
(2009) 09 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3574 of 2000

Shakti Tubes Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Citation : (2009) 09 PAT CK 0020

Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to set aside the order dated 7.3.2000 (Annexure 5), passed by the Commercial Tax Tribunal, Bihar, Patna, in Revision Case No. PT -193/99 (Shakti Tubes Ltd. v. State of Bihar), whereby the order passed by the authorities under the provisions of the Bihar Finance Act (hereinafter referred to as "the Act"), has been upheld, and it has been held that the petitioner is not entitled to the benefit of exemption from payment of purchase tax on raw materials used for manufacture of the products to the extent of sales effected by the petitioner outside the State of Bihar by stock transfer, in terms of the Industrial Incentive Policy 1993. It relates to the assessment year 1994-95.

2. A brief statement of facts essential for the disposal of the writ petition may be indicated. The petitioner is a Private Limited Company, incorporated under the provisions of the Companies Act 1956, and has set up a steel plant at Hajipur, district Vaishali. The State Government had issued its industrial policy for rapid growth of industries in the State of Bihar, whereby incentives were given to entrepreneurs to set up industrial units in the State of Bihar, vide its resolution No. 13730, dated 1.9.1986, which was extended upto 1993, by various orders of the State Government. The State Government noticed that the desired industrial growth had not been achieved in all the districts of the State. It was also felt that in the context of new Industrial Policy 1991 of the Central Government, and with the withdrawal of freight equalization policy, the incentives granted by the said industrial policy of the Bihar Government required new dimensions to achieve balanced industrial growth in a planned manner so that natural and human resources of the State are fully utilised and developed and the opportunities for

employment are progressively increased. With these objectives clearly stated in the preamble, the new Industrial Incentive Policy 1993 (hereinafter referred to as "the Industrial Policy"; Annexure 1) came to be issued, replacing the previous industrial policy. New incentives were granted to the entrepreneurs to promote industrial growth in the State. The same was approved by the Bihar Cabinet on 10.6.1993, and was enforced with effect from 1.4.1993 (Annexure 1). It is relevant to state that the petitioner company had already commenced production before 1.4.1993, and its capital investment was less than Rs. 15 crores.

3. In view of the provisions of Section 7(3)(b) of the Act, and in purported exercise of powers under Paragraph 10.5 read with the provision of Paragraph 10.4 of the 1993 Industrial Policy, the State Government issued S.O. No. 95, dated 4.4.1994 (Annexure 2), along with the forms appended thereto, purporting to impose certain restrictions on the grant of industrial incentives. We shall confine ourselves to the restrictions in so far as relevant in the present context. It is further relevant to state that the State Government in the Department of Commercial Taxes had issued certificate of exemption to the petitioner company on 29.9.1995 (Annexure 12), declaring therein that it shall be exempted from levy of sales tax and purchase tax on the items mentioned in Paragraph 4 therein.

4. The petitioner submitted its returns and, inter alia, in view of Clause 10.4 of the 1993 Policy, claimed the benefit of exemption from payment of purchase tax on raw materials used for manufacture of its products. The learned Assessing Officer, namely, the Deputy Commissioner of Commercial Taxes, Patna West Circle, passed the order of assessment on 15.7.1997 (Annexure 3), whereby he, inter alia, held that the petitioner is not entitled to the benefit of exemption from payment of purchase tax on the purchase of raw materials to the extent the finished products were sold outside the State of Bihar by stock transfer. Aggrieved by the order, the petitioner preferred revision application which was rejected by order dated 3.2.1999 (Annexure 4), passed by the learned Commissioner of Commercial Taxes in Revision Case No. CCS (S) 361 and 361 A/1997-98. Aggrieved by the same, the petitioner preferred second revision application before the Tribunal which has been rejected by the impugned order. The two revisional authorities have concurrently upheld the view taken by the learned assessing authority.

