

(2000) 12 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 572 of 2000

Oswal Fats and Oils

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 8
Constitution of India, 1950 — Article 5, 6, 7
General Insurance Business (Nationalization) Rules, 1973 — Rule 2(2)
Income Tax Act, 1961 — Section 30, 31, 32, 33, 34
Punjab General Sales Tax (Department and Exemption) Rules, 1991 — Rule 1(2)(3), 1(3), 12, 4, 4(1)
Punjab General Sales Tax Act, 1948 — Section 10A, 20, 27, 27(1), 30A

Citation : (2002) 128 STC 116

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rakesh Dwivedi, assisted by Vikas Suri, for the Appellant; Rupinder Khosla, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is a petition for issuance of a writ in the nature of mandamus directing the respondents to implement the Industrial Policy, 1996 and the Industrial Incentive Code, 1996 and grant sales tax deferment to the petitioner on the total production. The other prayer made in the petition is to direct the respondents to withdraw the notices issued to the petitioner for non-filing of the sales tax returns and to refund the excess sales tax deposited during the quarters ending in June, 1999 and September, 1999.

2. The petitioner is a company incorporated under the Companies Act, 1956. It is engaged in the manufacture of soaps, fatty oils, stearic acids, glycerine etc, In the year 1998, the petitioner made expansion at its existing factory in village Jaladiwal, Tehsil Rajkot, District Ludhiana by making fixed term investment of Rs.

1200.78 lacs, After expansion, the commercial production was started on 31st March, 1999. The General Manager, District Industries Centre, Ludhiana issued eligibility certificate dated 25th June, 1999 (Annexure P.6) to the petitioner entitling it to seek deferment of sales tax to the extent of Rs. 17.12 crores for a period extending over 7 years from 31st March, 1999. After getting the eligibility certificate, the petitioner submitted application dated 29th June, 1999 (Annexure P.7) to the Assistant Excise and Taxation Commissioner, Ward-IV, Ludhiana (respondent-No. 3) for grant of exemption certificate for sales tax deferment under the Industrial Incentive Code, 1996. For the next one year, a lot of correspondence was exchanged between the petitioner and the respondents on the modalities of sales tax deferment. While the petitioner was of the opinion that the benefit of sales tax deferment was available only on incremental production in terms of Rule 4(3) and (4) of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (hereinafter referred to as "the 1991 Rules") and not on the total production. Ultimately, certificate Annexure P.18 dated 3rd May, 2000 was issued by respondent No. 4 entitling the petitioner to claim deferment benefit to the tune of Rs. 17,12,31,000/-. This was super-imposed by D.O. letter No. 5(3)/2000-ET-II(12) dated 10th May, 2000 written by the Financial Commissioner, Excise and Taxation Department, Punjab to the Secretary, Industries and Commerce Department, Punjab vide which he opined that incentive under the Industrial Policy, 1996 was meant only for incremental production, i.e. on the capacity created by expansion of the unit.

3. In the meanwhile, the competent authority of the Department initiated proceedings against the petitioner on account of its alleged failure to file sales tax return and to pay tax in accordance with the provisions of the Punjab General Sales Tax Act, 1948 (for short, the 1948 Act) within the stipulated time. On 31st January, 2000, the petitioner submitted representation Annexure P.14 for extension of time for filing of the return. On 14th February, 2000, the petitioner filed return for the quarter ending 31st December, 1999 and deposited Rs. 5,10,729/- which was over the above the benefit of the sales tax deferment claimed by it under the Industrial Policy, 1996. The petitioner filed another return on 15th March, 2000 showing its liability to pay sales tax amounting to Rs. 5.8 lacs after subtracting Rs. 109.66 lacs by way of deferment under the 1991 Rules.

4. The petitioner challenged the proceedings initiated against it for alleged violation of the provisions of the 1948 Act and reluctance of the concerned authority to grant deferment certificate entitling it to claim exemption on total production by filing the present petition. During the pendency of the writ petition, the petitioner received copy of D.O. letter dated 10th May, 2000 written by the Financial Commissioner, Excise and Taxation Department, Punjab to the Secretary, Industries and Commerce Department, Punjab and, therefore, it sought leave to amend the writ petition which was granted by the Court.

5. The petitioner has averred that the refusal of the respondents to extend the benefit of sales tax deferment on total production is ultra vires to the Industrial

Policy, 1996 (hereinafter described as the 1996 Policy), the provisions contained in the rules titled as Punjab Industrial Incentive Code under the Industrial Policy, 1996 (hereinafter described as the Incentive Code, 1996), Section 10-A of the 1948 Act and Rule 4-B of the 1991 Rules. The petitioner has further averred that after having induced it to undertake expansion by making huge fixed capital investment in the light of the 1996 policy, the State Government and its functionaries cannot dilute or truncate the benefits promised at the time of promulgation of the policy."

6. In the written statement filed on behalf of the respondents, an objection has been raised to the maintainability of the writ petition on the ground of the petitioner's failure to avail the alternative remedy of appeal u/s 20 of the 1948 Act. On merits, it has been averred that the petitioner has been granted incentive in the form of deferment of tax on incremental production in terms of Rule 4(4) of the 1991 Rules. The respondents have relied on the decision Annexure RI taken in the meeting of the Officers' Committee on Fiscal Management held under the Chairmanship of the Chief Secretary, Punjab on 27th January, 2000 to maintain status quo in the matter of incentives based on incremental production. They have also relied on Form the filed by the petitioner's representative for grant of benefit under the 1991 Rules to show that the petitioner is not entitled to the benefit of deferment of tax on total production.

