
**Dharampal Satyapal Limited and Others Vs Union of India (UOI) and
Another**

Writ Petition (C) No"s. 149 and 150 of 2010

Court: Gauhati High Court

Date of Decision: Dec. 10, 2010

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 â€” Section 3(3)#Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 â€” Section 3(1), 3(3), 3(4)#Central Excise Rules, 1944 â€” Rule 10, 173G, 9#Central Excises and Salt Act, 1944 â€” Section 11A, 38A, 5A, 5A1#Constitution of India, 1950 â€” Article 14, 19, 226#Customs Act, 1962 â€” Section 25#Electricity (Supply) Act, 1948 â€” Section 49#Finance (Amendment) Act, 2003 â€” Section 154#General Clauses Act, 1897 â€” Section 6

Citation: (2011) 1 GLT 625

Hon'ble Judges: Amitava Roy, J

Bench: Single Bench

Advocate: A.K. Bhattacharyya, S.K. Medhi, R.K. Bharali, J. Das and A. Pathak, for the Appellant; K.N. Choudhury and B. Sarma, for the Respondent

Judgement

Amitava Roy, J.

Feeling distressed by the withdrawal of the fiscal incentive professed under the new industrial policy in the Northeastern

Region embodied in the office memorandum No. EA/1/2/96-IPD dated 24.12.1997 of the Ministry of Industry and Commerce, Department of

Industrial Policy and Promotion, Government of India by way of exemption of duty under the Central Excise Act, 1944 (for short hereafter

referred to as the Act) for its manufactured items of ""pan masala"" and other tobacco products the Petitioner has mounted this assailment seeking

invalidation of the impugned decision and restoration of the concession with all consequential benefits. By orders dated 9.3.2010, the operation of

the impugned notifications 11/2007-CE dated 1.3.2007 and No. 21/2007-CE dated 25.4.2007 had been kept in abeyance.

I have heard Mr. A.K. Bhattacharyya, Sr. Advocate assisted by Mr. S.K. Medhi, Mr. R.K. Bharali, Mr. J. Das and Mr. A. Pathak, Advocates

for the Petitioner and Mr. K.N. Choudhury, learned Additional Advocate General, Assam, and Mr. B. Sharma, learned Central Government

Standing Counsel, for the State as well as the Union Respondents respectively.

2. The contentious pleadings dealt case wise lay the essential facts. The Petitioner in WP(C) 749/2010 has introduced itself to be a Company

incorporated under the Companies Act, 1956 with its registered office at 1711, S.P. Mukherjee Marg, in New Delhi having fifteen units functional

in the State of Assam out of which eight are exclusively engaged in the manufacture of pan masala. The Central Government in the Ministry of

Industry and Commerce, Department of Industrial Policy and Promotion, in order to provide a fillip to industrial growth in the Northeastern Region

through its Northeastern Industrial Policy conveyed by the office memorandum No. EA/1/2/96-IPD dated 24.12.1997 announced new initiatives

and incentives amongst others by way of central excise and income tax exemptions on various excisable commodities/goods including pan masala

for a period of 10 years from the date of commencement of commercial production thereof or the date of issuance of the notification whichever

was later. Consequent upon the above declaration, the Central Government issued notifications No. 32/99-CE and 33/99-CE dated 8.7.1999

under the Act read with other legal provisions as mentioned therein in reiteration. Thereunder the Central Government exempted the specified

goods from excise duty or additional excise duty with regard to the units located in certain areas/industrial estates etc. The exemption so granted

was extended to new industrial units that had commenced their commercial production on or after 24.12.1997 as well as those that had existed

before that date but had undertaken substantial expansion by way of increase in their installed capacity by not less than 25% on or after the said

date.

3. According to the Petitioner, though it was initially hesitant to set up its units in the Northeastern Region due to logistical and locational problems

as well as other difficulties, in view of the assurance of excise duty exemption for a period of 10 years, it decided to do so and thus set up

manufacturing units within the areas specified in the aforementioned notifications. The commercial production in the fifteen units so established in the

industrial estate, Bamunimaidam, Guwahati of which 8 were devoted to the manufacture of pan masala commenced in the years 2001, 2002, 2006

and 2007. In the process it has invested huge amounts generating as well substantial employment to the locals besides stimulating industrialisation in

the Region. The Petitioner has claimed that its total investment in the projects as on 30.9.2009 is Rs. 90.65 crores. A chart has been furnished by it

disclosing the details of investment in the pan masala units and the dates of commencement of commercial production in them. It has maintained

that its investment in the pan masala units has been to the tune of Rs. 29.09 crores which employ about 400 persons. According to it, it has also

entered into various agreements for carrying out the manufacturing process and has schemed several new ventures in the Northeastern Region

acting on the commitment that the exemption would continue for a full term of 10 years as alluded in the notifications No(s) 32/99-CE and 33/99-

CE. It having satisfied the eligibility criteria as mentioned in the North East Industrial Policy, 1997, (for short hereafter referred to as the Policy

1997) and being entitled, availed the benefit of exemption from payment of excise duty on the finished goods manufactured and cleared by it and

was duly allowed the refund of such duty deposited by it since the year 2001 following the verification of its claims relatable thereto.

4. The North East Industrial and Investment Promotion Policy, 2007 (for short hereafter referred to as the Policy 2007) promulgated vide Office

Memorandum No. 10(3)/2007-DBA-II/NER dated 1/4/2007 by the Government of India in the Ministry of Commerce and Industry, Department

of Industrial Policy and Promotion followed which though approved a package of fiscal incentives and other concessions for the North East Region

with effect from that date, catalogued pan masala covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985 (for short

hereafter also referred to as the Tariff Act, 1985) in the ""Negative List"" of industries identified as ineligible for the benefits thereunder. The

Petitioner, however, has insisted that the policy evinced that all existing industrial units that had commenced production on or before 31.3.2007

would enjoy the exemption benefits and that therefore though pan masala was included in the Negative List of Policy, 2007, these units having

commenced production on or before 31.3.2007 were entitled to avail the fiscal incentives under Policy 1997.

5. By the impugned notification No. 21/2007-CE dated 25.4.2007, the benefits hitherto extended vide the notifications No. 32/99-CE and 33/99-

CE to the Petitioner were sought to be withdrawn vis-a-vis pan masala falling under Chapter 21 of the First Schedule to the Tariff Act, 1985

signifying the mandate of payment of full excise duty by the manufacturers of the said commodity/goods. Contending that such unilateral withdrawal

is arbitrary and unwarranted as well as annihilative of its legitimate expectation besides being impermissible qua the precept of promissory estoppel,

the Petitioner claims to have unsuccessfully represented before the various authorities of the concerned Departments of both the Governments and

distraught by their gelid response has turned to this Court for judicial intervention. It, however, has referred to the office memoranda dated

22.11.2007, 24.1.2008 and 23.2.2009 of the Ministry of Commerce and Industries, Department of Industrial Policy and Promotion, Government

of India, exhorting the Ministry of Finance, Department of Revenue for a decision on the Petitioner's request for the reconsideration of the

withdrawal of excise duty exemption to pan masala industries set up under the Policy 1997.

6. The Respondents 1 to 4 have in two instalments submitted their recorded version. In the counter first in point of time represented to have been

filed on behalf of the Respondent No. 2 and affirmed by the Assistant Commissioner of Central Excise, Guwahati, the promulgation of the

policy 1997 and the notifications No. 32/99-CE and 33/99-CE dated 8.7.1999, the incentives thereunder including central excise holiday for a

period of 10 years for the goods specified therein vis-a-vis the industrial units identified, the entitlement of the Petitioner and the grant thereof to it

have been admitted. The answering Respondents have averred that subsequent thereto though the Central Government issued notification No.

45/99 dated 31.12.1999 u/s 5A of the Act whereby the notifications No. 32/99-CE and 33/99-CE dated 8.7.99 were amended with effect from

that date excluding all tobacco related products including pan masala falling under Chapter 24 or heading No. 21.06 of the First Schedule or

Second Schedule of the Central Excise Tariff Act, 1985, from the purview of the exemption, the benefit was, however, restored by the notification

No. 1/2000 dated 17.1.2000. Thereafter by Notification No. 1/2001 -CE dated 22.1.2001 the exemption on cigarettes was withdrawn. This was

followed by the notification No. 6/2001-CE dated 1.3.2001 withholding the excise duty exemption on all goods excluding the same from the ambit

of the notifications No. 32/99-CE and 33/99-CE dated 8.7.99. According to the answering Respondents, the Government of India, on a due

consideration of the achievements in the realm of industrial development in the North East Region, mushroom growth of tobacco related companies

and heavy refund due to excise duty exemptions, in public interest by the Finance Act, 2003 inserted Section 154 and consequently rolled back

the benefit of excise duty exemption with retrospective effect thus effecting cessation of the benefits under Policy 1997 vis-a-vis pan masala.

Reference to the determination made by the Apex Court in R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others,

sustaining the aforementioned amendment of the Central Act, 1944 by the Finance Act 2003 has been made in endorsement of this stand.

