

SUPREME COURT OF INDIA

State of Haryana & Ors.

Vs.

Mahabir Vegetable Oils Pvt.

C.A.No.1977 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

21.02.2011

JUDGMENT

Dr. Mukundakam Sharma, J.,

SLP (Civil) No.16227 of 2009

1. Leave granted.

2. The issue that falls for our consideration in this appeal is whether the Respondent is entitled to the benefit of Sales Tax exemption on the entire investment made by them in setting up the industrial unit i.e. Solvent Extraction Plant, or on the investments made up till 16.12.1996, the date on which the exemption granted under Rule 28A of the Haryana Sales Tax Rules ("HSTR" for short) was withdrawn by the State by putting the Solvent extraction plant in the negative list.

3. The basic facts which are not in dispute, are as follows:-

The State enacted the Haryana General Sales Tax Act, 1973 (for short "the Act"). Section 64 of the Act provides for rule-making power. The said provision was amended by inserting sub-section (2-A) therein which reads as under:

"64. (2-A) The power to make rules under sub-sections (1) and (2) with respect to clauses (ff) and (oo) of sub-section (2) shall include the power to give retrospective effect to such rules i.e. from the date on which policy for incentives to industry is announced by the State and for this purpose Rules 28-A, 28-B and 28-C of the Haryana General Sales Tax Rules, 1975, shall have retrospective effect i.e. with effect from 1st April, 1988, 1st August, 1997 and 15th November, 1999 respectively, but such retrospective operation shall not prejudicially affect the interest of any person to whom such rules may be applicable."

4. Clause (ff) of sub-section (2) of Section 64 of the Act provides for the class of industries, period of exemption and conditions of such exemption, under Section 13-B; whereas clause (oo) thereof provides for class of industries, period of deferment and the conditions to be imposed for such deferment under Section 25-A.

5. Pursuant to or in furtherance of the said rule-making power, the State made rules known as the Haryana General Sales Tax Rules, 1975 (for short "the Rules"). Rule 28-A occurring in Chapter IV-A of the Rules provide for the class of industries, period and other conditions for exemption/deferment from payment of tax as envisaged both under Sections 13-B and 25-A of the Act.

"Operative period" has been defined in sub-rule (2)(a) of Rule 28-A of the Rules to mean "the period starting from the 1st day of April, 1988 and ending on the 31st day of March, 1997". Sub-rule (2)(c) thereof defines "New industrial unit" to mean:

"a unit which is or has been set up in the State of Haryana and comes or has come into commercial production for the first time during the operative period and has not been or is not formed as a result of purchase or transfer of old machinery except when purchased in the course of import into the territory of India, or when the cost of old machinery does not exceed 25% of the total cost of machinery re-establishment, amalgamation, change of lease, change of ownership, change in constitution, transfer of business, reconstruction or revival of the existing unit".

6. "Negative list" has been defined in sub-rule (2)(o) to mean "a list of class of industries as specified in Schedule III appended to these Rules".

7. The State of Haryana announced an industrial policy for the period 1-4-1988 to 31-3-1997 wherein inter alia incentive by way of sales tax exemption was to be given for the industries set up in backward areas in the State. Schedule III appended to the Rules provides for a negative list of the industries and/or class of industries which were not to be included therein. At the initial stage the Solvent extraction plant was admittedly not included in the negative list.

8. On or about 3-1-1996, notice was given as regards the intention of the State to amend the Rules in respect whereof a draft was circulated for information of persons likely to be affected thereby so as to enable them to file objections and suggestions thereto. Amendments in the terms of the said draft rules were notified on 16-12-1996 substituting Schedule III appended to the Rules whereby and whereunder the solvent extraction plant was included therein. Note 2 appended thereto reads as under:

"The industrial units in which investment has been made up to 25% of the anticipated cost of the project and which have been included in the above list for the first time shall be entitled to the sales tax benefits related to the extent of investment made up to 3-1-1996. Only those assets will be included in the fixed capital investment which have been installed or erected at site and have been paid for. The anticipated cost of

the project will be taken on the basis of documents furnished to a financial institution or banks for drawing a loan and which have been accepted by the financial institution or bank concerned for sanction of loan."

