M/s. Pine Chemicals Ltd. and Others

Vs

Assessing Authority and Others

and

M/s. K. C. Vanaspati

Vs

State of Jammu and Kashmir and Others

and

Kashmir Vanaspati Limited and Another

Vs

State of Jammu and Kashmir and Others

Civil Appeal Nos. 2309, 2310, 3148 to 3150 and 3151 of 1989

(S. Ranganathan, N.D. Ojha, V. Ramaswami-II JJ)

16.01.1992

JUDGMENT

V. RAMASWAMI J. –

1. Civil Appeal No. 2309 of 1989 arises out of an order made by the High Court of Jammu and Kashmir in Writ Petition No. 87 of 1981 dismissing the writ petition filed by M/s. Pine Chemicals Ltd., which is public limited company manufacturing rosin, turpentine and rosin derivatives and carrying on business at Bari Brahmana, Jammu Tawi. The appellants had prayed in the writ petition for quashing the order of assessment dated January 20, 1981 made by the Assessing Authority, Incharge Sales Tax Circle, Jammu under the Central Sales Tax Act, 1956 for the year ending June 30, 1980 and the penalty order made on February 2, 1981 under Section 10 of the Central Sales Tax Act in respect of the same period. They had also prayed for a declaration that they are entitled to exemption from payment of tax under the Central Sales Tax Act and the Jammu and Kashmir General Sales Tax Act, 1962, on the finished goods produced by them for a period of five years commencing from November 8, 1979, when the Company went into commercial production. This main relief had been prayed for on the grounds that the appellants were exempt from payment of Sales Tax in terms of the Government Order No. 159-Ind. dated March 26, 1971 as amended by Government Order No. 414-Ind. dated August 25, 1971 read with section 8(2-A) of the Central Sales Tax Act. Their further case was that the government represented and announced a package of incentives for large and medium scale industries including grant of exemption from sales tax both on the raw materials purchased by the industries and the sale of their finished products, that acting upon such representations and assurances, appellants set up their factory at Bari Brahmana on the

land allotted by the State Industrial Development Corporation and that therefore the government is estopped from charging sales tax on the doctrine of promissory estoppel. The High Court was of the view that the two government orders referred to above were only declarations of an intention to exempt from payment of sales tax and that they are not exemption notifications under Section 5 of the General Sales Tax Act. The High Court was also of the view that the appellants have failed to prove the necessary factual foundation for invoking the principle of promissory estoppel and that, therefore, they are not entitled to any relief under that doctrine. In that view the writ petition was dismissed.

2. It may be mentioned that Civil Appeal No. 2310 of 1986 is against an order made in a Civil Misc. Petition No. 2519 of 1988 which was also dismissed on September 23, 1988 along with the writ petition. This miscellaneous petition was filed after the judgment in the writ petition was reserved for permission to file reply affidavit on the ground that the assessment files produced at the time of hearing contained certain documents needing certain explanation by the appellants. Both on the ground that it was belated and on the ground that the judgment in the writ petition was delivered only relying on the materials placed on the record and therefore there was no need for giving an opportunity to the writ petitioners to file a reply statement, the learned Judges dismissed this miscellaneous petition also.

3. Civil Appeals 3140-50 of 1989 have been filed by M/s. K. C. Vanaspati, a firm of partnership manufacturing vanaspati ghee at Bari Brahmana, Jammu Tawi. They filed Writ Petition No. 52 of 1982 praying to quash a sales tax assessment order dated January 16, 1982 assessing them to sales tax for the period from September 2, 1981 till the end of the month under the Jammu and Kashmir General Sales Tax Act. They also prayed for a mandamus directing the government and the Assessing Officer not to assess them to sales tax or recover any amount on account of sales tax from them to sales tax from them for a period of five years from September 2, 1981 when their industry started commercial production. This relief was prayed again on the ground that Government Order 159-Ind. dated March 26, 1971 as amended by Government Order 414-Ind. dated August 25, 1971 exempted the sales of their finished product of vanaspati ghee from sales tax and also on the ground that in any case the government is estopped from collecting tax on the principle of promissory estoppel. When this writ petition was pending an assessment order was made on November 14, 1984 for the assessment year ending September 30, 1982 including the period September 2 to September 30, 1981 which was the subject matter of the earlier assessment order and which was questioned in Writ Petition No. 52 of 1982. The validity of this assessment order was the subject matter of Writ Petition No. 822 of 1984 filed by the appellants. The relief prayed for and the grounds on which the relief prayed for were almost identical as that in Writ Petition No. 52 of 1982 except that on the question of promissory estoppel, more detailed facts were mentioned in this writ petition. The respondents filed their counter-affidavits contending that the said government orders were not exemption orders under Section 5 of the General Sales Tax Act and that there is no factual foundation for the plea of promissory estoppel. Since we will be dealing with contentions in detail at the appropriate place we are not setting out contentions of the petitioners and the replies of the government in the writ petition in detail. During the pendency of the writ petitions certain other Government orders came to be passed and certain assessment orders for the subsequent periods were also sought to be made and questioning these actions M/s. K. C. Vanaspati filed Writ Petition No. 711 of 1987 for a writ of prohibition restraining the Assessment Officer and the government from recovering any sales tax at any point of sale in the series of sales in respect of vanaspati ghee manufactured by them for a period of 10 years from September 2, 1981 when their factory went into commercial production and also for a declaration that SRO 448 dated October 22, 1982 issued by the Government of Jammu and Kashmir (which will be referred to later) was illegal and

unconstitutional. They had also prayed for a mandamus directing the respondents to refund the sales tax already recovered from them with interest and damages. In this writ petition also they contended that Government Order No. 159-Ind. dated March 26, 1971 and Government Order 414-Ind. dated August 25, 1971 were exemption orders referable to Section 5 of the General Sales Tax Act. They have also referred elaborately to the representations, declarations and promises of the government in support of the plea of promissory estoppel. The respondents had filed a counter-affidavit refuting these contentions of the appellants. The High Court dismissed all these three writ petitions by a common order dated February 22, 1989. Civil Appeal Nos. 3148-50 of 1989 have been filed against this common order.

4. Civil Appeal No. 3151 of 1989 has been filed by M/s. Kashmir Vanaspati Ltd., against the judgment of the High Court in Writ Petition No. 5 of 1989 in which they had prayed for a writ of certiorari to quash certain notices issued to the appellants, their selling agents and the owner of the premises where they have their sale depots, issued under Section 17 of the General Sales Tax Act and for a declaration that the vanaspati ghee manufactured by the appellants is exempt from payment of tax at all stages up to January 1992 i.e. for a period of 10 years from the date from which they have started their commercial production. In this writ petition also the appellants had relied on Government Order 159-Ind. dated March 26, 1971 and Government Order No. 414-Ind. dated August 25, 1971 as orders exempting their goods from sales tax under section 5 of the General Sales Tax Act. They have also relied on certain statements of government as commitments to continue the incentives and exemptions from sales tax for a period of 10 years on the principle of promissory estoppel. The respondents had filed their counter-affidavit. This writ petition was also dismissed on March 17, 1989 almost on the same grounds as in the earlier two cases.

