

(2015) 12 KAR CK 0193

In the Karnataka High Court

Case No : Writ Appeal Nos. 268 and 294-436 of 2015 (T-RES)

Nandi Infrastructure Corridor Enterprise Limited and Others APPELLANT
Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 17[6], 5, 5B, 5-B, 6B
Karnataka Value Added Tax Act, 2003 — Section 5(1), 5(2), 5[1], 5[2]

Citation : (2015) 12 KAR CK 0193

Hon'ble Judges : Vineet Saran and S. Sujatha, JJ.

Bench : Division Bench

Advocate : K.P. Kumar, Senior Counsel for Suryanarayana T., Advocate, for the Appellant; K.M. Shivayogiswamy, Govt. Advocate, for the Respondent

Judgement

S. Sujatha, J.—In these appeals, the appellants are questioning the order dated 12.12.2014 passed by the learned single Judge in writ petition Nos. 49399/2014 and 52259-52401/2014.

2. In the writ petitions, the appellants prayed for a writ of mandamus, directing the respondent No. 1 to issue the Notifications superseding the Government Order FD.07.CET.09 dated 7.12.2011 exempting the whole of the tax payable by the first to third appellants and their subcontractors under the provisions of the Karnataka Value Added Tax Act, 2003, (hereinafter referred to as "the KVAT Act" for short) inter-alia challenging the re-assessment orders for the tax periods April 2005 to March 2009 and the consequent demand notices issued by the prescribed authority.

3. The appellants sought exemption from levy of value added tax as envisaged in the framework agreement, (hereinafter referred to as "the FWA" for short), dated 3.4.1997 entered into by the respondent No. 1 with appellant No. 1.

4. The learned single Judge vide impugned order, disposed of the aforesaid writ petitions observing that the appellants prayer for exemption from levy of tax

under the provisions of the KVAT Act relates to policy matters, which has to be considered by the Government of Karnataka and a decision to be taken thereof. The learned single Judge accordingly directed the appellants to appear before the Government and the Government shall take policy decision and pass appropriate orders in accordance with law. However, so far as payment of arrears of tax is concerned, appellants are directed to exhaust the remedy available under the law.

5. Being aggrieved by the said Judgment and order passed by the learned single Judge, the appellants have filed these appeals.

6. Sri. K.P. Kumar, learned senior counsel appearing for the appellants contended that Article 12.1 of the FWA dated 3.4.1997 entered into between the Government of Karnataka and the appellants provides for reduction and elimination of state and local taxes, which reads thus:

"12.1 Reduction and Elimination of State and Local Taxes: GOK shall extend, grant, award and/or make available to the Company and its Affiliates in connection with the Project or any Component thereof or asset related thereto the following concessions, incentives and holidays in respect of the state and local taxes, duties including stamp duties, registration fee, levies and conversion fine - [collectively, the Assessments"] indicated below.

12.1.1 Each part of the Toll Road, the roads in the Townships and the public utilities and common facilities in the Townships shall be exempt from all state and local Assessments.

12.1.2 All assessments that otherwise may be due with respect to any residential housing contemplated in the Townships shall be deferred until such time as each such residential housing or part thereof is sold to public on prorata basis at the same rate as was originally would have been.

12.1.3 The minimum invoice value for application of the entry tax waiver shall be Rs. 2,500,000, on a single invoice basis.

12.1.4 All assessments shall be subject to CAP/Ceiling the amount of taxes to be paid on annual basis."

7. As per the said Article 12.1, the Government of Karnataka has extended concessions, incentives and holidays in respect of the state and local taxes, duties including stamp duties, registration fee, levies and conversion fine to the company i.e., Nandi Infrastructure Corridor Enterprise Limited - appellant No. 1 and its affiliates, in connection with the project. The Government of Karnataka has issued the Notification dated 1.8.1998 exercising the powers conferred under section 8-A of the Karnataka Sales Tax Act, 1957, (hereinafter referred to as "the KST Act" for short), exempting the tax payable by the dealer under section 5 of the KST Act on the sale of machinery and equipments worth more than Rs. 1 crore in each individual sale invoice and on the sale of construction material worth more than Rs. 25 lakhs in each sale invoice effected to a dealer undertaking an infrastructure project in the state or any other dealer authorized

to execute the works in the said infrastructure project which is eligible for the benefit of tax concession in terms of Government Order dated 26.12.1997.