7. According to the answering Respondents, however, in view of the persistent demands of the affected companies/units, the Government of India

issued another notification No. 69/03 dated 25.8.2003 also u/s 5A of the Act granting exemption to the extent of 50% of the central excise duty

under certain conditions stipulating inter alia that the benefit would be extendable to the units that had availed incentives under the notification No(s)

32/99-CE and 33/99-CE and had continued their manufacturing activities on or after 28.2.2001. Subsequent thereto vide notification No. 8/2004

dated 21.1.2004 u/s 5A of the Act, the Government of India in supersession of the notification No. 69/03 dated 25.8.2003 exempted all goods

falling under sub-heading 2401.90, 2402.00, 2404.49, 2404.50 or 2404.99 of the First Schedule or Second Schedule of the Tariff Act, 1985

from the whole of the excise duty etc. payable thereon subject to certain conditions as enumerated therein. Under these notifications dated

25.8.2003 and 21.1.2004, the Petitioner was entitled to retain amounts payable as excise duty and invested in the projects undertaken by it to be

subsequently verified and scrutinised by the Investment Appraisal Committee for issuance of a certificate on due satisfaction thereof.

8. On a post assessment of the arrangement so contemplated, the Government decided against the retention of Central Excise Duty for investment

and thus issued notification No. 28/04 dated 9.7.2004 introducing Escrow Account Mechanism System and accordingly amended the contents of

the notification No. 8/2004 dated 21.1.2004. The post escrow period also witnessed various problems according to the answering Respondents,

as the Investment Appraisal Committee detected mis-utilisation of the investment as well as utilisation of the escrow fund. The Government decided

to suspend the operation of the escrow account and eventually issued notification No. 11/07 dated 1.3.2007 also under the above provision of the

Act amending the one dated 21.1.2004 clarifying that the exemption contained therein would not be available to the goods cleared on or after the

first day of March, 2007.

9. While reiterating that the promise of incentives under Policy 1997 had ceased with the amendment vide the Finance Act, 2003 read with the

Ninth Schedule thereto excluding pan masala and other products specified therein from the purview of the exemption, the partial respite from this

levy granted by the notification No. 69/03 dated 25.8.2003 and 11/07-CE dated 9.7.2004 has been asserted to be independent of the

aforementioned policy and not by way of extension thereof. It has been stated that out of an amount of Rs. 100 crores represented by the

Petitioner to have been invested during the pre-escrow period, only an amount of Rs. 34 crores had been certified by the Investment Appraisal

Committee to have been genuinely applied in its plants and machinery and social infrastructure projects.

10. Referring to the negative list in the Policy 2007, the answering Respondents traced the radix of the said measure to Section 154 of the Finance

Act, 2003 whereby tobacco and goods covered under Chapter 21 of the First Schedule of the Tariff Act 1985 including pan masala had been

withdrawn from the ken of the exemption of the central excise duty as evidenced by the Ninth Schedule thereto. The impugned notification dated

25.4.2007 has been justified on this plea as well as on the ground of public interest bearing in mind the adverse ramifications of the use of tobacco

products and the resultant health hazards in the country. The answering Respondents have insisted that the assurance of the continuance of the

benefit under Policy 1997 vis-a-vis industrial units that have commenced commercial production on or before 31.3.2007 would not apply for

tobacco and tobacco based products. The impugned notification dated 25.4.2007 has also been endorsed stating that the grant of exemption of

excise duty in respect of tobacco products did not yield any noticeable progress or industrial development as contemplated.

11. In reiteration and reaffirmation of its pleaded assertions, the Petitioner has highlighted the inconsistency in the approach of the Respondents in

withdrawing the exemption from central excise duty on pan masala and tobacco while sustaining the income tax exemption/rebate extended by the

Policy 1997. According to it, the grant of exemption of excise duty after the incorporation of Section 154 of the Finance Act, 2003 by the

notification No. 69/2003-CE dated 25/8/2003 patently belied the plea of extinction of the promise qua the said incentive by such amendment.

While insisting that the Policy 2007 saved the Petitioner's pan masala manufacturing units that had commenced production on or before 31.3.2007

it reiterated its assailment of the impugned notification dated 25.4.2007 as illegal, arbitrary and mala fide. Protection of Section 38A of the Act has

also been insisted upon and the justification of public interest vis-a-vis the impugned notification has been refuted.

12. In their additional affidavit, the Respondent No. 1 to 4 have besides contending that the counter filed by the Respondent No. 2 is also on

behalf of the remaining Respondents has questioned the maintainability of the writ petition on the ground of delay as the impugned notification is

dated 25.4.2007. Apart from asserting that the Petitioner even otherwise has failed to lay any factual foundation to invoke the doctrine of

promissory estoppel they have accused it of suppression of the material fact that it had, the impugned notification notwithstanding, been paying

central excise duty for the pan masala manufactured in terms of Pan Masala Packing Machines (Capacity, Determination and Collection of Duty)

Rules, 2008 (hereafter referred to as the Duty Rules). As the withholding of the said fact had a vital and decisive bearing on the grant of interim

order in its favour, the Respondents have pleaded that the Petitioner has thereby disentitled itself for any equitable relief from this Court.

13. The Petitioner in its reply to this additional affidavit of the Respondents has in substance sought to explain the time lag by referring to its

persistent efforts with the various authorities of the Government Departments for the mitigation of the prejudicial consequences of the impugned

notification. Assurances to it for restoration of the benefit of exemption made by concerned authorities but eventually departed from has also been

cited as a reason for the interval. While denying the imputation of suppression of any material the Petitioner has insisted that following the issuance

of the notification No. 11/2007 dated 1.3.2007, it was obliged in law to pay the consequential excise duty and that, therefore, the charge is wholly

misplaced. According to it, having regard to its pleadings and the documents on record, a sound foundation exists for invocation of the principles of

legitimate expectation and promissory estoppel in denunciation of the impugned decision.

14. The Petitioner's pleaded version in WP(C) 750/2010 is substantially akin to those as above except for a few factual variations. It is aggrieved

by the notification No. 11/07 dated 1.3.2007 alluded hereinbefore seeking to withdraw the benefits under the Central Excise Notifications No.

32/99-CE and 33/99-CE dated 8.7.99 issued in furtherance of the Policy 1997 so far as tobacco products as referred to therein are concerned.

According to the Petitioner, it is engaged in the manufacture of zarda (scented tobacco/pan masala) in the four out of its 15 manufacturing units

located in the Industrial Estate, Bamunimaidan, Guwahati. Further three more such tobacco manufacturing units have also been set up at Agartala

being incentivised by the representations made in the aforementioned policy. Contending that the commercial production in the said units had

commenced in the years 1999, 2000, 2001, 2002, 2003, 2007 and 2008 respectively, it has asserted that it has thereby provided employment to

about 2200 local persons thereat. It has claimed to have invested Rs. 6911.03 lakhs in its said units till September, 2009, and has claimed to have

been sanctioned the benefit of refund under the said Policy during the period 17.11.2000 to 28.2.2001. It has referred to the notifications dated

31.12.1999, 17.1.2000, 22.1.2001, 1.3.2001, 25.8.2003, 21.1.2004 and 9.7.2004 mentioned by the Union Respondents in their affidavits in

WP(C) 749/2010.

15. The Petitioner has maintained that pursuant to the notifications dated 21.1.2004 and 9.7.2004, it had entered into a tripartite escrow

agreement with the concerned Respondents on 21.6.2005. Reiterating its entitlement to the privileges granted by the Policy 1997 also under the

Policy 2007, vis-a-vis its tobacco products, it has impugned the notification dated 1.3.2007 whereby the exemptions contemplated in those dated

21.1.2004 and 9.7.2004 had been withdrawn vis-a-vis the goods cleared after 1.3.2007. It has assailed this notification as well as the one dated

25.4.2007 to be repugnant to the Policy 2007 besides being in arbitrary repudiation of the doctrines of promissory estoppel and legitimate

expectation. Its failure, inspite of persistent representations to elicit redressal of its grievances has also been recited.

16. The answering Respondents have defended the impugned notification dated 1.3.2007 to be in public interest and has denied the Petitioner's

charge of arbitrariness, illegality and malafide. In their additional affidavit they have pleaded that the notification dated 25.8.2003 was not pursuant

to any promise held out by the Union Government and being u/s 5A of the Act, it was permissible to rescind, vary and amend the grant accorded

by it. They accused the Petitioner of suppression of the fact that the withdrawal of the benefit of exemption granted to tobacco manufacturing units

under the Policy 1997 by the insertion of Section 154 in the Finance Act, 2003 had been upheld by the Apex Court in R.C. Tobacco Pvt. Ltd.

and Another etc. Vs. Union of India (UOI) and Others, for which the writ petition is liable to be dismissed in limine. They further contended that as

pleaded by the Petitioners, four of its seven units engaged in the manufacture of tobacco had admittedly commenced production after 2001 and

were thus not eligible to avail the exemption under the notifications dated 21.1.2004 and 9.7.2004, the cut off date therefore being 28.2.2001.

They have urged as well against the applicability of the doctrine of promissory estoppel and legitimate expectation.

17. The Petitioner in its affidavit in reply has categorically denied the allegation of misutilisation of funds and has instead urged that faced with

numerous arbitrary and unfair decisions it was compelled to approach this Court to invoke its writ jurisdiction on more than one occasion. It

refuted as well the Respondents plea that the notifications dated 25.8.2003, 21.1.2004 and 9.7.2004 had failed to achieve their objectives and

charged the Respondents of causing hindrances against it on one hand and accused it of the non-implementation thereof on the other. It contended

that the Investment Appraisal Committee though had certified the investment of Rs. 35 crores out of its claim of Rs. 96 crores, it did not reject the

Petitioner's investment claims of the remaining amount.

