

Manjushree Extrusions Ltd. and Another Vs State of Assam and Others

Court: Gauhati High Court

Date of Decision: March 27, 2001

Acts Referred: Assam General Sales Tax Act, 1993 â€” Section 2, 30, 74, 74(3), 9(4)
Central Sales Tax Act, 1956 â€” Section 8(5)

Citation: (2001) 1 GLT 430

Hon'ble Judges: N.C. Jain, C.J; M. Sharma, J; D. Biswas, J

Bench: Full Bench

Advocate: Dr. Ashok Saraf, Mr. K.K. Gupta, Mr. D. Baruah, Mr. S. Saikia, Mr. S.K. Agarwal, Dr. B.K. Sarma and Mr. P.K. Tewari, for the Appellant; Mr. P.G. Baruah, A.G., Mr. B.C. Das and Mr. R. Goswami, for the Respondent

Final Decision: Allowed

Judgement

M. Sharma, J.

All these above mentioned appeals have been preferred against a common judgment and order dated 29.4.1998 passed by

the learned Single Judge dismissing the writ petitions by upholding the validity of the impugned provisions of the Assam Industries (Sales Tax

Concession) Scheme, 1995.

2. Facts leading to filing of the writ petitions and the appeals, in a narrow campus, may be stated as follows. With a view to boost the industrial

development in the State of Assam the State Government introduced a number of Schemes offering incentives and subsidies for certain period,

extending the policy time to time. These limited benefits relating to industrial policy of the State have been offered to commercial production of the

industrial units falling under a particular scheme during their initial stage as an incentive. First such incentive Scheme was started vide notification

dated 8th November, 1969. With the change of time necessity for revision in this incentive scheme was felt, hence, the Government by notification

dated 12.10.1982 announced a new package of incentive known as 1982 Scheme, which envisaged and provided for grant of sales tax exemption

to the new industrial units on the purchase of raw materials and sale of finished products for a period of five years from the date of commencement

of the commercial production. But, this exemption of sales tax was subject to the production of the eligibility certificate from the Udyog Vikash,

which is the main implementing agency.

3. Again in the year 1986 the State Govt. announced a new package of incentives (1986 Industrial Policy) vide notification No. CI-386/ 86 dated

25.12.1986 fixing the period from 1.1.1987 to 31.3.1990 which was subsequently extended to 31.3.1991. In this 1986 Scheme also State Govt.

granted sale tax exemption to the new industries as well as to the industries undertaking expansion, modernisation and diversification for a period of

5 years from the date of commercial production. Accordingly the State Legislature enacted Assam Industries (Sale Tax Concession) Act, 1986.

This enactment was made with a view to consolidate and amend the provisions of the law relating to sales tax in the matter of concession to the

industries which come within this scheme and further Rules were made and notifications were issued in order to give effect to the provisions of the

Act.

4. In 1991 again a new industrial policy was announced vide notification No. CI/154/90/279 dated 6.4.1991 and No. CI/154/ 90/242 dated

1.7.1992 (1991 Industrial Policy) granting similar exemption of sales tax to new industrial units set up on or after 1.4.1991 and also the existing

industrial units undertaking expansion, modernisation and diversification, for a period of seven years.

5. The appellants which were existing industries as on 1.4.1991 undertook expansion, modernisation and diversification work on the basis of the

1991 Industrial Policy. After having undertaken expansion, modernisation and diversifications work in the existing industrial units the appellants

applied for issuance of the eligibility certificate before the appropriate authority and the Implementing Agency after being satisfied, issued the

eligibility certificate to appellants granting amongst others, exemption from payment of sales tax for a period of seven years. Accordingly, the

appellant companies sold its product without charging any sale tax and purchased raw materials to be used in the manufacture of finished products

without payment of tax. The appellants submitted their return of turn over before the Superintendent of Taxes, who is the assessing authority,

showing taxable turn over to be ""Nil"" and claiming exemption under the relevant Scheme.

6. In the mean time, in the year 1993 the new Sales Tax Act, came into force, viz., Assam General Sales Tax Act, 1993. Section 9(4) of this Act

confers power on the State Govt. to frame one or more Schemes by way of notification in the Official Gazette for the purpose of granting reliefs of

full or partial exemption of tax to any class of industry within the State from payment of any tax payable under the said Act on the new materials or

other inputs purchased within the State of Assam and on the manufactured goods sold within the State or in course of Inter-State trade and

commerce for such period as may be prescribed and from such date as may be specified in the notification. The aforesaid Act came into force with

effect from 1.7.1993.

7. The State Government in exercise of the power conferred u/s 9(4) and Clause (f) of Sub Section (3) of Section 74 of the Act by way of

notification framed a scheme known as ""Assam Industries (Sales Tax Concession) Scheme, 1995"" dated 16.8.1995 granting relief by way of full

exemption of sales tax on the purchase of raw materials within the State by the eligible industrial units situated within the State and also on the sale

of finished products manufactured in such eligible units in the State or in course of inter State trade and commerce. The said scheme was brought

into force with effect from 1.4.1991. As per Clause (b) of Section 2 of the said scheme an industrial unit having its registered office within the State

which is or was in production prior to 1.4.1991 undertaking expansion, modernisation and diversification to the minimum extent of 25% of the

fixed capital investment at the same location or at any other place of the State and resulting an increase in capacity by a minimum of 25% and

generating additional employment of at least 10% shall be treated as an eligible industry for the purpose of the scheme. In the said scheme, it was

provided for that the benefit of sales tax exemption in respect of the industries undertaking expansion, modernisation and diversification shall be

limited to the increase in production due to expansion, modernisation and diversification. The said scheme provided for determination of increase in

production of an industrial unit which has undertaken expansion, modernisation and diversification which shall be equal to the annual production

after completion of expansion, modernisation and diversification minus production during the base year which has been said to be the actual

production of an industrial unit during 365 consecutive working days of the unit preceding the expansion, modernisation and diversification to be

expressed in percentage. As such, an industrial unit undertaking expansion, modernisation and diversification was given the benefit of sales tax

exemption only in the increase in production after expansion, modernisation and diversification since increase was to be computed in accordance

with the principle laid down in this scheme.

8. Similarly, exemption was also granted on the inter State sale of the goods, manufactured in a new industrial unit as well as industrial unit

undertaking expansion, modernisation and diversification by issuance of notification u/s 8 of the Central Sales Tax Act, 1956.

9. From the nature of 1995 Scheme, it is thus clear that it curtailed the benefit of sales tax exemption as promised in the 1991 Industrial Policy,

inasmuch as, the 1991 Industrial Policy promised for a grant of full sales tax exemption for a period of seven years to both new industries as well

as industries undertaking expansion, modernisation and diversification. The appellants filed writ applications before this Court challenging the

validity of the impugned provisions of the 1995 Scheme curtailing the exemption as well as challenging the provisions of scheme relating to

determination of increase in production to be arbitrary and illegal. The aforesaid writ applications have been dismissed by the learned Single Judge

on the ground that there was no substantial difference in the 1991 Industrial Policy and 1995 Concession Scheme and that the 1995 Policy

provided for full sales tax incentives only to the new industrial units. Being aggrieved by the judgment and order of the learned Single Judge, the

present writ appeals were filed before this Court.

10. We heard the learned counsel for the parties. The grievance of the appellants is that while the appellants have been enjoying the benefits from

the respective schemes and were granted eligible certificates till 2001 under the 1991 Scheme, are facing predicament as the State Govt. has

framed a scheme by notification dated 16.8.1995, namely, Assam Industries (Sales Tax Concession) Scheme, 1995 in exercise of power u/s 9(4)

of the Assam General Sales Tax Act, 1994 read with Clause (f) of Sub-Section (3) of Section 74, granting relief by way of full exemption of sales

tax on the purchase of raw materials within the State by eligible industrial units. This scheme came into force with effect from 1.4.1991. Further

contention of the appellants is that industrial units of the appellants were in production prior to 1.4.1991 and they undertook expansion,

modernisation and diversification and, as such, the sale is covered by the Scheme 1995 and entitled to the benefits of the scheme. It is alleged that

the procedure or manner of determination for eligibility for sales tax exemption under the 1995 Scheme making the same applicable in the case of

the appellants caused deprivation of the benefits to which they were entitled under the earlier schemes; that the incentives granted under the

Industrial Policies cannot be curtailed by framing scheme to give effect to the policy announcements and promises as is done in 1995 Scheme. The

main contention is that the State Govt's action in providing for in the 1995 Scheme, that the industries undertaking expansion, modernisation and

diversification will be entitled to sales tax exemption only on that part of the production which is determined to have been increased due to such

expansion etc. is arbitrary and prejudiced the right and entitlement of the appellants. Appellants in their writ petitions have invoked writ jurisdiction

of the Court to declare the 1995 Scheme as arbitrary and to tenable in law as it was enacted without jurisdiction.