5. While assailing the validity of the impugned order, learned Counsel for the petitioner submitted that in view of the preamble of the Government notification bearing S.O. No. 95, dated 4.4.94 (Annexure 2), the same does not create any new condition so as to deprive the petitioner of the benefits of Paragraph 10.4 of the Industrial Policy with respect to its sale of finished products outside the State of Bihar. If any such indication is to be found in the notification or the forms thereto, the same would be clearly ultra vires the scheme of things. He also submitted that S.O. No. 95, dated 4.4.94, cannot act in contravention of the Industrial Policy because it has to be subservient to the same and is only meant to help achieve the goals set out in the policy. He relied on the judgment of the

Supreme Court in case of State of Orissa v. Tata Sponge Iron Ltd. : 2007 (8) SCC 189 (paragraph 13). He submitted in the alternative that, if any such condition is to be found in S.O. No. 95, the same falls foul of Paragraph 10.4 of the Policy and has to be ignored. He relied on the judgment reported in the case of Suprabhat Steel Ltd. v. State of Bihar and Ors. 1995 (2) PLJR 536 , which was upheld by the Supreme Court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, He also relied on the judgment dt. 20.5.2008 of a Division Bench of this Court in CWJC No. 2916 of 2000 (Kalyanpur Cement v. State of Bihar). He next submitted that, in view of the aims and objects of the Industrial Policy, Paragraph 10.4 has to be given its full play to achieve the aims and objects. He next submitted that the petitioner is also protected by the principles of estoppel. He relies on the judgment of the Supreme Court in State of Punjab Vs. Nestle India Ltd. and Another, (paragraphs 24 to 30, and 47). He next submitted that the authorities seemed to have overlooked the legal position that the provisions of Section 4 of the Act are subject to the provisions of Sections 5, 6 and 7 of the Act. In other words, in his submission, once there is a policy decision in terms of Section 7 of the Act granting certain exemptions, the provisions of Section 4 become inoperative with respect to the persons or companies covered by the Industrial Policy. He relied on the judgment of the Supreme Court in Associated Cement Companies Ltd. Vs. State of Bihar and Others, He lastly submitted that S.O. No. 95 was in the nature of sub-delegated legislation, and cannot be repugnant to the dominant policy.

6. Learned Additional Advocate General III submitted that the writ petition is not maintainable because the petitioner had already moved this Court earlier by preferring CWJC No. 7467 of 1994 (Shakti Tubes Ltd. v. State of Bihar), 1995(2) PLJR 536 , where the petitioner had the opportunity to raise this issue. The writ petition is barred by the provisions of Order 2, Rule 2, CPC. He submitted in the same vein that the petitioner is, therefore, precluded from challenging the validity of S.O. No. 95. He relied on the judgment of the Supreme Court in Shri Inacio Martins, Deceased through LRs. Vs. Narayan Hari Naik and others, (para-6). He next submitted that S.O. No. 95 has been framed with the object to promote industrial growth in this State for the benefit of the people of the State and enhance Government revenue. The petitioner has transferred major portion of its finished products outside the State of Bihar by stock transfer as a result of which this State would be deprived of its revenues like Bihar sales tax or central sales tax. He next submitted that Paragraph 10.5 of the Industrial Policy fully authorizes the Sales Tax Department to put conditions to prevent misuse of the benefits thereunder. Section 7(3) of the Act contemplates exemption with respect to sales. Transfer of stock from this State to another State is not sale. He relied on the judgment of the Supreme Court in Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., (Para 17). He also submitted that the decision in Suprabhat Steel Ltd (supra) is inapplicable in the present case because the factual position in that case was different. That was a case of complete deprivation of the benefits which is not the situation here, and is

instead a case of imposing reasonable restrictions to prevent misuse. He relied on the following reported judgments of the Supreme Court:

(i) Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, (para 9)

(ii) Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, (para 22)

He next submitted that Section 4 of the Act is subject to Sections 5, 6 and 7. If a case is covered by the terms of the notification u/s 7(3) of the Act, then the same shall to that extent be entitled to the benefit of exemption, otherwise shall be subject to the rigors of Section 4 of the Act. He relied on the judgment of the Supreme Court in Hafiz Din Mohammad v. State of Maharastra (1962) 13 STC 292 (at page 295). He lastly submitted that the petitioner shall have to appreciate the purpose of exemption. He relied on the judgment of the Supreme Court in Commnr. of Sales Tax, Orissa and Others Vs. Crown Re-roller (P) Ltd. and Others, (para 17).