18. In this narrated backdrop of the rival assertions, Mr. Bhattacharyya has emphatically argued that having regard to the underlying objective of

the policies involved and the unequivocal and conscious assurances of the highest administrative authorities, a purposeful interpretation for the

effectuation thereof ought to be adopted. As the Petitioner admittedly was entitled to the benefit amongst others of exemption from excise duty on

its products as involved under the Policy 1997, having duly complied with all the stipulations as embodied therein, it is evidently qualified for the

same under the Policy 2007 as well as is apparent from Clause 2 thereof. As the Policy 2007 has specifically identified the industrial units which

have commenced commercial production on or before 31.3.2007 to be eligible to avail the benefits/incentives under the Policy 1997 as endorsed

by the office memorandum No. 10(3)/2007-DBA-II/NER dated 1.4.2007, the impugned notifications dated 1.3.2007 and 25.4.2007 being

obtrusively in repudiation thereof are patently illegal and nonest in law. The learned Sr. Counsel has insisted that though pan masala and tobacco

products manufactured by it have been included in the Negative List in the Policy 2007, in view of the above saving clause, it having commenced

its commercial production thereof on or before 31.3.2007, cannot be denied the benefit of the incentives/exemptions sanctioned by the Policy

2007. This, Mr. Bhattacharyya, has pleaded is amply demonstrated amongst others by the office memorandum dated 22.11.2007, 24.1.2008 and

23.2.2009 of the Department of Industrial Policy and Promotion, Government of India, urging upon the Finance Department to reconsider its

decision of withdrawal of the privilege of exemption of excise duty on the said products. The notification dated 25.4.2007 has been denounced as

well on the count that the grant of public interest as mentioned therein is visibly vague and unintelligible in the attendant facts and circumstances.

Referring to Sections 5A and 38A of the Act, Mr. Bhattacharyya had maintained that the Policy 1997 has its roots in the legislative scheme

outlined thereby, continuance of the benefit held out by it (policy 1997) being the mandate of Section 38A. Any "different intention" as envisaged in

this legal provision thus necessarily has to be informed with relevant considerations in espousal of public interest to justify a departure, he urged and

there being none in the face of the two Policies as well as the notification dated 1.4.2007, in reinforcement thereof, the impugned notifications are

null and void. In any case, the Respondents having utterly failed to discharge their burden of demonstrating such a different intention to promote

public interest, the impugned notifications are visibly invalid, he contended. In any view of the matter, there being an apparent conflict on the issue

between the two Ministries of the Central Government which is constitutionally irreconcilable, the impugned notifications are liable to be adjudged

as nonest, he pleaded. The learned senior Counsel refuted the plea that the notification dated 25.8.2003 is independent of the Policy 1997.

Referring to the various clauses of this notification as well, Mr. Bhattacharyya has contended that it is obviously pursuant to the Policy 1997 and is

to remain in force for a period of 10 years.

19. He argued that the impugned notification dated 1.3.2007 in particular having been issued before the Policy 2007, the reason therefore cannot

thus be logically linked with the interpretation of the Respondents based on the Negative List. The learned Sr. Counsel has profusely relied upon

the pleaded averments demonstrating the steps taken by the Petitioner in setting up its units for manufacture of pan masala and other tobacco

products in the region specified by the Policy 1997, investments in connection therewith, employment statistics, date of commencement of

production thereat as well as the excise duty paid so as to bolster its plea founded on legitimate expectation and promissory estoppel. Contending

that the Petitioner inspite of its high and low in its business ventures pertaining to the units involved has still been pursuing the same inter alia by

reinvesting its earnings in the plants and machineries inspite of heavy odds and thus contributing to the economic growth of the region, Mr.

Bhattacharyya has urged that in absence of any overwhelming evidence of overriding public interest justifying withdrawal of the exemption granted

by the policies the impugned notifications are palpably illegal and ought to be adjudged as such.

20. On the aspect of delay, the learned Sr. Counsel has persuasively argued that the concerned Respondent authorities having failed to respond to

the repeated requests of the Petitioner for redressal, it ought not to be non-suited on this ground. This is more so as the Department of Industrial

Policy and Promotion, Government of India, held the view against the impugned decision and had been urging upon the Ministry of Finance for

reconsideration thereof. As the Petitioner was thus waiting in bonafide expectation that its grievances would be mitigated without indulging in

avoidable litigation, it ought not to be penalised for the inexplicable omission on the part of the Respondents. Mr. Bhattacharyya pleaded that as

with the issuance of the notification dated 1.3.2007, the Petitioner had no other alternative but to pay the excise duty as leviable on its products,

the charge of suppression of this fact is wholly misplaced. As the Revenue has not been prejudiced in any manner by the payment of the impost by

it and thus it has not reaped any undue benefit out of the interim order granted, this plea as well ought to be dismissed, he contended. He also

referred amongst others to the prayers made in the writ petition to repeal this plea of the Respondents. Following decisions were relied upon to

substantiate his arguments:

- (1) State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others,
- (2) Secretary, Ministry of Chemicals and Fertilizers Government of India Vs. Cipla Ltd. and Others,
- (3) State of Jharkhand and Others Vs. Tata Cummins Ltd. and Another,
- (4) Global Energy Ltd. and Another Vs. Central Electricity Regulatory Commission,
- (5) U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others,
- (6) Dai-Ichi Karkaria Ltd. Vs. Union of India and Others,
- (7) 2006 (Supp) GLP 211: Sunrise Biscuits Co. Ltd. and Anr. v. Union of India.
- (8) Praneswar Das and Anr. v. State of Assam and Ors. AIR 73 Ghy 51,
- (9) Vadilal Chemicals Ltd. Vs. The State of Andhra Pradesh and Others,
- (10) Union of India and Ors. v. Shree Ganapati Rolling Mills Pvt. Ltd. and Ors. (2006) 4 GET 1
- (11) Tilokchand and Motichand and Others Vs. H.B. Munshi and Another,
- (12) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others,
- (13) Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das,
- (14) R.S. Makashi and Others Vs. I.M. Menon and Others,
- (15) P.B. Roy Vs. Union of India (UOI),
- (16) 2009 (235) ELT 5: Gillete India Ltd. v. Union of India
- (17) MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others,
- (18) State of Bihar and Others Vs. Kalyanpur Cements Ltd.,
- (19) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,
- (20) Union of India and others Vs. Hindustan Development Corpn. and others,
- (21) Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another,
- (22) Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others,

21. In controversion of the above, the learned Additional Advocate General, Assam, reiterated the assailment on the maintainability of the writ

petitions on the ground of delay and shielding of material facts. Mr. Choudhury has urged that the omission on the part of the Petitioner to mention

about the payment by it of excise duty on its products in its pleadings amounts to a conscious failure to make candid disclosure of relevant facts

which is a sine qua non for the invocation of the equitable jurisdiction of this Court under Article 226 of the Constitution of India. As admittedly the

Petitioner had been making such payment, its intentional suppression of the above fact weighed in its favour facilitating the grant of the interim

order. There being no explanation worth the name for the appreciable time lag between the issuance of the impugned notifications and the

institutions of the writ petitions, those are liable to be dismissed in limine on the ground of delay and laches as well, he urged.

22. Mr. Choudhury argued that Policy 2007 not being under challenge and as admittedly pan masala is included in the Negative List as

incorporated therein, the Petitioner's impugnement of the notification dated 25.4.2007 is wholly misconceived. As the power and the discretion to

alter a policy on relevant considerations paramount whereof is public interest is available to the state and there being no vested right in any one to

restrain it, the Petitioner's assailment is vacuous and is not worth any analytical scrutiny, he insisted. As the impugned notification dated 25.4.2007

has been issued to give effect to the Policy 2007, which incidentally has been spared of any challenge, the aspect of public interest need not be

strictly enquired into as well. In that view of the matter, the decisions cited by the Petitioner emphasising scrupulous compliance of a public policy

in effect reinforce the validity of the impugned notification dated 25.4.2007, he contended. Not only the plea of promissory estoppel is unavailable

to the Petitioner against the exercise of a statutory and or a legislative power, it having omitted to question the validity of the Policy 2007, its

contentions founded on promissory estoppel and legitimate expectation are unworthy of any attention, he argued. While pleading that the Policy

2007 is in public interest, the learned Additional Advocate General underlined that in absence of any material on record to the contrary, the

notification dated 25.4.2007 in conformity therewith is wholly unassailable. Reiterating that the withdrawal of the benefit of the exemption vide

Section 154 of the Finance Act, 2003 read with Schedule DC thereof had been upheld by the Apex Court, Mr. Choudhury pointed out that as the

Policy 1997 remained in vogue even thereafter, the notification dated 25.8.2003 was issued granting partial exemption from payment of excise

duty to the units as specified therein which had commenced production on or after 24.12.1997 but not later than 28.2.2001. The stipulations

contained in the notification dated 25.8.2003 being conditioned by the prescriptions of the one dated 1.3.2001, it was evidently independent of the

Policy 1997, he argued. The impugned notification dated 1.3.2007 being a precursor of Policy 2007 and as both are complementary of each

other, in absence of any challenge to the said policy, this notification on this count as well is unimpeachable.