11. Dr. Saraf, learned counsel for the appellants has submitted that the respondents did not dispute, in their affidavit, the validity of the claims of the

appellants that the incentive as existing units, were granted under industrial policy cannot be curtailed by framing a scheme to give effect to the

policy announcements and promises as has been done in the 1995 Scheme. It has also been argued by the learned counsel for the appellants that

the Industrial Policy of 1991 contained a promise of full sales tax exemption for a period of seven years to new industries as well as industries

undertaking expansion, modernisation and diversification, therefore, it cannot be said that Sales Tax Concession Scheme 1995 did not make any

material departure from 1991 Industrial Policy.

12. To decide the claims of the appellants regarding the incentive and the effect thereof offered by the 1991 Scheme, Court is required to raise the

avail of the said incentive scheme. Before proceeding further, it is necessary to look into the some of the Clauses of the Scheme, 1991, particularly,

Clause 5 of the Part II of the Scheme.

13. Clause 2 of Part II of the 1991 Industrial Policy defines eligible unit as follows:

Eligible unit:

Only new units set up on or after 1.4.1991 and existing units, undertaking expansion, modernisation and diversification at the same location or at

any other place in the State of Assam will be eligible for incentive under 1991 Scheme provided that :

2.1 A unit shall have employment of 80% people of Assam in the managerial cadre and 90% people of Assam to the non-managerial cadre and

that over a period of 5 years from the commencement of production such units would take all effective steps to ensure 100% employment of

people of Assam in non-managerial and at least 90% in managerial posts. They would further give an undertaking that if these conditions are

violated, the State Government Subsidies/Incentives so availed by them would be fully refunded.

2.2 In exceptional cases where the industrial unit can prove to the satisfaction of the State Level Committee that persons with required skill and

expertise are not locally available relaxation of the above clause will be allowed by the State Level Committee for a period to be determined by the

State Level Committee as deemed fit.

2.3 The location of the registered office shall be within the State of Assam. New Unit is defined in clause 3 of Part II as follows:

3. New Unit:

An industrial unit which has taken all the initial effective steps on or after 1.4.1991 would be considered as a new unit.

Existing unit has also been defined by Clause 4 as under:

4. Existing Unit:

A unit which is or was in commercial production at any time prior to 1.4.1991 will be considered as an existing unit for the purpose of the 1991

Scheme.

Similarly, expansion, modernisation and diversification have been defined by Clause 5 as under :

5. Expansion/Modernisation/Diversification

Expansion/Modernisation/Diversification of an existing industrial unit will also be eligible for all incentives if the total capital investment on plant and

machinery in the expansion/ modernisation/diversification as the case may be, is more than 25 per cent of the- total fixed capital investment of the

existing unit. For the purpose of calculation, gross value of all the capital investments made on land, building, plant and machinery of an existing unit

will be taken into consideration. Expansion, modernisation and diversification will imply an increase of at least 25% in the existing installed capacity

as well as increase of additional employment at least by 10%.

The fact that existing unit has availed itself of incentives will not disqualify the expansion/modernisation/diversification project to get incentives for

the extra investment made.

14. Clause 8 of Part II of the Scheme 1991 runs thus :

8. No right or claim for any incentive under the Scheme shall be deemed to have been conferred by the scheme merely by virtue of the fact that

the unit has fulfilled on its part the conditions of the scheme. The incentives under the scheme cannot be claimed unless the eligibility Certificate has

been issued under the scheme by the Implementing Agency concerned and the unit has complied with the stipulations/ conditions of eligibility.

Apparently, this Clause 8 makes it clear that the benefit under the scheme cannot be claimed until and unless the Eligibility Certificate has been

issued by Implementing Agency. The Eligibility Certificate is to be issued by the Udyog Sahayak of the Directorate of Industries, District Industries

Centre for the SSI Sector and Assam Industries Development Corporation Limited for the medium and large sector and the same is to be issued

after ensuring that all the norms for the eligibility certificate have been fulfilled.

15. Part III of the Industrial Policy of 1991 deals with various incentives announced and Clause 6 of the said Part III deals with the sales tax

exemption. Clause 6 reads as under:

6. Sales Tax Exemption : Sales tax will be exempted on purchase of raw materials and sales of finished products for a period of seven years.

16. So, the moot question is whether the appellants have fulfilled the criteria and if so, whether they can claim the benefit promised as per the 1991

Industrial Policy for seven years. The contentions of the appellants were that they were existing industries as on 1.4.1991, undertook expansion,

modernisation and diversification work on the basis of the 1991 Industrial Policy announcements and the promises made in the said Industrial

Policy and the incentive Scheme of 1991. After having fulfilled all the requisite criteria for grant of the benefits of various incentive scheme and

having undertaken expansion, modernisation and diversification work in the existing industrial unit, the appellants applied for issuance of the

Eligibility Certificate before the appropriate authority and the Implementing Agency after being satisfied that all the norms for issuance of the

Eligibility Certificate have been fulfilled, issued the Eligibility Certificate to the appellants granting amongst others, exemption from payment of sales

tax for a period of seven years.

17. After the announcement of the 1991 Industrial Policy, the Department of Industries gave wide publicity of the policy by issuing booklets

explaining the salient features of this policy. Apparently, under this policy existing units undertaking expansion, modernisation and diversification are

offered incentives at the same rate (Annexure-VIII to the CR No. 3673/96). The State Legislature enacted the Assam General Sales Tax Act,

1993 (for short "the Act, 1993") amalgamating all the four Sales Tax Acts and amended the s to levy of tax on the sale and purchase of goods in

the State of Assam, thereby repealed all the existing Sales Taxes with effect from 1.7.1993.

18. A cursory discussion of the Act, 1993 is required to be made in the light of the appellants' case. Section 9(4) of the Act, 1993 confers power

on the State Govt. to frame one or more Schemes by way of notification in the Official Gazette for the purpose of granting relief by way of full or

partial exemption of any tax payable under this Act to any class of industries within or any specified part of the State, on raw materials and other

inputs purchased within the State or on the manufactured goods sold by them within the State in course of inter State trade and commerce for such

period or periods as may be specified. This Act, 1993, as stated above came into force from 1.7.1993 whereas the 1991 Industrial Policy came

into force from 1.4.1991 promising, as submitted, full sales tax exemption to the new industries as well as to existing industries undertaking

expansion, modernisation and diversification on or after 1.4.1991.

19. As it is seen Section 74 of the Act, 1993 was amended in 1994 by inserting Clause (f) to Sub-Section (3) of Section 74, so that provision of

the Act can also be made applicable in respect of exemption of tax, granted before the appointed day. After this amendment the State Govt. was

empowered to issue exemption notification under the act, 1993 with effect from a date prior to the appointed date. Apparently, this amendment

was done keeping in view the exemptions announced and granted under the 1991 Industrial Policy and incentive scheme with effect from

1.4.1991.

20. In exercise of the power u/s 9(4) of the Act, 1993 read with Clause (f) of Sub-Section (3) of Section 74 of the Act, 1993, the Govt. of

Assam, by a notification framed a Scheme, viz., Assam Industries (Sales Tax Concessions) Scheme, 1995 dated 16.8.1995 granting relief by way

of full sales tax exemption on the purchase of raw materials within the State of Assam by the eligible industrial unit and also on the sale of finished

products manufactured in such eligible units in the State or in course of inter State trade and commerce. This Scheme came into force with

retrospective effect from 1.4.1991.

21. As the appellants have challenged some of the Clauses of the Scheme, 1995 alleging discriminatory treatment meted out to them and

deprivation of the benefits under the 1991 scheme, it require some discussion in the light of the promised incentives/benefits given to them under the

1991 scheme.

22. Clause B, paragraph 2 of Part I of the aforesaid Scheme provides" that an industrial unit having registered within the State of Assam which is

or was in production prior to 1.4.1991, undertaking expansion, modernisation and diversification to the minimum extent of 25% at the same

location or at some other places and with an additional employment of at least 10% and which is in compliance of the criteria of employing the

people of Assam, shall also be treated as an eligible industrial unit for the purpose of the aforesaid scheme. The aforesaid scheme also provided for

a detailed procedure for applying for the grant of eligibility and the authorisation certificate.

23. The preamble of the 1995 Scheme states that the scheme is framed for the grant of relief by way of full exemption of sales tax on purchase of

raw materials, within the State of Assam by the eligible industrial units in the State of Assam or in course of inter State trade and commerce.