7. We have perused the materials on record and considered the submissions of learned Counsel for the parties. It is evident from a plain reading of the preamble of the Industrial Policy that the State Government had reviewed the implementation of its previous industrial policy of 1986, alongwith its subsequent amendment(s), and felt very dissatisfied with the achievements, which fell far short of the aims, objects, and the expectations. The State Government, therefore, reviewed the entire situation and framed the Industrial Policy. Its preamble and the relevant provisions are reproduced hereinbelow:

With the objective of accelerating the industrial progress in the state the industrial incentive policy was announced by the state government vide its resolution No. 13730 dt. 1.9.1986, the period of which was extended upto 31.3.1993 vide its Resolution No. 10441 dt. 28.12.92, Resolution No. 46 AIDC dated 6.9.89, Resolution No. 1810 dt. 21.2.90. It has been experienced that desired industrial progress has not been achieved in all the districts of this state. It has also been felt that in the Context of new industrial policy 1991 of the centre and with the withdrawal of freight equalization policy, these industrial incentives require new dimensions to achieve balanced industrial growth in a planned manner so that the natural & human resources of the State are fully utilized and developed and the opportunities for employment are progressively increased.

In the light of above mentioned facts, the State Govt. has decided to introduce a new industrial policy. The provisions of this policy are as follows:

(a) This industrial policy shall be applicable to those industrial units which would come into production from 1.4.1993 to 31.3.1998. In regard to the date of production of small industrial units, the certificate issued by the respective General Manager, District Industry centre or Managing Director, Industrial Area

Development Authority will be considered. In case of any dispute in the date of production the decision of the Director of Industries shall be final. In the case of Large & Medium Industries the certificate issued by the Director, Technical Development/Director of Industries shall be considered.

(b) Units coming into production before 1.4.1993 shall be entitled to the benefits for the period as announced by the previous incentive policy. The entrepreneurs who have invested capital for the establishment of industry on the basis of previously announced incentive benefits before 1.4.93, but could not begin production till 31.3.1993 will have to give in writing to the Director of Industries within 30-days from the date of issue of this resolution, whether they want to avail of the benefits as announced by the previous incentive policy or the benefits of the new industrial policy, which has come into effect from 1.4.93. These entrepreneurs shall be entitled either for the complete package of the benefits announced by the previous incentive policy or for the package of benefits announced by the new industrial policy which came into effect from 1.4.1993. But they will not be entitled for the partial benefits both from the previous incentive policy and from the new incentive which came into effect from 1.4.93.

It is thus evident on a plain reading of the extracted portion that the State Government had felt dissatisfied with the results achieved as per the old policy, and also in view of the subsequent developments like enforcement of the new industrial policy of the Central Government, and withdrawal of freight equalization policy. The State Government, therefore, decided to remove the constraints which had impeded the previous industrial policy so that the objects of industrialization of the State, use of its human resources, and opportunities of employment are increased. In other words, a very liberal policy was conceived and incorporated in the Industrial Policy. Obviously, therefore, a wide and expansive meaning has to be given and, in case of doubt or difficulty, the Courts would lean in favour of a liberal approach, and in favour of the entrepreneur.

8. The admitted position in the present case is that the petitioner company qualified for the incentives under Clause (b) set out hereinabove. In other words, the petitioner company had commenced production before 1.4.1993, and its investment was less than 15 crores. It is nobody's case that the petitioner had already availed of the incentives under 1986 Policy. We, therefore, proceed to examine whether or not the petitioner is entitled to the incentives under the Industrial Policy. The petitioner claims exemption from levy of purchase tax as contemplated by Paragraph 10.4 of the policy. Paragraph 10.4 and Paragraph 10.5 of the Industrial Policy are reproduced hereinbelow.

10.4 SALES TAX EXEMPTION ON THE PURCHASE OF RAW MATERIAL:

(i) The facility will be admissible to the industrial units mentioned in Annexure-V in the following manner:

a) Industrial Units coming into production between 1.4.93 to 31.3.98 whose investment on plant & machinery does not exceed Rs. 15.00 Crores shall be

entitled for this facility for a period of seven years from the date of production.

b) Such old industrial units whose investment on plant & machinery do not exceed Rs. 15.00 Crores on 1.4.93 shall be entitled for this facility for a period of seven years from 1.4.93.

(ii) All other industries units shall continue to enjoy the existing facility of purchase of raw material on concessional rate of tax as announced and made applicable by the Sales Tax Department as before.