9. On or about 28-5-1997 the said Rules were amended inter alia by omitting Note 2 deeming to have always been omitted.

10. Yet again on 3-6-1997 in clause

(a) of sub- rule (2) of Rule 28-A of the Rules instead and in place of "31-3-1997" the words "date on which new policy for incentive to industry is announced by the Government of Haryana in Industries Department" was substituted.

11. On 26-6-2001 in Section 13-B after the words "for such period", the words "either prospectively or retrospectively" were inserted.

12. It is only after the notice dated 3.1.1996 that the respondent Mahabir Vegetable Oils (P) Limited purchased land measuring 30 kanals 17 marlas in the month of August 1996 to set up a solvent extraction plant. It also obtained registration under the provisions of the Act and the Central Sales Tax Act, 1956 on 6-9-1996. On 13-8-1996 it applied for a no-objection certificate from the Haryana State Pollution Control Board which is a condition precedent for setting up a solvent extraction plant. On 15-8-1996, the appellant entered into an agreement with M/s Saratech Consultants and Engineers, Karnal for supply and erection of the plant for a sum of Rs. 55,55,000.00 and Rs 22,75,000 respectively and advances were paid on different dates. Furthermore, on 6-9-1996, civil construction work started at site. Plans submitted by the appellant for getting permission for storage of hexane were sanctioned by the Explosives Department on 19-9-1996 and licence was finally given on 11-3-1997. On 26-9-1996, process of installation of the plant started at the site. On or about 18-11-1996, a 250 kVA power-generating set costing Rs 9,91,000 was installed, no-objection certificate wherefor was granted on 22-11-1996. The appellant applied to the Haryana State Electricity Board for release of the power connection vide application dated 12-12-1996 and also deposited the security of Rs. 68,700 for the same. On 26-3-1997, the appellant started the trial production and commercial production commenced on 29-3-1997.

13. The respondent had applied for grant of exemption from payment of sales tax as on 16-12-1996 which was rejected the following terms: -

"... The solvent extraction plants were included in the negative list with effect from 16-12-1996. The industrial unit has made 45% of total investment. In the notification it was stipulated that the industrial unit in which investment has been made up to 25% of the anticipated cost of the project which has been included in the negative list for the first time shall be entitled to sales tax benefit, however, this condition has been deleted vide notification dated 28-5- 1997. The Committee was of the view that this condition has already been deleted and certain parties have challenged it in the Punjab and Haryana High Court. The Director of Industries was of the view that in case a

particular industry is put in the negative list, benefit on account of investment made before the date of putting the unit in the negative list should be available to the unit for sales tax exemption/deferment. Though the Higher Level Screening Committee broadly agreed with this view, yet in view of the fact that such cases were not covered in the existing notification of the Commercial Taxation Department, it was decided to reject the claim of the party."

And the writ petition filed by the Respondent before the High Court was dismissed holding: -

"(i) The power to grant exemption from the payment of sales tax is an exercise of the powers conferred by the statute on the State Government and is, thus, a delegated legislative function. The delegated legislation can be struck down if it is established that there is manifest arbitrariness. It must be shown that it was not reasonable or manifestly arbitrary.

(ii) As per the records made available, a Standing Committee was constituted by the State of Haryana for revising the negative list periodically keeping in view the industrial scheme of the State and its neighborhood. Such Standing Committee considered the revision of negative list in its meeting held on 15-9-1995 wherein it was decided to include highly polluting industries, power-intensive industries, conventional type of industries where sufficient capacity has already come up and any further increase in the capacity would jeopardise the health of existing industry in the negative list. There is no challenge to the decision or proceedings of such Committee on any ground indicating arbitrariness, bias, mala fide or any such like reason.

(iii) In view of certain decisions of this Court, the benefit of exemption can be withdrawn in public interest.

(iv) There is no allegation of exercise of such power to include solvent extraction plant which is actuated by any mala fides, fraud or lack of bona fides. It is a matter of fiscal policy of the State Government as to which industries should be granted exemption.

(v) Mahabir Vegetable Oils (P) Ltd. only invested Rs. 4,44,000 in the land and purchased machinery worth Rs.16,90,000 on 14-12-1996.

(vi) Thus, we hold that there is no representation on behalf of the State Government that the scheme of granting incentives by way of exemption or deferment will not be modified, amended or varied during the operative period. There cannot be any restraint on the State Government to exercise the delegated legislative functions within the parameters laid down by the statute."

