansion/Modernization. The first proviso to the aforesaid Clause 7 inter alia stipulates that the maximum limit of fifty percent prescribed under clause 7(i)(a) and clause 7(i)(b) may be raised by the BIDI to sixty percent in such cases where the investments exceed Rs. 100 crores but are less than or equal to Rs. 200 crores; and this maximum limit may be raised further to seventy five percent in cases where the investments exceed Rs. 200 crores. It is this proviso which could be invoked in the present case as it empowered the BIDI to increase the limit of subsidy of 50% to 75% in cases where the investments exceed Rs. 200 crores.

The RIPS-2003 was amended vide notification dated 02.12.2005 whereby sub-clause (vi) and (vii) were inserted in Clause 7 of the RIPS-2003. Sub-clause (vi) provided for new cement units, which enhanced maximum limit of 75% instead of 50% and further would be available on submitting option within 180 days of the amendment to SLSC and commencement of commercial production within 5 years of filing the application for option. The total period of subsidy was to be 7 years from commencement of production and it was particularly mentioned that subsidy of 45% of the RST or VAT and CST shall be allowed up front on the basis of actual tax liability and the remaining was further to be paid as mentioned in sub-clause 3(b) of the newly inserted sub-clause. Sub-clause (vii) inserted in Clause 7 provided that notwithstanding anything contained in sub clauses (i) to (v) above, in case of investments for expansion of existing cement unit having investment exceeding Rs. 200 crores and with a minimum regular employment of 100 persons, the amount of subsidy shall be subject to a maximum limit of 75%

of the additional tax (calculated by taking the average of last 3 years) payable or deposited under Rajasthan Sales Tax Act, 1994 or Value Added Tax Act (as and when introduced in the State) and Central Sales Tax Act, 1956 for a period of 7 years from the date of commencement of production, subject to the condition that the investor shall submit an option to the Member-Secretary, SLSC to avail benefit under this scheme within 180 days of this amendment; the unit shall start commercial production within 5 years of filing of application for option; and the sum total of 75% subsidy shall be calculated.

It is significant to note that the petitioners directly submitted an application to the BIDI for a customised package for its Kotputli unit for establishment of a cement plant proposed to be of installed capacity of 3 MTPA with invest of Rs. 300 crores and employment of 500 persons. The Pre-BIDI meeting was held on 28.03.2006 in which the application of the petitioners was considered. The Pre-BIDI proposed as under:

"14. Grasim Industries

The pre-BIDI recommended that the cement package as announced recently should be applicable to the company."

Meeting of the BIDI presided over by the Chief Minister on 01.04.2006, considered the recommendation of the Pre-BIDI and resolved at Agenda Item No. 13 as under:

"Agenda No. 13 Grasim Industries Limited BIDI directed that the recently announced cement package and RIPS 2003 shall be applicable on the company. Any changes post VAT regime will also be available to other units."

The petitioners submitted option for availing benefits under the aforesaid newly inserted sub-clause (vii) on 26.04.2006 under new notification dated 02.12.2005. However, both the sub-clauses (vi) and (vii) were deleted by the Government vide notification dated 28.04.2006. The petitioner-company was fully conscious of this fact that it shall not receive the tax subsidy under deleted sub-clause (vii) supra, which is evident from the representation which it made to the respondents on 26.05.2006 stating that the withdrawal of 45% upfront subsidy of actual tax liability is a major setback to the company's investment plan and it was requested that the aforesaid newly inserted clauses vide notification dated 28.04.2006 be reconsidered and withdrawn.

But then, the Bureau of Investment Promotion specifically informed the petitioner-company vide communication dated 17.06.2006 with regard to its request for customised package that "the company will be eligible for the concessions as contained in RIPS-2003". Even in the MOU entered into between the Government and the petitioner-company on 30.11.2007, all that stated was that the State will extend to the Project incentives permissible to the Project under the RIPS as amended from time to time. The Government issued a categorical clarification on 22.05.2008 that on deletion of sub-clauses (vi) and

(vii) of Clause 7 of the RIPS-2003 w.e.f. 28.04.2006, none of the types enumerated at Serial No. 1 to 6 in the clarification will qualify for benefits under the deleted sub-clauses. For the facility of reference, clarification dated 22.05.2008 is reproduced as under:

"CLARIFICATION

Reference from the Commercial Taxes Department has been received regarding interpretation of the admissibility of subsidy (for new cement units having investment exceeding Rs. 400 crores and with a minimum regular employment of 200 persons) raised to a maximum limit of 75% of tax payable or deposited by inserting sub-clause (vi) in clause 7 of RIPS-2003 vide FD order No. F.12(20)FD/Tax/05-Pt. Dated 02.12.2005, subject to conditions, inter alia, that the investor shall submit an option to the Member Secretary, SLSC to avail benefit under the scheme within 180 days of the amendment and shall start commercial production within 5 years of filing of the application for option. Similar provision was made for the investments for expansion by the existing cement units having investment exceeding Rs. 200 crores and with a minimum regular employment of 100 persons by inserting sub-clause (vii) in Clause 7 of the Scheme. These provisions of the scheme were deleted vide FD order dated 28.04.2006.