10.5 A separate order/notification for sales tax exemption will be issued by the Commercial Tax Department and the condition mentioned in that order/notification shall be binding in the final terms.

9. The admitted position is that the petitioner is covered by Clause (b). The petitioner company has used the raw materials for manufacture of steel and iron products. Equally admitted position is that a substantial portion of its end products were transferred to other State(s) by stock transfer, and a comparatively small portion was sold in the State of Bihar. The statutory authorities under the Act granted exemption from payment of purchase tax on purchase of its raw materials to the extent the end products were sold in Bihar. But the benefit of exemption has been declined on the raw materials used to the extent the manufactured products were sent outside the State of Bihar by stock transfer, and is the subject matter of adjudication before us. This issue arises in view of notification No. 95, dated 4.4.94 (Annexure 2), issued by the Sales Tax Department in terms of Paragraph 10.5 of the Industrial Policy set out hereinabove, and is reproduced hereinbelow:

2 vizSy 1991

,l0 vks0 95 fnukad 4 vizSy 1994&& fcgkj foRr vf/kfu;e 1981 ?fcgkj vf/kfu;e 5 1981? ds Hkkx&1 dh /kkjk 7 dh mi&/kkjk ?3? ds [kaM+ ?[k? }kjk iznRr "kfDr;ksa dk iz;ksx djrs gq, fcgkj jkT;iky fuEufyf[kr ,slh vkS|ksfxd bdkbZ] tks fcgkj ljdkj ds m|ksx foHkkx vFkok Hkkjr ljdkj ds l{ke izkf/kdkjh }kjk vuqeksfnr ,oa fucfU/kr gks vkSj tks 1 vizSy 1993 ls 31 ekpZ 1998 dh vof/k esa mRiknu esa vkrh gS vkSj ftudk e"khujh rFkk IykaV ij iawth fuos"k 15 djksM+ :i;k ls vf/kd u gks dks mRiknu frfFk ls rFkk ,slh iqjkuh vkS|ksfxd bdkbZ ftudh 1 vizSy 1993 rd e"khujh rFkk IykaV ij iwath fuos"k 15 djksM+ :i;k ls vf/kd u gks vkSj tks jkT; esa vFkok vUrjkZT; O;kikj ,oa okf.kT; ds dze esa fcdzh ds fy, ekyks dk fofuekZ.k djrh gS rFkk ftUgksus vU; fdlh Hkh vkS|ksfxd izksRlkgu uhfr ds v/khu fdlh izdkj dh lqfo/ kk ;k ykHk dk miHkksx ugh fd;k gS dks 1 vizSy 1993 ls lkr o"kksZ rd fcdzh ds fy;s ekyksa ds fofuekZ.k esa izR;{k :i ls visf{kr dPpk eky dh [kjhn ij ns; fcdzh ds fy;s mnxzg.k ls fuEu "krksZ vkSj fucU/kuks ds v/khu foeqfDr iznku djrs gS A

10. Learned Counsel for the petitioner has submitted that there is no additional eligibility condition indicated in the notification of 4.4.94 (Annexure 2). It is thus evident that interpretation of the relevant portion of the notification is the determining factor. It appears to us from the relevant portion of the same set out

hereinabove that, in order to qualify for the exemption, the entrepreneur must have manufactured the finished products in Bihar and may have been sold within the State or outside the State. In other words, the primary emphasis is on manufacture within the State, and then on its sale in Bihar or outside. It is not in doubt that the petitioner's unit is situated in Bihar and the entire raw materials on which it seeks exemption from payment of purchase tax during the period in question was used for manufacture of finished products. We are of the view that the condition sought to be imposed by the respondents that, in order to qualify for exemption, the finished products must necessarily be sold within the State of Bihar, or during the course of inter-State sale, is not discernible from the preamble, the aims and objects, the other provisions of the Industrial Policy, and the Act. We see no such restriction in the notification dated 4.4.94.

11. We must also notice the relevant provisions of the Act. Section 4 is headed "Levy of purchase tax", and is reproduced hereinbelow:

4. Levy of purchase tax.- Subject to the provisions of Sections 5, 6 and 7 of this part, every dealer liable to pay tax u/s 3, who purchases goods in circumstances in which no sales tax is payable or has been paid on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise disposes of such goods in any manner other than by way of sale in the State or sale in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods u/s 12.