7. Shri Rakesh Dwivedi, Senior Advocate appearing for the petitioner referred to the new Industrial Policy, 1989 (hereinafter described as "the 1989 Policy"), rules framed for implementation of the said policy, the 1996 Policy and the rules framed for implementation thereof, Sections 10-A and 27 of the 1948 Act and the provisions of the 1991 Rules to show that the concept of incremental production ingrained in the 1989 Policy and the rules framed for its implementation had been deliberately omitted from the 1996 policy and the rules framed for its implementation and argued that in view of the non-obstante clause contained in Rule 4-B of the 1991 Rules, the respondents cannot insist on granting the benefit of deferment by applying the concept of incremental production embodied in Rule 4(3) and (4) of the 1991 Rules. He then argued that Rule 4(3) and (4) had been framed keeping in view of the provisions of the 1989 Policy and the same cannot be made applicable to the provisions contained in the Incentive Code, 1996. He then argued that Rule 4-B of the 1991 Rules overrides the provisions of Rules 4 and 4-A and, therefore, the applicability of the concept of incremental production must be treated as excluded in the cases of expansion undertaken after the announcement of the 1996 Policy. Another argument of the learned counsel is that after having induced the petitioner to make investment of over Rs. 12 crores by holding out a promise of sales tax deferment on total production, the State Government cannot apply the concept of incremental production and deprive it of the benefits admissible under the Incentive Code, 1996 read with Rule 4-B of the 1991 Rules.

8. Shri Rupinder Khosla, learned Deputy Advocate General, Punjab heavily relied on order dated 6th July, 2000 passed in Civil Writ Petition No. 12093 of 1999 - M/s. Jyoti Phoschem v. State of Punjab C.W.P. No. 12093 of 1999 and argued that the petitioner cannot get the benefit of exemption/deferment on total production. He further argued that the petitioner cannot invoke the doctrine of promissory estoppel/equitable estoppel because it will not suffer any injury by invoking the concept of incremental production for the purpose of grant of benefits under the 1991 Rules.

9. Before dealing with the arguments of the learned counsel, we consider it necessary and proper to notice the salient features of the two Industrial Policies, the provisions contained in the rules framed by the State Government for implementation of those policies and the provisions of the 1948 Act and the 1991 Rules.

10. The 1989 Policy was framed by the Government of Punjab to achieve the objective of providing conducive industrial environment, strengthening of infrastructure, identifying thrust areas, developing skills and encouraging entrepreneurship, for accelerating the rate of industrial development and generating employment opportunities, particularly for the educated unemployed rural youths. The Package of Incentives proposed to be given under the 1989 Policy was designed to attract the industries in the thrust area, like highly-technology and agro based sectors. For the purpose of implementing the scheme of incentives set out in the 1989 Policy, the President of India (at the relevant time, the State was under the President's rule) framed the rules called as Punjab Industrial Incentives Code under the Industrial Policy, 1989 (hereinafter described as "Incentive Code, 1989"). The same were notified vide notification No.4/15/89/41Bill/2929 dated 30th March, 1989. Simultaneously, the 1991 Rules were framed by the President of India in exercise of powers conferred upon the State Government u/s 27 read with Section 10-A and 30-A of the 1948 Act. In September, 1992, the State Government announced new package of incentives which was implemented to boost the growth of industries in the State. After four years, the State Government framed the 1996 Policy which was notified vide notification NO.15/43/96-651B/2238 dated the 20th March, 1996 and for giving effect to the said Policy, rules described as Incentive Code, 1996 were framed.

11. Para 4-A(II) and (IV) of the 1989 Policy, Rules 2.1, 2.2, 3.7, 3.10, 3.12, 6, 6.2 (relevant portion) of Incentive Code, 1989, para VI(iv), (v), (vii) of the 1996 Policy, Rules 2.5, 6.3(11) of the Incentive Code, 1996, Sections 10-A, 27(1) and 30-A of the 1948 Act and relevant portions of Rules 1(2), (3), 4(1), (3), (4), 4-A and 4-B of the 1991 Rules, which have been bearing on the decision of the writ petition, read as under:-

"Para 4(A)(II) and (IV) of the 1989 Policy.

4. Package of incentives detailed below, shall be admissible as per categorization contained in Annex I so as to ensure balanced industrial development.

(A) INCENTIVES

(I) *** ***(II) Sales Tax Incentives

State Sales Tax Exemption/Deferment shall be admissible in each category subject to maximum benefit to be regulated, as per Table given below:-

TABLE I

Category SSI (Backwardness)

Medium & Large

Time Limit

Maximum Limit

"A" 15% of FCI (Fixed Capital Investment)

125% of FCI (Fixed Capital Investment) production

9 years from the date of starting

6.00 crores

"B" 125% of FCI

00% of FCI the date of starting production

7 years from

4.50

"C" 100% of FCI

90% of FCI the date of starting production

5 years from

3.00 crores

Note: "The incentive of Sales Tax as allowed under this policy, will not be applicable to Electronic Units for which there is a separate policy".

(III) *** ***(IV) Sales Tax Exemption / Deferment for Expansion / Modernization / Diversification.

These incentives will be admissible to the following:-

(a) Units undergoing expansion;

(b) Units undergoing modernization;

(c) Units undergoing diversification.