8. It is also pointed out by learned counsel that the Government of Karnataka issued another notification No. FD.35.CSL.98[II] Bangalore dated 1.8.1998 exempting the tax payable by a dealer i.e., a contractor or sub contractor under section 5B and 6B or 17[6] of the KST Act on turnover relating to transfer of property in goods involved in execution of works contract to a dealer undertaking infrastructure project in terms of the Government Order dated 26.12.1997. This exemption provided by the Government of Karnataka was extended from time to time till 13.1.2005. It is contended that subsequent to the KVAT Act coming into force from 1.4.2005, despite making several representations requesting the appellants to honour the exemption clause i.e., exemption promise in the state taxes as per FWA, the same was not given effect to by the respondents by issuing appropriate notifications exempting the appellants from the levy of tax under the KVAT Act, which it was required to do.

9. Learned counsel vehemently contended that in view of express assurances of the respondent No. 1 in the Memorandum of Understanding dated 20.2.1995 entered into with the promoters of the appellant No. 1, the appellant No. 1 company was incorporated, which in turn envisaged and established appellant Nos. 2 and 3 on the basis of the inducements in the FWA to execute the project, by borrowing necessary loans, and therefore unilateral withdrawal of the exemptions in the FWA is contrary to the doctrine of promissory estoppel. In other words, having led the appellants to believe by virtue of the FWA as well as subsequent exemption granted until 2005 that the project was exempted from value added tax and other taxes, appellants invested huge sums of money in the project with the expectation that the exemption would be granted without demur. Therefore, the respondent No. 1 is estopped from unilaterally modifying the exemption accorded to the detriment of the appellants and action in this regard is contrary to the principles of promissory estoppel. The respondent No. 1 has not made out any case for supervening public interest for it to change its stand and withdraw the exemption granted under the FWA and is on the contrary, bound to carry out its promise under the FWA dated 3.4.1997. The FWA envisaged total exemption from all taxes i.e., exemption of payment of value added tax on purchases as well as on sales and is clear from the conduct of the respondent No. 1 from the years 1999 to 2005 when the appellants, including the sub-contractors, were granted complete exemption from payment of all taxes and having bestowed the total exemptions from taxes from the year 1999 to 2005, the respondent No. 1 not only recognized its obligations under the FWA to also give effect to it, which is evident from the fact that during the said period, there were "nil" sales tax assessments in respect of the appellants and sub-contractors executing works in the project. However, the Government Order dated 7.12.2011 issued by the respondent No. 1 does not effectuate the provisions of the FWA dated 3.4.1997 and assurances given therein by the respondent No. 1. The Government Order dated 7.12.2011 is contrary to the

assurances envisaged in the FWA. The said Government Order dated 7.12.2011 only provides for reimbursement of the net value added tax paid/value added tax recovered by the appellant No. 3 from the appellant No. 2 in respect of works relating to Bangalore Mysore Infrastructure Corridor Project (BMIC).

10. Learned counsel further submitted that the appellants are primarily not challenging the reassessment orders in view of the FWA, exempting the appellants from payment of taxes. The learned single Judge, driving the appellants to approach the respondent No. 1 for necessary benefits, is contrary to the terms and conditions stipulated in the FWA and accordingly seeks for setting aside the Judgment and order passed by the learned single Judge and to allow the writ petitions.

11. The assessee-company is seeking for tax exemption under the KVAT Act placing reliance on the assurance or promise granted by the Government of Karnataka by the FWA dated 3.4.1997.

12. It is contented that the appellants had made its establishment based on the promises made by the Government of Karnataka to extend certain benefits to the assessee including the tax benefits which was in fact implemented and acted upon by issuing two different notifications dated 1.8.1998 under the KST regime in respect of infrastructure project. Having implemented the said FWA, the Government of Karnataka was bound to extend the same, even in the VAT regime.