5. The first common question that arises for considerations in all these appeals therefore is whether Government Order No. 159-Ind. dated March 26, 1971 and the amending Government Order No. 414-Ind. dated August 25, 1971 are orders of exemption referable to Section 5 of the General Sales Tax Act, 1962. The said government orders are extracted below :

> # "GOVERNMENT OF JAMMU AND KASHMIR INDUSTRIES AND COMMERCE DEPARTMENT Sub : Grant of incentives to Large and Medium Scale Industries in the Jammu and Kashmir State. Ref : Cabinet Decision No. 101 dated March 26, 1971 Government Order No. 159-Ind. of 1971 Dated : March 26, 1971##

Sanction is accorded to the grant of the following incentives and facilities to Large and Medium Scale Industries in the State of Jammu and Kashmir :

> (1) Land : As provided in Government Order No. 206-Ind. of 1968 dated July 5, 1968. However such land ... include a reasonable amount of land for the establishment of residential colonies required to house the workers of Large and Medium Scale Industries and would be granted on the terms and conditions defined in the Government Order No. 206-Ind. of 1968 dated July 5, 1968.
>
> (2) Grant of exemption from the Stated Sales Tax both on the raw materials and finished products for a period of five years from the date the unit goes into production.
>
> (3) Grant of exemption from levy of additional surcharge on Toll Tax for an initial period of five years from the date the units goes into commercial production with

respect to raw materials and finished goods. The question of grant of exemption from this levy for further periods would be reviewed thereafter in every individual case and the further grant of this concession would only be considered in deserving individual cases.

(4) Grant of exemption from the levy of Urban Immovable Property Tax on the lands and buildings belonging to such industries would be available as admissible under the Urban Immovable Property Taxation Rules.

By order of the Government of Jammu and Kashmir.

Sd/- G. R. Renzu, Secretary to Government"##

6. This order was partially modified in G.O. 414-Ind. dated August 25, 1971 which read as follows :

"GOVERNMENT OF JAMMU AND KASHMIR INDUSTRIES AND COMMERCE DEPARTMENT Sub : Grant of incentives to the Large and Medium Scale Industries in the Jammu and Kashmir State Ref : Director Industries and Commerce's letter No. SSI-J/455/2251-52 dated July 22, 1971 Government Order No. 414-Ind. of 1971 Dated : August 25, 1971##

In partial modifications of Government Order No. 159-Ind. of 1971 dated March 26, 1971, item 2 may be read as under :

2. Grant of exemption from the sales tax both on raw materials and finished products.

The State Sales Tax paid by Large and Medium Scale Industries on the raw materials procured by them for the initial 5 years of the production would be refunded to such industries. Similarly such industries will be granted exemption from the payment of any state sales tax on their finished products for a period of five years from the date the unit goes into production.

By order of the Government of Jammu and Kashmir.

Sd/- Secretary to Government"##

7. It may be noted at this stage itself that the Amending Order G.O. 414-Ind. dated August 25, 1971 was also published in the government gazette.

8. Section 5 of the General Sales Tax Act, 1962 empowers the State Government to grant exemption from taxation and that section reads as follows :

"5. Exemption from taxation. - The government may subject to such restrictions and conditions as may be prescribed, including conditions as to licence and licence fees, by order exempt in whole or in part from payment of tax any class of dealers or any goods or class or description of goods."

9. The government orders were made implementing the Cabinet decision No. 101 of the same date. There is no ambiguity about the class of persons or dealers to whom the government orders apply, no ambiguity about the class or description of goods and transactions of sale which are exempt from

tax. It has been duly authenticated in terms of Section 45 of the Constitution of Jammu and Kashmir. It is well settled that if power to do an act or pass an order can be traced to an enabling statutory provision, then even if that provision is not specifically referred to, the act or order shall be deemed to have been done or made under the enabling provision. Thus the government orders satisfy all the requirements of the provisions of Section 5 of the local Act. The section also does not talk of any notifications; it only talks of a government order exempting in whole or in part from payment of tax. This is very insignificant (sic significant), if contrasted with Sections 4(1) and 4(5) of the local Act relating to the fixation of the taxable point (sic) refers to a notification by the government. The Act itself thus makes a distinction requiring a notification to be made for certain purposes and the making of a government order in respect of certain other purposes. Moreover, since there is no form prescribed in this behalf if the particular order in effect is an exemption order, whether it takes the form of an order or notification makes no difference. But we may note from the various orders produced before us that normally in the case of grant of tax exemptions as an incentive to industry the exemption orders have generally taken the form of government order rather than a notification. But in the case of other exemptions though they are also under Section 5 of the local Act they have taken the form of notification. Thus the pattern followed in Jammu and Kashmir seems to be that in respect of the exemptions from payment of taxes following Cabinet decision on policy matters and incentive they have taken the form of a government order. It is necessary to refer to this aspect because in later modifications while superseding the earlier orders or modifications, the government have followed the specific pattern and have used the word 'orders' in cases of grant of incentive and the word 'notifications' in the other cases.

10. It may also be pointed out that the Government Order Nos. 159 and 414 were also understood and treated as such exemption orders as seen from the publicity given to them by the government while inviting entrepreneurs to establish industries in Jammu and Kashmir and certain other communications to the parties. The booklet published by the government in December 1975 under the heading "Incentives to Development of Industries in Jammu and Kashmir" contained incentives available for small scale industries as also large and medium scale industries. The above-said two government orders were reproduced in this booklet as the orders relating to incentives available to large and medium scale industries. Another brochure issued in March 1978 under the heading. 'The State Marches Towards Industries Development' after noting the efforts made by the government to invite industrial enterprises from outside the State to locate the industries in Jammu and Kashmir and the reasoned by the industrialist, listed the package of incentives under the heading 'Incentives Available to help you establish your beautiful industrial ventures in the J & K State'. Item 5 of this list related to 'exemption from certain taxes'. This was followed by the Finance Minister's Budget Speech for the year 1978-79 in which the Finance Minister stated :

> "We have to continue a consistent policy of support and protection to industry and attract as many new units as we can, both in order to increase the employment opportunity and to achieve better economic growth. It is as such proposed to continue the grant of exemption from payment of sales tax on the goods manufactured by new units for a period of ten years from the date the unit goes into production."

11. Subsequent to this speech of the Finance Minister another brochure was published by the government on September 7, 1978 which referred to the sustained efforts made by the government to involve successful and experienced entrepreneurs from all over the country in setting up the industries in J & K and incentives available to the industries. In page 14 of this brochure "Exemption from sales tax and toll tax for 10 years and exemption from CST" is listed as one of the incentives available in the State. Obviously these announcements, references and statements relating

to exemption from sales tax refer to G.O. 159-Ind. dated March 26, 1971 and G.O. 414-Ind. dated August 25, 1971. No other government order or notification relating to exemption from payment of sales tax by large and medium industries were brought to our notice as relating to these references in the brochures and speeches.

12. Thus on a plain reading there could be no doubt that the two government orders are referable to the power of the government under Section 5 of the General Sales Tax Act and are exemption orders falling within the scope of that provision.

13. In this connection we may also refer to three decisions of this Court cited at the bar wherein similar orders of government without specifying the source of power under which they were made and also not in the form of a notification, were considered to be orders granting exemption.

14. In Pournami Oil Mills v. State of Kerala (1986 Supp SCC 728 : 1987 SCC (Tax) 134) this court had occasion to consider almost identical government orders as those we are concerned with in these appeals. The first was a government order dated April 11, 1979 and the relevant portion of the same reads as follows :

> "The government has considered the recommendations and suggestions of the Committee in detail and they are pleased to approve the following package of measures for promoting industrial development in Kerala :

SMALL SCALE INDUSTRIES :

Sales Tax Concessions :

New industrial units under small scale industries set up after April 1, 1979, will be exempted from the payment of sales tax for a period of five years from the date of production .....