It opens with the non-obstante clause and states that the provisions of Section 4 are subject to Sections 5, 6 and 7. Section 7 is particularly relevant and is reproduced hereinbelow:

7. Exemption.- (1) No tax shall be payable under this part on sales or purchases of goods which have taken place -

(a) in the course of inter-State trade or commerce;

(b) outside the State;

(c) in the course of import of goods into, or export of the goods out of the territory of India

(2) The provisions of the Central Tax Act 1956 (LXXIV of 1956) shall apply for determining when a sale or purchase of goods shall be deemed to have taken place in any of the ways mentioned in Clauses (a), (b) or (c) of Sub-section (1).

(3) The State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from the sales tax or purchase tax -

(a) sales of any goods or class or description of goods;

(b) sales of any goods or class or description of goods to or by any class of dealers;

(c) any sale or category or description of sales; and

(d) purchase of any goods by any class of dealers or any purchase or category or description of purchases of such goods.

(4) Where exemption from the levy of tax under this part on any sale or purchase of goods is claimed by a dealer under the provisions of this Section or Section 21, the burden of proof shall lie on such dealer and the prescribed authority may require the dealer to substantiate the claim in the prescribed manner.

It is evident that once the State Government issues a notification of exemption in terms of Section 7, no tax under the Act shall be payable on sales or purchase of goods which have, inter alia, taken place outside the State. Once a notification u/s 7 is issued, Section 4 of the Act ceases to operate with respect to a dealer engaged in the manufacture or sale of the products. We are mindful of the provisions of Sub-section (3) of Section 7 which is to the effect that it is open to the government to impose such conditions or restrictions as it may decide. A few conditions have been imposed by the said notification dated 4.4.94 (Annexure 2), namely, the unit must have commenced production between 1.4.1993 to 31.3.1998, or even older units, but in both cases its investment must not exceed Rs. 15 crores as on 1.4.1993, and manufacture of its products must have taken place in the State, for the purpose of sale. We see no such restrictions in the said notification of 4.4.1994, as is sought to be canvassed on behalf of the respondents. Neither do we see any such condition in the preamble of the notification dated 4.4.94, issued in terms of Section 7(3)(b) of the Act, nor in Paragraph 10.4 of the Policy. In that view of the matter, the terms of Section 7(1) (b) of the Act, i.e. sales outside the State, must be allowed to have its full play, and the benefit of exemption shall be available to the entrepreneur even if the sale of goods takes place outside the State of Bihar, may be after stock transfer or not.

12. Learned Counsel for the petitioner has rightly relied on the judgment of a Division Bench of this Court in *Suprabhat Steel Ltd. v. State of Bihar* (supra), wherein the Division Bench interpreted the Industrial Policy. The following observations are particularly relevant in the present context and indeed support the petitioner's case:

16. ... These facilities/benefits were not extended to other units. However, in paragraph 10.4 where the policy dealt with the grant of sales tax exemption on the purchase of raw material, this facility was extended to the industrial units coming into production between 1.4.1993 and 31.3.1998, and also such old industrial units whose investment on plant and machinery did not exceed Rs. 15 crores on 1.4.1993. To the extent of this facility alone a facility was sought to be conferred even on old industrial units. So far as the policy goes, there is no other condition attached to the grant of this facility except that the investment on plant and machinery as on 1.4.1993 must not exceed Rs. 15 crores. The clear and

unequivocal words employed in the said paragraph of the policy decision permit no other meaning being given to the policy.