State Government hereby clarifies that the benefits under the deleted provision cannot be granted on and after 28.04.2006, that is to reiterate that none of the types enumerated at Sl. No. 1 to 6 below, qualify for benefits under deleted sub-clause (vi) and (vii) of clause 7 of RIPS-2003 on or after 28.4.2006.:

1. Where the option was submitted before 28.04.2006 and benefits were also granted by SLSC before 28.04.2006,
2. Where the option was submitted before 28.04.2006 and benefits were granted by SLSC after 27.04.2006,
3. Where the option was submitted before 28.04.2006 and benefits have not been granted by SLSC,
4. Where the option was submitted after 27.04.2006 but within 180 days of 02.12.2005 and benefits has not been granted by SLSC,
5. Where the option was submitted after 27.04.2006 but within 180 days of 02.12.2005 and the case has not been considered by SLSC, and
6. Where the option was submitted after 27.04.2006 but within 180 days of 02.12.2005 and the unit has still not applied for the benefits. "

The Government then vide notification dated 30.09.2008 by way of amendment introduced another proviso after existing provisos in sub-clause (iii) of Clause 7 of the RIPS- 2003 provided that the investment made or committed before 22.05.2008 or under MOU signed during Resurgent Rajasthan Summit for both new cement unit or unit under expansion, having capacity of more than 200 tons per day, shall be eligible for subsidy under this clause on the condition that such

unit shall start commercial production by 31.03.2011. The petitioners however submitted an application on 04.02.2010 for issuance of entitlement certificate and benefits under the notification dated 02.12.2005 whereas the amendments made under that notification were already deleted on 28.04.2006. It was at that stage that the SLSC considered this application of the petitioners in its meeting dated 17.03.2011 and directed for granting the subsidy to it upto the limit of 75% under proviso to Clause 7(i)(a) and (b) in view of the approval allegedly granted by the BIDI. A careful examination of the minutes of 21st meeting of the BIDI held on 01.04.2006 does not reveal any such decision on the part of the BIDI. The BIDI simply directed that recently announced cement package in RIPS-2003 shall be applicable on the company.

The SLSC further considered the matter in its meeting dated 17.10.2011 for revision of the entitlement certificate. Consequently, the entitlement certificate issued on 29.04.2011 was revised on 24.11.2011. The petitioners accordingly availed the subsidy. However, the SLSC in its meeting dated 22.05.2017 considered the issue on the letter received from the department, which found that the BIDI never approved raising of the subsidy upto 75% and accordingly recommended to the Government for proceeding under Clause 13 of the RIPS-2003.

It is significant to note that the cement package was announced on 05.12.2005 which was inserted as sub-clause (vi) and (vii) in Clause 7 of the RIPS-2003. These sub-clauses were entirely different in scope and content than sub-clause (i) of Clause 7 of the RIPS-2003. A clear communication was addressed to the petitioners by Bureau of Investment Promotion Rajasthan on 17.06.2006 with regard to customised package that the company would be eligible for the concessions as contained in the RIPS-2003. Shortly thereafter, the aforementioned amendment made on 05.12.2005 following the announcement of cement package was deleted on 28.04.2006. Clarification dated 22.05.2008 issued in this behalf categorically indicated that the company will not be eligible for any benefit under sub-clause (vi) and (vii) which have been deleted on 28.04.2006 and thus the option submitted on 26.04.2006 for grant of the enhanced subsidy upto 75% to it became infructuous. Request of the petitioners to withdraw the notification dated 28.04.2006 was not acceded to as is evident from communication dated 17.06.2006 sent to the petitioners by the Bureau of Investment Promotion and clarification dated 22.05.2008.