The second was a notification dated October 21, 1980 made under Section 10 of the Kerala General Sales Tax Act which read as follows :

> "In exercise of the powers conferred by the Section 10 of the Kerala General Sales Tax (15 of 1963) the Government of Kerala have considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable under the said Act on the turnover of the sale of goods produced and sold by the new industrial units under the small industries for a period of five years from the date of commencement of sale of such goods by the said units subject to the conditions that if the tax collected by any such units by way of tax on their sales shall be paid over to government and that the sales tax, if any, already paid by such units to government shall not be refunded :
>
> Provided that such units shall produce proceedings of the General Manager, District Industries Centre, declaring the eligibility of the units for claiming exemption from sales tax :
>
> Provided further that the cumulative sales tax concessions granted to a unit at any point of time within this period shall not exceed 90 per cent the cumulative gross fixed capital investment of the unit.

Explanation. - For purpose of this notification new industrial unit under the Small Scale Industries shall mean undertakings set up on or after April 1, 1979 and registered with the Department of Industries and Commence as a small scale industrial unit.

This notification shall be deemed to have come into force with effect from April 1, 1979."

Section 10 of the Kerala General Sales Tax Act empowered the government if they consider it necessary in the public interest, by notification in the gazette, to make an exemption or reduction in the rate either prospectively or restrospectively in respect of any tax payable under the Act. It may be seen that the first government order dated April 11, 1979 did not to any statutory power under which that order was made and it was generally in the nature of an order approving package of measure and incentives for promoting industrial development in Kerala and not in the of a notification, while the second notification was made specifically in exercise of the statutory powers under Section 10 of the Kerala Act. It may also be seen that the first government order gave more tax exemption while the second notification did not give any exemption relating to purchase tax and also confined the exemption from sales tax to the limits specified in the proviso to the notification. Two main question were considered by this Court. The first was whether the first government order dated April 11, 1979 was an exemption order referable to the powers of the government under Section 10 of the Kerala Act. On this issue this Court held that it was an exemption order and that since there was an enabling provision in the statute empowering the government to give exemption, through the government order did not refer to the statutory provision conferring such powers the order should be deemed to have been made under the said enabling provision and that therefore both the orders were made in exercise of the powers under Section 10 of the Kerala Act. The second important point that was decided was that the second notification was prospective in operation and that industries set up on or after April 1, 1979 and before October 21, 1980 would be entitled to the benefit of the whole exemption under the first government order for the full period of five years from the date they started production and that right could not have been curtailed by the second notification dated October 21, 1980. As the government was bound by the rule of estoppel from taking away that right which had accrued to them under the first government order. Only new industries set up after October 21, 1980 would have the restricted benefit as provided in the second notification.

15. In Bakul Oil Industries v. State of Gujarat ((1987) 1 SCC 31 : 1987 SCC (Tax) 74 : (1987) 1 SCR 185) the effect of two exemption notifications made in exercise of the government's power under Section 49(2) of the Gujarat Sales Tax Act, 1960 was considered. Under the first notification dated April 29, 1970 certain exemption from payment of sales tax or purchase fix was given in respect of certain specified classes of sales and purchases described in the Schedule to that notification without any specification of period. The second notification dated November 11, 1970 amended the first notification by adding a new entry in the Schedule exempting a manufacturer who established a new industry from the whole of purchase tax and sales tax of a period of five years from the date of commissioning of the industry. This second notification stated that for the benefit of claiming the exemption the industry shall have been commissioned at any time during the period from April 1, 1970 to March 31, 1975. The assessee in that case had commissioned his plant on May 17, 1970 and when the Industries Commissioners refused to give him the eligibility certificate for claiming exemption he filed a writ petition under Article 226 before the Gujarat High Court. During the pendency of the writ petition the State Government issued another notification dated July 17, 1971 amending the definition of 'new industry' and excluding among others decorticating,

expelling, crushing, roasting, parching, frying of oil seeds and colouring, decolouring and scenting of oil, from the purview of the exemption notification. This Court held that under the first notification dated April 9, 1990 the exemption granted was general and did not stipulate as to how long the exemption would remain in operation and that would mean that the exemption granted under the notification was to have operative force till such time that exemption was allowed to remain before being withdrawn by a subsequent notification. Though the second notification dated November 11, 1970 gave the exemption for a period of five years from the date commissioning of the industry this Court was of the view that, that exemption cannot be invoked by the assessee in that case for claiming the benefit of tax exemption for five years because second notification was prospective in operation and would apply only those new industries which were commissioned subsequent to the issue of that notification and since the assessee in that case commissioned the mill on May 17, 1970 before the second notification he was not eligible for the benefit of second notification. However, the learned counsel for the respondents relied on the observation in the first paragraph at page 192 (SCC p. 36, para 9) of the Bakul Oil Industries case ((1987) 1 SCC 31 : 1987 SCC (Tax) 74 : (1987) 1 SCR 185) wherein the learned Judges have held that the State Government was under no obligation in any manner known to law to grant exemption and that it was fully within its powers to revoke the exemption by means of a subsequent notification. These observation will have to be understood in the light of the earlier statement that the second notification dated November 11, 1970 was prospective; that is to say if the industry had been commissioned subsequent to November 11, 1970 the assessee would have been entitled to the exemption for the full period of five years. These observations are apposite only to the notification dated April 9, 1970 which was the one which the assessee was entitled to. In correctly understanding the ratio of this judgment we have to keep in mind that the date of commissioning of the industry was the relevant factor to the entitlement of the relief. Therefore this is an authority only for the proposition that if the exemption notification did not stipulate as to how long the exemption would remain in operation it would be open to the government to withdraw the same at any time by a subsequent notification. But the learned Judges did stop with that but made a further observation that if the exemption notification gave exemption from payment of tax for a particular period and an industry was commissioned after the date of the exemption order but before the exemption was withdrawn, the said industry would be entitle to the benefit of exemption for the period specified in the exemption order though the exemption was withdrawn before the expiry of that period if the industry could rely on any estoppel. This is also clear as the learned Judges themselves have observed that the industry commissioned subsequent to the notification could also plead estoppel and observed : (SCC p. 37, para 11)

> "We must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz. the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the government can withdraw an exemption granted by it earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the government grants exemption to a new industry and if on the basis of the representation made by the government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute".

16. The government order which was considered by this Court in Assistant Commissioner of Commercial Taxes v. Dhamendra Trading Company ((1988) 3 SCC 570 : 1988 SCC (Tax) 432) read

as follows :

> "Consequently, the Governor of Mysore is pleased to sanction the following incentives and concessions to the entrepreneurs for starting new industries in Mysore State :
>
> (1) Sales Tax. - A cash refund will be allowed on all sales tax paid by a new industry on raw material purchased by it for the first (five) years from the date the industry goes into production, eligibility to the concessions being determined on the basis of a certificate to be issued by the Department of Industries and Commerce ...."

Though this again was in the form of a government order giving incentives and concessions, this Court held that since there is a power to grant an exemption or concessions under the statute the mere fact that it did not specify the power under which it was issued will make no difference and that the assessee would be entitled to the benefit of this order.