However, Clause 7 of Part I of the Scheme 1995 provides for determination of the increase in production of an industrial unit which had

undertaken expansion, modernisation and diversification.

24. Clause 10 of Part I of the Scheme 1995 further provides for the procedures for the extension of the benefit under the Scheme 1995 to an

eligible industrial unit of category B, namely, an industrial unit which had undertaken expansion, modernisation and diversification and obtains the

certificate of authorisation on or after the date of the issuance of the notification dated 16.8.1995 with effect from the date of issuance of the said

notification.

25. Paragraph 11 of Part I of the Scheme provides for procedure for the grant of extension of benefits under the scheme to an industrial unit

undertaking expansion, modernisation and diversification etc. (Category B) which obtains the certificate of authorisation on or after the date of

issuance of notification, but whose certificate of authorisation is in force prior to the date of issue of the notification dated 16.8.1995, but on or

after 1.4.1991.

26. Dr. Saraf, learned counsel for the appellants has submitted that the Clause 11 of Part 1 of the Scheme 1995 provided that the benefit of sales

tax exemption would be granted to the extent of requirement of permitted raw materials in reference to the difference between the actual annual

production after the completion of expansion, modernisation, diversification work and the production during the base year. That, such benefit of

taxes on the purchase of the raw materials has to be granted by way of refund in the manner laid down in Clause 11. That, so far the finished

products are concerned, the benefit has been limited to the increase in production which is corresponding to the difference between the actual

annual production after completion of the expansion, modernisation and diversification and the annual production during the base year. It has

further been submitted that para 7 of Part 1 has provided for the determination of the increase in production of the industrial unit which undertakes

expansion, modernisation and diversification which shall be equal to the annual production after completion of the modernisation etc. minus the

production during the base year which has been subject to the actual production of industrial unit during the 365 consecutive working days of the

unit preceding the date of expansion etc. to be expressed in percentage. In view of this, it has been submitted, as per the Scheme 1995, the

industrial unit undertaking expansion etc. on the basis of the 1991 Industrial Policy will be entitled to the benefits of sales tax exemption, only on the

increased production.

27. Dr. Saraf has submitted that similar exemption was granted on the inter State sale of goods manufactured in a new industrial unit as well as

industrial unit undertaking expansion, modernisation etc by issuance of notification u/s 8(5) of the Central Sales Tax Act, 1956. In the Scheme

1995 in Clause 5 of Part II, also provision has been made for exemption from payment of sales tax in respect of the sales made in course of inter

State trade and commerce by an industry undertaking expansion, modernisation and diversification. But the said exemption has been made limited

to the increase in production after expansion, modernisation and diversification.

28. From the above the sum and substance of the arguments of the appellants is that the Scheme 1995 curtailed the exemption of the incentives

offered by the 1991 Scheme as provisions of the Scheme 1995 relating to determination of increase in production is arbitrary and illegal.

29. In view of the provisions made in the Scheme 1995, it is to be considered whether this Scheme curtailed the benefit of sales tax exemption as

promised in the 1991 Industrial Policy as this policy promised for a grant of full sales tax exemption for a period of seven years to both new

industries as well as industries undertaking expansion, modernisation and diversification.

30. The respondent State Govt. contested the writ petitions by filing affidavit in oppositions. Mr. PG Baruah, learned Advocate General, Assam

reiterated the stand on the Government and stated that no promise was made by the Govt. and, therefore, there cannot be a case of promissory

estoppel; that the Govt. policy can be changed for public interest for attainment of certain objectives and that the respondent Govt. never gave any

undertaking to the appellants for not raising the sales tax from them and that the appellants would be entitled to sales tax exemption only for the

expanded portion of the unit and not for the original unit which already enjoyed the benefits of sales tax exemptions for five years; that the

exemption of sales tax under the earlier industrial policy were already enjoyed and, therefore, no extra advantage by taking resort to the expansion,

modernisation and diversification with plea of extra investment for their original units for a further period along with the expanded portion and that

such exemption has not been provided under the 1986 Act. The learned Advocate General further submitted that 1991 policy did not contain any

promise and that the Scheme 1995 being a statutory scheme framed under the 1993 Act and, therefore, there cannot be any estoppel against the

statutory provisions.

31. Before proceeding further with the issue relating to applicability of the promissory estoppel in the case of the appellants' claim Clause 5 of Part

I of the 1991 Scheme needs some examination in the light of the claim of the appellants.

32. In the preceding paragraphs we have discussed the provisions of Clause 5 of Part I of the 1991 Scheme along with other Clauses. However,

considering the importance of the issue in question, we find it necessary to look into those Clauses along with Clause 5 of Part I.

33. Clause 3 of the 1991 Scheme deals with new unit which states that an industrial unit which has taken all the initial effective steps on or after

1.4.1991 would be considered a new unit. Existing unit means a unit which is or was in commercial production at any time prior to 1.4.1991 which

will be considered as an existing unit for the purpose of the 1991 Scheme. Clause 5 deals with expansion, modernisation, diversification. This

Clause state that expansion, modernisation, diversification of an existing industrial unit will also be eligible for all incentives if the total capital

investment on plant and machinery in the expansion, modernisation, diversification as the case may be, is more than 25% of the total fixed capital

investment of the existing unit. For the purpose of calculation, gross value of all the capital investments made on land, building, plant and machinery

of an existing unit will be taken into consideration. Expansion, modernisation, diversification will imply an increase of at least 25% in the existing

installed capacity as well as increase of additional employment at least by 10%.

The fact that existing units which has availed itself of incentives will not disqualify the expansion/modernisation/diversification project to get

incentives for the extra investments made

34. The learned Single Judge in the impugned judgment held that in the 1991 policy Govt. gave full sales tax exemption only to the new units for

seven years and that the Scheme 1995 was not meant for the existing industrial unit in the entirety, but it conferred the benefit only to the expanded

portion only. Further, the learned Single Judge rejected the plea of promissory estoppel holding that 1991 Scheme has not spelt out any promise to

the appellants and that the Scheme 1995 did not make any material departure from the 1991 Industrial Policy and in that view of the matter the

Scheme 1995 cannot be held to be retrospective in effect.

35. But, as discussed above, as per Clause 5 of the Part I of 1991 Scheme, the industrial policy, as amended, extend to new industries as well as

the industries undertaking expansion, modernisation and diversification, will be entitled to exemption from sales tax both in the finished products as

well as on purchase of raw materials for seven years. As it is seen, the benefit of the Scheme has been extended to expansion, modernisation and

diversification of an "existing unit" subject to some conditions, given in the Clause 5 itself - such as - if the total capital investment on plant and

machinery in the expansion, modernisation or diversification, as the case may be, is more than 25% of the total fixed capital investment of the

existing unit. Further, this Clause 5 also gives a guideline for the manner to calculate the gross value of all the capital investment on such

modernisation etc. as indicated in this Clause which relates to "existing units" and take those into consideration for the purpose of calculation to

give tax exemption etc. The intention of the policy maker is clear and categorical that expansion, modernisation and diversification will imply an

increase of at least 25% in the existing installed capacity as well as increase of additional employment at least by 10%. The intention of the

industrial policy maker of 1991 policy categorically clarified the intention in clear terms that "the fact of existing units has availed itself of incentives

will not disqualify the expansion, modernisation and diversification project to get the incentives for extra investment made." Meaning from this

Clause can be interpreted that subject to those conditions inserted therein, the existing units can derive the benefit of the scheme 1991 and if the

existing industries fulfil those criteria, they will be qualified to the benefit of exemption of tax etc. till seven years as intended by the 1991 scheme. In

view of this aspect, those existing industries which do not fulfil these criteria are not entitled to the exemptions of sales tax etc. Hence, we are

constrained to hold that the existing industrial units which -made expansion, modernisation and diversification is required to fulfil the criteria for

exemption of sales tax etc. under the scheme. This aspect of the entitlement for exemption of sales tax is further clarified by Clause 8 of Part I of

the 1991 scheme which states that "unless the eligibility certificate has been issued under the scheme by the Implementing Agency concerned and

the unit has complied with the stipulation/condition of eligibility". Apparently, issuance/ receipt of eligibility certificate is the pre-condition for such

benefits as eligibility certificate is required to be issued by the concerned authority after its satisfaction that the conditions are fulfilled, Clause 9 of

the Part I of the 1991 Scheme has inserted that the eligibility certificate will be issued after ensuring that "all the norms for eligibility have been

fulfilled". Clause 9.2 also provides for issue of provisional eligibility certificate, based on which disbursement of contribution of feasibility study cost

as development subsidy can be made.