23. With reference to Section 38A of the Act, the learned Additional Advocate General has insisted that as the Policy 2007 promulgated after the

expiry of 10 years as envisaged by the Policy 1997 conveys an unmistakeable dictum of exclusion of the units engaged in the manufacture of goods

included in the negative list, it is wholly inconceivable that the benefits and incentives under the former policy were intended to continue based on

the date of commencement of production. Mr. Choudhury has thus urged that having regard to the progression of events culminating in the Policy

2007, application of Section 38A to secure the benefit of incentives/exemptions hitherto sanctioned by the Policy 1997 to the manufacturing units

commencing production on or before 31.3.2007 is incomprehensible. In order to endorse his assertions, the learned Additional Advocate General

pressed into service the following decisions.

(1) K.D. Sharma Vs. Steel Authority of India Ltd. and Others,

(2) (2007) 10 SCC 337: Continental Foundation Joint Venture Holding Nathpa, H.P. v. Commissioner of Central Excise, Chandigarh -I.

(3) P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others,

(4) Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another,

(5) Commissioner of Sales Tax, Orissa and Another Vs. Jagannath Cotton Company and Another,

(6) State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another,

(7) Dai-Ichi Karkaria Ltd. Vs. Union of India and Others,

(8) Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others,

(9) State of Punjab Vs. Nestle India Ltd. and Another,

(10) U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others,

(11) Kasinka Trading and another, etc. etc. Vs. Union of India and another,

(12) Shrijee Sales Corporation and Another Vs. Union of India (UOI),

(13) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,

(14) Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others,

(15) Bansidhar and Others Vs. State of Rajasthan and Others,

(16) State of Orissa Vs. M.A. Tulloch and Co.,

(17) Union of India (UOI) and Another Vs. International Trading Co. and Another,

(18) Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others,

(19) Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others,

(20) Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad 1994 Supp (3) 606

(21) Tata Iron and Steel Co. Ltd. Vs. State of Jharkhand and Others,

(22) R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others,

24. Before venturing into the issues of moment stirred by the competing pleadings and the arguments founded thereon, politic it would be to attend

to the challenge to the maintainability of the writ petitions at the threshold. The Respondents have sought for summary dismissal thereof on the

grounds of delay and suppression of material facts. Whereas they contend that the Petitioner had wilfully withheld the factum of payment of excise

duty subsequent to the impugned notification dated 1.3.2007 and under the Duty Rules as well as the validation of the withdrawal of exemption of

the benefits/incentives under the Policy 1997 by the amendment of the Finance Act 1994 in the year 2003, it (Petitioner) has denied the

asseveration pleading its legal obligation to pay the impost. The plea of delay has been sought to be thwarted by referring to the string of

representations submitted by it as well as the communications issued by the Department of Industrial Policy and Promotion, Ministry of Commerce

and Industry, Government of India, persistently requesting the Ministry of Finance, Department of Revenue, Government of India for a response to

its (Petitioner) request for a reconsideration of the decision of withdrawal of the exemption of excise duty granted under the Policy 1997. As the

parties have cited authorities in support of their respective assertions, the same need be surveyed to outline the essential legal perspective.

25. The Apex Court in *Trilok Chand and Moti Chand, supra*, while observing that the Limitation Act does not in terms apply to claims against the

State in respect of violation of fundamental rights did acknowledge the discretion of a Court exercising writ jurisdiction to refuse a relief even

though on merits there is a substantial complaint, in case of long or unreasonable delay.

26. In *P.B. Roy, supra*, the Apex Court declined to interfere with the discretion exercised against the plea of delay on the ground that after the

admission of the writ petition and hearing of the arguments the rule that delay may defeat the rights of the parties is relaxed and need not be

applied, if the case is "positively good".

That the rule against enquiry into belated and stale claims is not one of law but of practice was reiterated by the Apex Court in *Ram Chandra*

Shankar (supra). While underlining that there is no inviolable rule that the Court must necessarily refuse to entertain a cause on the ground of delay,

it ruled that each case must be appraised on its own facts. It was propounded that the principle of refusing relief on that count is that the rights,

which have accrued, to others in the interregnum ought not to be allowed to be disturbed unless there is a reasonable explanation for the interval.

27. The preliminary objection based on delay was sustained in the contextual facts of *R.S. Makasi and Ors. supra*, by the Apex Court noticing that

during the intervening period of 8 years vested rights regarding seniority rank and promotions had accrued to a large number of Respondents

therein.

28. In *Hindustan Petroleum Corporation, supra*, the Apex Court in the context of the avowal of laches of the Respondents therein observed that

delay by itself may not defeat the claim for relief unless the position of the adversary is so altered that it cannot be retracted on account of lapse of

time on the inaction of the other party. That the Appellants therein would not be put to undue hardship in any manner by reason of the delay as

pleaded was also taken note of.

29. Delay thus is not an irremediable vitiating malady acknowledged by the rule of law eventuating refusal of relief though otherwise justified on the

merit of the claim. It is a matter of discretion exercisable in the facts of a given case, premium however not extendable to a party consciously guilty

of inaction, negligence and laches resulting in conferment and consolidation of rights on the adversary. While delay ought not to be applied as an

obdurate rule to decline relief in law, if otherwise allowable, inordinate delay would justify refusal of judicial intervention more particularly, if the

same would result in divestiture of a right acquired meanwhile.

30. The impugned notifications though dated 1.3.2007 and 25.4.2007, the writ petitions have been instituted on 1.2.2010 and 21.12.2009

respectively. The Petitioner has averred on oath that following the decision of the withdrawal of exemption by these notifications, a series of

representations had been filed by it and others to the various authorities of the Central Government seeking restoration of the incentives assured by

the Policy 1997. The representations annexed to the writ petitions bear out the correctness of the contents thereof to this effect and range from

14.7.2008 to 13.6.2009. Coupled with this are the official communications made by the Department of Industrial Policy and Promotion, Ministry

of Commerce and Industry, Government of India, with the Ministry of Finance, Department of Revenue, Government of India, urging upon the

latter to take a decision on the Petitioner's request for reconsideration of notifications of withdrawal of exemption. In the first office memorandum

dated 22.11.2007 of the Deputy Secretary to the Government of India, Department of Industrial Policy and Promotion, it had inter alia been

mentioned that though ""pan masala"" was included in the negative list under Policy 2007, no such list was contemplated in the earlier policy and that

in terms of the office memorandum No. 10(3)/07-DBA-II/NER dated 1.4.2007, the industrial units which had commenced industrial production

on or before 31.3.2007 were to continue to receive the benefits/incentives under the earlier policy for a period of 10 years. A request was thus

made to reconsider the plea of the Petitioner in the above premise. The office memorandum dated 24.1.2008 and 23.2.2009 are in reiteration of

the above.

31. While the representations submitted by the Petitioner to the various authorities clearly relate to the grievances as expressed by it in the instant

petitions seeking their remedial intervention, the official correspondences of the Ministry and Commerce and Industry, Department of Industries

Policy and Promotion had the potential of generating some expectations in it of the forthcoming steps for the mitigation of its remonstrance. The

materials on record do not demonstrate that the omission on the part of the Petitioner to immediately approach this Court following the issuance of

the impugned notifications has vested any right in the Respondents, which if the issues are scrutinised and disposed of on merits, would be

prejudicially affected. The facts and circumstances of the case do not in the estimate of this Court portray deliberate and wilful inaction and laches

on the part of the Petitioner so as to disqualify its impugnement to be adjudicated on merits. The plea therefore is unsustainable.

32. On the aspect of suppression of facts, the Apex Court in K.D. Sharma, supra, while emphasising that the Petitioner seeking prerogative writs

must come with clean hands and disclose all facts failing which his petition may be dismissed at the threshold, observed that such a consequence

would ensue if the Court, on a scrutiny of the textual facts is satisfied that it had been misled and or deceived by such concealment or retraction.

33. While dwelling on the import of the word "suppression" employed in the proviso to Section 11A of the Central Excise Act, 1944, the Apex

Court, in Continental Foundation etc. (Supra) elucidated that mere omission to give correct narration would not be so unless it is deliberate to

evade payment of duty. It observed that when the facts are known to both the parties, omission by one party to do what he might have done

would not render it to be a suppression.

34. The pleaded averments in the writ petitions truly do not refer either to the determination made in R.C. Tobacco, supra, vis-a-vis Section 154

of the Finance Act 2003 as well as the payment of excise duty by the Petitioner subsequent to the impugned notification dated 1.3.2007 under the

aforementioned Rules. It, however, has sought for amongst others a direction to the Respondents to refund such duty deposited by it after

1.3.2007/25.4.2007 respectively together with interest thereon. That it had been paying the impost under the said Rules after 1.3.2007 is a matter

of record. Non-disclosure of the above fact, however, in the opinion of this Court does not enfeeble the Petitioner's challenge otherwise to the

notifications and the decision preceding the same for withdrawal of the exemption from payment of excise duty vis-a-vis its products. The

revelation of the fact of payment of excise duty by it after 1.3.2007 though might have had some bearing on the contentions qua the prayer for

interim relief, omission to do so per se does not amount to, in the opinion of this Court, a distortion of the facts disclosed or suppression of any

vital information having a material and decisive bearing on the merit of its challenge. Noticeably no appeal had been preferred by the Respondents

against the interim order and evidently on the payment of excise duty by the Petitioner, it has not suffered any prejudice on account thereof Deposit

of levy as well cannot act as an estoppel against the Petitioner to pursue its impeachment of the impugned decisions/notifications. The parties have

articulated weighty contentious issues, which demand judicial scrutiny. The decisions cited by the Respondents in the factual panorama as above,

do not clinch this issue in their favour. The objection based on suppression of facts as well is unsustainable.