*** ***(IV) Rules 2.1, 2.2, 3.7, 3.10, 3.12, 6, 6.2 (relevant portion) of Incentive Code, 1989.

2. Commencement and applicability.

2.1 These rules shall come into force with effect from the 1st day of April, 1989.

2.2 These rules shall be applicable to such of the units which come into production for the first time on or after the date of notification of the rules except in the case of generating set subsidy, eligibility criteria for which have been laid down in Rule 12 below.

3.7 "EXPANSION and/or MODERNIZATION" in relation to industrial unit shall mean additional fixed capital investment of not less than 25% over and above its existing fixed capital investment, resulting in atleast 25% increase in the existing installed capacity.

3.10 "FIXED CAPITAL INVESTMENT" means actual investments made on land, building, machinery and plant, by a new unit or additional fixed capital investment made by a unit undergoing expansion/modernization/diversification.

3.12 "INCREMENTAL PRODUCTION" in relation to expansion/modernization shall mean production over and above either the installed capacity or actual production before expansion/modernization, whichever is more:

Provided that certificates regarding actual production before implementation of expansion/modernization/diversification programme shall have to be obtained from either the Sales Tax authorities or Central Excise authorities while a certificate retarding actual pre-expansion installed capacity shall be valid only if it is issued, by an authority competent to register such units/projects.

6. Sales/Purchase Tax Exemption & Sales Tax Deferment.

6.2 Quantum of entitlement.

(1) Sales/Purchase Tax exemption or sales tax deferment shall be available to units in different growth areas subject to maximum benefits to be regulated as per Table I.

TABLE I

Maximum Benefit of Sales/Purchase Tax Exemption & Sales Tax Deferment.

GrowthArea/ Category

Small Scale Industry

Medium & Large

Total time limit within which concession shall be available.

No Industry Block

NIL

125% of FCI (Fixed Capital Investment) with a maximum of Rs. 8 crore (Only)

pioneer Units shall be eligible.

10 years

"B"

125% of FCI

100% of FCI (Fixed Capital Investment) with a maximum of Rs.4.5 crore.

7 years

*** ***

(3) The units undergoing expansion/modernization in terms of the definition against Rule 3.7 will be entitled to this concession only on incremental production, as defined in Rule 3.12.

(4) The expansion and/or modernization part shall be considered as an independent identity for the purpose of sales tax concession and industrial unit shall obtain a separate Sales Tax registration certificate for the additional capacity and incremental production, resulting from such expansion/modernization.

*** *** *** *** (6) An industrial unit shall have to opt for either sales tax exemption or sales tax deferment. Option once exercised shall be final.

Part VI (iv), (v) and (vii) of the 1996 Policy

VI. MODIFICATIONS IN THE PACKAGE OF INCENTIVES-1992

(iv) To make available additional working capital funds, units shall be given the option of deferment of sales tax or exemption. The period of deferment and financial limit shall, however, remain the same as for exemption.

(v) The amount of sales tax collected and retained by the units under this scheme shall be made repayable in three equal annual instalments after 10 or 7 years from the date of commencement of benefit as per applicability.

*** *** *** *** (vii) To encourage the growth of existing industrial units, benefit of investment incentive and sales tax concession shall be allowed on

expansion, provided the fixed capital investment (FCI) is increased at least by 50% or the installed capacity as recorded in the industrial licence/certificate of the department of industry is increased minimum by 50%.

*** ** Rules 2.5, 6.3(11) of Incentive Code, 1996

2.5. "Expansion" means at least 50% increase in the installed capacity as recorded in the industrial licence/certificate of Department of Industries.

*** ** 6.3 Interest Subsidy or Sales Tax Deferment.

*** ** (II) Exemption from Sales Tax or Deferment of Sales Tax

(a) Eligibility:

Subject to provision of rule 5, exemption/deferment from Sales Tax shall be admissible to an industrial unit, registered as a dealer under Punjab General Sales Tax/Central Sales Tax Act, provided the unit has opted to avail Sales Tax exemption or deferment.

Existing small scale unit undergoing expansion in terms of Rule 2.5, shall also be subject to provision of Rule 5, eligible for Sales Tax exemption or deferment.

(b) Quantum of entitlement

For calculating the entitlement of the unit to Sales Tax exemption/deferment, Punjab Sales Tax, Central Sales Tax and Purchase Tax, wherever applicable shall be taken into account.

The amount of Sales Tax exemption/deferment to which a unit is entitled shall be calculated with reference to the following table:

Area/ Quantum of Total time limit within which concession Category benefit shall be available from the date of commencement of commercial production "A" 300% of FCI 120 months "B" 150% of FCI 84 months In case of expansion, the quantum of benefit shall be worked out on additional fixed capital investment made for expansion.

The amount of Sales Tax collected and retained by the unit under the deferment scheme shall be repaid by the unit to the Sales Tax Department in three equal annual instalments in the 11th, 12th and 13th years of 8th, 9th and 10th year from the date of commencement of benefit as per applicability.

*** ** Sections 10-A, 27(1) and 30-A of the 1948 Act.

10-A. Deferment of Tax - Notwithstanding anything to the contrary contained in this Act, the State Government, if satisfied that it is necessary or expedient so to do in the interests of industrial development of the State, may defer the payment of tax due against such class of industries for such period, either prospectively or retrospectively and subject to such conditions, as may be prescribed.