14. Against the said dismissal the Respondent approached this Court by filing Special Leave Petition which was converted into Civil Appeal 1635 of 2006. The said Appeal of the

respondent was allowed by this Court vide its judgment dated 10-3-2006 which was reported at (2006) 3 SCC 620. This Court by applying the Doctrine of Promissory Estoppel held that the promises/representations made by way of a statute, continued to operate in the field. This Court noted that it may be true that the Respondent altered their position only from August 1996 but it has neither been denied nor disputed that during the relevant period, namely, August 1996 to 16-12-1996 not only have they invested huge amounts but also the authorities of the State sanctioned benefits, granted permissions. The Respondent had also taken other steps which could be taken only for the purpose of setting up of a new industrial unit. This Court further noted that an entrepreneur who sets up an industry in a backward area unless otherwise prohibited, is entitled to alter his position pursuant to or in furtherance of the promises or representations made by the State.

15. However this Court, at that stage, did not interfere with the issue of the quantum of exemption which can be granted to the Respondent and the said issue was kept open and the matter was remanded to the Director Industries for fresh adjudication. The Writ Petition filed by the Respondent under Article 32 was also disposed off. The relevant portion of the said judgment is as follows:-

"38. The promises/representations made by way of a statute, therefore, continued to operate in the field. It may be true that the appellants altered their position only from August 1996 but it has neither been denied nor disputed that during the relevant period, namely, August 1996 to 16-12-1996 not only have they invested huge amounts but also the authorities of the State sanctioned benefits, granted permissions. Parties had also taken other steps which could be taken only for the purpose of setting up of a new industrial unit. An entrepreneur who sets up an industry in a backward area unless otherwise prohibited, is entitled to alter his position pursuant to or in furtherance of the promises or representations made by the State. The State accepted that equity operated in favour of the entrepreneurs by issuing Note 2 to the notification dated 16-12-1996 whereby and whereunder solvent extraction plant was for the first time inserted in Schedule III i.e. in the negative list.

39. Both the provisions contained in Schedule III and Note 2 formed part of subordinate legislation. By reason of the said note, the State did not deviate from its professed object. It was in conformity with the purport for which original Rule 28-A was enacted.

40. We, in this case, are not concerned with the quantum of exemption to which the appellants may be entitled to, but only with the interpretation of the relevant provisions which arise for consideration before us.

41. We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne14.)

43. A retrospective effect to an amendment by way of a delegated legislation could be given, thus, only after coming into force of sub-section (2-A) of Section 64 of the Act and not prior thereto.

44. By reason of Note 2, certain rights were conferred.

Although there lies a distinction between vested rights and accrued rights as by reason of a delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not, thus, have taken away the rights of the appellant with retrospective effect.

45. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeals are allowed and the matter is remitted to the Director of Industries to consider the matter afresh.

46. In view of our findings aforementioned no direction is required to be issued in the writ petition filed by the appellants. The writ petition is disposed of accordingly."

16. The Lower Level Screening Committee ("LLSC" for short) After considering the matter in the light of the abovementioned judgment passed by this Court made a recommendation for grant of eligibility certificate to the extent of Rs.94,48,911/- for a period of nine years i.e. from 29.03.1997 to 28.03.2006. The said amount was calculated with reference to the investment made by the petitioner up to 16.12.1996 i.e. date of amendment, putting the unit in the negative list. On appeal, the Appellate Authority affirmed the said view with the following observations :-

".....The Committee examined the judgment relied upon and observed that the Hon'ble Supreme Court has not found fault with the amendment dated 16.12.1996 whereby the solvent extraction plant have been put into negative list (schedule III). The effect of enlargement of the negative list is that the unit has ceased to be eligible for exemption/deferment with effect from 16.12.1996. Besides, it is further observed that tax concessions, as repeatedly held by the Hon'ble Supreme Court, are a defeasible, not an indefeasible, right but the withdrawal is always prospective."

17. The respondent challenged the said order & judgment before the High Court of Punjab & Haryana by filling a writ petition. The High Court by the impugned judgment allowed the writ and held once the Respondent has been treated to be eligible for exemption, there was no valid reason to further classify the benefit of investment up to the date of amendment, putting the unit in the negative list. The relevant paras of the impugned judgment are follows:-

"13. Admittedly, on the date of commercial production and also on the date of issue of entitlement/exemption certificate, the petitioner was in negative list and could not be considered to be eligible unless applicability of notification dated 16.12.1996 was confined to units which started investment before the said date.