36. Learned counsel for the appellants submitted that all the appellants obtained eligibility certificates on the basis of which they are entitled to

exemption of sales tax on the sale of the finished products as well as on the purchase of raw materials. The appellant industries having undertaken

the necessary steps for expansion, modernisation and diversification on the basis of the promise made in the 1991 Industrial Policy and policy

statements and having been issued with the eligibility certificate by the Implementing Agency, making it clear that the appellant industries will be

entitled to sales tax exemption for a period of seven years, the Scheme 1995 framed to give effect to the 1991 Industrial Policy, cannot curtail the

benefits of sales tax exemption to only increase in production due to expansion, modernisation and diversification.

37. As stated above, the amalgamated amended Act - Assam General Sales Tax Act, 1993, has been enacted with effect from 1.7.1993 to give

effect to the policy of 1991. Further, the provisions of Section 9(4) of the Act, 1993 conferred powers to the State Government to frame scheme

by way of notification in the Official Gazette for granting relief to any class of industries within the State. The 1991 policy which was given effect to

from 1.4.1991 promised full exemption to sales tax including all industries stated in Clause 5 therein. The main contention of the counsel for the

appellants is that Scheme 1995 was framed to give effect to the promises and policy statements of 1991 Industrial Policy, therefore, the Scheme

1995 can not be contrary to the policy statements made in 1991 by the State Government. From the perusal of the Scheme 1995 it is seen that

Scheme 1995 also granted similar relief by way of sales tax exemption to the Industrial Units. However, this Scheme was given retrospective effect

from 1.4.1991 with restriction under Clause 7 of Part I. It is also seen that the Implementing Agency on being satisfied issued eligibility certificates

to appellants on various dates, certifying that the appellants are entitled for sales tax exemption for seven years.

38. In view of the above position, it is to be seen whether provisions of the Scheme 1995 can give retrospective effect to deprive the appellants

from the sales tax exemption which was promised by the 1991 Industrial Policy.

39. The industrial policy initiated in 1982, as it is seen, was formulated-as a continuous process and changes were made to make the industrial

policy more pragmatic so that benefit of substantive nature will be granted. The appellants-industries have been enjoying the incentives offered by

the Government, and undertook expansion, modernisation and diversification and invested huge amount for this purpose. From the 1991 Industrial

Policy it is clear that the existing units undertaking expansion modernisation and diversification will also be entitled to full sales tax exemption for a

period of seven years.

40. Dr. Saraf, counsel for the appellants has further submitted that from the promises made by the respondent/Government in the 1991 Industrial

Policy created reasonable and legitimate expectations that the appellants are entitled to the industrial incentives for seven years and no change of

this incentive policy is discernible in subsequent action/decisions of the respondent/ Government.

41. In support of his contention, he has placed reliance on a decision of the Apex Court in the State of Bihar and Others Vs. M/s. Suprabhat Steel

Limited and Others, . The Apex Court was dealing with the matter arising out of the Bihar Industrial Incentive Policy, 1993 in this case. The

notification issued u/s 7 of the Bihar Finance Act by the State Government was contrary to the Industrial Incentive Policy announced by the State

Government. In this case, the Supreme Court upheld the judgment of the High Court in striking down the part of the exemption notification u/s 7 as

the same was repugnant to the Industrial Incentive Policy. According to learned counsel for the appellants this decision is squarely application to

the facts of the present cases, since the Scheme 1995 framed by way of notification u/s 9(4) of the act of 1993 to give effect to the Industrial

Policy resolution and the Incentive Scheme of 1991.

42. The Supreme Court in *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, held thus:

We must, however, observe that the power of revocation or withdrawal would be subject to one limitation, viz., the power cannot be exercised in

violation of the rule of promissory estoppel. In other words, the Government can withdraw an exemption granted by it earlier if such withdrawal

could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under

the said Rule. If the Government grants exemption to a new industry and if on the basis of the representation made by the Government an industry

is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption

could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel can not be claimed against a statute.

The aforesaid law was again reiterated by the Supreme Court in *Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others*,

43. The learned counsel for the respondents in their arguments did not dispute the validity of the contentions of the appellants that the incentives

granted under the Industrial Policy cannot be curtailed/denied by framing a Scheme, in the instant case, the Scheme 1995. The ratio enunciated in

the judicial pronouncement mentioned above is that principle of promissory estoppel and legitimate expectation require regularity, predictability and

certainty in the government's dealing with the public. These principles may not be source of Constitutional Code, but are the consequences of rights

of individual/public on substantive effect of Government action as defined and enforced by the Courts. As submitted by Dr. Saraf, promissory

estoppel has arisen with legitimate expectation on the decision of the respondent State Government from the incentives already given by the 1991

Industrial Policy and that by the subsequent Scheme 1995 the same benefit be given to them. It is an admitted fact that the industrial units of the

appellants were in production prior to 1.4.1991 and they undertook expansion, modernisation and diversification of their existing industries and

have received the benefits with promise till end of seven years. Hence, in our view, when the appellants are in receipt of the benefits as per the

Scheme 1991 it cannot be curtailed by another Scheme.

44. For the forgoing reasons, we hold that the Scheme 1995 is the continuation of the 1991 Industrial Policy, hence appellants are entitled to the

benefits of Scheme 1995. The Government can give exemption from payment of tax under the Scheme. It is for the policy markers, i.e. the

Government to decide whether as per the Scheme 1995, sales tax concession can be given to these appellants in the light of the benefits given

under the Scheme, 1991, which have been enjoying by them for seven years. This Court can issue a writ of mandamus to the Government for

implementation of the policy decision for the reasons discussed above.

45. Further, we have examined the contents of the Eligibility Certificate issued by the implementing Agency to the appellants. These certificates

created enforceable rights to the appellants and the Writ Court as an appellate court cannot review the same when these certificates were issued

on the basis of a particular Scheme as a policy matter.

46. As discussed above, the Scheme 1995 is the continuation of Scheme 1991 so far it relates to Clause (5) of 1991 policy. Therefore, the

Scheme 1995 is applicable subject to the scrutiny and enquiry made by the Government. The appellants are at liberty to approach the respondents

\Government for implementation of the Scheme 1995 and for the benefits in the light of the Scheme 1991. The Government may pass appropriate

orders within a period of six weeks from the date of receipt of such representation from the appellants.

47. The appeals are allowed to the extent indicated above. No orders as to costs.

D. Biswas, J. (Dissenting)

48. I have seen the Judgment written by my sister Mrs. M. Sarma, J. I fully agree to the principles of law as discussed by her. There is no

controversy that the State cannot resile from the promise it makes through its Industrial Policy for extending benefits like exemption of payment of

taxes, rebate in rent for land and subsidies in different forms when the investors in pursuance of the said promise set up industrial units. Promise

once held by the State cannot be withdrawn, except in certain exceptional circumstances, to the detriment of the investors. Therefore, I fully agree

to the conclusion arrived at by my sister Mrs. Sharma, J. that the incentives proposed in the Industrial Policy of Assam, 1991 cannot be taken

away or abridged in any manner before the expiry of the period of concession promised to the industrial units, On this context, it has to be seen

whether the Assam Industries (Sales Tax Concession) Scheme, 1995 in any manner has adversely affected the concessions proposed in the

Industrial Policy of 1991.

49. It is, therefore, necessary to have a clear picture as to the incentives sought to be given to the new investors under the Industrial Policy of

1991. It may be mentioned here that the appellants had set up the Industrial Units on or before 1.4.1991, the effective date of enforcement of the

Industrial Policy, 1991 and they had availed of full sales tax exemption as per earlier Industrial Policy of the State. The benefits sought to be given

to these industrial units which were set up prior to 1.4.1991 is according to the appellants full sales tax exemption on the purchase of raw materials

and also on the sale of finished products. But the contention of the State before this court is that the sales tax exemption on the above two counts

proposes to be given to the industrial units set up prior to 1.4.1991 was restricted to the extent of extra investments made for

expansion/modernisation/diversification only.

50. Clause 1.2 of Part-II of the Industrial Policy, 1991 provides that the effective date for the 1991 incentives scheme is 1.4.1991. Clause-2

defines the "eligible unit". Only new units set up on or after 1.4.1991 and the existing units undertaking expansion, modernisation or diversification

at the same location or at any other place in the State of Assam has been declared eligible for incentives under 1991 Scheme. The appellants being

industrial units set up prior to 1.4.1991 are in the category of existing units entitled to the incentives under 1991 Scheme provided they have

undertaken expansion, modernisation or diversification as detailed in Clause 2.1. In Clause-4, the words ""existing units"" have been clarified as unit

which is or was in commercial production at any time prior to 1.4.1991. A joint reading of Clause-2 and Clause-4 on the face of it would show

that the appellant industrial units which were set up prior to 1.4.1991 are also eligible for the incentives under the 1991 Scheme. Now let us

examine the extent of incentives proposed to be given to the ""existing units"" as defined above.