27. Power to make rules. - (1) The State Government may, subject to the

condition of previous publication, make rules for carrying out the purposes of this Act.

(2) *** ** 30-A Power to exempt certain class of industries.-The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period and subject to such conditions, as may be prescribed:

Provided that in the case of industries which came into production for the first time on or after the first day of April, 1989, or wherein modernization, expansion or diversification has been carried out in accordance with the Industrial Policy, 1989, the Government may exempt such industries from the payment of tax with effect from the first day of April, 1989, subject to such conditions as may be prescribed:

Provided further that in the case of industries which came into production for the first time after the 24th day of June, 1991, or wherein expansion, modernization or diversification has been carried out in accordance with the Electronic Policy, 1991, the Government may exempt such industries from the payment of tax with effect from the 24th day of June, 1991, subject to such conditions as may be prescribed.

Explanation.- for the purpose of this section:-

(i) "The Industrial Policy, 1989" shall mean the industrial policy of 1989 notified by the Government of Punjab in the Department of Industries, as amended from time to time.

(ii) "The Electronics Policy, 1991", shall mean the electronic policy of 1991 notified by the Government of Punjab in the Department of Industries, as amended from time to time.

*** **

Rules 1(2), (3), 4(1), (3), (4), 4-A and 4-B of the 1991 Rules.

1. Short title, commencement and application.*-(1)***

*** ** (2) They shall be deemed to have come into force on or with effect from the 1st day of April, 1989.

(3) They shall apply to the units which came into production for the first time, on or after the first day of April, 1989 or (on or after the first day of October, 1992) or (on or after the first day of April, 1996) or where in modernization, expansion or diversification, in terms of the Industrial Policy is carried out and to the units which came into production for the first time after 24th day of June, 1991 or wherein modernization, expansion or diversification is carried out in accordance with the Electronics Policy, 1991.

*** ** 4. Quantum of entitlement.-(1) The deferment of, or exemption

form, the liability to pay tax under the Act, shall be available with regard to group of industries subject to the maximum benefits as per Table given below:-

Sr No.

Group of Industries

To small scale industries

To medium & large scale

Total lime limit within which concession will be available

1

2

3

4

5

1.

"A"

One hundred and fifty percent of the fixed capital investment.

One hundred and twenty five percent of the fixed capital investment subject to a maximum of six crores of rupees.

One hundred and eight months from the date of the production starts. Provided that in the case of the units located in Goindwal industrial Complex, (he period shall be one hundred and twenty months commencing from the date the production starts.

2.

"B"

One hundred and twenty five percent of the fixed capital investment.

Hundred percent of the fixed capital investment subject to a maximum of four and a half crores of rupees.

Eighty four months from the date the production starts.

3.

"C"

One hundred percent of the fixed capital investment.

Ninety percent of the fixed capital investment subject to a maximum of three crores of rupees.

Sixty months from the date the production starts.

Provided that the electronic units which came into production on or after the 24th day of June, 1991 shall be eligible for deferment of and exemption from the liability to pay tax under the Act for a period of ten years from the date of their coming into production for the first time, in the State of Punjab.

Note:- The period specified in Sub-rule (1) for availing the benefit of deferment of, or exemption from the liability to pay tax shall be reckoned from the date of commencement of production by a unit.

(3) The units undergoing expansion or modernization shall be entitled to the benefit under Sub-rule (1) on incremental production.

(4) The expansion or modernization or both parts of unit shall be taken into account for the purpose of determining the deferment of, or exemption from, the liability to pay tax under the Act:

Provided that a separate account for the additional and, incremental production resulting from such expansion or modernization or both is maintained.

Explanation.-"Incremental Production" in relation to expansion or modernization shall mean production over and above either the installed capacity or actual production before expansion or modernization, whichever is more.

4-A. (1) Notwithstanding anything contained in any other provision of these rules, and subject to the provisions of sub- rule (2):-

(i) Group of Industries which are set up in "A" category area on or after the first day of October, 1992 and the goods produced by them shall be exempt from the payment of sales tax for a period of ten years commencing from the date of production for the first time in the State of Punjab, subject to the condition that the total sales tax exemption shall not exceed 300 percent of their fixed capital investment.

*** ** (ii) Group of Industries which are set up in "B" category area excluding the units manufacturing items specified in Annexure II-A on or after the first day of October, 1992 or on or after the first day of April, 1996 shall be exempt from the payment of sales tax for a period of seven years commencing from the date of production for the first time in the State of Punjab subject to the condition that the total sales tax exemption shall not exceed 150% of their fixed

capital investment.

(iii) the units which are set up in any of the categories of areas manufacturing the goods specified in Annexure II-D, shall be eligible for such deferment or exemption, as is permissible to the units located in "A" category areas for the period of ten years from the date of commencement of production by the units.

(2) A unit which qualifies for the various incentives, both under the Industrial Policy of 1989 or the industrial Policy of 1992, as notified by the Department of Industries, and has exercised its option to be covered under either of the aforesaid two policies by the first day of April, 1993 would be governed by the policy for which it has exercised its option:

PROVIDED THAT no such option shall be available if a unit has already availed of any of the incentives, partially or fully, under the Industrial Policy of 1989.