13. It is further contended that it is the obligation on the part of the Government to honour the promises assured by the FWA and the same cannot be turned down for whatever reasons. The Government of Karnataka has executed the FWA in the public interest also, as the infrastructure project is necessarily a public interest project. In such circumstances, the Government of Karnataka cannot turn around and issue an order only to reimburse the net VAT paid by the assessee, that too after six years. The assessee has neither collected the taxes nor paid the same on the assurance/promise of the Government of Karnataka to exempt the taxes. The stance of the Government now taken would attract payment of tax by the assessee-company from its pocket as the assessee has not collected output tax, besides attracting the levy of penalty and interest which would be detrimental to the interest of the company. The Department initiating the proceedings against the company after issuing the Government Order dated 7.12.2011 belatedly would amount to breach of terms and conditions of the FWA and fastening the tax liability on the assessee-company along with interest and penalty is not called for. Given the circumstances, the Government of Karnataka has to honour the promises or assurances and act according to the FWA dated 03.04.1997. The silence on the part of the Government of Karnataka from 1.4.2005 to 7.12.2011 not coming out with its stance would indicate inaction on the part of the Government of Karnataka to issue necessary notifications under the KVAT Act. The assessee has designed its business structure based on the terms of FWA and suddenly after the lapse of 6 years, after the KVAT Act coming

into force, the Government of Karnataka issuing the Government Order extending the benefit of reimbursement of net tax, not extending the benefit of exemption of tax, would damage the entire business prospects of the company, burdening the assessee with huge tax liabilities with the interest and penalty, not due to any default on behalf of the assessee-company.

14. Learned senior counsel, in support of his contention, placed reliance on the following Judgments:

"[a] State of Karnataka and Another Vs. All India Manufacturers Organization and Others,

[b] State of Punjab Vs. Nestle India Ltd. and Another,

[c] Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI), "

15. On the contrary, learned counsel Sri. K.M. Shivayogiswamy, appearing for the respondent-State would contend that Article 12 of the FWA deals with taxes. Article 12.1 specifies that Government of Karnataka shall extend or make available to the company and its affiliates in connection with the project, certain concessions, incentives and holidays in respect of the state and local taxes, duties. The Government of Karnataka had assured the appellant-company and its affiliates only to extend the reduction and elimination of state and local taxes. The learned counsel would refer to the definition clause of "Affiliate" as defined under Article 1.2 of FWA.

""Affiliate" means in relation to any Party, any person in which that Party holds, or any Person that holds in that Party, directly or indirectly, at least a ten percent [10%] beneficial equity interest and includes a subsidiary as defined under section 4 of the Companies Act of India."

16. It is argued that the Government of Karnataka had entered into an agreement as per the FWA to grant tax concessions, incentives and holidays in respect of state and local taxes only to the appellant-company and its affiliates. As per the definition of "affiliate", the person directly or indirectly should have beneficial equity interest at least of 10% including a subsidiary as defined under section 4 of the Companies Act of India. The contractors and subcontractors working under the appellant company, are the assesseees having no beneficial equity interest and are not falling within the definition of "Affiliate" as per Clause 1.2, thus, are not entitled for any benefit flowing out from the FWA. The contention of the assessee company to extend the benefits even to the contractors and sub-contractors placing reliance on the FWA is contrary to the terms and conditions of the FWA since no promise or assurance was made by the Government to extend such benefit to the contractors and sub-contractors who are working under the assessee-company. It is restricted only to the assessee-company and its affiliates as defined under clause 1.2 of the FWA. Admittedly, appellant No. 4 is not an affiliate of the assessee-company and is not entitled for any tax concession or tax holiday or incentive as provided under clause 1.2 of

the FWA.