35. Apt it would be next, to be abreast with the judicial elucidations on the other legal propositions encompassed in the rival assertion.

DELEGATED LEGISLATION

36. In *State of Bihar v. Suprabhat Steel Limited and Ors.* (supra), a notification issued by the State Government in exercise of power u/s 7 of the

Bihar Finance Act, 1981, was contended to be repugnant to the Bihar Industrial Incentive Policy, 1993, as thereby certain category of industrial

units were sought to be excluded from the benefits envisaged thereunder. The Apex Court while observing that the notification under the

aforementioned legal provision was an instrument to enable the industrial units to avail the incentives and benefits declared by the State Government

in the Policy, it would not be permissible for it, in the exercise of such power to deny any benefit which is otherwise available to an industrial unit

thereunder. Noticing that the policy had been issued on being approved by the Cabinet, it was held that any notification so issued if found to be

inconsistent therewith, would be bad to that extent. Unmistakeably, the legal premise of the conclusion is that a notification u/s 7 of the Bihar

Finance Act, 1981 was comprehended to further the attainment of the objectives of the Policy and not to scuttle those.

37. While enumerating the grounds on which the vires of a subordinate legislation which in the contextual facts in *Dai-Chi, Karkari Limited* (supra),

was a notification u/s 25 of the Customs Act, 1962, could be questioned namely (i) non-conformance with the parent statute (ii) conflict with any

other enactment (iii) unreasonableness and manifest arbitrariness and (iv) violation of the principles of industrial justice, the Apex Court observed

that in situations where, the State power is one to be exercised in public interest, the same necessarily has to be wielded in accordance with the

spirit of the constitution. While dealing with the notifications whereby exemption from duty under the Customs Act, 1962, was partially withdrawn,

it was held that the Government having failed to establish any overriding public interest necessitating such reduction, those were unsustainable and

were thus interfered with. In this context, the Apex Court observed that in respect of exemptions that may have been made by the Government, the

doctrine of promissory estoppel would not be applicable if the change is impelled by public policy.

38. The Apex Court in *Secretary, Ministry of Chemical and Fertiliser* (supra), held that the contents of a policy document ought not to be

interpreted as statutory provisions but the Government which assumes the dual role of policy maker and the delegatee of legislative power cannot

in its megrim give a go by to the policy guidelines evolved by itself and is required to adopt a transparent criteria so as to minimise the scope of

subjective approach. The delegated legislation thus should be broadly and substantially in conformity with the policy formulations as otherwise it

would be exposed to the challenge on the ground of arbitrariness, it held. While acknowledging that the breach of policy decision simpliciter would

not be a ground to invalidate a delegated legislation, it emphasised that the subordinate law making authority is to be essentially guided by the

policy and the objectives of the primary legislation and it would not be open for the government to stray haywire and flout or debilitate the said

norms.

39. The Apex Court in *State of Jharkhand and Ors. v. Tata Cumin Limited and Anr.* (supra), underlined that the implementing notifications in the

context of an industrial policy, promising tax exemption for setting up an industry in the backward area should be read liberally keeping in mind the

objectives envisaged thereby (policy). While recognising the right of an authority granting an exemption to revoke the same, the Apex Court in

U.P. Power Corporation Limited, supra, interfered with a notification issued u/s 49 of the Electricity (Supply) Act, 1948, reducing the concession

of the hill development rebate earlier allowed to the industrial units as specified principally on the ground that the said legal provision did not

stipulate the withdrawal of the benefit so granted unreservedly at any point of time. The Apex Court was of the view that the impugned notification

being in the form of a delegated legislation such curtailment in the manner effected was impermissible. The plea of public interest in support of such

action in the facts was also rejected to be not borne out by the facts. In this context, their Lordships observed that the Government or its

instrumentality ought to abide by their commitments in order to sustain the faith of the polity in the governance more particularly in the domain of

representations made by them so as to attract entrepreneurs to act on those by altering their position.

40. That delegated legislation ought to follow formulations designed by a statute or a policy and operate in conformity therewith was reiterated in

Global Energy Limited, supra.

GOVERNMENT CANNOT SPEAK IN TWO VOICES

41. With reference to Section 7 of the Bihar Finance Act, 1981, the Apex Court in *State of Bihar and Ors. v. Suprabhat, supra*, had remarked

that as the notification thereunder is comprehended to extend the benefits of the industrial incentive policy of the State, the exercise of power

thereunder cannot be in nullification of the said purpose.

That the State which is represented by various departments has to speak in one voice was underlined by the Apex Court in *Vadilal Chemicals*

Limited in which the exemption under the liberalised state incentive scheme granted to the Appellants units on the certification of the industries

department of the State was sought to be withdrawn by the Deputy Commissioner of Commercial Tax, Hyderabad.

42. A Division Bench of this Court in *Union of India and Ors. v. Shri Ganapati Rolling Mills Pvt. Ltd. and Ors. supra*, in the context of the

Government of India's industrial policy and other concessions to new industries in the North East Region and a subsequent notification occasioning

modifications thereto, had in emphatic terms declared that in the Cabinet form of Governance in vogue in the country, the decisions taken by the

Government are bound to be implemented by each and every wing thereof. It held that the concerned departments are required to effectuate a

policy decision so taken by the Cabinet even if it involves drafting of a legislation or framing of Rules as the case may be. Their Lordships were of

the view that as issuance of notifications in the exercise of statutory functions in order to give effect to a broad policy decision of the Cabinet is

construed to be a ministerial act, it would be futile to contend that the policy decisions would remain a dead letter unless the concerned department

moves in the matter and issues notification implementing the same. Their Lordships observed that the citizens cannot be made scape goats in the

cross fire between interdepartmental feuds or deadlocks.

PROTECTION u/s 38A OF THE CENTRAL EXCISE ACT, 1944

43. Whereas in *Gillete India Limited, supra*, the High Court of Himachal Pradesh interpreted Clause (c) of Section 38A of the Act to be protective

of a right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order amended, repelled, superceded or

rescinded and thus annulled the impugned notification whereby the benefit of exemption from whole of excise duty availed by the Petitioners, was

recalled by the Allahabad High Court in *Simbholi Sugar Mills Limited, supra*, while tracing the insertion of the above provision in the Act w.e.f.

28.2.1944 adjudged in favour of continuance of a proceeding under Rule 10 of the Central Excise Rules, 1944, which stood omitted w.e.f.

17.11.1980 vide a notification dated 12.1.1980 as referred to therein. Vis-a-vis the scope of Section 38A and the applicability thereof, their

Lordships of the Allahabad High Court propounded in favour of the savings otherwise contemplated thereby in absence of a different intention to

the contrary.

44. A constitution Bench of the Apex Court in *State of Orissa and Anr. v. M.A. Tulloch and Company, supra*, authoritatively declared the

principle on which the saving clause in Section 6 of the General Clauses Act, 1897, was based. Their Lordships propounded that every latter

enactment which supercedes an earlier one or puts an end to an earlier state of law is presumed to intend the continuance of the right accorded and

liability incurred under the superceded enactments unless there were sufficient indications--express or implied--in the later enactment designed to

completely obliterate the earlier state of law. While highlighting that legislative intent is the final determinant, it was held that there was no distinction

between an express provision and one implied, for it is only the form that differs in the two cases.

45. That for the application of a saving clause in the event of a repeal of a statute accompanied by a re-enactment of a law on the same subject, a

scrutiny of a contrary intention in the new legislation is of considerable relevance was reiterated by the Apex Court in *Banshidhar v. State of*

Rajasthan, supra.

46. The application of Section 6 of the General Clauses Act was propounded to be extendable only on the repeal of a Central Act or Regulation

and not to a Rule in Kolhapur Canesugar Works Ltd. and Anr. v. Union of India and Ors. supra. It was further observed that, if a provision of a

statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions would stop and if final relief has not been

granted before the omission, it cannot be granted afterwards. Their Lordships, however, remarked that savings of the nature contained in Section 6

or in special Acts may modify the position and thus the operation of repeal or deletion as to the future and past events would largely depend on the

savings applicable.

Validity of Section 154 of The Finance Act, 2003

47. The challenge to the vires of Section 154 of the Finance Act, 2003, which arose as an offshoot of a pending litigation following the denial of the

exemption from duty under the Act in respect of cigarettes in terms of the notifications dated 8.7.1999 pursuant to the Policy 1997 was answered

in the negative in RC Tobacco (P) Ltd. and Anr. v. Union of India & Anr. (supra), by the Apex Court. The determination made therein also

disposed of the appeals filed by the Union of India assailing the decision of the Division Bench of this Court directing refund of excise duty on the

aforementioned commodity manufactured by the Petitioners therein. While the legislative competence of the Parliament to enact laws with

retrospective effect was conceded on behalf of the Petitioners, absence of reason justifying retrospective withdrawal of the benefit of exemption

was highlighted. The impugned legislation was thus impeached to be unreasonable and thus violative of Article 14 and 19 of the Constitution of

India. It was pleaded that the change in policy with retrospective effect would unsettle the vested right and deprive people of the benefits already

enjoyed and cause financial burden, which were clearly unreasonable and arbitrary. It was argued as well that although estoppel operates only

against the executive and not against a statute, violation of the promises and representations of the Government by the legislature would indeed be

a facet of unreasonableness afflicting the restrained law with the vice of the outrage of Article 14 and 19. That the reasonableness of the law

whereby the benefit of exemption is withdrawn with retrospective effect ought to be judged in the light of the representations to that effect made by

the Government was also pleaded.