17. The High Court was of the view that the government orders are, as such, not exemption orders but only a policy decision. The learned Judges observed that Section 5 of the General Sales Tax Act "does not speak of general order of exemption as the power to grant exemption is related to a class of dealers or goods and that too subject to restrictions and conditions as may be prescribed. So there could be no general order of exemption and hence the need for specific order in favour of the petitioner is quite obvious". On this interpretation the High Court held that the appellant has to first establish that he had set up an industry in the State which conforms to the intent of 1971 order and thereafter ask for an exemption and that on being satisfied the government will have to make an order of exempting under Section 5 of general Sales Tax Act. We are unable to agree with this reasoning of the learned Judges on the interpretation of Section 5 of General Sales Tax Act. We are of the view that the High Court was in error in thinking that the exemption order should be specific in favour of the appellant. The exemption as can be seen from the provisions of Section 5 of the General Sales Tax act could be in respect of any class of dealers or any goods or class or description of goods. There could be an exemption to an individual also but the power of exemption is not restricted to such cases alone. It may refer to transactions of sale of a particular type of goods or class or description of goods or in respect of any class of dealers or a combination of both. Of course even as an order of exemption the appellant will have to show that he had set up the industry in conformity with the intent of 1971 order and entitled in terms thereof to the exemption in respect of the goods manufactured by him. But that is not to say that after the establishes those facts the government will have to make a separate order of exemption in relation to him.

18. When the appellant sought to rely on the decision of this Court in Pournami Oil Mills case (1986 Supp SCC 728 : 1987 SCC (Tax) 134) the learned Judges of the High Court sought to distinguish the same on the ground that the government order in Pournami Oil Mills case (1986 Supp SCC 728 : 1987 SCC (Tax) 134) used the words 'will be exempted' whereas in the government orders now under consideration the word used are 'will be granted exemption'. According to the learned Judges there is a vast difference between the two expressions. Whereas the expression 'will be exempted' is in the nature of an order the expression 'will be granted exemption' clearly implies declaration of intention which could result in an order of exemption being issued by taking further follow-up action. We have carefully considered this reasoning of the learned Judges. The government orders follow an earlier Cabinet decision to give incentives to large and medium scale industries. The intention was clear that they wanted to attract entrepreneurs from all over the country to come and establish industries in the State of Jammu and Kashmir. It is not with reference

to any particular industrialist or industry that the order was intended to be operative. The subject in both the government orders show that it is grant of incentives. In the light of the context in which the came to be used we are of the view that 'will be granted exemption' has the same meaning as 'will be exempted' and does not in any way show that it requires a further follow-up action. Even in Pournami Oils Mills case (1986 Supp SCC 728 : 1987 SCC (Tax) 134) under the government order dated April 11, 1979 the industries which are to be benefited are those which are to be set up on or after April 1, 1979. The exemption is thus with reference to an industry which is to be established subsequent to the government order. Therefore in that sense both expressions mean the same.

19. It was then pointed out by the learned Judges of the High Court that this Government Order No. 159 dated March 26, 1971 dealt with sanction to grant four different types of facilities and incentives and three out of them are covered by different legislative enactments and, therefore, it was futile to contend that without any follow-up action the said order can be treated as notification of exemption under the different statutes. We are unable to agree with this reasoning of the learned Judges also. As we have already pointed out there is no prescribed form for granting exemption under Section 5 of the General Sales Tax Act. There is also no prohibition against reference to any other matter or matters in exemption orders under Section 5 of the General Sales Tax Act. If the incentives related also to other benefits or rights merely because they are included in the same government order does not make it any the less an exemption order so far as the exemption related to payment of sales tax. In fact it appears to be that factually the submission of the learned counsel for the State that follow-up action was taken in pursuance of the government order in respect of exemption from the levy of urban immovable property tax and the exemption from levy of an additional surcharge on toll tax is not correct. Mr. Verma, learned senior counsel appearing for the State of Jammu and Kashmir in two of the appeals referred to what he called as a follow-up action in relation to the exemption from payment of tax under the Urban Immovable Property Act, a notification issued on June 3, 1971 in S.R.O. 214 of that date, in exercise of the powers conferred by Section 23 of the Jammu and Kashmir Urban Immovable Property Tax Act, 1962 amending the Immovable Property Tax Rules, 1962 by inserting Rule 20-A. The relevant portion of this Rule 20-A stated that under the provisions of clause (f) of sub-section (1) of Section 4 of the Act "all buildings and lands owned by proprietors of a factory and used by him for the purposes thereof shall be exempted from the levy of tax, etc. ...." It is true that this notification was subsequent to G.O. 159 Ind. dated March 26, 1971. But it is seen from the notification itself that the same was previously published on March 25, 1971 in the government gazette under Section 23(1) for information of all persons likely to be affected thereby and informing that notice is given thereby that it will be taken up for consideration on April 7, 1971 and any objection or suggestion which may be received in the Finance Department from any persons with respect to the said draft before the said date will be considered by the government. It is by reason of the fact that this draft rule has been published calling for objection the G.O. 159-Ind. itself stated that the grant of immovable property tax exemption would be available "as admissible under the Urban Immovable Property Taxation Rule." Thus on the day when the government order was made there was already the draft amendment rules, and, therefore, it could not be stated that the amendment was a follow-up action in pursuance of the government order. Rather the government order refers to the draft and says as per the amendment they will be entitled to the exemption. So far as the toll tax is concerned the notification dated July 18, 1977 relied on by the learned counsel for the respondents only extended the benefit of exemption to large and medium scale industries in respect of additional toll leviable 'till the construction phase is completed' that is in respect of tax on construction materials and it did not relate to the grant of exemption of additional surcharge on toll tax. But it is significant to note that this notification itself stated that 'the raw materials brought into the State for the purpose of

manufacturing and finished products marketed outside the State by the said industries shall remain exempt from payment of additional toll for a period of ten years in respect of all the units from the date of commencement of production by them". This definitely shows that there is already an exemption from payment of additional toll in respect of raw materials brought and finished product marketed and the government order related only to an extension of exemption benefit in respect of the construction phase as well. These notifications under the Immovable Property Tax Act and Toll Tax Act rather reinforce the contention of the learned counsel for the appellant that the government orders themselves are exemption orders under Section 5 of the General Sales Tax Act and no follow-up action was intended under those orders and the said orders operate as exemption orders. Thus there could be no doubt the Government Order 159-Ind. dated March 26, 1971 and the amending Government Order 414 dated August 25, 1971 are orders of exemption from payment of sales tax issued under Section 5 of the General Sales Tax Act.

20. Though the learned counsel of M/s. Kashmir Vanaspati Limited the learned counsel appearing for M/s. K. C. Vanaspati strenuously that the exemption from payment of tax was extended from 5 years to 10 years and the government was bound to give the exemption years on the ground of promissory estoppel we think there is absolutely no factual foundation for such a plea. The only reference to was in the Finance Minister's speech and in the brochure dated September 1978. The brochure only lists the concessions and incentives generally. It does not refer to any government decision or Cabinet decision or any order of the government. No decision of the government, let alone a Cabinet decision, or any government order extending the period of exemption was produced before us. It is not clear on what basis the brochure mentioned 10 years. Further the reference in the brochure is not for sales tax alone, but also refers to toll tax and Central sales tax. It is noticed that so far as toll tax is concerned there are government orders exempting the industries covered by the notifications for a period of 10 years. The Finance Minister's statement made in March 1978 only refers to a proposal to continue the grant of exemption from payment of sales tax for a period of 10 years. This statement also is not unambiguous. It may mean that the benefits under the Government Orders 159 and 414 may be continued for another 10 years without with-drawing the same. This is merely a budget proposal which could give rises to no right to the appellants. As no decision, order or notification is produced extending the period of exemption in relation to sales tax it is not possible to consider the claim of the appellants for exemption for 10 years on the ground of promissory estoppel.