14. The respondents themselves have extended the benefit by not treating the notification dated 16.12.1996 to be applicable to the petitioner. Once the petitioner has been treated to be eligible, there was no valid reason to further classify the benefit of investment up to the date of amendment, putting the unit in the negative list.

14. In view of above, we allow this petition and quash the impugned orders to the extent of restricting the benefit to the date of notification i.e. 16.12.1996.

15. The Appellate Authority may now pass a fresh order in accordance with law, within four months from the date of certified copy of this order."

18. It is against the said judgment that the appellants have approached this Court. We heard the learned Senior Counsel for the parties. However, before we deal with the respective submission we may specify that this Court in the year 2006 has already held that the Respondent is entitled to the exemption, and the only issue which remains to be decide is whether the exemption has to be granted upon the entire investment or the investment made up till 16.12.1996 i.e. date of amendment, putting the unit in the negative list.

19. The learned Senior Counsel appearing for the State vehemently argued that the exemption granted to solvent extraction plant was legally withdrawn by the State Government on 16.12.1996 as the same was deemed necessary in the public interest It was further submitted that it is within the prerogative of the State to withdraw an exemption if the same is deemed necessary in the public interest. It was also submitted that the Respondent does not have a vested right in their favour and the exemption granted cannot go beyond the date of withdrawal by the State. It was also contented that as now the benefit of exemption has been granted on the investment made up till 16.12.1996 the question of retrospective effect also does not arise.

20. On the other hand, it was submitted by the Learned Senior Counsel appearing for the Respondent that the respondent has taken a decision to establish its industrial unit in the said area of the State of Haryana, only on the basis and footing that the respondent would be entitled to the benefit of sales tax exemption @ 150% on the total capital investment made in that industrial unit. In order to supplement the said submission, the learned Senior Counsel placed strong reliance on the doctrine of promissory estoppel and submitted that once the Respondent, based on the representation of the State has initiated the steps to establish the unit and has made substantial investment in that regard, the State now cannot turn around and deny the said benefit of exemption.

21. We have considered the submission made by the learned senior counsel for the parties and have also perused the relevant provision, as amended from time to time and the documents placed on record.

22. The judgment of this Court dated 10-3-2006 in Civil Appeal 1635 of 2006 reported at only considered the retrospective operation of the amendments made on 16.12.1996 and subsequent amendments which sought to take away certain rights of the Respondents. This Court in the said judgment had only held that the amendment to Rule 28A could not have any retrospective effect, in the sense that it could not affect an assessee's pre-existing rights. It is also important to note that the said judgment clearly clarified that the question of quantum of exemption to which the appellants may be entitled to was not considered. It may also be pointed out that this Court did not go into the challenge made to the validity of the Amendments made which was challenged by the Respondent by way of a Writ Petition. The reliance placed on the said Judgment is therefore misplaced. The issue that falls for our consideration in this appeal is on the quantum of exemption to which the Respondent is entitled and that too for the period subsequent to the date of the amendment. In other words, the question before us pertains to whether the Respondent is entitled to the benefit of Sales Tax exemption on the entire investment made by them in setting up the industrial unit i.e. Solvent Extraction Plant, made prospectively after 16.12.1996.

23. It has been urged on behalf of the Respondents that benefit of the exemption is required to be advanced to them on the principle of the Doctrine of Promissory Estoppel. We are not in agreement with the said argument. This Court in *M/s. Motilal Padampat Sugar Mills Co. (P) Ltd. vs. State of Uttar Pradesh and Ors. Reported i'n* held as under:

"24. This Court finally, after referring to the decision in the *Ganges Manufacturing Co. v. Sourujmull, Municipal Corporation of the City of Bombay v. Secretary of State for India and Collector of Bombay v. Municipal Corporation of the City of Bombay* summed up the position as follows:

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and

completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on

some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Avodeji Ajaye v. Briscoe".

24. The doctrine of Promissory Estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straight jacketed into pigeon holes. In other words, there cannot be any hard and fast rule for applying the doctrine of Promissory Estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties i.e. both the promisor and the promisee.