17. The main arguments advanced by the learned counsel appearing for the State is that under the KST regime, a general notification dated 1.8.1998 was issued by the Government of Karnataka exercising the powers under section 8-A of the KST Act exempting the tax payable by a dealer under section 5 of the KST Act on the sale of machinery and equipments worth more than Rs. 1 Crore in each individual sale invoice and on sale of construction material worth more than Rs. 25 lakhs in each sale invoice effected to a dealer undertaking an infrastructure project in the State or any other dealer authorized to execute the works in the said infrastructure project which is eligible for the benefit of tax concessions in terms of the Government Order dated 26.12.1997. Infrastructure project" is also defined as per the explanation to the said Notification. Another Notification No. HD.35.CSL.98[2] Bangalore dated 1.8.1998 was issued by the Government of Karnataka exercising the powers under section 8-A of the KST Act exempting the tax payable by a dealer, that is a contractor or a sub-contractor under sections 5-B , 6-B and 17[6] of the KST Act on turnover relating to transfer of property in goods involved in execution of works contract to a dealer undertaking an infrastructure project in terms of the Government Order dated 26.12.1997. These two Notifications are general notifications, not specifically issued to the assessee-company. Such notifications issued under the KST regime exempting the tax with respect to infrastructure project was extended from time to time till 13.1.2005. However, subsequent to the KVAT Act coming into force, no such power is vested with the State Government to extend tax concession, incentive and holidays to the dealers except as provided under sections 5[1] and 5[2] of the KVAT Act.

18. Our attention was drawn to the provisions of sections 5[1] and 5[2] of the KVAT Act, to emphasize that, section 5[1] of the KVAT Act provides for exemption only in respect of the goods and not to any class of persons and section 5[2] of the KVAT Act provides for exempting the new industrial units.

19. According to the learned counsel, the assessee-company is entitled to tax benefit as per section 5[2] of the KVAT Act i.e., the Government of Karnataka can only reimburse or refund the net tax paid by the assessee-company. As such, Government of Karnataka issued the Government Order dated 7.12.2011 extending the benefit of reimbursement or refund of taxes as envisaged in section 5[2] of the KVAT Act.

20. Learned counsel placed reliance on the Judgment of Andhra Pradesh and Telangana in the case of Krishnapatnam Port Company Ltd. Vs. The Govt. of A.P.--
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21. It is the arguments of the learned Counsel that though the FWA specifies for extending tax benefit/incentives/holidays, the exemption cannot be extended as provided under the KST regime, since no specific provision is available under the KVAT Act as that of the KST Act. In the absence of any power conferred on the

Government of Karnataka to extend exemption under the KVAT Act, the Government of Karnataka, in its wisdom, has taken a policy decision to reimburse the net value added tax paid by the assessee-company and the value added tax paid on purchase of goods made from local registered dealers for use in BMIC project, provided no input tax credit is claimed on the same which is in accordance with the provisions of the KVAT Act read with FWA, and as such prays for dismissal of the appeals and to relegate the assessee-company to avail the alternative statutory appeal, which is the efficacious remedy to challenge the re-assessment orders.

22. We have heard the learned Counsel appearing for the parties and we have given careful consideration to the points advanced at the Bar. We have also perused the terms and conditions of FWA along with the provisions of the KST Act and KVAT Act.

23. Sections 5(1) and 5(2) of the KVAT Act reads thus:

"5. Exemption of tax:

(1) Goods specified in the First Schedule and any other goods as may be specified by a notification by the State Government shall be exempt from the tax payable under this Act [subject to such restrictions and conditions as may be specified in the notification].

(2) [Notwithstanding anything contained in this Act, the Government may, in such circumstances and subject to such conditions as may be specified, by notification, and subject to such rules as may be prescribed, exempt the whole or any part of the tax payable for any period on sale of goods made to or made by a new industrial unit, in respect of which the Government has already notified exemption of tax under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), and such exemption on purchases or sales shall be by way of refund of tax collected on purchases or sales made by such industrial unit)."

24. Section 8-A of KST Act reads thus:

"8-A. Power of State Government to notify exemptions and reductions of tax.

(1) The State Government may, by notification, make an exemption, or reduction in rate, in respect of any tax payable under this Act,

(a) on the sale or purchase of any specified goods or class of goods, at all points in the series of sales by successive dealers; or

(b) by any specified class of persons, in regard to the whole or any part of their turnover; or

(c) on the sale or purchase of any specified class of goods by any specified class of dealers in regard to the whole or part of their turnover."