21. In exercise of the powers under Section 4(7) of the General Sales Tax Act the government notified that "In supersession of all the previous notifications on the subject, the government hereby specify, in column 3 of the Schedule appended thereto, the point of tax on the turnover in the series of sales of goods specified in column 2 of the said schedule." This was notified and published as SRO 195 dated March 31, 1978. The schedule in column 2 gave the description of the goods and in column 3 point of tax. This schedule was amended by SRO 448 dated October 22, 1982 the relevant portion of which reads as follows :

> "SRO 448. - In exercise of the powers conferred by sub-section (7) of Section 4 of the Jammu and Kashmir General Sales Tax Act, 1962 (20 of 1962), the government hereby direct that in notification SRO 195 dated March 31, 1978, the following amendments shall be made namely :-
>
> (i) Sub-item (C) in column 2 under the heading 'Goods manufactured in the State' appearing against serial No. 2 shall be numbered as sub-item (d) and before sub-item (d) as so numbered the following shall be inserted as sub-item (C)

#(C) Vanaspati and edible oils.(i) When sale is made by Second sale in the manufacturer to State i.e. sale is another dealer in the by such dealer who State for resale. purchases goods from the manufacturer.(ii) When sale is made by First sale in the manufacturer to con- State i.e. when sumer direct. sale is made by the manufacturer.##

By order of the Government of Jammu and Kashmir."

22. Before the High Court the vires of SRO 448 was questioned on various grounds. However, the High Court rejected all those contentions and held that it is valid and that it has superseded the exemption, if any, granted under G.Os. 159 and 414. Mr. Thakur, the learned counsel for M/s. Kashmir Vanaspati and Mr. Beg, learned senior counsel for M/s. K. C. Vanaspati, apart from contending that SRO 448 was ultra vires, also contended on merits that this had no effect of superseding exemption granted under the said orders. Since we are agreeing with the learned counsel that this SRO did not and could not supersede the exemption granted under the said government orders we are not going into the question of vires of the same.

23. As may be seen from SRO 195 dated March 31, 1978 the notification was made by the government in exercise of the power under Section 4(7) of the State Act which related to the power to fix a point of sale for purposes of taxation in the series of sales of goods. In fact the notification specifically stated that it is made in supersession of all previous notifications on the subject and specified the point of tax on the turnover in the series of sales of goods specified in column 2 of the Schedule. The said notification therefore could not have and did not supersede the exemption notification made under Section 5 of the General Sales Tax Act. When it stated in the amending notification SRO 448 dated October 22, 1982 that vanaspati and edible oils are taxable at the point specified therein it only means that those vanaspati and edible oils which are not exempted are taxable at the points specified in the Schedule. It may be noted that the government order gave exemption only for five years from the date of commencement of the industry and those industries who had been manufacturing for more than that period and also those industries who were not entitled to the benefit of the said government order would be liable to pay sales tax on the vanaspati manufactured by them and the said goods were liable to tax at the point specified in the Schedule.

24. In the scheme of levy of single point taxation, there could be no doubt, the government could fix any point in the series of sales for the government have fixed the sale by the dealer, that if the second sale, as point no exception can be taken. In that sense no question of vires on the ground of lack of power would arise.

25. Under Section 4(1) of Jammu and Kashmir General Sales Tax Act the goods are taxable only once, that is it could be taxed only at one point of sale. We have already held that the Government Orders 159 and 414 are exemption orders and exempt the sale by appellants of their manufactured products. The exemption would not arises unless the goods taxable at the point of their sale. Thus the effect of exempting their sale is that the said goods manufactured by them could not be taxed at the second or subsequent sales also as that would offend Section 4(1) which provides for single point levy. In cases where there are no exemption orders and the State fixed the seconds or subsequent sale as point of taxation the first or prior or subsequent sales are not exempted sales but are not taxable sales. Therefore SRO 448 fixing the sale of vanaspati ghee by a dealer would not be applicable to vanaspati ghee manufactured by the appellants which are exempt under the said government orders. No question of vires of SRO 448 thus arises in these cases. Thus we are not called upon to decide the vires of SRO 448 on the ground of discrimination as in our view the goods

manufactured by the appellants are exempt under Government Orders 159 and 414 and that exemption covers entire series of sales of that very goods.

26. As already noticed in the case of Pine Chemicals the assessment orders related to their liability for tax under the Central Sales Tax Act in respect of their interstate sales. The High Court has not considered their claim for exemption under Section 8(2-A) of the Central Sales Tax Act. They seem to have proceeded on the assumption that if Government Orders 159 and 414 above referred to are exemption orders or if the dealers were entitled to exemption under the State Act on the principle of promissory estoppel they would automatically be entitled to the benefit of Section 8(2-A) of the Central Sales Tax Act. However, probably since the High Court was of the view that the said government orders are not exemption orders and that the appellants had not laid the factual foundation for claiming the benefit of promissory estoppel, the question of consideration of the applicability of Section 8(2-A) of the Central Sales Tax Act did not arise and was not considered. In fact the appellants in the special leave petition after claiming that the government orders above referred to are exemption orders and that in any case on facts they have established their case of promissory estoppel and the government is bound to give exemption, stated as a ground that in the High Court the Advocate-General made a concession to the effect that "he was not disputing that if the appellants were entitled to exemption in respect of finished goods under Section 5 of the Jammu and Kashmir Sales Tax Act they would automatically be exempted under Section 8(2-A) of the Central Sales Tax Act in respect of interstate transaction". On the basis of this concession it appears that the appellants have also filed a review petition against certain observations made in the judgment of the High Court. However, in the reply filed by the State in the special leave petition in this Court the government have denied that any concession was made by the Advocate-General of the State in the High Court and that in any case the concession referred to related to a question of law and that the State is entitled to press that point in this Court. In these circumstances we have permitted the State to raise the question that even if the said government orders were exemption orders under Section 5 of the General Sales Tax Act the appellants are not eligible for exemption in respect of their interstate sales under Section 8(2-A) of the Central Sales Tax Act.

27. Under Section 6(1) of the Central Sales Tax Act, 1956 every dealer who sells goods in the course of interstate trade or commerce shall be liable to pay tax under that Act. A sale of goods shall be deemed to take place in the courses of interstate trade or commerce if the sale occasions the movement of goods from one State to another or if effected by a transfer of documents of title to the goods during their movement from one State to another. The rate of tax on sales in the course of interstate trade or commerce is fixed under Section 8 of the Central Sales Tax Act. The tax payable by any dealer under the Act shall be collected in the State from which the movement of the goods commenced by the assessment officers of that State on behalf of the Government of India in accordance with the provisions of Section 9(2) of the Central Sales Tax Act. The learned Advocate-General of Jammu and Kashmir contended that even if the sale of a particular commodity is exempted from payment of tax under the local Act the dealer selling the same in interstate trade or commerce would be liable to pay Central sales tax under the provisions of Section 6(1-A) of the Central Sales Tax Act. His further submission was that if Section 6(1-A) of the Central Sales Tax Act is applicable to a particular transaction of sale Section 8(2-A) of the Central Sales Tax Act would not be applicable to that transaction.