4-B (1) Notwithstanding anything contained in Rule 4-A and subject to the provisions of Sub-rule (2), the following clauses shall be inserted, namely:-

(i) Group of industries which are set up in "A" category area on or after the 1st day of April, 1996, and the goods produced by them shall be eligible for the grant of benefit, at their option, deferment of, or, exemption from, the liability to pay tax under the Act, for a period of ten years commencing from the date of production for the first time in the State of Punjab, subject to the condition that the total amount of tax deferred or exempted shall not exceed three hundred percent of their fixed capital investment.

PROVIDED THAT the units and goods specified in Annexure II-D shall be eligible for incentive which are available to the units located in "A" category area, respective of the area throughout the State of Punjab.

*** ** (ii) Group of Industries which are set in "B" category area on or after the 1st day of April, 1996 and the goods produced by them shall be eligible for the grant of benefit, at their option, of deferment or exemption from the liability to pay tax under the Act, for a period of seven years commencing from the date of production for the first time in the State of PUT, ab subject to the condition that the total amount of tax deferred or exempted shall not exceed one hundred and fifty percent of their fixed capital investment.

(2) A unit which qualifies for various incentives both under the Industrial Policy, 1992 or under the Industrial Policy, 1996 as notified by the Department of Industries, Punjab had exercised its option to be covered under either of the aforesaid two policies by the 30th day of September, 1996 would be governed by the policy for which it has exercised option."

12. An analysis of the above extracted portions of the two Industrial Policies, the provisions of the Rules framed for implementation thereof, the provisions of the 1948 Act and the 1991 Rules shows that with a view to achieve the objective of rapid industrialisation of the State and the consequential creation of job

opportunities for unemployed youth, the State Government gave incentives to the new entrepreneurs and also to the existing industries in the form of capital subsidy, exemption or deferment of the sales tax etc. Section 10-A which begins with a non-obstante clause, empowers the State Government to defer the payment of tax by the particular class of industries in the interest of industrial development of the State and Section 30-A which empowers the State Government to grant exemption from payment of tax to the particular class of industries, were inserted in the 1948 Act w.e.f. 19th March, 1990 vide Punjab Act No. 3 of 1990. Provisos and Explanations were inserted in Section 30-A vide Ordinance No. 4 of 1992 (which was replaced by Act No. 1 of 1993) in the light of the 1989 Policy and Electronics Policy, 1991. The 1991 Rules were framed by the President of India u/s 27 read with Sections 10-A and 30-A of the 1948 Act with a view to regulate the deferment and exemption of payment of tax envisaged by the 1989 Policy. Later on these rules were amended keeping in view the provisions of Package of Incentives, 1992 and the 1996 Policy. The incentives in the form of sales tax exemption/deferment for expansion/modernization of the existing industry envisaged in the 1989 Policy was to be given on incremental production as defined in Rule 3.12 of the Incentive Code, 1989. For this purpose, expansion and/or modernization part of the existing industry was considered as an independent identity by virtue of Rule 6.2(4) of Incentive Code, 1989. Under that rule, the industrial unit was required to obtain separate sales tax registration certificate for the additional capacity and incremental production resulting from such expansion/modernization. This was also unequivocally reflected in the 1991 Rules which were brought into force w.e.f. 1st April, 1989 and made applicable to the units which came into production on or after 1st April, 1989. Rule 4(3) and (4) read with Explanation appearing below Rule 4(4) provided for grant of benefit under sub-rule (1) thereof on the basis of incremental production. Later on, Rule 1(3) was amended vide notification No. GSR.../97 dated 22nd May, 1997 w.e.f. 1st April, 1996 so as to make it applicable to the units which came into production on or after 1st day of October, 1992 and 1st April, 1996 respectively. Rule 4-A which begins with a non- obstante clause was also inserted vide notification dated 29th September, 1992 with a view to extend the benefit of deferment /exemption to the units coming into production on or after 1st day of October, 1992. The 1996 Policy made a clear departure from the 1989 Policy in the matter of grant of incentives in the form of sales tax deferment/exemption in-as-much as the concept of incremental production was omitted from the said policy and the Incentive code, 1996. Instead, the new concept of giving benefit of additional fixed capital investment was introduced. A corresponding change was also made in the 1991 Rules by inserting Rule 4-B w.e.f. 1st April, 1996 vide notification dated 27th May, 1996. This rule also begins with non-obstante clause and Clause (ii) of Sub-rule (I) thereof lays down that group of industries which are set up in B-category area (the petitioner falls in this category) on or after 1st April, 1996 and the goods produced by them shall be eligible for grant of the benefit, at their option, of deferment of, or, exemption from the liability to pay tax under the 1948 Act

for a period of 7 years commencing from the date of production subject to the condition that total amount of tax deferred or exempted shall not exceed 150% of their fixed capital investment.

13. We shall now deal with the petitioner's claim that it is entitled to the sales tax deferment on total production and the respondents cannot restrict it by applying the concept of incremental production envisaged under the Incentive Code, 1989 and Rule 4(3) and (4) of the 1991 Rules. A comparison of the 1996 Policy with the 1989 Policy shows that the 1996 Policy was framed to accelerate the level of growth, to attract fresh investment and also to facilitate the expansion of the existing industries. With this end in view, the package of the special incentives was devised. The most notable change made in the 1996 Policy which was implemented by framing the rules in the form of Incentive Code, 1996 was to drop the concept of incremental production and introduction of benefit based on additional fixed capital investment for expansion. This change was also incorporated in the 1991 Rules by inserting Rule 4-B.