48. It was responded on behalf of the Union of India that the operation of the notification did not attain the objective of the Policy to ensure long

lasting benefit to the State in the form of investment in industries with consequential benefits by way of increased employment opportunities to the

local population. It was argued as well that retrospective levy of excise duty was justified particularly when the liability to pay the same was merely

suspended by the exemption notifications.

Their Lordships while observing that the competence of the Parliament and the State Legislature to repeal, amend or supercede an exemption

notification was unquestionable and that a law cannot be held to be unreasonable merely because it is retrospective in operation recorded that the

obvious intention behind the grant of the package of incentives including exemption from payment of excise duty was to stimulate further industrial

growth in the area with enduring benefits not only to the local populace by way of employment opportunities but also to promote economic welfare

of the State. The Court took notice of the stand of the Union of India that the exemption notification did not attain that objective. The Apex Court

reiterated that a delegated legislation is essentially required to actualise the policies and guidelines outlined by the legislation in the statute and that

the executive in discharging that role is expected to mirror the said notions. Their Lordships were of the view that if the executive fails to carry out

the objective of the parliament, the latter in exercise of its control over the delegatee can permissibly enact retrospectively to achieve what the

former ought to have secured. The exemption notifications issued u/s 5A of the Act were construed as subordinate legislations and thus subject to

the amendment effected. The constitutionality of Section 154 of the Act was upheld and consequentially the Union of India was also allowed to

recover the duty due. Their Lordships though observed that the retrospective operation of the amendment would result in harsh consequences, the

same would not per se invalidate the demand as principles of equity are to give way to express statutory provisions.

49. The essence of the precedential formulations on promissory estoppel and legitimate expectation in generic terms, as well as in the perspective

of executive policy can be gleaned from the authorities cited at the Bar. Promissory estoppel variously described as ""equitable estoppel"", ""quasi

estoppel"" and ""new estoppel"" is not really based on principle of estoppel but is a doctrine evolved in equity in order to prevent injustice when a

promise is made by a person knowing that it would be acted upon by the promisee so that if it is so it would be inequitable to allow the promisor to

renege therefrom. In the context of the Government, if it, thus makes a promise knowing or intending that it would be acted upon by the promisee

and in fact by doing so the latter alters his position, the former would be bound by the promise and then a plea of executive necessity simpliciter

would not be a sufficient justification for the former to absolve itself of the consequences of recession. If a change in policy is sought to be urged by

the Government as a justification for his departure from the promise, it would have to establish the reason and the basis thereof to demonstrate that

overriding public interest which is a superior equity over individual equity would render it inequitable to enforce the resultant liability against it. In

absence of such supervening public interest it may as well be competent for the Government to resile for the promise on giving reasonable notice

according thereby an opportunity to the promisee to redeem his position, provided of course it is so possible for him to restore status quo ante .

The doctrine of promissory estoppel is essentially founded on the rule of equity and logically cannot be enforced to permit or condone a breach of

law or to compel an act prohibited by law.

50. That there is no promissory estoppel against a statute was reiterated by the Apex Court in *Sales Tax Officer and Another Vs. Shree Durga Oil*

Mills and Another, in which a notification u/s 6 of the Orissa Sales Tax Act, 1947 was issued granting exemption of tax. The same view was taken

in *Kasinka Trading v. Union of India (supra)* where the Apex Court referring to an exemption notification issued under Section. 25 of the Customs

Act, 1962. Their Lordships held that there was no unequivocal representation in the exemption and that the notification could be revoked without

falling foul of the principle of promissory estoppel and that it would not be necessary for the Government in the circumstances to establish a

overriding equity in its favour. It was however held by the Apex Court in *MRF Ltd.(supra)* by placing reliance of its earlier determination made in

Pournami Oil Mills and Others Vs. State of Kerala and Another, that the doctrine on promissory estoppel is applicable to statutory notifications as

well. This understandably would be subject to the language and purport of the relevant statutory provision.

51. In a later decision, the Apex Court in *U.P. Power Corporation Ltd.(supra)* recognized that public interest and repugnancy with a statute were

exceptions to the doctrine. The Apex Court in the facts of that case however rejected the Corporation's plea of overriding public interest as a

justification of the reduction of the rebate sought to be effected.

52. The Apex Court in *State of Rajasthan v. J.K. Udaipur Udyog Ltd. (supra)* had declared that an exemption granted under a statutory provision

in a fiscal statute is a concession granted by the State Government so that the beneficiaries thereof are not required to pay the tax or duties

otherwise liable to be exacted and thus the recipient of the concession has no legal enforceable right against the Government for the grant of it

except to enjoy the benefits thereof during the period of the grant. Referring amongst others to its decision in *Shri Bakul Oil Industries and Another*

Vs. State of Gujarat and Another, the appellate Court held that this right to enjoy was defeasible so much so that it could be taken away in

exercise of the very power under which the exemption is granted.

53. The judicially evolved and time tested essentialities for the invocation of the doctrine of promissory estoppel are synopsized thus:

(a) a party must make an unequivocal promise or representation by word or conduct to the other party, (b) the representation is intended to create

legal relations or affect the legal relationship, to arise in the future,(c) a clear foundation has to be laid in the petition with supporting documents, (d)

it has to be shown that the party invoking the doctrine has altered its position relying on the promise, (e) it is possible for the Government to resile

from its promise when public interest would be prejudiced if the Government were required to carry out the promise if enforced would result in a

coreach of any law, the Court will not apply the doctrine in abstract.

54. The Apex Court in *Union of India v. Hindustan Development Corporation* (supra) succinctly crystallized the notion of legitimate expectation in

the following excerpt-

On examination of some of these important decisions it is generally agreed that legitimate expectation gives the Applicant sufficient locus standi for

judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in

negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative

authorities as no crystallized right as such legitimate expectation does not required the fulfillment of the expectation where an overriding public

interest requires otherwise in other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker

should justify the denial of such expectation by showing some overriding public interest.... It simply ensures the circumstances in which that

expectation may be denied or restricted.... But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the

first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which

give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not

taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision.

55. De-Smith in his illustrious treatise ""Judicial Review (6"" Edition) "" portrayed the protection of legitimate expectation as the root of the

constitutional principle of the rule of law which requires regularity, predictability and certainty in the Governments dealings with the public.

56. It was however observed in *Attorney General for New South Wales v. Quim* (1990) 64 Aust LRR 327 (Aust. H.C) that to strike down the

exercise of administrative power solely on the ground of avoiding disappointment of the legal expectations of an individual would be to set the

Court adrift on a featureless sea of unpragmatism. It was propounded that if a denial of legitimate expectation in a given case amounts to

contravention of right guaranteed or it is arbitrary, discriminatory, unfair or bias, gross abuse of power or violation of principles of natural justice,

the same can be questioned on the well known grounds attracting Article 14, but a claim based on some legitimate expectation without knowing

more cannot ipso facto give a right to invoke these principles. It was held that the concept of legitimate expectation is ""not the key which unlocks

the treasure of natural justice and it ought not to unlock the gates which shut the Court out of review on the merits"", particularly when the elements

of speculation and uncertainty are inherent in that very concept.

57. In this context the Apex Court in *Commissioner of Sales Tax, Orissa and Anr.* (supra) while dealing with the sales tax exemption of the

Respondent therein under the industrial policy involved held that the provisions of the related Orissa Sales Tax Act, 1947 ought to be examined to

ascertain the bearing thereof on the policy. The relevance as well as the determinative orientation of legislation relatable to an incentive granted

under the industrial policy was thus clearly underlined.

58. The following observations of the Apex Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, aptly abridge the

underlying principle:

The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to

consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate

expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant

factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the

context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in

larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the

claimant.

Policy of 1997 and 2007. Read with the notifications and the overall impact thereof.

59. The Policy 1997 notified vide office memorandum No. EA//2/96-Pd dated 24.12.1997 unmistakeably comprehended concessions and

incentives for promoting industrial growth in the North Eastern Region of the country with a bid to mitigate the backwardness thereof. The benefits

offered included inter alia fiscal incentives to new industrial units as well as existing units, which had undertaken substantial expansion. The Growth

Centres and the Integrated Infrastructure Development Centres as identified therein were to be converted into a total tax free zone for the next 10

years and all industrial activities thereat were approved to be free from income tax and excise duty for the said period to be reckoned from date of

commencement of production in the concerned units. New industrial units or substantial expansion in the specified industries located outside these

Growth Centres and other identified locations were also declared to be eligible for similar fiscal incentives. The Ministry of Finance, Government of

India, amongst others was requested to amend its rules/notifications etc and issue necessary instructions for giving effect to the initiatives set out in

the Policy. A copy of the memorandum was also forwarded to all Ministries/Departments of the Government of India as well as the Chief

Secretaries and the Secretaries of the Industries Department of the North Eastern States. The Office memorandum carrying the policy was issued

by the Government of India in the Ministry of Industry, Department of Industrial Policy and Promotion. By the notification No. 32/99-CE dated

8.7.1999 issued u/s 5A of the Act read with Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the

Central Government being satisfied that it was necessary in public interest exempted, the goods specified in the First and Second Schedule to the

Tariff Act, 1985 and cleared from a unit located in the Growth Centres or Integrated Infrastructure Development Centres etc. specified in the

annexure appended thereto from the duty of excise or additional duty of excise leviable thereon under any of the aforementioned enactments as

was equivalent to the amount of duty paid by the manufacturer of goods from the account currently maintained under Rule 9 read with Rule 173 G

of the Central Excise Rules, 1944 (hereafter referred to as the Rules).

