

**(2001) 05 GAU CK 0014****Gauhati High Court****Case No:** Writ Appeal No. 399 of 1998

Doson Chemicals Pvt. Ltd. and

APPELLANT

Another

Vs

State of Assam and Others

RESPONDENT

**Date of Decision:** May 19, 2001**Citation:** (2001) 2 GLT 481 : (2001) 124 STC 305**Hon'ble Judges:** H.K. Sema, Acting C.J.; A.H. Saikia, J**Bench:** Division Bench**Advocate:** N.M. Lahiri, G.N. Sahewalla and A.K. Goswami, for the Appellant; C. Choudhury, Sr. Govt. Advocate and R. Goswami, Jr. Govt. Advocate, for the Respondent**Final Decision:** Dismissed**Judgement**

H.K. Sema, AG. C.J.

1. This appeal is directed against the judgment and order of the learned single Judge dated August 25, 1998 passed in Civil Rule No. 3748 of 1991 dismissing the petition. This appeal was conclusively heard on April 21, 2001. As the parties would like to furnish citations and some relevant documents to support their contentions, the order was reserved.

2. Facts leading to filing the present writ appeal may, briefly be recited. The appellant is a private limited company. The appellant industry was established some time in the year 1961 as small-scale sector and it was registered with the respondent No. 5. It is stated that there were about 58 employees in the industry besides shareholders and directors. In order to boost industrial development the Government of Assam issued the Industrial Policy of 1982 and thereafter it was reviewed in 1986. It is stated that in the aforesaid policy of 1986 an existing unit which undertakes expansion, modernisation and diversification are also entitled to get incentives. Such units were also held to be eligible units under the policy and also entitled to get sales tax exemption and reduction of Assam finance (sales tax)

for a period of 5 years.

3. It is stated that pursuant to the incentive offered by the policy to small-scale industries, the appellant-company also undertook expansion, modernisation and diversification of industry in terms of the policy and thereafter applied for issuance of eligibility certificate to the Udyog Sahayak. It is stated that for expansion, modernisation and diversification work the appellant has spent more than rupees eight lakhs. The Udyog Sahayak after making proper enquiry and after due consideration also issued eligibility certificate to the appellant on May 29, 1989 certifying that the appellant is entitled to exemption of sales tax with effect from April 1, 1988 to March 31, 1993.

4. The Government of Assam for the purpose of regulating the incentive granted under the 1982 Policy passed an Act namely, the Assam Industries (Sales Tax Concessions) Act, 1986 and under the said Act a provision has been made for exemption of sales tax in respect of new industries as per the 1982 Policy and Rules are also framed thereunder. Thereafter, the 1982 Industrial Policy has been reviewed by the 1986 Industrial Policy. However, under the 1986 Industrial Policy the Government of Assam did not make any statutory provision for granting exemption to the existing industries by an enactment. The appellant, however, applied for granting of sales tax exemption to the taxation authority. However, the same was refused by the taxation authority by its letter dated April 12, 1990 and May 28, 1990 on the ground that the appellant industry is not a new industry and the provision of the Assam Industries (Sales Tax Concessions) Act, 1986 does not apply to it. Being aggrieved by the impugned letters dated April 12, 1990 and May 28, 1990 the appellant preferred a writ which was dismissed by the learned single Judge. Hence, the present appeal.

5. Before we advert further for other points in the facts and circumstances as alluded above, it is clear that the Government of Assam passed an Act called Assam Industries (Sales Tax Concessions) Act, 1986 (in short "the Act"), for regulating incentive of the industries granted under the 1982 Industrial Policy. However, after the 1982 Policy has been reviewed by another policy of 1986, no such statutory provision for exemption under the 1986 Act has been provided. The civil rule was filed, *inter alia*, praying to issue a writ of mandamus or direction to the Government of Assam to carry out the promise based on the doctrine of promissory estoppel. We shall deal with this point at appropriate time a little later.

6. In the instant case the admitted fact is that the Assam Industries (Sales Tax Concessions) Act, 1986 has been repealed by the Assam Industries (Sales Tax Concessions) Act, 1987 with effect from January 5, 1987. It is the case of one statute substituted by another statute. The appellant-company applied for sales tax exemption for the assessment year April 1, 1988 to March 31, 1993 while the Assam Industries (Sales Tax Concessions) Act, 1987 was holding the field. The claim of the appellants for exemption of sales tax with effect from April 1, 1988 to March 31,

1993 was rejected by the impugned order dated April 12, 1993 (annexure 3). It reads :

"With reference to the subject mentioned above, I would like to inform you that only new industrial unit will get the benefit of sales tax concession.

The new industrial unit defined u/s 2(2) of the Assam Industries (Sales Tax Concessions) Act, 1987 as follows :

"New industrial unit" means an industrial unit for the setting up of which all the effective steps have been completed on or after the 15th October, 1982, but before 31st March, 1990.