14. A conjoint reading of Rules 1(2) & (3), 4(3) & (4), 4-A and 4-B of the 1991 Rules makes it clear that while the concept of incremental production was adopted for giving benefit of sales tax deferment/exemption envisaged by the 1989 Policy and the Incentive Code, 1989, the same was replaced by the concept of giving benefit in the form of sales tax deferment on the fixed capital investment under the 1996 Policy read with the Incentive Code, 1996. The use of expression "notwithstanding anything contained in any other provisions of these rules in Rule 4-A(I) is clearly indicative of the intention of the rule-making authority not to invoke the concept of incremental production for grant of benefit of the incentives under the Package of 1992. The use of expression "notwithstanding anything contained in Rule 4-A and subject to the provision of Sub-rule (2)" in Rule 4-b and the language of Clauses (i)(a) and (ii) of Sub-rule (1) of Rule 4-B show that the benefit of exemption to the industries set up in A-category area and B-category area on or after 1st day of April, 1996 was made relatable to the fixed capital investment and not on the basis of incremental production. Therefore, the decision taken by the respondents to grant benefit of sales tax deferment to the petitioner by applying the concept of incremental production is liable to be declared ultra vires to the scheme of the 1996 Policy, the Incentive Code, 1996 and Rule 4-B(I)(ii) of the 1991 Rules.

15. The effect of a non-obstante clause in a statute was considered by the Constitution Bench of the Supreme Court in *Kulathil Mammu Vs. The State of Kerala*, in the context of Articles 6 and 7 of the Constitution of India. The facts of that case were that one Aboobacker, who was born on 5th March, 1936 in District Kozhikode, left India some time in 1948. He remained in Pakistan till 1954. In September, 1954, he came to India on Pakistani Passport. Between November, 1954 and October, 1964, he off and on went back to Pakistan and came to India. In 1964, he was found living in District Kozhikode without valid travel documents. He was arrested. Writ petition filed on his behalf challenging his

arrest was dismissed by Kerala High Court which held that Aboobacker will be deemed to have migrated to Pakistan within the meaning of Article 7 of the Constitution of India and thus, was a foreigner. While upholding the decision of the High Court, the majority of the Supreme Court referred to the non-obstante clauses contained in Articles 6 and 7 and held as under: -

"Article 6 begins with the words "notwithstanding anything in article 5" and Article 7 begins with the words "notwithstanding anything in Articles. Articles clearly indicates that they were meant to deal with the abnormal situation and prescribe conditions as to who shall be deemed to be citizens of India on the date of the commencement of the Constitution (Article 6) and who shall not be so deemed (Article 7). It is also remarkable that both these articles are silent on the question of domicile and the presence of the non obstante clause in the beginning of these Articles clearly shows that the concept of domicile was not to be brought into them when deciding who shall be deemed citizens of India (Article 6) or who shall not be deemed to be citizens of India (Article 7). Therefore, the Constitution makers did not intend that the concept of domicile should be brought into Articles 6 and 7 notwithstanding that such concept was present in Article 5 which provides for the normal case of citizenship of India. In this situation it is clear that when Article 6 as well as article 7 use the word "migrated", the intention must have been to give the wider meaning to that word, namely, going from one territory to the other." (Underlining is ours).

16. In General Insurance Corporation of India Vs. Commissioner of Income Tax, Bombay, a Division Bench of the Supreme Court considered the question as to whether the amount set apart by General Insurance Corporation for redemption of preference shares can be added back for computing profits and gains of business. The facts of that case show that the appellant-Corporation was formed as a Government company under the General Insurance Business (Nationalization) Act, 1972. It carries on general insurance business in India. At the time of nationalization, the then existing private companies which were carrying on the business of general insurance merged together in four subsidiaries of the appellant Corporation. The Central Government contributed to the capital of the appellant in the form of preference shares and equity shares for the purpose of paying compensation to the shareholders and the management of the merged companies. The preference shares were to be redeemed in such time as the Board of Directors of the appellant Corporation might deem fit. In profit and loss account for assessment year 1977-78, the appellant assessee made a debit entry of a certain amount and, in accordance with Rule 2(2)(a) of the General Insurance Business (Nationalization) Rules, 1973 (for short "GIB Rules") transferred the same to the preference share capital redemption account. The ITO added back that amount to the income of the assessee on the reasoning that in view of Rule 2(a) of the GIB Rules this amount was to be treated as revenue expenditure. The High Court upheld the action of the Revenue. While allowing the appeal of the Corporation, the Supreme Court held as under: -

"The sum set apart as provision for redemption of preference shares could not have been treated as an expenditure. It is also not an expenditure or allowance of the nature covered by Sections 30 to 43-A of the IT Act, 1961. The question of determining its admissibility by reference to Rule 5(a) of the First Schedule to the Income Tax Act, 1961 does not arise nor could it have been added back by the assessing authority by purporting to exercise power under the said rule. The object of GIB Rules is quite different. The concept behind Rule 2(2)(a) of the GIB Rules is to permit the Corporation to enter the amount of reserve in the profit and loss account in the expenditure side which would not have been permissible otherwise because the amount set apart in a reserve cannot be expenditure. The rule puts a stamp of permissibility on something not permissible otherwise. This rule itself is suggestive of the fact that the amount set apart in a reserve is not an expenditure in its commercial sense. The extent of the GIB Rules does not go beyond providing an accounting method. These rules cannot be pressed into service for altering the basic character of the amount which is not expenditure.