60. The notification apart from narrating the exemption proposed limited the benefits to the new industrial units which had commenced commercial

production on or after 24.12.1997 as well as units existing before that date but had undertaken substantial expansion by way of increase in

installed capacity by not less than twenty five percent on or after therefrom. It was categorically mentioned that the exemption contained in the

notification would be for a period not exceeding 10 years from the date of publication thereof in the official gazette or from the date of

commencement of commercial production whichever was later. The notification No. 33/99-CE dated 8.7.1999 was in identical terms but referred

to the units located in the State of Assam, Tripura, Meghalaya, Mizoram, Manipur, Nagaland or Arunachal Pradesh as the case may be.

61. From the documents appended to the writ petitions, it is obvious that the Petitioner had at all relevant times engaged itself in the manufacture of

chewing tobacco, gutkha, pan masala and mouth freshener. That it had its manufacturing units, as claimed, in the State of Assam as well as Tripura

and that it had been availing the benefit of such exemption under the said Policy is a matter of record. The particulars furnished by the Petitioner

with regard to the date of commencement of commercial production, the investments, productions, sales and the employment generated by its units

relatable to pan masala and other tobacco products as referred to hereinabove have also as such not been refuted by the Respondents.

62. As the matter stood at that, during the subsistence of the Policy 1997, the notification No. 45/99-CE dated 31.12.1999 was issued by the

Ministry of Finance, Department of Revenue, Government of India u/s 5A of the Act as well as the associated enactments referred to therein

amending the two notifications No. 32/99-CE and 33/99-CE dated 8.7.99 excluding from their purview the goods falling under Chapter 24 or

Heading No. 21.06 of the First Schedule or Second Schedule to the Tariff Act, 1985. These amendments were recalled further by a subsequent

notification No. 1/2000-CE dated 17.1.2000. By the notification No. 1/2001 -CE dated 22.1.2001 that followed also being issued under the

same legal provisions, cigarettes falling under Chapter 24 of the First Schedule to the Tariff Act, 1985 was withdrawn from the list of items

amenable to exemption from excise duty under the above mentioned two notifications dated 8.7.1999. The prevailing configuration underwent

further change vide notification No. 6/2001 -CE dated 01.3.2001 whereby the notifications dated 8.7.1999 as above were amended excluding all

goods falling under Chapter 24 of the First and Second Schedules to the Tariff Act, 1985 from the purview of such exemption. Noticeably this did

not affect the incentives to that effect vis-a-vis the pan masala catalogued under Chapter 21 of this Act but sought to deny the benefit thereof vis-a-

vis the goods falling under Chapter 24 of the First Schedule or Second Schedule to the Tariff Act, which included other tobacco products as

recited therein. Though the Petitioner's units engaged in the manufacture of tobacco products were thus affected, the materials on record do not

establish that the said notification at its instance had been nullified by any judicial forum.

63. On the other hand, by the Finance Act, 2003, which received assent of the President of India on 14.5.2003, Section 154 was inserted in the

following terms:

Section 154. Amendment of notifications issued u/s 5A of the Central Excise Act. --(1) The notifications of the Government of India in the

erstwhile Ministry of Finance (Department of Revenue) Nos. G.S.R. 508(E), dated the 8th July, 1999 and G.S.R.509(E), dated 8th July, 1999

issued under Sub-section (1) of Section 5A of the Central Excise Act read with Sub-section (3) of Section 3 of the Additional Duties of Excise

(Goods of Special Importance) Act, 1957 (58 of 1957) and Sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile

Articles) Act, 1978 (40 of 1978) by the Central Government shall stand amended and shall be deemed to have been amended in the manner as

specified against each of them in column (3) of the Ninth Schedule, on and from the corresponding date specified in column (4) of that Schedule

retrospectively and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, any

action taken or anything done or purported to have been taken or done under the said notifications, shall be deemed to be and always to have

been, for all purposes, as validly and effectively taken or done as if the notifications as amended by this Sub-section had been in force at all

material times.

(2) For the purposes of Sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notifications

referred to in the said Sub-section with retrospective effect as if the Central Government had the power to amend the said notifications under Sub-

section (1) of Section 5A of the Central Excise Act read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special

Importance) Act, 1957 (58 of 1957) and Sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978

(40 of 1978), retrospectively at all material times.

(3) No suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or

omitted to be done, in respect of any goods under the said notifications, and no enforcement shall be made by any court, tribunal or other authority

of any decree or order relating to such action taken or anything done or omitted to be done as if the amendments made by Sub-section (1) had

been in force at all material times.

(4) Recovery shall be made of all amounts of duty or interest or other charges, which have not been collected, or, as the case may be, which have

been refunded but which would have been collected or, as the case may be, which would have not been refunded if the provisions of this section

had been in force at all material times within a period of thirty days from the day on which the Finance Bill, 2003, receives the assent of the

President, and in the event of non-payment of duty or interest or other charges so recoverable, interest at the rate of fifteen percent., per annum

shall be payable from the date immediately after the expiry of the said period of thirty days till the date of payment.

Explanation: For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence

which would not have been so punishable if the notifications referred to in Sub-section (1) had not been amended retrospectively by that Sub-

section.

64. By a legislative mandate, therefore, the notifications No. 32/99-CE and 33/99-CE dated 8.7.1999 corresponding to G.S.R. 508(E) and

G.S.R.509(E) stood amended retrospectively in the manner as specified in the Ninth Schedule with the predication that notwithstanding anything

contained in any judgment, decree, or order of any Court, tribunal or other authority, any action taken or anything done or purported to have been

taken or done under the said notifications would be deemed to be and always to have been, for all purposes, as validly and effectively taken or

done as if those notifications as amended had been in force at all material times. Sub-Section 4 of that section also authorised recovery of all

amounts of duty or interest or other charges which have not been collected or refunded but which ought to have been collected and ought not to

have been refunded had the new section been enforced at all material times within a period as specified therein.

65. The Ninth Schedule adumbrated in Section 154 so newly inserted withdrew w.e.f. 8.7.1999 from the purview of exemption of payment of

excise duty (a) cigarettes falling under Chapter 24 of the First Schedule or the Second Schedule to the Tariff Act and (b) pan masala containing

tobacco under subheading No. 2106.00 and 2404.49 in the First Schedule or the Second Schedule of the said Act. Further w.e.f. 1.3.2001, the

incentives by way of exemption from payment of excise duty was rescinded vis-a-vis goods falling under Chapter 24. The combined effect thus in

view of this statutory precept was that whereas cigarettes falling under Chapter 24 and pan masala containing tobacco falling under 2106 and

2404.49 of the First Schedule or the Second Schedule to the Tariff Act, 1985 were denied the exemption from payment of excise duty w.e.f.

8.7.1999, all goods falling under Chapter 24 were dislodged from the benefit of exemption on and from 1.3.2001. This progression of events teed

off by the notification dated 31.12.99 and culminating with the introduction of Section 154 by the Finance Act, 2003, by no means can be

disregarded vis-a-vis the Policy 1997 which otherwise was then in force. That the validity of Section 154 of the Finance Act, 2003 had been

upheld by the Apex Court negating a challenge to the vires thereof by the manufacturer of cigarettes falling under Chapter 24 of the Tariff Act,

1985, permitting recovery of the arrear duty is an unassailably admitted fact. This verdict which holds the sway as on date, not only did uphold the

constitutional validity of this legal provision, it neutered the existence and the dominion of the Policy 1997 vis-a-vis the prescriptions thereof as

manifest in the Ninth Schedule. The determination in R.C. Tobacco (supra), therefore, visibly truncated the extent and expanse of the application of

the Policy 1997 and rendered it nonest so far as the representation thereunder for exemption from payment of excise duty on cigarette, pan masala

containing tobacco falling under heading 2106.00 or 2400.49 on and from 8.7.99 as well as goods falling under Chapter 24 on and from

1.3.2001. It is in this premise that the notifications that followed would have to be analysed.

66. By notification No. 69/2003-CE dated 25.8.2003 issued u/s 5A of the Act and other cognate enactments, a few of the goods falling under

Chapter 24 were thus exempted from payment of excise duty subject amongst others to the condition that the units so identified had commenced

commercial production on or after 24.12.1997 but not later than 28.2.2001 and had already availed the benefit of the notifications dated 8.7.1999

and had been continuing with the manufacturing activities after 28.2.2001.