25. A conjoint reading of these two provisions under KST Act and KVAT Act

postulates that a specific provision was available under the KST Act to extend the exemption of taxes to the class of dealers, whereas, under Section 5(1) of the KVAT Act, goods specified in the first schedule and any other goods as may be specified by the State can be exempted from payment of tax. Section 5(2) of the KVAT Act provides for granting exemption to an industrial unit providing the tax benefit of reimbursement of the net tax paid by a new industrial unit. However, the learned Government Advocate has vehemently contended that Section 5(2) of the KVAT Act is attracted in the present case, the assessee-Company being a new industrial unit. We are not inclined to accept this argument advanced by the State. The assessee-company is declared as a unit carrying on the infrastructure project from 18.01.1999 as per the certificate issued by the Karnataka Government Secretariat, Public Works Department. There is no definition clause of "New of Industrial Unit" neither in the notification dated 1.8.1998 nor in the Government Order dated 7.12.2011. We cannot construe the Assessee-company as a "New Industrial Unit" to which the tax benefit under the KST Act was extended, it was for the infrastructure project in terms of Government Order dated 26.12.1997. It is also made clear in the notification dated 1.8.1998 that the dealer undertaking an infrastructure project shall obtain and produce a certificate issued by the Infrastructure Development Department of Government of Karnataka or its authorized nominee certifying that the project is recognized by the Infrastructure Development Department in terms of the Government Order No. IDD/1UIP/97-Bangalore dated 26.12.1997. Thus, by no stretch of imagination, the assessee-company could be construed as a new industrial unit to attract the provisions of Section 5(2) of the KVAT Act. Accordingly, the arguments advanced by the State that the assessee-company is only entitled to the reimbursement of net value added tax paid during the KVAT regime, requires to be negated.

26. Now, we have to examine whether Section 5(1) of KVAT Act, is applicable to the facts of the case and the Government of Karnataka is bound by the promises/assurance made by the FWA?

27. In pursuance to the FWA dated 3.4.1997, though general notifications were issued under the KST Act exempting the tax payable by a dealer on the sale of machinery, equipments and construction material to a dealer undertaking an infrastructure project within the State, no such exemption notification was issued under the KVAT Act on a wrong assumption that no such power is vested with the State Government to issue exemption notification to a dealer or class of persons, misconstruing the original notification issued under the KST Act in exercise of the powers under section 8-A of the KST Act to a notification issued in respect of class of dealers, though it was specifically on the sale of goods i.e., machinery, equipments and construction material. On the repeated requests and representations made by the appellant No. 1, Government Order dated 7.12.2011 is issued by the Government extending the benefit of reimbursement or refund of tax as envisaged in section 5[2] of the KVAT Act. It is an admitted fact that the appellant No. 1 has set up its establishment subsequent to the FWA

dated 3.4.1997 on the assurance of certain benefits which were to be extended to the appellant No. 1 and its affiliates.

28. It is the specific case of the Revenue that State Government is not empowered to grant exemption or reduction in rate in respect of any tax payable under the KVAT Act on the sale or purchase of any specified goods by any specified class of dealers. A reading of Section 5(1) of the KVAT Act postulates that goods specified in the First Schedule and any other goods that may be specified by a notification by the State Government would be exempt from the tax payable under the Act, subject to such conditions and restrictions, as may be specified in the notification. The Notification No. FD 35 CSL 98(1), Bangalore, dated 01.08.1998 was issued by the Government of Karnataka exercising the powers conferred under section 8-A of the KST Act exempting the tax payable by a dealer on the sale of machinery and equipments and on the sale of construction material to a dealer undertaking an infrastructure project. The exemption that was granted under the KST regime by issuing notifications under section 8-A of the KST Act is in respect of the goods i.e., machinery, equipments and construction material, granting of exemption is subject to the sale effected to a dealer undertaking an infrastructure project. Such power of granting exemption is very well embedded in the latter portion of Section 5(1) of the KVAT Act, which specifics granting of exemption "subject to such restrictions and conditions as may be specified in the notifications". Hence, State Government is empowered to grant exemption under section 5(1) of the KVAT Act on the sale of machinery, equipments and construction material to a dealer undertaking an infrastructure project. State cannot contend that it has no power to exempt the dealer unlike KST Act. It is virtually exemption of tax on the goods, subject to certain restrictions and conditions.