The argument that the SLSC which consisted of the officers mostly from the Finance Department of the State by virtue of doctrine of Contemporenea Expositio was in the best position to consider decision of the BIDI is noted to be rejected firstly because there is no ambiguity whatsoever in the decision of the BIDI and secondly, such decision has to be read in context of the facts. The BIDI never explained its understanding subsequently on 01.04.2006. The SLSC thus misunderstood the decision of the BIDI. The RIPS-2003 also does not provide any clarification for such a decision. In the cited judgments on this aspect, it has

been indicated that such interpretation by a particular authority has by no means a controlling effect upon the courts and if occasion arises, has to be disregarded for cogent and perspective reason and in a clear case of error, the court would without hesitation refuse to follow such construction. As regards the decisions relied on behalf of the petitioners on the aspect that tax incentives cannot be withdrawn retrospectively, it is submitted that the impugned order clearly draws a distinction between tax exemption notifications and the notification with regard to subsidy of this nature. Cited judgments arose out of the matters where the beneficiary having not collected tax by virtue of acceptance of exemption by the Government could not be saddled with liability retrospectively. In the present case, the situation is entirely different in that the petitioners availed undue advantage at the time when it established the plant, which is being sought to be recovered after its full establishment in business. It is not a case where the petitioners did not recover taxes and did not deposit due to exemption. The cited judgments are therefore not applicable and are only the expression of the doctrine of impossibility and are based on reasons of equity which are not applicable in this case. Clause 13 of the RIPS-2003 clearly indicates that the benefit wrongly given can be withdrawn after its being fully availed and the petitioners availed the benefits with open eyes and full knowledge. Such was not the position in the judgments cited on behalf of the petitioners.

Contention that the revisional order passed by the Principal Secretary, Finance Department on behalf of the State Government amounted to revising the order passed by the BIDI, which is a high power body headed by the Chief Minister, is noted to be rejected for the simple reason that the resolution which the BIDI passed in its 21st meeting held on 01.04.2006 at Agenda Item No. 13 merely directed that the recently announced cement package and the RIPS-2003 shall be applicable on the petitioner- company. This means that such direction was issued to the concerned authority competent to extend the benefit of cement package and RIPS-2003. The fact that the expression "cement package" was combined with "RIPS-2003" would mean that the competent authority, which in this case was the SLSC, was to extend the benefit of tax incentive to the petitioner-company in accordance with the provisions contained in RIPS-2003. Undeniably, the cement package was inserted into the RIPS-2003 as sub-clauses (vi) and (vii) vide notification dated 05.12.2005 which empowered the SLSC to grant tax incentive upto 75% to the entrepreneurs on fulfillment of the conditions contained therein, but these two sub-clauses were soon thereafter deleted on 28.04.2006. The SLSC was therefore left with no authority whatsoever to decide in its meeting dated 17.03.2011 to grant 75% tax subsidy to the petitioner-company. Thus clearly, it is basically decision of the SLSC which has been revised by the Principal Secretary, Finance Department on behalf of the State Government and not the decision of the BIDI.

As regards the contention that amendment made in Clause 7(iii) of RIPS-2003 vide notification dated 30.09.2008 protected investments made under MOU signed during Resurgent Rajasthan Summit, provided commercial production

started by 31.03.2011 also does not improve the case of the petitioners. Even though Clause 7(iii) had protected MOUs signed during Resurgent Rajasthan Summit but this amendment does not in any manner confer any additional power on the SLSC to grant more subsidy than what it otherwise wielded. On the date of aforesaid amendment, the SLSC was competent to grant subsidy to the extent of 50% and no more than that. The SLSC, however, wrongly accepted the application of the petitioner-company under the proviso to Clause 7(i)(a) by incorrectly relying upon the decision of the BIDI dated 01.04.2006 in raising the limit of subsidy upto 75%. The SLSC at the maximum could have granted the tax subsidy to the extent of 50% and could have, till the BIDI was in existence, referred the case of the petitioner-company for extending the limit of tax subsidy from 50% to 75%. Since the BIDI was disbanded on 07.06.2009, therefore, it was not in existence when the SLSC took up the case of the petitioner for consideration in its meeting held on 17.03.2011. Thus obviously, it could not have granted tax subsidy beyond 50%.