51. Clause -5 of the Industrial Policy spells out the incentives proposed to be given to the existing units. Clause-5 reads as follows: -

5. Expansion/Modernisation/Diversification :

Expansion/Modernisation/Diversification of an existing industrial unit will also be eligible for all incentives if the total capital investment on plant and

machinery in the expansion/ modernisation or diversification as the case may be, is more than 25 per cent of the total fixed capital investment or the

existing unit. For the purpose of calculation. Gross value of all the capital investments made on land, building, plant and machinery of an existing

unit will be taken into consideration. Expansion, modernisation, diversification will imply an increase of at least 25% in the existing installed capacity

as well as increase of additional employment at least by 10%.

The fact that existing unit has availed itself of incentives will not disqualify the expansion/modernisation/diversification project to get incentives for

the extra investment made."".

52. It would appear from Clause-5 that the existing units which have undertaken expansion/modernisation/diversification have been made eligible

for all incentives if the total capital investments in such expansion/modernisation/diversification is more than 25 percent of the total fixed capital

investments of the existing unit. It has been further clarified that the expansion, modernisation or diversification would also imply an increase of at

least 25% of the installed capacity of the existing unit with corresponding increase of additional employment at least by 10%.

53. The second part of the Clause-5 restricts the incentives to the existing unit to the extent of extra investments made. It is true that the existing

unit undertaking expansion/modernisation or diversification has been made eligible for incentives including full sales tax exemption. But the

proposed full sales tax exemption has been restricted to the extra investments made by the existing units for the purpose of

expansion/modernisation or diversification. It would further appear from the said para that the existing units although they have availed of incentives

under the earlier Scheme shall not be ineligible to get the incentives for the extra investments made.

54. From above it would transpire that the existing units as defined in Clause-4, which have been made eligible for incentives under the 1991

Scheme by Clause-2, are entitled to the incentive by way of full exemption of sales tax for the specified purposes for the extra investments made.

The extra investments implies an increase of at least 25% of the existing installed capacity including increase of additional employment 10%

(Clause-5). The intention behind the Industrial Policy of 1991 as reflected therein for the industrial units set up prior to 1.4.1991 is clear. There

cannot be any doubt that the incentives promised to, be given by the State by way of full sales tax exemption is to the extent of extra investments

made and not otherwise. Therefore, in my opinion, the argument advanced on behalf of the appellants that they are entitled to full sales tax

exemption like a new unit is not correct.

55. Now, let me refer to what is stated in the Assam Industries (Sales Tax Concession) Scheme, 1995. This Scheme has been prepared by the

State Government in exercise of the powers conferred under sub-section (4) of Section 9 read with Clause (f) of sub-section (3) of Section 74 of

the Assam General Sales Tax Act, 1993. It provides for relief by way of full exemption of sales tax on purchase of raw materials within the State

of Assam by the eligible industrial units situated within the State of Assam and also on the sale of the finished products manufactured in such

eligible units in the State of Assam or in course of inter-State trade or commerce. This Scheme has been brought into force with effect from

1.4.1991. Although not spelt out in explicit terms, the provisions of the Scheme appears to be to give effect to the Industrial Policy of 1991. In

para-2 of the Scheme, eligibility of Industrial Units have been defined. New Industrial Unit has been defined in para-2 "A". The unit which is or

was under production prior to 1.4.1991 undertaking expansion/modernisation/diversification to the minimum extent of 25% at the same location

has been dealt with in para-2 "B". It reads as follows:-

"B" An industrial unit, having its registered office within the State of Assam, which is or was in production at any time prior to 1.4.1991

undertaking expansion/modernisation/diversification to the minimum extent of 25% at the same location or at other place(s) of the State of Assam

and with an additional employment of at least 10% and is in compliance with the criteria on the industrial unit's employing the people of Assam

shall be treated as an eligible industrial unit for the purpose of this scheme.

For the purpose of getting benefit under this Scheme, the minimum extent of expansion/modernisation/diversification as referred to above shall be

25% of the total fixed capital investment of the unit prior to such expansion/modernisation/diversification.

For the purpose of calculation of gross value, all capital investment made on land, building, plant and machinery or a unit, which is or was in

production at any time prior to 1.4.1991 shall be taken into consideration.".

56. It would appear from para-"B" that the appellants who are in production prior to 1.4.1991 fall within the above category and they have been

given limited benefit only for the expansion/ modernisation or diversification subject to certain conditions. In para-7, we find the procedure for

determination in increase of production of an industrial unit which undertakes expansion/ modernisation/diversification. In para-10 "A" & "B",

procedure have been prescribed with regard to raw materials and finished products so far they apply to the "existing units". A joint reading of the

provisions of Industrial Policy of 1991 with the provisions of the Scheme of 1995 as above prepared under the provisions of the Assam General

Sales Tax Act, 1993 would show that the incentives promised to be given by the State in its Industrial Policy of 1991 have not been in any way

taken away or restricted in any manner so as to prejudice the appellants. In fact, the Scheme prepared in 1995 is in conformity with what have

been spelt out in the Policy decision of 1991. The Scheme framed in 1995 under the provisions of the Assam General Sales Tax Act, 1993 and

brought into force w.e.f. 1.4.1991 is in fact a legislative measure adopted to implement the Policy of 1991. The argument that the State has

withdrawn the Incentives declared in 1991 with retrospective effect is, therefore, of no significance. In my opinion, there is practically no difference

in the promise made in the Industrial Policy of 1991 and the Scheme prepared in 1995. The appellants being ""existing units"" as defined in the

Industrial Policy of 1991 have obviously no cause to vindicate. The Policy decision of 1991 extended full sales tax exemption for 7 years to the

new units while it conferred restricted benefits to the ""existing units"" to the extent of expanded industrial activity only. That being the position, I am

of the opinion that these appeals are devoid of merit and deserves dismissal.

On difference of opinion between the two Hon"ble Judges, the matter was referred to the third Judge, Hon"ble Chief Justice Mr. N.C. Jain. The

judgement of the third Judge is given below.

N.C. Jain, C.J.

57. As many as nine industrial units viz., Manjushree Extrusions Ltd. A Bakers Pvt. Ltd., G W Mills Ltd., United Soft Drinks Pvt Ltd, Sunrise

Biscuit Co. Ltd, M C I P Ltd., A A Ltd., P Steel Ltd and M/s K U Pvt. Ltd., filed as many as nine writ petitions before the learned Single Judge in

which the basis relief claimed by them was that they were entitled to full Sales Tax exemption as was contemplated by the Industrial Policy of 1991

issued by the State of Assam if they undertake expansion, modernisation and diversification work in their existing industrial units to the extent of at

least 25% in Capital investment and 10% in additional employment. It was further the case of the industrial units in the writ applications that having

granted full Sales Tax exemption, the Govt. of Assam could not issue notification in the year 1995 and frame a scheme contrary to the one which

was framed in the year 1991. According to the industrial units, a right, which was vested in the industries, viz., the right to claim full Sales Tax

exemption, has been illegally taken away by issuance of a notification in the year 1995 and this is what could not precisely be done in law. The

learned Single Judge dismissed the writ petitions of all the industrial units by holding that the industrial units undertaking expansion, modernisation

and diversification to the extent of 25%, were not entitled to the grant of full Sales Tax exemption. The industrial units filed writ appeals before a

Division Bench of this Court which came-up for hearing before Smt. Meera Sharma, j. and Shri D. Biswas, J. The leading judgment was written by

Smti Meera Sharma, J. holding that the appellants were entitled to full Sales Tax exemption under the policy of 1991 and that the same could not

be taken away by the policy of 1995. It has also been found by Smt. Meera Sharma, J. that once the State had promised full Sales Tax exemption,

it could not divest the industrial units of that full Sales Tax exemption by inserting different words in the policy of 1995. Shri D Biswas, J. while not

disagreeing with Smt. Meera Sharma, J. that if a benefit has been conferred, the same could not be taken away by the State, has disagreed to the

extent that both the Policies of 1991 and 1995 were similar in nature and that the appellants were not entitled to full Sales Tax exemption. Since

there was difference of opinion between the two Judges, the matters stood referred for opinion of the third Judge. Hon"ble the Chief Justice Shri

Brijesh Kumar (as he then was) ordered placement of the matters before me for opinion. This is how the cases have come-up for hearing before

me for my opinion as to which view is correct.