29. An identical issue was before the Hon"ble Apex Court in the case of the "Orient Weaving Mills Private Limited cited supra, which examined the constitutional validity of Rule 8(1) of Central Excise Rules 1944. Rule 8(1) of Central Excise Rules, 1944 reads thus:

"Rule 8 - Power to authorize exemption from duty in special cases:

"(1) The Central Government may from time to time, by notification in the Official Gazette, exempt subject to such conditions as may be specified in the notification any excisable goods from the whole or any part of the duty leviable on such goods".

In pursuance of the powers conferred on the Central Government by Rule 8(1), Notification No. 74/59 dated: 31.07.1959 and Notification No. 70/60 dated: 10.04.1960 were issued exempting cotton fabrics produced by any co-operative society formed of owners of cotton power looms which was challenged on the ground that they exempt certain classes of persons and not classes of goods from the excise duty, the exemption if any, could have been granted in respect of any particular specified variety of cotton fabrics and not with reference to the

person producing the same variety of those fabrics. In that context it is held thus:

"9. It was next contended that even if it were held that R.8 is valid and constitutional, the notifications are bad in so far as they exempt certain classes of persons and not classes of goods from the excise duty. It is argued that the tax is a duty of excise on "any goods" and item 19 has reference to a particular variety of goods, namely, "cotton fabrics"; the exemption if any could have been granted in respect of any particular specified variety of cotton fabrics and not with reference to the persons producing the same variety of those fabrics. There is apparently a fallacy in this argument. The tax is on the production of any goods, but it is payable by persons producing such goods. The exemption also is with reference to such goods as come within the description of excisable goods. The respondent No. 5 has been exempted from payment of excise duty in respect of goods produced by the weavers. It has not been exempted from the payment of a personal tax, like Income Tax. The exemption must, therefore, have reference to the same kind of tax which would otherwise have been leviable but for the exemption. From the notifications set out above, it is manifest that the Government has exempted cotton fabrics produced on power-looms owned by a cooperative society, and in the present instance owned by the members of the Co-operative Society. It has not been contended before us that the conditions laid down for granting the exemption have not been fulfilled by the members of the Cooperative Society, the respondent No. 5. Hence, the exemption granted is within the terms of the notifications aforesaid, which have effect as if enacted as apart of the Statute. The vires of the Statute, as already indicated, has not been questioned."

Thus, it was held that Rule 8(1) of the Central Excise Rules, 1944, does not suffer from the vice of excessive delegation of power to exempt nor the notifications were bad in so far as they exempt certain classes of persons from the excise duty.

30. In the light of the said Judgment, we are of the considered opinion that the State is empowered to issue exemption notification to the appellant company on the sale of goods and cannot deny extending the exemption benefit agreed upon, on the pretext that it has no powers under KVAT Act to extend such exemption. The terms agreed in the FWA amounts to promissory estoppel.

31. Considering several Judgments of the Hon"ble Apex Court holding the field on the issue of doctrine of promissory estoppel, the Hon"ble Apex Court in the case of State of Punjab Vs. Nestle India Ltd. and Another, , has held thus:

"Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest". On the other hand, as was observed in Motilal Padampat Sugar Mills. case and approved in the

subsequent decisions:

"It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned:

the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel."

32. It is settled law that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires.

33. In the case of Nestle India Limited (*supra*), the facts before the Apex Court was relating to the provisions of Punjab General Sales Tax Act, 1948 wherein, the Government's decision to abolish purchase tax on milk was considered in the light of the Chief Minister, Council of Ministers and the Finance Department's decision to abolish purchase tax on milk with effect from 01.04.1996, the sales tax authorities having taken the consequential action of issuing circulars, consequently, the milk producers did not pay the purchase tax along with their returns for the year 1996-97 as required under the Rules framed under the Act. In that context, it is held though, the statutory provisions required exemption to be granted by notification, nevertheless, the Court having found that the essential pre-requisites for the operation of promissory estoppel had been established, directed the issuance of exemption notification considering the various Judgments of the Apex Court rendered on the issue of Doctrine of Promissory Estoppel. Thus, it is held that the Government having assured the exemption of purchase tax on milk for the upliftment of milk producers, it would, in the circumstances, be inequitable to allow the State Government to resile from its decision to exempt purchase tax on milk and demand purchase tax with retrospective effect from 01.04.1996 so that the respondents cannot in any event readjust the expenditure already made. This Judgment is squarely applicable to the facts of the present case.