The argument that impugned revisional order constituted breach of the promise held out to the petitioner- company which was binding on the respondents by doctrine of promissory estoppel and equitable estoppel cannot be countenanced for the simple reason that there could be no estoppel against the statute. The BIDI did not direct the SLSC to grant 75% tax subsidy to the petitioner-company. It merely directed that "the recently announced cement package and RIPS- 2003 shall be applicable on the company." When the BIDI had itself not taken the decision and directed for extending the recently announced cement package as per RIPS-2003, that would mean that the provisions contained in RIPS-2003 would have to be adhered to and the case of the petitioner-company would be dealt with in accordance therewith. The two provisions under which the petitioner-company could have availed tax subsidy upto 75% were the sub-clauses namely Sub-clause (vi) and (vii) of Clause 7 inserted vide notification dated 02.12.2005 but both these sub-clauses were deleted vide notification dated 28.04.2006, merely two days after the petitioner-company submitted option for availing benefit thereunder on 26.04.2006. Another provision under which the petitioner-company could have availed tax incentive of 75% was proviso to Clause 7(i)(a) and 7(i) (b) in which case the petitioner-company was required to make an application to SLSC whereupon the SLSC could have referred it to the BIDI. The BIDI remained in existence till 07.06.2009 and till that time, no such reference was made by the SLSC to it. There is therefore hardly any justification to contend that any representation was held out to the petitioner-company by the BIDI or the SLSC.

The Constitution Bench of the Supreme Court in Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company & Others (supra) held that where there is ambiguity in an exemption notification or exemption clause, the benefit of such ambiguity cannot be extended to the assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while



considering an exemption notification, the distinction cannot be ignored. Thus, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of assessee, but the same is not true for an exemption notification or exemption clause wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State. Furthermore, the burden of proving applicability of exemption would be on the assessee to show that his case comes squarely within the parameters of the exemption notification or exemption clause. The question whether assessee falls in the notification or in the exemption clause, has to be strictly construed and when once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction, held the Supreme Court. In the present matter, case of the petitioners has not even been considered by the BIDI which merely relegated it to SLSC, as such the provisions of the RIPS-2003 are to be strictly adhered to. Unlike the exemption schemes where the assessee is not collecting the taxes from the customer/purchaser, here in the present case of subsidy, the tax is collected from the customers/purchasers and after depositing the same with the department, the amount to the extent of 50% or 75%, as per the entitlement certificate, is refunded to the assessee.

Contention that every loss of revenue as a consequence of an order of the subordinate authority cannot be treated as prejudicial to the interest of the revenue cannot be countenanced for the simple reason that in the present case the decision taken by the SLSC was based on incorrect reading/understanding of decision of the BIDI, which on true construction of the decision of the BIDI in the light of provisions of the RIPS-2003 was not a possible view. The BIDI did not as such take any conscious decision to extend 75% tax incentive to the petitioner-company. It rather directed that "the recently announced cement package and RIPS-2003 shall be applicable on the company." The question is whether the SLSC could have extended the benefit of sub-clauses (vi) and (vii) of Clause 7 vide its decision dated 17.03.2011 when admittedly the aforesaid sub-clauses stood withdrawn vide notification dated 28.04.2006. The petitioner-company fully understood this situation which is evident from its representation which it made to the respondents on 26.05.2006 stating that the withdrawal of 45% upfront subsidy of actual tax liability is a major setback to the company's investment plan and it was requested that the withdrawal of the aforesaid newly inserted clauses vide notification dated 28.04.2006 be reconsidered and withdrawn. The cited judgments on the parity of Clause 13 of the RIPS and Section 263 of the Income Tax Act, 1961 do not in any manner apply to the fact situation obtaining in the present case.

Even in the judgment of the Supreme Court in *Malabar Industrial Co. Ltd.* (supra) relied by learned Senior Counsel appearing on behalf of the petitioners, the Supreme Court in para 9 of the Report did not approve of the interpretation placed by Madras High Court in *Venkatakrishna Rice Co. Vs. CIT*, (1987) 163 ITR 129 (Mad) on the phrase "prejudicial to the interests of the Revenue" and held

that the scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. When this phrase is understood in its ordinary meaning, it is of wide import and is not confined to loss of tax. Relevant discussion is found in Paras 8, 9 and 10 of the Report, which are reproduced as follows:

"8. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in *Dawjee Dadabhoy & Co. v. S.P. Jain* (1957) 31 ITR 872 (Cal), the High Court of Karnataka in *CIT v. T. Narayana Pai* (1975) 98 ITR 422 (Kant), the High Court of Bombay in *CIT v. Gabriel India Ltd* (1993) 203 ITR 108 (Bom), and the High Court of Gujarat in *CIT v. Minalben S. Parikh* (1995) 215 ITR 81 (Guj) treated loss of tax as prejudicial to the interests of the Revenue.

9. Mr Abraham relied on the judgment of the Division Bench of the High Court of Madras in *Venkatakrishna Rice Co. v. CIT* (1987) 163 ITR 129 (Mad) interpreting "prejudicial to the interests of the Revenue". The High Court held:

"In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration".