58. It is agreed between the counsel for the parties that since a common question has arisen in all these cases, all the cases can be and should be

disposed of together. In view thereof, I, by virtue of this Judgment, would be disposing of all these matters (Writ Appeals Nos. 139/98, 140/98,

141/98, 153/98, 154/98, 155/98, 156/98, 163/98 and 164/98) together.

In order to appreciate the precise controversy between the parties, it would be necessary to have a look at the very wordings of the Industrial

Policy of 1991 (hereinafter called Policy of 1991) and the notification of the Assam Government issued in the year 1995 (hereinafter called the

notification of 1995). The relevant provisions of the Policy of 1991, are reproduced below:

2. Eligible Unit: Only new units set up on or after 1.4.1991 and existing units undertaking expansion, modernisation or diversification at the same

location or at any other place in the State of Assam will be eligible for Incentives under 1991 Scheme provided that :

2.1 A unit shall have employment of 80% people of Assam in the managerial cadre and 90% people of Assam in the non-managerial cadre and

that over a period of 5 years from the commencement of production such units would take all effective steps to ensure 100% employment or

people of Assam in non-managerial and atleast 90% in managerial posts. They would further give an undertaking that if these conditions are

violated, the State Government Subsidies/Incentives so availed by them would be fully refunded.

3. New Unit : An Industrial unit which has taken all the initial effective steps on or after 1.4.1991 would be considered as a new unit.

4. Existing Unit : A unit which is or was in commercial production at any time prior to 1.4.1991 will be considered as an existing unit for the

purpose of the 1991 Scheme.

5. Expansion/Modernisation/Diversification : Expansion/ Modernisation/Diversification of an existing industrial unit will be eligible for all incentives if

the total capital investment on plant and machinery in the expansion, modernisation or diversification as the case may be, is more than 25 percent of

the total fixed capital investment of the existing unit. For the purpose of calculation, Gross value of all the capital investments made on land,

building, plant and machinery of an existing unit will be taken into consideration. Expansion, modernisation and diversification will imply an increase

of at least 25% in the existing installed capacity as well as increase of additional employment at least by 10%.

The fact that existing unit has availed itself of incentives will not disqualify the expansion/modernisation/diversification project to get incentives for

the extra investment made.

6. Sales Tax Exemption : Sales Tax will be exempted on purchase of raw materials and Sales of finished products for a period of seven years.

59. Having reproduced the relevant provisions of the Policy of 1991, it would be appropriate to reproduce the relevant provision of notification of

1995. The same read as under:

7. Determination of increase in production of an industrial unit which undertakes expansion/modernisation/diversification : The actual production of

the industrial unit during 365 consecutive working days of the unit, preceding the date of completion of its expansion/modernisation/diversification

shall be called its base year production.

The actual production of the industrial unit after its expansion/ modernisation/diversification shall be determined on an yearly basis, the first year

being the 365 working days, following the date of commencement of production after the completion of the expansion/modernisation/diversification.

Increase in production of an industrial unit after the completion of expansion/modernisation/diversification shall be equal to the annual production

after the completion of expansion/ modernisation/diversification minus production during the base year divided by the base year production,

expressed in percentage.

10. Procedure for the extension of the benefit under this scheme to an eligible industrial unit of the category "B", which obtains the certificate of

authorisation on or after the date of issue of this notification, dated the 16th August, 1995 with effect from the date of issue of this notification or

thereafter:-

(a) With regard to the purchase of permitted raw materials, as stated in the certificate of authorisation, granted to an industrial eligible unit, of the

category "B" under this para 10, the following shall be the procedure:-

Under this scheme, an eligible existing industrial unit, undertaking expansion/modernisation/diversification, fulfilling all conditions and norms and

holding the certificate of authorisation shall be entitled to the benefit of full sales tax relief in the purchase of permitted raw materials, stated in the

certificate of authorisation, granted to it by the Assessing Officer of the area to such extent as are required for achieving the difference between

actual annual production after the completion of the expansion/modernisation/diversification and the annual production during the base year.

The relief aforesaid shall be allowed by way of refund to such eligible industrial unit on application, filed before the Assessing Officer of the area

within 90 days from the date of expiry of the financial year to which the refund relates. The refund shall be governed by the provision of section 30

of the Assam General Sales Tax Act, 1993 and the Rules made thereunder.

Provided that...

(b) With regard to the sales of the finished products, the following shall be the procedure :-

Corresponding to the difference between the actual annual production after the completion of expansion/modernisation/diversification and the

annual production during the base year, the holder of the certificate of authorisation in the case of an eligible industrial unit of the category "B" shall

be competent to sell his finished products in the State of Assam or in the course of inter-State trade or commerce, for which he shall not be liable

to pay sales tax under the Assam General Sales Tax Act, 1993. In the cash memorandum or the bill, issued to the purchaser, the holder of the

certificate of authorisation shall clearly mention the reference particulars of his certificate of authorisation and such copy of the cash memorandum

or bill shall be verified by the Assessing Officer of the area at the time of assessment of his sales tax dues.

Provided that ...

11. Procedure for the extension of benefit under the scheme to an eligible industrial unit under the category "B", which obtains the certificate of

authorisation on or after the date of issue of this notification, dated the 16th August, 1995, but whose certificate of authorisation is in force prior to

the date of issue of this notification dated the 16th August, 1995, but from or after 1.4.1991:-

(a)(i) Corresponding to the extent of requirements of the permitted raw materials (stated in the certificate of authorisation, granted to the aforesaid

industrial unit) in reference to the difference between the actual annual production after the completion of the

expansion/modernisation/diversification and the annual production during the base year, the benefit of sales tax, as entitled under the scheme shall

be allowed by way of refund to such eligible industrial unit on application, filed before the Assessing Officer of the area within 180 days from the

date of issue of the certificate of authorisation. The refund shall be governed by the provision section 30 of the Assam General Sales Tax Act,

1993 and rules made thereunder.

(ii) During the period from or after the date of this notification dated the 16th August, 1995, the benefit of sales tax relief as entitled under this

scheme in the purchase of permitted raw materials stated in the certificate of authorisation granted to any of the above mentioned eligible industrial

units of Category "B" under this para 11 shall be available to it in the same manner as laid down in sub-para (a) of para 10.

Provided ...

(b) With regard to the sale of the finished products, the following shall be the procedure: -

Corresponding to the difference between the actual annual production after the completion of expansion/modernisation/ diversification and the

annual production during the base year, the holder of the certificate of authorisation in the case of an eligible unit of the category "B" under this para

11 shall be competent to sell his finished products in the State of Assam or in the course of inter-State trade or commerce, for which he shall not

be liable to pay sales tax under the Assam General Sales Tax Act, 1993. In the case memorandum or the bill, issued to the purchaser, the holder

of the certificate of authorisation shall clearly mention the reference particulars of his certificate of authorisation and such copy of the cash

memorandum or bill shall be verified by the assessing officer of the area at the time of assessment of his sales tax dues.

Provided

60. While interpreting the 1991 Policy and 1995 Scheme, Smt. Meera Sharma, J, held that the Industrial Policy of 1991 provided Sales Tax

exemption to new industrial units as well as existing industrial units undertaking expansion/modernisation/ diversification for a period of seven years.

It has been held that the Scheme of 1995 limiting Sales Tax exemption only on increased production was improper and that the incentives granted

under Industrial Policy of 1991 could not be curtailed by the Scheme of 1995. It is further the finding of Smt. Meera Sharma, J. that the Scheme of

1995 was in continuation of 1991 Industrial Policy and that eligibility certificates issued by the implementing agency created enforceable rights and

that the Court could issue Writ of Mandamus for implementing the policy decision. The relevant observations made by Smt. Meera Sharma, J. are

reproduced below for ready reference:-

41. The Supreme Court in Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, held thus :

We must, however, observe that the power of revocation of withdrawal would be subject to one limitation, viz., the power cannot be exercised in

violation of the rule of promissory estoppel. In other words, the Govt. can withdraw an exemption granted by it earlier if such withdrawal could be

done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said

rule. If the Govt. grants exemption to a new industry and if on the basis of the representation made by the Govt. an Industry is established in order

to avail the benefit of exemption it may then follow that the new industry can legitimately raise a grievance that the exemption could not be

withdrawn except by means of legislation having regard to the fact that promissory estoppel can not be claimed against a statute.