17. ... The petitioners are, therefore, right in contending that the notification of 4th April, 1994 in so far as it imposes a condition that the old industrial units should not have taken benefit under any earlier industrial incentive policy of the Government is inconsistent with the policy decision. In exercise of authority vested in the Commercial Taxes Department under paragraph 10.5 of the Industrial Incentive Policy, 1993, the Commercial Taxes Department could not add or subtract to the incentive/benefits granted under the policy decision, but could only issue a separate order/notification for sales tax exemption with a view to give effect to the policy decision. The conditions which it could lay down by issuing such order or notification could be conditions which were essentially to be imposed with a view to keep a check on the persons availing of the benefits and to ensure that the facility was not being misused. They could require the industrial units to furnish such particulars about their purchases and production as was considered necessary, and for that purpose could have prescribed forms and declarations as was considered necessary with a view to give effect to the policy decision and to avoid misuse of facilities/benefits conferred thereby. Such conditions could not be imposed which in effect amended the policy decision itself by depriving industrial units of the benefits/facilities granted by the policy decision.... They have also made heavy investment on the basis of the promise held in the Industrial Incentive Policy 1993, that they shall be given the facility of sales tax exemption on the purchase of raw material. Having done all these, they cannot be deprived of the facility which they were promised under the Industrial Incentive Policy 1993 and that too by the issuance of notification which is inconsistent with the policy decision, and seeks to modify the same without authority of law. In exercise of his power under the Bihar Finance Act, the Commissioner should have issued appropriate notification granting exemption in the matter of payment of sales tax consistent with the Industrial Incentive Policy decision of 1993, which bound the State.

18. The learned Advocate General did not urge that the principle of estoppel does not apply in the instant case, and in my view, rightly. The impugned notification has been issued with a view to give effect to the policy announced. It does not proceed on the basis that old industrial units which came into production before 1.4.1993 are not entitled to any benefit under the scheme. On the contrary, it concedes that such old industrial units are entitled to the facility of exemption of sales tax on purchase of raw material, provided they have not taken benefit under any earlier incentive policy. The challenge is on the ground that if the notification is intended to give effect to the policy decision announced by the State, it is not permissible to the Commissioner of Sales Tax to make a further classification by imposing a condition not warranted by the policy. If the policy intended to give a benefit or facility, to a class of industries, he could not impose a further condition so as to create another class of industries out of the industries to whom the benefit or facility was intended, as that would be

arbitrary and unreasonable.

13. The aforesaid judgment was upheld by the Supreme Court in *State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others*, The following portion of the judgment is relevant:

6. ... We are entirely in agreement with the conclusion arrived at by the High Court in this regard and we do not find any error committed by the High Court in granting the benefits of the said Clause 10.4(i)(b) of the Policy to the respondents' industrial units. We accordingly have no hesitation to affirm the conclusion of the High Court on this score and reject the submission of Mr. Dwivedi, the learned Senior Counsel, appearing for the appellant.

7. Coming to the second question, namely, the issuance of notification by the State Government in exercise of power u/s 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. The industrial incentive policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification u/s 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decision taken in the industrial policy itself. In this view of the matter, any notification issued by government order in exercise of power u/s 7 of the Bihar Finance Act, if is found to be repugnant to the industrial policy declared in a government resolution must be held to be bad to that extent....

(Emphasis added)

14. Learned Counsel for the petitioner has also rightly relied on the unreported judgment dated 20.5.2008, passed by a Division Bench of this Court in CWJC No. 2916 of 2006 (*Kalyanpur Cement Ltd. v. State of Bihar and Ors.*). That was a case where the Court was called upon to declare the Explanatory Note appended to Rule 3 of the Bihar Sales Tax Supplementary (Deferment of Tax) Rules 1990, as ultra vires and inconsistent with the provisions of the Bihar Finance Act 1981, and the Industrial Policy Resolution 1989. The petitioner therein had made the further prayer to quash the order of the State Level Committee, whereby it had held that the petitioner shall be entitled for the incentive of deferment, not on the additional production, but on the incremental production above the installed capacity. The following portion of the judgment is relevant and reproduced hereinbelow:

... While it is true that the State Government is not expected to give each and every detail in its policy and hence "Rule" is framed laying down the extent to which the benefit can be given. However, at the same time while interpreting Industrial Policy the test which governs the interpretation of legislation is not to

be taken recourse to. It is further true that framing of Rule u/s 7 of the Bihar Finance Act is necessary to entitle the Industrial units to avail the incentives and benefits declared by the State Government in its Industrial Policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit given in the Industrial Policy declared by it. Rule framed by the State Government in exercise of the power framed u/s 7 of the Bihar Finance Act is to give effect to the Industrial Policy and if found repugnant to the Industrial Policy declared in the Government resolution then to that extent the rule is rendered illegal and in such circumstances the Industrial Policy shall prevail.