Since, your industry is in operative with effect from October 1, 1962, I do not see any legal provision as per Assam Industries (Sales Tax Concessions) Act, 1987 to accept your claim to exempt you from paying sales tax.

So, you are liable to pay sales tax on your sales of own manufactured medicines".

7. It is vehemently contended by Mr. G.N. Sahewalla, learned counsel for the appellant, that the Government made a promise that industrial units established under the 1982 policy would be entitled to sales tax concession and under the Assam Industries (Sales Tax Concessions) Act, 1986 and therefore the Government is estopped from resiling the same promise by application of the doctrine of promissory estoppel. This contention has been rejected by the learned single Judge in para 6 of the impugned judgment. It reads :

"6. It was never in dispute that the Assam Industries (Sales Tax Concessions) Act, 1986 provides sales tax concession. The validity of the Act was not in question. At any rate, the act of the respondents cannot be faulted on the face of the statutory provisions. The principle of requisite estoppel is a principle based on fairness and equity. The application of promissory estoppel is a principle based on fairness and equity. The application of promissory estoppel will depend on the facts and circumstances of the case. There cannot be any estoppel against legitimate exercise of statutory powers. Similarly, estoppel cannot bind any promise or undertaking which is contrary to the statute. Estoppel cannot stand in the way of the Government in formulating policy and the Legislature from making any statutory provisions. Principle of promissory estoppel cannot estop public authorities from discharging its statutory duties and the doctrine cannot hinder operation of law."

8. We are entirely in agreement with the finding of the learned single Judge.

9. We have already held that the statute of 1986 has been repealed by another statute of 1987 with effect from January 5, 1987. The appellant applied for exemption of sales tax from April 1, 1988 to March 31, 1993 after the 1987 Act came into being. The appellant has not assailed the vires of the Assam Industries (Sales Tax Concessions) Act, 1987. In such a situation there cannot be any estoppel against

the legitimate exercise of statutory powers. Mr. C. Choudhury, learned Senior Government Advocate, Assam, has rightly brought to our notice the decision of the apex Court in [Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others](#), In that case the Supreme Court while dealing with the rule of promissory estoppel in paragraph 23 of its judgment after referring to various decision of the Supreme Court observed as follows :

"Indeed, it is reiterated in these cases that the said Rule is not available in respect of the ultra vires acts of a statutory body/ authority nor can it be invoked to compel the Government--a public authority--to carry out a promise which is contrary to law or ultra vires its powers."

10. The doctrine of estoppel cannot be invoked to confer upon public authority powers which it does not in law possess. Nor can it be invoked to legitimate action which is ultra vires the statutes.

11. In the instant case, admittedly the 1986 Sales Tax Concessions Act has been substituted by another Act of 1987 with effect from January 5, 1987. The appellant has not challenged the vires of the 1987 Act, Since the 1986 Act has been substituted by another Act in 1987, the doctrine of promissory estoppel cannot be invoked to compel the Government to carry out the promise which is contrary to the statute.

12. Admittedly the 1987 Act which came into being with effect from January 5, 1987 defined the new industrial units thus. "New industrial unit" means an industrial unit for the setting up of which all the effective steps have been completed on or after October 15, 1982 but before March 31, 1990. The appellant industry has been in operative since October 1, 1962 as admitted by the appellant themselves. Therefore, in our view, the appellant industry does not come within the definition of the new industrial unit under Sub-section (2) of Section 2 of the Assam Industries (Sales Tax Concessions) Act, 1987.

13. Mr. G.N. Sahewalla, learned counsel for the appellant, has strenuously contends that despite 1987 Act, the appellant-company is entitled to sales tax exemption under the incentive policy of 1986 Act. In this connection he has referred a decision of the Supreme Court rendered in [State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others](#), In para 7 of its judgment the Supreme Court while considering the notification issued by the Government in exercise of power u/s 7 of the Bihar Finance Act, 1981 had held that such notification would not entitle the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. In that case the notification was issued in exercise of power u/s 7 of the Act denying the benefit to industrial units which granted incentive under the policy itself. Facts of this case is not analogous with the present facts of the case at hand. As pointed out above, the 1986 Act has been substituted by another Act of 1987. The Assam Industries (Sales Tax Concessions) Act, 1986 on the basis of which the appellant industry claim exemption was repealed by another

Act of 1987. Therefore, this decision is of no help to the appellant.

14. Mr. Sahewalla has also brought to our notice the judgment and order dated March 27, 2001 passed by honourable Chief Justice Mr. N.C. Jain (as His Lordship then was) in batches of writ appeals, viz., W.A. No. 139 of 1998 Manjushree Extrusions Limited v. State of Assam [2001] 123 STC 366 (Gauhati). and others as third Judge. On a bare perusal of the order it is noticed the judgment relates to 1991 policy and has no bearing in the facts of the case at hand.

15. In the result, there is no infirmity in the order passed by the learned single Judge which warrants our interference. This writ appeal is accordingly dismissed as meritless. Parties are to bear their own costs.