67. The conditions of eligibility to avail the benefit of partial exemption thus granted are noticeable. The date of commencement of commercial

production tallies with the one as mentioned in the Policy 1997 with the deadline therefore i.e. 28.2.2001 being on the eve of 1.3.2001 on and

from which the embargo had been imposed by Section 154 of the Finance Act, 2003 read with Schedule 9 thereto. By this notification, the rigour

of the denial of the benefit of exemption from payment of excise duty as enjoined by Section 154 of the Finance Act, 2003 read with Schedule 9

was partially relaxed to the extent as embodied therein. Though the notification inter alia reveals that the exempted amount of excise duty would

have to be utilised by the manufacturer only for investment in its plants and machineries located in the North Eastern States and will not be allowed

to be withdrawn before the expiry of 10 years, there is nothing decisive therein to indicate that it was in extension of the incentives conceived of

and hitherto granted by the Policy 1997. The Respondents' plea that this notification is thus independent of the Policy 1997 in the narrated

background of facts and more particularly in view of Section 154 of the Finance Act, 2003 along with Schedule 9 thereto thus commends for

acceptance. The benefit of partial exemption from payment of excise duty vis-a-vis some of the goods under Chapter 24 of the Tariff Act, 1985,

as indicated in the said notification thus cannot be construed to be under the Policy 1997 as insisted upon by the Petitioner. The notification No.

8/04-CE dated 21.1.2004 appearing in the scene thereafter exempted all goods falling under subheading 2401.90, 2402.00, 2404.41, 2404.49,

2404.50 or 2404.99 of the First Schedule and Second Schedule to the Tariff Act 1985 from whole of the duties of excise, additional duties of

excise leviable under the Tariff Act 1985 etc. as mentioned therein. The benefit again was limited to the identified manufacturing units that had

commenced commercial production on or after 24.12.1997 but not later than 28.2.2001 and had continued its manufacturing activities thereafter.

Thereby the exempted amount of duty was to be invested in the plants and machineries and for other works as referred to therein. The Notification

No. 28/04-CE dated 9.7.2004 introduced further amendments in the one dated 21.1.2004 more particularly detailing the manner in which the

investment as required in the latter notification was to be made.

68. It was subsequent thereto that the Policy 2007 was promulgated by the office memorandum No. 10(3)/2007-DBA-U/NER by the

Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion. Thereby all new units as well as existing

units which would go in for substantial expansion unless otherwise specified and which would commence commercial production within 10 years

from the date of the notification i.e. 1.4.2007 were construed to be eligible for the incentives mentioned therein including 100% excise duty

exemption on finished products made in the North Eastern Region as was available under the Policy 1997 for a period of 10 years from the date of

commencement of commercial production. The incentives on substantial expansion were to be given to the units effecting an increase by not less

than 25% in the value of fixed capital investment in plant and machinery for the purpose of expansion of capacity/modernization and diversification

as against an increase by 33 1/2 as prescribed by the Policy 1997. 100% excise duty exemption as assured under the Policy 1997 was to continue

as well. The Policy 2007 in Clause (x) contained a negative list of industries ineligible for benefits thereunder. For ready reference, the same is

extracted herein below.

(x) Negative List:

The following industries will not be eligible for benefits under NEHPP, 2007:

(i) All goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which pertains to tobacco and

manufactured tobacco substitutes.

(ii) Pan Masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

(iii) Plastic carry bags of less than 20 microns as specified by Ministry of Environment and Forests Notification No. S.O. 705(E) dated

02.09.1999 and S.O,698(E) dated 17/6/2003.

(iv) Goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) produced by petroleum oil or gas

refineries.

69. Clause (2) of the Policy, 2007 however provided that the Policy 1997 would cease to operate on and from 1.4.2007 and the industrial units,

which had commenced commercial production on and from 31.3.2007, would continue to receive the benefits/incentives under the earlier Policy.

While reserving to the Government the right to modify any part of the Policy in public interest all concerned Ministries/Department of the

Government of India were requested to amend their respective Acts/rules/notifications etc. and to issue necessary instructions for giving effect to

the decisions engrafted in the Policy, 2007. The office memorandum No. 10(3)/2007-DBA-II/NER dated 1.4.2007 also of the same Ministry in

substance reiterated the cessation of the effect of the Policy 1997 on and from 1.4.2007 with the rider that the industrial units which have

commenced commercial production on or before 31.3.2007 would continue to receive the benefits/incentives thereunder. Much emphasis has

been laid by the Petitioner on Clause (2) of the Policy 2007 to impress upon this Court that having regard to the date(s) of commencement of

commercial production by its manufacturing units qua the goods involved, it was entitled to be endowed with the benefits/incentives as available

under Policy 1997, the negative list notwithstanding. The Respondents to the contrary have pleaded that in the face of the intervening events as well

as on a close reading of the Policy 2007, this contention is wholly misplaced.

70. Having regard to the series of events subsequent to the promulgation of the Policy 1997 and reading between the lines of the Policy 2007, I am

inclined to sustain the resistance offered by the Respondents. Clause (ii) of the Policy 2007 with the caption ""Duration"" indicates that all new units

as well as existing units which go in for substantial expansion unless otherwise specified and which commence commercial production within 10

years from the date of the notification would be eligible for incentives for a period of 10 years from the date of commencement of commercial

production. The Policy did contemplate only new units as well as existing units venturing out for commercial production within 10 years from the

date of issuance thereof unless otherwise specified. The negative list provided by the Policy 2007 spells out the industries, which are ineligible for

the benefits thereunder. In the estimate of this Court, these are the industries contemplated to be excepted from the purview of the Policy 2007.

Clause 2 thereof when viewed in this context refers to the industrial units, which have commenced commercial production on or before 31.3.2007,

i.e. those not contemplated in Clause (ii). Having regard to the background that had preceded the Policy 2007 and the curtailment of the benefits

of exemption earlier granted by the Policy 1997 through various instruments of law in the form of Section 154 of the Finance Act 2003 read with

Schedule 9 thereto as well as the notifications u/s 5A of the Central Excise Act and other related legislations it would be in defiance of logic to

conclude that all these notwithstanding, with the specific intention of excluding the industries engaged in the manufacture of goods under Chapter 24

and pan masala under Chapter 21 of the First Schedule to the Tariff Act, 1985, these would still continue to avail the benefits/incentives under the

Policy 1997 only because the units concerned had commenced commercial production on and from 31.3.2007. As it is, the Policy, 2007 has not

been assailed by the Petitioner and the reliefs sought for by it are wholly founded on the assumption that it has by Clause (2) thereof assured the

continuance of the benefits/incentives of exemption from payment of excise duty as promised by the Policy 1997. As a matter of fact, all its

formulations qua the various legal principles highlighted stem from such a notion. If the interpretation of Clause (2) of the Policy 2007 as intended

by the Petitioner is accepted, the negative list for all intents and purposes would be rendered redundant and otiose. Further it would signify

effacement of the march of events prior thereto ending with Section 154 of Finance Act, 2003, the vires whereof has been upheld by the Apex

Court in R.C. Tobacco, supra.

71. The Apex Court in Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad, and Tata Iron and Steel Co.

Ltd. (supra), negated the plea that the benefit of an ambiguity in the language in an exemption notification ought to be construed in favour of the

Assessee. By recalling its earlier decision in Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., it was held that the

principle that in case of ambiguity, the taxing statute should be construed in favour of the Assessee, does not apply to the construction of an

exception or an exemption provision, which has to be construed strictly. It was underlined that a person invoking an exception or an exemption

provision to relieve him of the tax liability must establish clearly that he is covered by the said provision and in case of doubt or ambiguity, the

benefit of it must go to the State.

The power to lay down a policy by an executive decision or by legislation includes the power to withdraw the same unless in the former eventuality

it is afflicted by a mala fide exercise of power or if the action taken is in abuse of power. It is judicially recognized that a authority has to be left to

decide its full range of choice within the executive or legislative power and more particularly in matters of economic policy, the Courts have

conceded greater leeway to the executive and the legislature. If the Government is satisfied that change in the policy is warranted in public interest it

would be entitled to revise it and herald a new one and the Court would prefer to permit a free play to it in fiscal matters and to act upon the same.

This discretion to alter the policy in exercise of executive power is however neither unqualified nor unfettered and such an action is amenable to

judicial review. The Apex Court in Bannari Amman Sugars Ltd.(supra) emphasized that the State to this effect has to act validly on discernible

reasons and not whimsically for ulterior purposes. This view reverberated in Dhampur Sugar (Kashipur) Ltd. (supra) wherein while affirming the

discretion and dominion of the executive to alter its policy in public exigency underscored, the indispensable essentiality of bona fide and good faith

as validating imperatives. It marked the constricted contours of judicial review of such matters by extracting its following observations in-

State of M.P. and Others Vs. Nandlal Jaiswal and Others,

34 ...We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one

may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any strait

jacketed formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain

measure of freedom or "play in the joints" to the executive....

...Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void....

The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have

been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.

72. In the above view of the matter, on a totality of the aforementioned considerations, the challenge to the notifications dated 1.3.2007 and

25.4.2007 based on Policy 1997 cannot be sustained. A contrary intention being apparent from Section 154 of the Finance Act, 2003 read with

Schedule 9 thereto as well as the notifications issued after the Policy 1997 curtailing/regulating from time to time the exemptions from payment of

excise duty as contemplated by the said Policy, I am of the unhesitant opinion that the Petitioner too is not entitled to any protection u/s 38A of the

Act. The decisions relied upon by it qua promissory estoppel and legitimate expectation are thus of no avail to it in this perspective. There is no

discernible conflict in the approach of the Respondent authorities in promulgating the policy, 2007 or issuing the impugned notification. No mala

fide or extraneous consideration is also decipherable. The petitions therefore lack in merit and are dismissed. No costs.