The aforesaid law was again reiterated by the Supreme Court in *Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others*,

42. The learned counsel for the respondents in their argument did not dispute the validity of the contentions of the appellants that the incentives

granted under the Industrial Policy cannot be curtailed/denied by framing a scheme, in the instant case the Scheme 1995. The ratio enunciated in

the judicial pronouncement mentioned above is that principle of promissory estoppel and legitimate expectation require regularity, predictability and

certainty in the Govt.'s dealing with the public. These principles may not be source of Constitutional Code, but are the consequence of rights of

individual/public on substantive effect of Govt. action as defined and enforced by the Courts. As submitted by Dr. Saraf, promissory estoppel has

arisen with legitimate expectation on the decision of the respondent State Govt. from the incentives already given by the 1991 Industrial Policy and

that by the subsequent Scheme 1995 the same benefit be given to them. It is an admitted fact that the industrial units of the appellants were in

production prior to 1.4.1991 and they undertook expansion/modernisation and diversification of their existing industries and have received the

benefits with promise till end of seven years. Hence, in our view, when the appellants are in receipt of the benefits as per the Scheme 1991 it

cannot be curtailed by another Scheme.

43. For the foregoing reasons, we hold that the Scheme 1995 is the continuation of the 1991 industrial policy, hence appellants are entitled to the

benefits of Scheme 1995. The Govt. can give exemption from payment of tax under the Scheme. It is for the policy makers, i.e. the Govt. to

decide whether as per the Scheme 1995, sales tax concession can be given to these appellants in the light of the benefits given under the Scheme.

1991, which have been enjoying by them for seven years. This Court can issue a writ of Mandamus to the Govt. for implementation of the policy

decision for the reasons discussed above.

44. Further, we have examined the contents of the Eligibility Certificate issued by the Implementing Agency to the appellants. These certificates

created enforceable rights to the appellants and the writ court as an appellate court cannot review the same when these certificates were issued on

the basis of a particular Scheme as a policy matter.

45. As discussed above, the Scheme 1995 is the continuation of Scheme 1991 so far it relates to Clause (5) of 1991 Policy. Therefore the

Scheme 1995 is applicable subject to the scrutiny and enquiry made by the Govt. The appellants are at liberty to approach the respondents/Govt.

for implementation of the Scheme 1995 and for the benefits in the light-of the Scheme 1991. The Govt. may pass appropriate orders within a

period of six weeks from the date of receipt of such representation from the appellants.

61. Mr. D. Biswas, J., while not disagreeing with the view of Smt. Meera Sharma, J. to the extent that the promise made in 1991 could not be

resiled by the State, has held that the incentives promised by the Industrial Policy of 1991 were neither taken away nor restricted by 1995 Scheme

and that there was no difference in promise made in Industrial Policy of 1991 and the Scheme of 1995. According to the learned Judge, Industrial

Policy of 1991 extended full sales tax exemption for seven years to new units while restricted the benefits to existing units to the extent of expanded

industrial activity only. It would be fruitful to reproduce the exact observations of D. Biswas, J. :

56. It would appear from para "B" that the appellants who are in production prior to 1.4.1991 fall within the above category and they have been

given limited benefit only for the expansion/ modernisation or diversification subject to certain conditions. In para 7, we find the procedure for

determination in increase of production of an industrial unit which undertakes expansion/ modernisation/diversification. In paras 10 "A" and "B",

procedure have been prescribed with regard to raw materials and finished products so far they apply to the "existing units". A joint reading of the

provisions of Industrial Policy of 1991 with the provisions of the Scheme of 1995 as above prepared under the provisions of the Assam General

Sales Tax Act, 1993, would show that the incentives promised to be given by the State in its Industrial Policy of 1991 have not been in any way

taken away or restricted in any manner so as to prejudice the appellants. In fact, the scheme prepared in 1995 is in conformity with what have

been spelt out in the policy decision of 1991. The scheme framed in 1995 under the provisions of the Assam General Sales Tax Act, 1993 and

brought into force w.e.f 1.4.1991 is in fact a legislative measure adopted to implement the Policy of 1991. The argument that the Sate has

withdrawn the incentives declared in 1991 with retrospective effect is, therefore, of no significance. In my opinion, there is practically no difference

in the promise made in the Industrial Policy of 1991 and the scheme prepared in 1995. The appellants being "existing units" as defined in the

Industrial Policy of 1991 have obviously no cause to vindicate. The policy decision of 1991 extended full sales tax exemption for 7 years to the

new units while it conferred restricted benefits to the "existing units" to the extent of expanded industrial activity only. That being the position, I am

of the opinion that these appeals are devoid of merit and deserves dismissal.

62. Dr. A.K. Saraf, representing the industrial units, while supporting the view of Smt. Meera Sharma, J., and while interpreting the Industrial

Policy of 1991 and Scheme of 1995, has vehemently argued that the benefit of full sales tax exemption granted under 1991 Industrial Policy has

been taken away by 1995 Scheme. He has interpreted 1991 Industrial Policy by arguing that in the Industrial Policy of 1991 sales tax exemption

was granted to new industrial units set up as well as existing industrial units undertaking expansion/modernisation/diversification at the same location

or at any other place in the State of Assam for a period of seven years. The precise argument of the learned counsel is that in Clause 2 of Part II of

1991 Industrial Policy "eligible units" have been defined and clause 3 talks of "new units" set up on or after 1.4.1991 and clause 4 defines an

"existing unit". According to the counsel, it has been envisaged by clause 2 of 1991 Industrial Policy that both new as well as existing units shall be

eligible for incentives under the Scheme provided they fulfil the requirements of clause 2.1. It has further been argued that "new units" have been

defined in clause 3 whereas "existing unit" has been placed on equal footing with the new units in view of the definition of clause 4. The learned

counsel has further argued that an industrial unit undertaking expansion/modernisation or diversification would also be eligible for all incentives

provided the total capital investment is made by the industrial unit at least to the extent of 25% in the installed capacity and increase of additional

employment at least by 10%. According to the counsel, this has been made clear by the wording of clause 5. It is further the argument of Dr. Saraf

that the factum of the existing units availing the benefits of incentives would not disqualify the expansion/modernisation/diversification projects to get

the incentives for the extra investment made. According to clause 6, the counsel submits that both new as well as existing units were entitled to full

exemption of sales tax on purchase of raw materials as well as the sale of finished products for a period of seven years. The learned counsel, after

reading the notification of 1995, that is, the Industrial Scheme of 1995, has submitted that a change has been made inasmuch as a mention has

been made in clause 7 to the effect that the actual production of an Industrial unit during 365 working days of the unit preceding the date of

completion of its expansion/modernisation/diversification would be called its base year production. According to Dr. Saraf, clauses 10A and 10B

of Industrial Scheme of 1995 when read together, limit the right of the existing industrial unit to claim exemption between the actual production and

base year production, which was not the position under the 1991 Industrial Policy. The learned counsel, in support of his argument, has relied upon

the decision of the Hon"ble Supreme Court in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others,

63. Lastly, Dr. Saraf has argued that even if there is ambiguity in the Industrial Policy of 1991 and the Scheme of 1995, a construction beneficial to

the subject of the State should be adopted. In this context, another judgment of the Hon"ble Supreme Court in Commissioner of Income Tax,

Patiala v. Sahazada Nand and Sons and others 60 ITR 393, has been relied upon.

64. Mr. B.C. Das appearing for the State of Assam has, with equal vehemence argued that the Industrial Policy of 1991 and 1995 Scheme are not

Inconsistent with each other and that 1995 Scheme does not curtail the rights of the industrial units which were conferred under 1991 Industrial

Policy. According to the counsel, the perusal of 1991 Industrial Policy clearly shows that only new industrial units set up on or after 1st April, 1991

and such units who undertook expansion, modernisation and diversification, have been made eligible for exemption on fulfilment of certain

conditions specified therein. The existing units, according to Mr. Das, who undertook capital investment on plant and machinery in the

expansion/modernisation/diversification to the tune of more than 25% of the total fixed capital investment are eligible for all incentives. Increase of

additional employment at least by 10% is also another factor, according to him, which makes an existing unit eligible for availing the incentives. The

precise argument of Mr. Das is that even those industrial units who have already availed of the incentives, but are existing, they do not stand

disqualified to get incentives, but they would get incentives only for the extra investments made and not for the entire unit; whereas a new industrial

unit would get full sales tax exemption. According to the counsel, there is no departure from the aforesaid policy in the 1995 Industrial Scheme and

that both the Industrial Policy of 1991 and Industrial Scheme of 1995 are in consonance with each other. It has further been argued by Mr. Das

that the factum of the existing units getting full exemption from payment of sales tax under the old Industrial Policy of 1986 is also relevant for

considering the object sought to be achieved of the public good at large by the Industrial Policy of 1991 and that it would be discriminatory and

against public interest to give the industrial units full exemption under the 1991 Policy for another period of seven years. The decision of the Apex

Court in the State of Bihar and others v. Suprabhat Steel Ltd. and others, relied upon by Dr. Saraf, has been distinguished by Mr. Das by arguing

that the Apex Court on interpretation of Clause 10.4(i)(a) and (b) of the Bihar Industrial Incentive Policy, 1993, held that the benefit would not

only be extended to old industrial units which started production between 1.4.1993 and 31.3.1998 but also to those industrial units which started

production before 1.4.1993.