The object of Rule 2(2Xa) is to reduce the amount of profit of the Corporation by the amount set apart as reserve by artificially treating the amount of reserve as an item in the expenditure column. If the same amount was allowed to be added back to profits under Rule 5(a) of the First Schedule to the IT Act then the object sought to be achieved by Rule 2(2) (a) above said is defeated. The non obstante clause with which Section 44 of the IT Act opens and gives it an overriding clause with which Section 44 of the IT Act would earn an overriding effect on the provisions of another enactment also though Parliament has not chosen to give Section 44 of IT Act such an effect. Nor does Rule 2(2)(a) of the GIB Rules have an overriding effect on the provisions of the IT Act. The two provisions contained in the two enactments have thus different purposes to achieve. The rule of harmonious construction would there sustain neither what the Income Tax Officer did nor the view of the law taken by the High Court." (Underlining is ours)

17. By applying the propositions laid down in the aforementioned decisions to the facts of this case, we hold that non obstante clause contained in Rule 4-B(I) overrides the provisions contained only in Rule 4-A, but also in Rule 4(3) and (4) of the 1991 Rules and, therefore, the concept of incremental production cannot be invoked for granting benefit of sales tax deferment to an industrial unit, like the petitioner which undertook expansion after 1st April, 1996.

18. The argument of the learned Deputy Advocate General that Rule 4(3) and (4) should be read as part of Rule 4-B because the non obstante clause contained in Sub-rule (1) of Rule 4-B is worded differently than the non obstante clause used in Rule 4-A appears to be attractive in the first blush, but lacks merit and deserves to be rejected. In this context, it is important to bear in mind that Rule 4-A was inserted vide notification dated 29th September, 1992 for the purpose of giving effect to package of incentives announced by the Government in September, 1992 and by incorporating non obstante clause in it, the rule making authority had made it clear that the benefit available under the package of the

incentives will not be restricted by applying the concept of increment production. Rule 4-B, as observed above, was inserted for giving effect to the 1996 Policy and the rules contained in the Incentive Code, 1996. Therefore, the non obstante clause used in Sub-rule (1) of Rule 4-B will have the effect of overriding the provisions of Rule 4-A as also Rule 4(3) and (4) and being later in point of time, it would prevail over all other provisions of the 1991 Rules.

19. The issue deserves to be considered from another angle. It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver.

20. If the aforementioned principles of construction are applied for interpreting the provisions referred to hereinabove, we do not find any justification to read the concept of incremental production in the 1996 Policy, the Incentive Code, 1996 and Rule 4-B(I) of the 1991 Rules because there is no ambiguity in these provisions.

21. In *Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others*, the Supreme Court considered the claim made by the appellant for exemption from excise duty in terms of notifications issued u/s 8 of the Central Excise and Salt Act, 1944 granting exemption from excise duty in respect of cotton fabrics cooperative society in pursuance of the agreement entered into with it. The Excise Authorities rejected the plea of the appellant on the ground that the exemption under the notifications could be claimed only qua the cotton fabrics manufactured by the cooperative society for itself. While rejecting the plea of the department, their Lordships observed as under:-

"It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in *Salomon v. Solomon and Company*. 1897 AC 22 :

"Intention of the legislature is a common but very slippery phrase, which popularly understood may signify anything from intention embodied in positive

enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law of Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

22. In *State of M.P. v. G.s. Dall and Flour Mills* 1999 (1) Supp. S.C.C. 150 a three Judges Bench relied on the proposition laid down in *Hans Raj Gordhan Dass*'s case (supra) in the context of notification dated 23rd October, 1981 issued u/s 12 of the M.P. Sales Tax Act granting concession in payment of sales tax by new industrial units and held as under;-

"Prima facie the Director of Industries cannot refuse the exemption certificate on a consideration not specified in the notification. All the conditions for exemption have to be, and are, set out in the notification itself and all that the Director of Industries has to do is to satisfy himself that those conditions are fulfilled; he cannot travel beyond the terms of the notification. He can see whether the dealer falls under the description in column (1), whether he has set up a new industry in M.P. State, whether he has commenced production after 1st April, 1981 and whether he has opted for the deferment scheme. The condition about the dealer filing returns regularly would seem to be one under the purview of the Sales Tax Officer rather than one under that of the Director of Industries. If these conditions are fulfilled, the exemption certificate will have to be granted.

The provisions of the earlier schemes cannot be read into the notification in question. An applicant who fulfills the terms of the notification cannot be denied the eligibility certificate merely because under the previously prevalent schemes, an eligibility certificate could not be issued to "traditional industries". An interpretation to the contrary would amount to substituting, for the word "dealers" in column (1) of the notification the words "dealers other than those carrying on traditional industries". Such an interpretation virtually amounts to allowing certain executive instructions issued in a different context to cut down the scope of a statutory notification. This cannot be done. The earlier specifically provided that "traditional industries" were outside their purview. The language of the notification, which is a piece of subsequent legislation, is silent about this. This is itself indicative of a legislative intent to widen the scope of relief and grant exemption to traditional industries as well. For granting a certificate that the applicant is eligible for exemption under the notification, the director has to look to the conditions set out in the notification and now/here also. Moreover, it appears from the earlier schemes that the concept of traditional industries is a vague one. Therefore, it is not permissible to restrict the scope of the notification in the manner suggested."