34. In the given circumstances, the appellant No. 1 and its affiliates having set up their establishment on the promises/assurances made by the State Government of extending the tax benefits to the project, now cannot resile from its decision and demand the payment of taxes with retrospective effect from 1.4.2005, which was not made known to the respondents, to collect output taxes, thereafter to make the payment of the net tax after deducting the input tax as enumerated in the Government Order dated 7.12.2011. There is no bar under the scheme of the KVAT Act to deny the benefit of exemption as extended under the KST Act. It is only in the circumstances, where the promise or assurance made is contrary to law or is outside the authority or power of the Government or the statute, such promise or assurance cannot be enforced. In the event of there being no statutory prohibition, issuing the exemption notification under section 5[1] of the KVAT Act on the sale of goods, namely,

machinery, equipments and construction material to a particular dealer cannot to be construed as a notification issued for a class of persons ignoring the sale of goods. The doctrine of promissory estoppel is rightly applicable to the facts of the present case and the Government cannot resile from its promises or assurances of exempting the tax under the KVAT Act. In view of the Hon''ble Apex Court Judgment, the decision cited by the Revenue [State] is not applicable to the facts of the present case.

35. At this juncture, it is significant to note that admittedly, Appellant Company No. 4 is not an affiliate of the appellant company No. 1. As per the terms of FWA, the benefit of tax exemption is available only to the appellant company, and its affiliates. The Notification NO.FD 35 CSL 98(11) Bangalore dated 01.08.1998 was issued exercising the powers conferred under section 8-A of the KST Act exempting the tax payable by a contractor or subcontractor on the turnover relating to transfer of property in goods involved in execution of work contract to a dealer undertaking an infrastructure project subject to certain conditions which is a general notification, not specifically issued to the appellant-company or its affiliates. Appellant No. 4 would have availed the benefit of the said notification but the same cannot be compelled to be continued under KVAT Act unless it is an affiliate of the appellant-company, in terms of the FWA. Hence, the Appellant company No. 4 in whatever manner has no right to claim exemption on the strength of the FWA entered into between the Government of Karnataka and Appellant No. 1-company. The arguments advanced by the learned senior counsel on this issue requires to be negated. We cannot direct the State Government to issue any notification exempting the non-affiliates of the appellant company from the tax payable under the provisions of the KVAT Act in terms of FWA. The fourth appellant, if aggrieved by any assessment/reassessment order, has to take recourse of statutory appeal available under the KVAT Act.

36. For the foregoing reasons we pass the following:

"ORDER

a) Writ Appeals are allowed in part. The order passed by the learned single Judge in W.P. No. 49399/2014 & W.P. Nos. 52259-52401/2014 are set aside in so far as it relates to appellants No. 1 to 3.

b) Government Order No. FD.07.CET.09 dated 07.12.2011 is set aside.

c) State Government is directed to issue appropriate exemption notifications under section 5(1) of the KVAT Act on the sale of goods to/by the appellants No. 1 to 3 in terms of Framework Agreement dated: 03.04.1997.

d) Sub-contractors other than affiliates of appellant No. 1 executing works in the Bangalore Mysore Infrastructure Corridor Project (BMIC) project are not entitled to any tax exemption in terms of Framework Agreement (FWA) dated 3.4.1997.

[e] The challenge made by the appellant No. 4 to the assessment/re-assessment

orders is negated. It is open to the appellant No. 4 to take recourse to the statutory appeal provided under the KVAT Act.

[f] Re-assessment orders/rectification orders/penalty orders made in respect of appellant Nos. 2 and 3 at Annexures - T1 to T8 and Annexures - AA, AB, AE, AF are set aside and remanded back to the prescribed authority to re-do the assessment in the light of the observations made hereinabove."