15. Learned Counsel for the petitioner is right in his submission that a narrow interpretation of the Policy and the notification will defeat the aims and objects of the Policy. As noticed hereinabove, the preamble of the Policy noted the near-failure situation produced by the 1986 Policy, and the State Government on a thoughtful review of the matter, intended to liberalize the incentives under the Industrial Policy. The policy seeks to achieve balanced industrial growth in a planned manner so that human and natural resources are fully utilized and developed, and the opportunities for employment are progressively increased. It is evident that the main emphasis is on use of the raw materials for production of finished products in the State of Bihar, which will industrialize the State, and will generate employment opportunities. While formulating the Policy, the State Government was mindful of the position that these industrial units are centres of production which will generate wealth, increase employment directly, and also indirectly, for example, a large number of ancillary units owned and managed by others come up to support the main industry. The transport sector and diverse other commercial activities get a fillip, lot of money gets into circulation in the local market which enhances the buying capacity of the local populace etc.

16. Learned Counsel for the petitioner is further right in his submission that the principle of estoppel comes to the aid of the petitioner. In view of the liberal policy, the petitioner purchased more and more of raw materials, and ventured to produce more and more products for sale. If the petitioner were not certain of getting the benefit of exemption, it may not have purchased raw materials in enormous quantities. It must have accordingly organized the manufacturing process and streamlined the marketing and other commercial activities. The judgment of the Supreme Court in *State of Punjab v. Nestle India* (supra) is relevant in the present context, particularly Paragraphs 30 to 47, and supports the petitioner's case.

17) Paragraph 1514 at page 1017 of Hallsbusry's Law of England, 4th Edition, Vol.16, is headed "Promissory estoppel", is relevant and reproduced hereinbelow:

1514. Promissory estoppel. When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their

previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced. This doctrine, which is derived from a principle of equity enunciated in 1877, has been the subject of considerable recent development and is still expanding. It differs from estoppel in pais in that the representation relied upon need not be one of present fact.

The doctrine cannot create any new cause of action where none existed before, and it is subject to the qualification (1) that the other party has altered his position; (2) that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position; (3) the promise only becomes final and irrevocable if the promisee cannot resume his position. The doctrine is known variously as "equitable" or "promissory" or "quasi" estoppel.

The principle so clearly and authoritatively enunciated fully supports the petitioner's case. The notification of Sales Tax Department cannot act in contravention of the Industrial Policy. Once the policy defines the purpose, aims, objects, and the sweep, the notification of the Sales Tax Department must in a subservient manner ensure effective implementation of the policy. We are in no doubt that in case of any apparent or real conflict between the dominant policy decision and the notification of the Sales Tax Department, the latter shall yield to the former, and will have to be read down in case of doubt or difficulty. The latter can be read only in the manner it advances the aims and objects of the Industrial Policy, and any attempt to reduce its efficacy has to be discouraged, and, if necessary, shall be declared to be repugnant to the Policy.

18. The judgment of the Supreme Court in the State of Orissa v. Tata Sponge Iron (Paragraph 13) (supra), is relevant in the present context and supports the aforesaid proposition. The judgment of the Supreme Court in Associated Cement Companies Ltd. Vs. State of Bihar and Others, (supra), is also relevant to the present issue.

19. We must now consider the contentions advanced on behalf of the State of Bihar. Learned Government Counsel has submitted that the writ petition is not maintainable and is hit by the bar engrafted in Order 2, Rule 3, CPC, for the reason that the petitioner had preferred the previous writ petition bearing CWJC No. 7467 of 1994, which was disposed of by a Division Bench of this Court in Suprabhat Steel Ltd. v. State of Bihar (supra), wherein the petitioner company had the opportunity to raise the issues canvassed before us. He relied on the judgment of the Supreme Court in Shri Inacio Martins, Deceased through LRs. Vs. Narayan Hari Naik and others, (paragraph 6). That was a case where 1993 Policy was as a whole reviewed and the relevant observations having strong bearing in the present context have been set out hereinabove which fully support the petitioner's case. The provisions of Order 2, Rule 3, CPC, are not at all attracted in the present case because the issue raised herein have surfaced by reason of the assessment proceedings giving rise to the present writ petition and

was not the subject matter of the previous writ petition. The contention is rejected.