28. Section 6(1-A) of the Act reads as follows :

> "6. (1-A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of interstate trade or commerce notwithstanding that no

> tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State."

In other words the liability of a dealer to pay Central sales tax on his transactions of sale will not be affected merely on the ground if the same dealer has sold the goods locally he would not have been liable to pay tax under the local Sales Tax Act. This is part of the general provisions of Section 6 of the Central Sales Tax Act making a dealer liable to tax on interstate sales. The rate of tax payable on interstate sale fixed at 4 per cent in the case of sales to a registered dealer of goods of the description coming under Section 8(3) of the Central Sales Tax Act or where the sale is to a government and at 10 per cent under Section 8(2)(b) of the Central Sales Tax Act in the case of goods other than declared goods. In respect of declared goods under Section 8(2)(a) of the Central Sales Tax Act tax shall be payable at twice the rate applicable to sale or purchase of such goods inside the appropriate State. In view of the provisions of Section 15 the State law can impose tax on sale of declared goods only at a rate not exceeding 4 per cent of the sale price and such tax also shall not be levied at more than one stage. If the tax has been levied under the State law on declared goods and such goods are add in the course of interstate trade and tax has been paid under the Central Sales Tax Act the tax levied under the State law shall be reimbursed to the person making such sale in the course of interstate trade.

29. Section 8(2-A) of the Central Sales Tax Act is in the nature of an exception to these general provisions. That sub-section read as follows :

> "8. (2-A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or in sub-section (1) of this section, tax payable under this Act by a dealer on his turnover insofar as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchases to which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.
>
> Explanation. - For the purpose of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchases of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

It may be seen from these provisions that Section 8(2-A) of the Central Sales Tax Act does not have any overriding effect on the scheme of taxation relating to interstate sale of declared goods. There is also scope for the applicability of Section 6(1-A) of the Central Sales Tax Act when the interstate sale takes place when the goods are in transit and is effected by transfer of documents of title to the goods during their movement from one State to another. There may be other instances also which may not affect the levy under Section 6(1-A) of the Central Sales Tax Act as in a case where Section 8(2-A) of the Central Sales Tax Act was not applicable though the transaction was not taxable under the State law. Suffice it to say that only certain cases which would have been covered by Section 6(1-A) of the Central Sales Tax Act have been carved out for the purposes of exemption subject to the applicability of Section 8(2-A) of the Central Sales Tax Act. Section 6(1-A) of the Central Sales Tax Act has not become otiose by reason of inclusion of that section in the non-obstante clause in Section 8(2-A). Both provisions, therefore, operate and they should not be read so as to nullify the

effect of one another.

30. On a plain reading of Section 8(2-A) of the Central Sales Tax Act it deals with the liability of a dealer to pay tax under the Act on his interstate sales turnover relating to any goods on the turnover relating to such goods if the sale had taken place inside the State is exempt from payment of Sales tax under the sales tax of the appropriate State. It provides that if an intrastate sale or purchase of a commodity by the dealer is exempt from tax generally or subject to tax generally at a rate which is lower than 4 per cent then his liability to tax under the Central Sales Tax Act when such commodity is sold on interstate trade would be either nil or as the cases may be shall be calculated at the lower rate. Explanation states as to when the sale or purchases shall not be deemed to be exempt from tax generally under the sales tax law. That is to say an intrastate sale or purchase of a commodity shall not be deemed as exempt from State tax generally if the exemption is given only (1) in specified circumstances or under specified conditions or (2) the tax is leviable on the sale or purchases of such goods at specified stages or (3) otherwise than with reference to the turnover of the goods. These conditions or limitations are therefore with reference to the transaction of sale or purchase. The main clause deals with the turnover of 'a dealer' which term would include 'any dealer' or 'any class of dealers'. The existence or otherwise of the three limitations under the explanation above referred to on claiming exemption under Section 8(2-A) of the Central Sales Tax Act will therefore, have to be tested with reference to the transaction of sale or purchase as the case may be of the dealer who claims the exemption in respect of his intrastate sale or purchase of the same goods. Thus the specified circumstances and the specified conditions referred to in the explanation should be with reference to the local turnover of the same dealer who claims exemption under Section 8(2-A) of the Central Sales Tax Act.

31. The learned Advocate-General for the State contended that the conditions that the industry should have been set up and commissioned subsequent to the Government Orders 159 and 414 above referred to and the commodity sold by him in order to claim the exemption under the said government order, shall be those manufactured by that industry are conditions or specified circumstances within the meaning of the explanation and, therefore, the dealer (Pine Chemicals) is not entitled to any conditions exemption under Section 8(2-A) of the Central Sales Tax Act. We are unable to agree with this submission of the learned counsel for the State. The facts which the dealer has to prove to get the benefit of the government orders are intended only to identify the dealer and the goods in respect of which the exemption is sought and they are not conditions or specifications of circumstances relating to the turnover sought to be exempted from payment of tax within the meaning of those provisions. The specified circumstances and the specified conditions referred to in the explanation should relate to the transaction of sale of the commodity and not identification of the dealer or the commodity in respect of which the exemption is claimed. These conditions relating to identity of the goods and the dealer are always there in every exemption and that cannot be put as a condition of sale. We have already held that not only sale by the manufacturer to dealer that is exempt under the government orders but since the General Sales Tax Act had adopted only a single point levy, even the subsequent sales would be covered by the exemption order. Therefore, the question whether the tax is leviable on the sale or purchase at "specified stages" does not arise for consideration. This is not also a case where the exemption is with reference to something other than the turnover of the goods.

32. In this connection we may refer to two decisions of this Court reported as Indian Aluminum Cables Ltd. v. State of Haryana ((1976) 4 SCC 27 : 1976 SCC (Tax) 437 : (1976) 38 STC 108) and Industrial Cables (I) India Ltd. v. Assessing Authority (1986 Supp SCC 695 : 1987 SCC (Tax) 112). The question for consideration in this case was whether the transaction of sale which would be

covered by Section 5(2)(a)(iv) of the Punjab Sales Tax Act could be said to be exempt from tax generally within the meaning of Section 8(2-A) of the Central Sales Tax Act. Section 5(2)(a) in effect provided that in determining the taxable turnover of a dealer his turnover on "(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 (9 of 1910), of goods for use by it in the generation or distribution of such energy" is to be deducted. That is to say that the transaction covered by this clause are exempt from Punjab Sales Tax Act. As may be seen from the provision the two conditions relate to the purchaser company being a licensed undertaking supplying electrical energy to the public and the goods sold are for use by the said undertaking in generation or distribution of such energy. This Court rejected the contention of the dealer that they are descriptive of the goods and not conditions and held that they are conditions under which exemption is granted and that therefore Section 8(2-A) of the Central Sales Tax Act was not attracted. As may be seen, the two conditions are attached to the sale of the dealer who is liable to pay sales tax. The description of the person who is to be the purchaser is not intended to identify the seller but relate to a condition of the sale being to a person of that description. The condition that the goods sold are for use by the licensed undertaking in the generation or distribution of electrical energy is again a condition attached to the sale and not identification of the goods. The goods are already identified. If the same goods had been sold to a person who is not a licensed undertaking and/or not for purposes of use in the generation or distribution of electrical energy the transaction would be liable to levy of tax under local sales tax law. If the conditions specified are satisfied then that transaction which would have otherwise formed part of the taxable turnover is allowed to be deducted from the total taxable turnover. Clearly, therefore, they are specified circumstances or specified conditions within the meaning of the explanation to Section 8(2-A) of the Central Sales Tax Act and therefore cannot be treated as exempted from tax generally.