25. The principles of promissory estoppel is not applicable in the instant case as the decision to put the Solvent Extraction Plant in the negative list was taken in public interest since the industry is in the category of polluting industry. It has never been the case of the Respondent that the Solvent Extraction Plant is a non polluting industry. There is also no allegation that the decision to put the Solvent Extraction Plant in the negative list was actuated by fraud or that the said decision was not bona fide. In cases where the Government on the basis of material available before it, bona fide, is satisfied that public interest would be served by granting, withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so. The withdrawal of exemption "in public interest" is a matter of policy and the Courts should not bind the government in its policy decision. The Courts

should not normally interfere with fiscal policy of the government more so when such decisions are taken in public interest and where no fraud nor lack of bona fide is alleged much less established.

26. An exemption is nothing but a freedom from an obligation which an assessee is otherwise liable to discharge. In a fiscal statute, an exemption has been held to be a concession granted by the state so that the beneficiaries of such concession are not required to pay the tax or the duty they are otherwise liable to pay under such statute. The beneficiary of a concession has no legally enforceable right against the government to grant a concession except to enjoy the benefits of the concession during the period of its grant. The right to exemption or concession is a right that can be taken away under the very power in exercise of which the exemption was granted.

27. Furthermore, in the fact of the instant case, it cannot be said that the Respondent had altered its position relying on the promise in as much as even before steps were taken by the Respondent for laying the Solvent Extraction Plant, the Petitioner had made its intention clear through its notice dated 3.1.1996 that it was likely to amend the law/rules in respect whereof a draft was circulated for information of persons likely to be affected thereby so as to enable them to file objections and suggestions thereto. Amendments in the terms of the said draft rules were notified on 16-12-1996 substituting Schedule III appended to the Rules whereby and where under the solvent extraction plant was included therein.

28. It cannot be denied that an investment was made by the Respondent in the said area of the State of Haryana, probably on the belief that it would be entitled to the exemption. However, the said factor alone, in the absence of any specific confirmation cannot stop the State to amend the policy and withdraw the exemption if the same is deemed necessary and expedient in the Public Interest. Moreover, the said policy which was for the period of 1-4-1988 to 31-3-1997 was nearing its end.

29. The Note 2, appended to the amendment made to Schedule III (extracted hereinabove), categorically state that the industrial units in which investment has been made up to 25% of the anticipated cost of the project and which have been included in the above list for the first time shall be entitled to the sales tax benefits related to the extent of investment made up to 3-1-1996. On or about 28-5-1997 the said Rules were amended inter alia by omitting Note 2 deeming to have always been omitted.

30. The LLSC, while arriving at the quantum of exemption considered the conditions enumerated in the Note 2 and keeping in view the observation made by this Court in the abovementioned judgment, granted the exemption till 16.12.1996 i.e. date of the amendment instead of 3-1-1996 as mentioned in the said Note. The said finding was upheld by the Appellate Authority which found that the quantification was in accord with abovementioned judgment passed by this Court and other principles of law.

31. If one goes by the wording of Note 2, it appears that in order to balance the equities and protect the interest of the investor the benefit of the exemption was granted for the

investments made up till 16-12-1996. Moreover, as the benefit has already been granted till 16-12-1996 in terms of the ratio of the judgment passed by this Court, in the Mahabir Vegetable case (supra) reported at it cannot be said that even now an attempt has been made to give retrospective effect to the said amendment.

32. The High Court has gone on the premise that once the Appellant have themselves extended the benefit to the Respondent they cannot further classify the benefit of investment up to the date of amendment, putting the unit in the negative list. It appears that the High Court while arriving at the said finding has failed to appreciate the fact that the case of the Respondent was considered for exemption in the light of the judgment passed by this Court in the Mahabir Vegetable case (supra) reported at (2006) 3 SCC 620 wherein it was held that the Respondent is entitled to exemption. However, the issue of quantum was kept open. The High Court while giving the said finding has altogether closed itself in considering the said issue and on the contrary has held that only because the Respondent has been considered for grant of exemption, there is no issue of quantum and the Respondent is entitled to entire exemption. In our opinion the said finding is not in line with the observations made by this Court in the Mahabir Vegetable case (supra) reported at (2006) 3 SCC 620. The quantification made by the LLSC is in accord with the ratio laid by this Court.

33. Accordingly, we allow the appeal and set aside the impugned judgment passed by the High Court leaving the parties to bear their own costs.

Judgment Referred.

¹(1979) 2 SCC 0409