20. Learned Government Counsel has next contended that 1993 Policy read with the notification of 4.4.1994 (Annexure 2), is intended to benefit the people of this State. If the exemption is granted with respect to the end products transferred to different State by stock transfer, this State is deprived of the sales tax. In view of the foregoing discussion, it is evident that the framers of the Industrial Policy as well as the notification issued in terms of Section 7(3) of the Act, never intended to restrict the exemption to sales within the State of Bihar or in the course of the inter-State trade. Such a restriction were possible if the Industrial Policy itself so stipulated, which is wholly absent therein, and is equally absent in the notification. The only possible requirement is that the goods so manufactured within the State of Bihar, should be for the purpose of sale. In such a situation, the provisions of Section 7(1)(b) are attracted in the present case, and comes to the aid of the petitioner. The contention is rejected.

21. Learned Government Counsel next contended that Paragraph 10.5 of 1993 Policy fully authorized the Sales Tax Department to introduce conditions to prevent misuse of the Policy. We have held hereinabove that no such condition is to be found in the Policy, or the notification. The respondents are trying to read into the same conditions of the nature not intended to be added by the sales tax department. No such condition can be permitted which will produce the effect of diluting the Industrial Policy. Furthermore, the respondents have not even prima facie shown any situation of misuse attributable to the petitioner, not even a hypothetical situation. We would be aghast to be told that sales outside the State of Bihar by transfer of stocks, in a situation where the petitioner satisfies all the prescribed conditions which qualify him for exemption, and his industry has given a fillip to the intended prosperity and also giving spurt to ancillary units, has run counter to the objects of the Industrial Policy and is a misuse of the same. Can the subservient instrument be permitted to be construed to mean that the alleged loss of sales tax to the State of Bihar must outweigh the perceptible growth in industry and the intended concomitant benefits. The answer is in the negative. And if the State Government really intends to deprive the petitioner of the benefit as has been canvassed, then we shall be constrained to declare the notification of the Sales Tax Department to be repugnant to the Industrial Policy. The contention is rejected.

22. Learned Govt. Counsel has further contended that the issue in M/s Suprabhat Steel Limited (supra) was quite different. In his submission, that was a case of complete deprivation of benefits which was disapproved of by the Court, whereas the issue in the present case is one of the reasonable restrictions to prevent misuse. The contention amounts to a complete misreading of the judgment. In order to do complete justice to the parties, this Court had examined the entire scheme of the Act and spelt out the meaning and content of the same. The judgment has been upheld by the Supreme Court. In that view of the matter, the

proposition of law sought to be invoked by the respondents that a decision should be taken to be an authority for what it actually decides, and not what logically follows, is wholly inapplicable to the present case because the Division Bench in order to dispose of the issues arising there, had to examine the scheme of the Industrial Policy and the notification. Neither the petitioner nor this Court has relied on the judgment in M/s Suprabhat Steel Ltd. in a manner which discloses an intention to take what logically seems to follow. On the contrary, the observations of the Division Bench relevant in the present context have been reproduced hereinabove, and we have taken therefrom only what has actually been decided. The contention is rejected.

23. Learned Govt. Counsel has also submitted that once it is held that the restriction is within the meaning of Section 7(3) of the Act, then the rigors of Section 4 are applicable. The contention is rejected, inter alia, for the reason that we have held hereinabove that S.O. No. 95 does not spell out any restrictions as has been canvassed by the respondents.

24. Learned Govt. Counsel has also relied on the judgment of the Supreme Court reported in Commnr. of Sales Tax, Orissa and Others Vs. Crown Re-roller (P) Ltd. and Others, (Para 17), in an effort to highlight the purpose of exemption. The purpose of exemption has been discussed hereinabove. The contention runs counter to the very aims and objects which the Industrial Incentive Policy 1993, which it intends to achieve. The contention is rejected.

25. In the result, the writ petition is allowed. The impugned order dated 7.3.2000 (Annexure 5), passed by the learned Commercial Tax Tribunal, is set aside. It is held that the petitioner is entitled to the benefit of exemption from payment of purchase tax on purchase of raw materials for manufacture of its products in Bihar, and sold in Bihar or outside Bihar. The petitioner shall be entitled to refund of the amount, if any, deposited by it along with interest @ 15% from the date of deposit(s) till the date of payment. There shall, however, be no order as to costs.

Jyoti Saran, J.

26. I agree.