23. In *M/s. Gujarat State Fertilizers Co. Vs. Collector of Central Excise*, a Division Bench of the Supreme Court considered the appellant's claim for levy of concessional rates of excise duty on naphtha and total exemption from excise duty on Amonia by virtue of exemption notification Nos. 75 of 1984 dated 1st

March, 1984 and 40 of 1985 dated 13th March, 1985 respectively issued under Rule 8(1) of the Central Excise Rules, 1944. Its claim was rejected by the CEGAT. It was contended on behalf of the revenue that final product i.e. Melamine was not a fertilizer at all and, therefore, intermediate product used as input to manufacture the same in that continuous process cannot earn any concession or exemption from duty. It was further contended that the object underlying exemption notification was only to benefit the fertilizer by making soil fertilizer cheaper and, therefore, raw naphtha used for manufacture of Ammonia which was utilised in manufacturing Molten Urea could not get the benefit of the soil fertilizer. While rejecting the contention of the Revenue, the Supreme Court relied on the proposition laid down in Ham Raj Goverdhan Dass's case (supra) and held as under:-

"Exemption Notification No. 75 of 1984 provides that raw naphtha utilised for manufacture of fertilizers and ammonia would attract the concessional rate of duty. Admittedly raw naphtha which the appellant purchased from the open market was utilised by it in the manufacture of ammonia even leaving aside the further question as to whether it was utilised for manufacture of any fertilizer. Therefore, the CEGAT erred in holding that because ammonia manufactured out of raw naphtha had resulted in molten urea which was not a soil fertilizer, the benefit of the aforesaid notification could not be made available to the appellant. The moment it was shown that raw naphtha was wholly utilised by the appellant for manufacturing ammonia, the condition laid down by the appellant for manufacturing ammonia, the condition laid down in column (4) of the notification got fully satisfied. However, in the instant case raw naphtha can also be said to have been utilised in manufacturing molten urea which is a chemical fertilizer covered by the term "fertilizer" as employed by this very condition in column (4). Thus this condition can be said to have been fully complied with by the appellant.

*** ** In view of the express language of the notification, it is not possible to uphold the Revenue's contention that the spirit of the notification was to give the benefit only to soil fertilizers as final product which could be utilised by the cultivator in agriculture. The scope and ambit of the said notification could not be curtailed on the basis of the supposed latent intention underlying the said notification."

24. The claim of the petitioner deserves to be examined from yet another angle. Section 10-A of the 1948 Act, which begins with non obstante clause, empowers the State Government to defer payment of tax due from any class of industries in the interest of industrial development. Such deferment would be for the specified period and subject to such conditions as may be prescribed by the Government. Notification dated 1st June, 1996 prescribes the period and the conditions subject to which the benefit of deferment can be granted. Rule 4-B(I) also begins with non obstante clause. Therefore, the provisions of Rule 4-B and the latter cannot destroy or whittle down the benefit of deferment incentive available under notification dated 1st June, 1996. If Rule 4(3) and (4) read as

part of the 1996 Policy and the Incentive Code, 1996, then it would result in restricting the benefit of deferment available under the 1996 Policy and this would be contrary to the policy approved by the Council of Ministers.

25. We are further of the view that the decision taken in the Officers Committee constituted by the Government to oversee implementation of the 1996 Policy can not be read as having the effect of amending the statutory rules framed by the Government u/s 27 read with Sections 10-A and 30-A of the 1948 Act. Likewise, D.O. Letter sent by the Financial Commissioner, Excise and Taxations Department, Punjab to the Secretary, Industries and Commerce department, Punjab cannot be used for depriving the petitioner of the right acquired by it to get sales tax deferment in accordance with the 1996 Policy read with the provisions of the Incentive Code, 1996 and Rule 4-B(I) of the 1991 Rules.

26. In so far as the judgment of C.W.P. No. 12093 of 1999 is concerned, it is sufficient to observe that the same had been decided by the Court without considering the provisions of the two Industries Policies and their effect and Rules 4-A and 4-B of the 1991 Rules. Therefore, the same cannot be treated as a precedent for depriving the petitioner of the right acquired by it under the 1996 Policy read with the rules contained in the Incentive Code, 1996 and Rule 4-B of the 1991 Rules. Rather, we are of the considered view that in the light of the discussion made hereinabove, the same would require review by the Court suo motu.

27. In view of the above conclusion, we do not consider it necessary to decide the petitioners' plea of promissory/equitable estoppel.

28. As regards the preliminary objection taken in the written statement of the respondents to the maintainability of the writ petition, it is sufficient to observe that no argument on this score was advanced by the learned Deputy Advocate General. Even otherwise, we do not find any merit in the same because the appellate authority constituted under the 1948 Act could not have decided the matter uninfluenced by the decision taken by the Officers' Committee.

29. For the reasons mentioned above, the writ petition is allowed. It is declared that the petitioner is entitled to the benefit of sales tax deferment in terms of Rule 4-B(I) of the 1991 Rules on total production. Accordingly, respondent No. 3 is directed to issue fresh sales tax deferment certificate and extend the benefit available to the petitioner under Rule 4-B(1)(ii) without applying the concept of incremental production. The punitive action taken against the petitioner for non-filing the returns of sales tax is declared illegal and quashed. The excess sales tax, if any, paid by the petitioner shall be adjusted towards its future liability under the 1948 Act.

sd/- Nirmal Singh, J.