65. As regards the decision of the Apex Court in Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others,

Mr. Das submitted that the present is not a case where there is any ambiguity, the benefit of which should be given to the subject of the State.

According to Mr. Das, no two interpretations are possible and, therefore, the ratio of law in Shahzada Nand's case (supra) is inapplicable to the

facts of the present case.

66. I have given thoughtful and deep consideration to the respective arguments of the counsel for the parties. In my considered opinion, the answer

to the arguments would lie in interpretation of the Policy of 1991 and Industrial Scheme of 1995.

67. Adverting to the interpretation of the Policy of 1991, I need straightaway refer to the definition of the words "eligible units" who is entitled to

incentives mentioned in the policy. Eligible units has been defined in Clause-2. This clause clearly lays down that only new units which have been

set up on or after 1st of April, 1991 and existing units undertaking expansion, modernisation or diversification, either at the same location or at any

other place in the State of Assam, shall be eligible to avail of the incentives under 1991 Scheme provided they fulfil the conditions laid down in

Clause 2.1. New units as well as existing units have been placed on same footing in accordance with Clause 2 of the Policy of 1991. As to what is

a new unit, the same has been defined in Clause 3 of the aforesaid Policy. That Industrial Unit, according to clause 3, would be called a "new unit

which has taken all initial effective steps on or after 1st April, 1991. Existing unit has been defined as the one for the purpose of 1991 Scheme

which had come up for commercial production at any time before 1st April, 1991. Clause 5 envisages that existing industrial units would also be

eligible for all incentives provided expansion/modernisation/diversification has been undertaken by such an existing industrial unit by investing capital

of more than 25% of the total fixed capital investment. It has again been so stated in clause 5 that expansion/modernisation/ diversification would

simply an increase of at least 25% in the existing installed capacity as well as increase of additional employment at lease by 10%. Use of specific

words Industrial unit will also be eligible for all incentives....." clearly shows that an existing industrial unit would also be eligible for all incentives,

provided there is an increase in capital investment on plant and machinery. The phraseology of the words and more particularly the word "also

mentioned above clearly denotes that an existing unit has been placed on equal footing as regards availing of incentives is concerned. This position

has further been strengthened by sub para of clause 5, which clearly says that the factum of the existing unit availing itself of incentives, the same

would not disqualify the expansion/modernisation/diversification project to get incentive for the extra investment made. Clause 6 of the policy of

1991 clearly say that sales tax will be exempted on purchase of raw materials and sales of finished products for a period of seven years. This

clause is mandatory as the word "will" has been used therein. Sale tax exemption has been granted both on purchase of raw materials and sales of

finished products by an industrial unit. In other words, an existing industrial unit would not be liable to pay sales tax on purchase of raw materials

and shall also be not liable to pay sales tax on finished products for a period of seven years. May be the words "full sales tax" have not been used

in clause 6, but the words "sales tax exemption" would necessarily mean total exemption from payment of sales tax by an existing industrial unit.

68. Whether each clause of Policy of 1991 is interpreted in its isolation or all the clauses are put together, the interpretation, in my considered

opinion, would be that both new units and existing units are eligible to avail of sales tax exemption limit in its entirety whether it be on purchase of

raw materials or sales of finished products.

69. The aforementioned interpretation put by me upon the Industrial Policy of 1991, leads me to scrutinise whether any change has been made by

the notification of 1995 in which Industrial Scheme of 1995 has been published. Clause 7 has laid down the criterion of actual production of an

industrial unit during 365 consecutive working days preceding the date of completion of its expansion by describing the same as base year

production. This was not the criterion in the Industrial Policy of 1991. There is not even a single word in Clause 7 to the effect that an existing unit

would also be eligible for all incentives, namely, sales tax exemption, provided it undertakes expansion/modernisation/diversification by making an

increase of at least 25% in the existing installed capacity as well as increase of additional 10% employment. On the other hand, altogether different

criterion has been laid down not only in Clause 7 but in other clauses as well which have been reproduced by me in the earlier part of my judgment

i.e. para 3. In my considered opinion, it is too much for the State now to contend that sales tax exemption would be available to an industrial unit to

that extent only to which expansion was made by an industrial unit, after having held out a promise in the year 1991 that sales tax exemption shall

be available to both new and existing industrial units. It would not be out of place to mention at this stage that it is the specific case of the appellants

that they neither paid sales tax on the purchase of raw materials nor charged sales tax on finished goods. Not only that even implementing agency,

admittedly, issued eligibility certificates to all the appellants granting them exemption from payment of sales tax for a period of seven years. No

condition whatsoever was laid down in the certificates that the exemption would be available only on the increase introduction resulting from the

expansion, modernisation or diversification and in fact, no provision in the Industrial Policy of 1991 contemplated about the increase in production

for availing the full sales tax exemption. In other words, the Industrial Policy was understood both by the industrial units and by the department in

the same manner. It is now too late in the day to ask the industrial units to pay the sales tax beyond the increased capacity when they have neither

paid the same on raw materials purchased nor charged the same on finished goods from their customers.

70. It appears to me that full sales tax exemption was granted even to the existing industrial units keeping in view the peculiar conditions prevailing

in Assam where, it cannot be denied, that industries have gone to dogs. It appears to me that in order to boost up the setting up of new industries

and also to boost up the expansion, modernisation and diversification of existing industrial units that exemption from payment of sales tax was

granted for a period of seven years. After making a clear cut provision in the 1991 policy, the State cannot make a somersault and change me

scheme in the year 1995 to the detriment of its subjects.

71. Since the decision in these cases has been arrived at by me by interpreting the Policy of 1991 and Industrial Scheme of 1995, there is no need

to go into the question whether the judgment of the Apex Court in State of Dinar and others v. Suprabhat Steel Ltd. and others (surpa) is

applicable or not since I am further of the view that the interpretation placed by me is the only possible interpretation and no other interpretation is

possible. I hold that there is no ambiguity in the Policy of 1991. However, even if it be assumed for a moment that there is ambiguity in the

language in the 1991 Policy, its benefit must go to the subjects of the State, as has been held in the case of Commissioner of Income Tax, Patiala v.

Shahzada Nand and Sons and others (supra).

72. Although the arguments of the counsel for the State pale into insignificance in the light of the observations made by me in the above paragraphs,

yet it would be appropriate to deal with the submissions of the State counsel. I am unable to agree to accept the argument of Mr. Das that the

Industrial Policy of 1991 and 1995 Scheme are not inconsistent with each other and that 1995 Scheme has not curtailed the rights of the industrial

units which stood conferred under 1991 Industrial Policy. As has been observed above, the Industrial Policy of 1991 did contemplate in clear and

unequivocal words that sales tax exemption would be available even to the existing units and that the same would be at part with the new units. But

1995 Scheme has limited the rights of existing industrial units to the extent of expansion. Even the wording of all the clauses of 1995 Scheme is

altogether different and inconsistent with 1991 Industrial Policy and, therefore. It cannot be maintained successfully by the counsel for the State that

there was no departure in Industrial Scheme of 1995. Equally untenable is the argument of Mr. Das that the very fact that the existing units got full

exemption from payment of sales tax under old Industrial Policy of 1986, it would be discriminatory and against public interest to give full

exemption again in the year 1991 for another seven years and that the object sought to be achieved would be against public good at large. The

Government cannot be estopped to confer the benefit of exemption from payment of sales tax simply because a similar benefit was granted earlier.

As has been observed above, the object of granting full sales tax exemption to the existing as well as new industrial unit seems to be to boost up

industrial development and generation of adequate employment opportunities. The very fact that the provision for more employment is there in

1991 Industrial Policy, it shows that the Government intended to confer the benefits even upon existing industrial units in the same manner as upon

new units.

73. In view of the discussion, I agree with the view expressed by Meera Sharma J, may be with some additional reasoning. As a consequence

thereof all Writ Appeals shall stand allowed.