33. There is also another judgment of this Court, namely, International Cotton Corporation (P) Ltd. v. Commercial Tax Officer ((1975) 3 SCC 585 : 1975 SCC (Tax) 78 : (1975) 35 STC 1) wherein they have generally considered the scope of Section 8(2-A) of the Central Sales Tax Act. After a consideration of the arguments the learned Judges observed :

> "Reading Section 6(1-A) and Section 8(2-A) together along with the explanation the conclusion deductible would be this : Where the intrastate sales of certain goods are liable to tax, even though only at one point, whether of purchase or of sale, a subsequent interstate sale of the same commodity is liable to tax, but where that commodity is not liable to tax at all if it were an intrastate sale the interstate sale of a particular commodity is taxable at a lower rate than 3 per cent then the tax on the interstate sale of tax commodity will be at that lower rate. A sale or purchase of any goods shall not be exempt from tax in respect of interstate sales of those commodities if as an interstate sale the purchase or sale of those commodities is exempt only in specific circumstances or under specified conditions or is leviable on the sale or purchase at specified stages. On this interpretation Section 6(A) as well as Section 8(2-A) can stand together."

34. In view of the pronouncement of this Court in above decisions and on our interpretation we do not consider it necessary to refer to the decisions of the High Courts cited at the bar. In the result we hold that the dealer "Pine Chemicals" is entitled to claim the benefit of exemption under G.O. 159 dated March 26, 1971 and G.O. 414-Ind. dated August 25, 1971 in respect of his turnover on interstate sales and the benefit of exemption is available for a period of five years from the commencement of commercial production.

35. Mr. Verma, learned counsel appearing for the State Government then contended that the said government orders were superseded by S.R.O. 80 dated March 12, 1982 (hereinafter referred to as S.R.O. 80/82) and vanaspati ghee has been made liable to tax at the rate of 8 per cent. The goods manufactured by M/s. Pine Chemicals are also made taxable as falling under the residuary item at the rate of 8 per cent.

36. S.R.O. 80 dated March 12, 1982 reads as follows :

> "In exercise of the powers conferred by sub-section (1) of Section 4 of the Jammu and Kashmir General Sales Tax Act, 1962 (20 of 1962) and in supersession of all the previous notifications issued on the subject, the government hereby direct that the tax on the taxable turnover shall be payable at the rates specified in Schedules A-I to A-XI annexed hereto;
>
> Further the government, in exercise of the powers conferred by Section 5 of the said Act and in supersession of all the previous notifications issued on the subject, hereby direct that the goods, persons and classes of persons as specified in Schedule 'B' annexed hereto shall be exempt from payment of tax leviable under said Act.
>
> Explanation. - Nothing contained in Schedule 'B' shall be deemed to exempt any goods specified in Schedules A-I to A-XI (both inclusive).
>
> The notification shall come into force with effect from April 1, 1982.
>
> By order of the Government of Jammu and Kashmir."

37. It then sets out the description of the goods and the rates at which they are taxable in Schedule A, Annexures I to XI. Items 1 to 3 Schedule "A", Annexure IV, read :

> "SCHEDULE A IV
>
> Goods chargeable to tax at 8 per cent
>
> 1. Hydrogenated vegetable oil (Vanaspati) and palm oil of all sorts.
>
> 2. Lubricants.
>
> 3. All goods other than items (1) and (2) above and those specified in other Schedules.
>
> #4. * * *##

38. In Schedule B goods except under Section 5 of the General Sales Tax Act are set out. Vanaspati ghee is not one of the items of goods exempted under Schedule B.

39. The learned counsel for the appellants contended that the second paragraph in the SRO only superseded the 'notifications' under Section 5 of the General Sales Tax Act made earlier and did not supersede and did not have the effect of superseding the government orders made, in pursuance of policy decisions taken by the Cabinet, exemption from payment of tax as an incentive to the industries. In any case the exemption for five years granted under the said government orders could

not be withdrawn so far as the appellants are concerned both on the ground that S.R.O. 80/82 was prospective in operation and also on the ground of promissory estoppel.

40. There could be no doubt that S.R.O. 80/82 was prospective in operation. We have noticed in the earlier part of this judgment that the government seems to have been following as a pattern that is in the case of incentives to industries the exemption orders had taken the form of a government order. Government Orders 159 and 414 were also in pursuance of a Cabinet decision. S.R.O. 80/82 though a government notification under the Business Rules it is issued by the Ministry concerned. In the circumstances we have also a serious doubt whether the said incentives could have been superseded by the said S.R.O. 80/82.

41. In this connection we may also refer to Government Order No. 54-Ind. of 1983 dated February 26, 1983 again an order made in pursuance of Cabinet decision which reads as follows :

> # "Civil Secretariat Industries and Commerce Department Government of Jammu and Kashmir Sub : Incentives for development of Large/Medium/Small Scale and Tiny Sector Industries in Jammu and Kashmir Ref : Cabinet Decision No. 57 dated February 5, 1983. Government Order No. 54-Ind. of 1983 Dated February 26, 1983##

In supersession of all previous orders it is ordered that the package of incentives as per Annexure to this order will now be applicable to the existing and new Large Medium/Small Scale and Tiny Industrial Units.

> 2. Such of the Industrial Units which have partly availed of the package of incentives, sanctioned under Government Order No. 391-Ind. of 1972 dated June 21, 1972 and subsequent orders issued in amplification thereof, as well as such units which have become entitled to the availment of the earlier package of incentives, sanctioned hereunder, remaining periods of their entitlement.
>
> #3. * * *4. * * *5. * * *6. * * *##
>
> By order of the Government of Jammu and Kashmir.
>
> # Sd. J. A. Khan Secretary to Government Industries and Commerce Department"##

42. The annexures to this order contain the incentives, benefits, privileges and priorities given to large, medium and small scale industries and tiny industries. So far as sales tax payable by large and medium scale industries which is relevant for our purpose paragraph XII/XIII states as follows :

> "XII/XIII. GST/CST/Additional Toll Tax on SSI Units and Medium/Large Units :
>
> (i) No. GST shall be charged on any raw material purchased by any industrial units except on items brought on a negative list.
>
> #(ii) * * *(iii) * * *##
>
> (iv) An equivalent amount of loan would be granted interest free to Medium and Large Units for a period of 10 years against GST/CST paid in the State, each installment of loan shall be recoverable in 7 years after a moratorium of 3 years, the

total amount of tax loan at any point of time not to exceed 33 per cent of capital investment or Rs. 25 lakhs whichever is less. Penal rate of interest may be prescribed for delay in repayment of loan.