In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

10. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the

Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See Rampyari Devi Saraogi v. CIT (1968) 67 ITR 84 (SC) and in Tara Devi Aggarwal v. CIT (1973) 3 SCC 482)".

Applying the ratio of the aforesaid judgment on the facts of the present case, it has to be accepted that due to erroneous reading of the order of the BIDI, which did not by itself direct for grant of 75% tax subsidy but merely directed that "the recently announced cement package and the RIPS-2003 shall be applicable on the company", the SLSC could have extended only such tax subsidy which it was competent to do. The SLSC by erroneously misconstruing the aforesaid decision of the BIDI extended the benefit of sub-clause (vii) whereas the said clause stood deleted only two days after the option was exercised by the petitioner-company. Order of the SLSC was therefore certainly "prejudicial to interest of the revenue" in the sense this phrase has been used in Clause 13 of the RIPS-2003. Although in a different way, allowing the petitioners to retain 25% differential amount would tantamount to loss of Revenue and gain of the petitioner-company at the cost of State exchequer which is after all public money. The petitioner-company was entitled to grant of 50% tax subsidy only as on the date on which the SLSC met to consider its case and resolved to grant subsidy of 75%, it was not competent for that. Money from coffers of the State has been undersevely paid to the petitioner-company even though it was not entitled to receive the same.

Adverting now to the challenge to the validity of Clause 13 of the RIPS-2003, we deem it appropriate to reproduce this clause which reads as under:

"13. REVISION BY THE STATE GOVERNMENT:

(a) The State Government in Finance Department may suo motu or otherwise revise an order passed by any Screening Committee wherever it is found to be erroneous and prejudicial to the interest of the State revenue, after affording an opportunity of being heard to the beneficiary industrial unit.

(b) No order under the sub-clause (a) shall be passed by the State Government after the expiry of a period five years after the date by which the benefits under this scheme are fully availed of."

The petitioner-company was very much aware about Clause 13 of the RIPS-2003 while submitting the application and availing the benefits. Therefore, the petitioner-company will be deemed to have waived all objections with regard to any clauses of the RIPS-2003. The RIPS-2003 is a composite scheme whereunder the benefits are conferred conditionally and therefore the argument of unreasonableness and arbitrariness is wholly misconceived. Such provision has been devised in the Scheme to confer the power of superintendence on the Government for protection of public exchequer from being frittered away at the whims or fancies of screening committees, which is valid and necessary in public interest. It is not the case of the petitioners that the Government did not have the necessary competence to enact such a clause in the aforesaid scheme. We

may in this connection refer to the judgment of the Supreme Court in State of Tamil Nadu and Another Vs. P. Krishnamurthy & Ors. (2006) SCC 517 wherein the Supreme Court succinctly enunciated the law on which subordinate legislation can be challenged and elucidated the grounds thereof in the following terms:-

- "(a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

It is pertinent to mention here that neither in the memo of writ petition, nor during the course of arguments, the petitioners have questioned the competence of the Government in framing the policy in question, nor have they been able to demonstrate that a provision of revision contained in Clause 13, in any manner violates the fundamental rights of the petitioners or any provision of the Constitution or any enactment or otherwise exceeds the limit of the authority conferred on the competent authority which framed the policy or are otherwise repugnant to the laws of the land or suffer from manifest arbitrariness/unreasonableness. It would be evident from Clause 13 supra that the State Government in its Finance Department may suo motu or otherwise revise an order passed by any Screening Committee wherever it is found to be erroneous and prejudicial to the interest of the State revenue, after affording an opportunity of being heard to the beneficiary industrial unit. Sub- clause (b) to Clause 13 further provides that no order under Clause 13(a) shall be passed by the State Government after the expiry of a period five years after the date by which the benefits under this scheme are fully availed of. Admittedly, in the present case, the petitioners started availing benefits of the subsidy from February, 2010 and fully availed the benefits of subsidy to the extent of 75% up to February, 2017. Show cause notice for revising the order under Clause 13 of the RIPS-2003 was issued to the petitioner-company by the Government on 10.07.2017, which was well within the period of five years, given in Clause 13(b) of the RIPS-2003. In fact, the show cause notice was issued/received within six months from February, 2017, up to which time, subsidy was fully availed by the petitioner-company. Therefore, the argument that exercise of power of revision within five years after the expiry of seven years during which benefit was availed by the petitioner-company, makes the said provision as unreasonable, arbitrary, oppressive and violative of fundamental rights of the petitioners, has no merit.

Upshot of the above discussion is that we do not find any merit in this writ petition, which is accordingly dismissed.

Stay Application also stands dismissed.