#(v) * * *(vi) * * *##

It may be seen that paragraph 1 of this order refers to 'supersession of all previous orders' and then speaks of package of incentives and then states as applicable to existing large and medium scale industries also. If S.R.O. 80/82 had superseded G.Os. 159 and 414 does it mean that this government order has superseded S.R.O. 80/82 and if that is so what are incentives available after S.R.O. 80/82 to the existing industries ? This government order is thus consistent with the pattern followed and deals only with incentives to industries. In the second paragraph an option has been given to the industry which has not utilised the full benefit of the earlier exemption either to continue to enjoy the earlier exemption given by way of incentive or to opt for the scheme of incentive under the new government order. Thus all these provisions are consistent with the case of the appellant that neither S.R.O. 80/82 superseded G.Os. 159 and 414 nor Government Order 54 dated February 26, 1983 took their right to continue to enjoy the exemption benefit for the total period of five years as provided in the said government orders.

43. The learned counsel for the appellants also contended that they are entitled to enjoy the benefit for the full period of five years both on law as also on the ground of estoppel. We have already noticed that in Bakul Oil case ((1987) 1 SCC 31 : 1987 SCC (Tax) 74 : (1987) 1 SCR 185) this Court held that in the case of a grant of exemption without specifying any period for which the exemption is available the government could withdraw the same at any time. Though in that case on facts no further question can arise since it was held that the dealer was not entitled to the benefit of the subsequent notification giving the exemption for a period of five years on the ground that the notification was prospective in operation and therefore not applicable to the dealer in that case, this Court made certain further observations to the effect that even in the case of exemption for a particular period it could be withdrawn at any time subject of course to the plea of estoppel. In Pournami Oil Mills case (1986 Supp SCC 728 : 1987 SCC (Tax) 134) also the learned Judges appear to have given the benefit of exemption for the full period even after the withdrawal on the basis that the industry was set up in pursuance of some representation made by the government amounting to estoppel. In the present appeals also there are lot of materials to show that the government made representations to industry that they would give tax exemptions and other incentives and invited entrepreneurs to establish their industries in J & K. Relying on those representations each of these appellants have set up their industries. It is not necessary to set out these factual details in the judgment. Suffice it to say that we have carefully considered all the material and are of the view that the appellants acting on the representation had set up their industries. Therefore they are entitled to claim the benefit of the exemption for the entire period of five years calculated as per the terms of the government orders, even if it were to be S.R.O. 80/82 superseded the earlier exemption orders.

44. It was then contended by Mr. Verma, learned counsel appearing for the State that in the assessment order relating to Assessment year 1981-82 for the period from September 1, 1981 to August 30, 1982 in the K. C. Vanaspati there is a finding that the assessee has collected sales tax in respect of their sales turnover for which the exemption is now and that under Section 8-B of the J & K General Sales Act the said amount is refundable to the government. As has already been there was an assessment order for the period covering from September 2, 1981 to September 30, 1981 which was the subject matter of Writ Petition No. 52 of 1982. The same period merged in the

assessment enter September 1, 1981 to August 30, 1982 and consolidated assessment order was made and that was subject matter of Writ Petition No. 822 of 1984. Both these assessment orders were regular assessment orders and they are not Section 8-B orders of the local Act. They were made on the finding that Government Orders 159 and 414 above referred to are not exemption orders and the assessee could not be said to have acted upon any representation by the government that they are exemption orders on the ground that if they had relied on those orders as exemption orders they would not have collected any tax in respect of their sales and that therefore the government was not precluded by any principle of promissory estoppel from assessing their sales turnover. The assessees had challenged these assessment orders mainly on the ground that the government orders were exemption orders and that in any case the State is precluded from levying any sales tax on the ground of promissory estoppel. The learned Judges of the High Court held, as already stated that, the said government orders were not exemption orders but were only in the nature of declaration of intention to exempt the said industries from payment of sales tax and that the assessee had also not established any right for non-payment of tax on any ground of promissory estoppel. For holding that the assessees could not be said to have relied on any representation from the government that they would be exempted from payment of tax the learned Judges relied on the facts that the assessees had collected sales tax or the sales tax element had gone into the fixation of price of vanaspati ghee showing thereby that the appellants had not relied on any representation from the government that their sales are exempt from payment of tax. Since the assessment orders were regular assessment orders on the ground that their sales are taxable sales the question of applicability of Section 8-B of the local Act does not arise. That question arises in view of our finding that their sales turnover are exempt but still under Section 8-B of the local Tax (sic Act) they are liable to refund any money collected "by way of tax". Since neither the High Court had any occasion to decide this question of applicability of Section 8-B of the local Act on the basis that the sales turnover were exempt from payment of tax nor the assessing authorities had any opportunity to decide or made any order under Section 8-B of the local Act separately, we think that the entire question relating to the applicability of Section 8-B of the local Act even the question whether there was any collection of sales tax will have to be left open. The learned counsel Mr. Verma strenuously contended that there is a finding in the assessment orders that the appellants had collected tax and that finding had not been either challenged or set aside by the High Court and that therefore they should be directed to refund the amount collected. We are not able to agree with this contention of the learned counsel. As already stated the assessment order itself was questioned in the writ petitions filed by the assessees. The High Court had proceeded on the basis that the government orders are not exemption orders and that the government also was not precluded from collecting tax on any ground of promissory estoppel and that therefore the question of applicability of Section 8-B of the local Act did not arise before the High Court. It may be mentioned it is not the case of the State that they had collected any amount in excess of the percentage of sales tax i.e. collectable in respect of taxable vanaspati sales. In the light of our findings that the sales were exempt the question now arises whether the assessees had collected any tax and whether the amount was collected by way of tax and whether any element of sales tax has merged in the fixation of the price and that amounts to collection of sales tax. These questions will have to be decided if the State considers that the assessees had collected sales tax, in separate proceedings that may have to be initiated under Section 8-B of the local Act or when the State demands payment of the money under Section 8-B of the Local Act. Suffice it so say that we are unable to agree with the observations of the learned Judges of the High Court that merely because in the balance sheet a reserve fund is made for payment of sales tax or on the basis of the letter of Kashmir Vanaspati giving a break up of the sales price of Rs. 238 it can be said to be conclusively established that sales tax had been collected. Anyway we do not want to say anything because the matter will have to be considered by the authorities concerned

in case they want to invoke Section 8-B of the local Act on the basis that the said government orders gave exemption from payment of sales tax in respect of these assessees for a period of five years as we have held. In this view we are also not going the question as to the validity of Section 8-B of the local Act and we open that question which was outlined before us. Thus interpretation of Section 8-B of the local Act and the question of fact of collection and the liability to refund all have to wait till a demand is made by the competent authority for refund of the amounts in exercise of their power under Section 8-B of the local Act. The assessees have made some deposits in pursuance of interim orders made by this Court pending the appeal. It is also stated that during the pendency some other amounts were also paid by the assessees in addition to the amounts paid as per the direction given by this Court. The refunds of this money and the liability of the State Government to pay any interest while refunding the deposits will have to await the demand, if any, that may be made by the government under Section 8-B of the local Act. However, we make it clear that the way of refund of money collected as aforesaid will be only for a period of six months by which time the department should initiate proceedings, if any, under Section 8-B of the local Act, if so advised.

45. To sum up : G.O. 159-Ind. dated March 26, 1971 and G.O. 414 dated August 25, 1971 are exemption from payment of sales tax orders to the powers of the government under Section 5 of the J & K General Sales Tax Act and that exemption covers the entire series of sales of the goods comprehended within it but that the exemption was available only for a period of five years from the date of commissioning of the industries and not for ten years. The benefit of the exemption under the said government orders are also available in respect of the interstate sales of the same commodities for a period of five years from the commencement of the commercial production. The appeals are accordingly allowed to the extent mentioned above, However, there will be no order as to costs.

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