REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2256-2263 OF 2020

(Arising out of S.L.P.(C) Nos. 28194-28201/2010)

Union of India & Another Etc. Etc. …Appellants

Versus

M/s V.V.F Limited & Another Etc. Etc. …Respondents

WITH

C.A. No. 2264 of 2020 @ SLP (C) No. 14751/2013,
C.A. No. 2265 of 2020 @ SLP (C) No. 14752/2013,
C.A. No. 2266 of 2020 @ SLP (C) No. 14753/2013,
C.A. Nos. 2267-2275 of 2020 @ SLP (C) Nos. 15481-15489/2011,
SLP (C) No.19998/2013,
SLP …. CC No. 1787/2014,
C.A. No. 2276 of 2020 @ SLP (C) No.11878/2015,
C.A. No. 2277 of 2020 @ SLP (C) No.19370/2015,
C.A. No. 2278 of 2020 @ SLP (C) No.19868/2015,
C.A. No. 2279 of 2020 @ SLP (C) No.19386/2015,
C.A. No. 2280 of 2020 @ SLP (C) No.19379/2015,
C.A. No. 2281 of 2020 @ SLP (C) No.19376/2015,
C.A. No. 2282 of 2020 @ SLP (C) No.19384/2015,
C.A. No. 2283 of 2020 @ SLP (C) No.19380/2015,
C.A. No. 2284 of 2020 @ SLP (C) No.20626/2015,
C.A. No. 2285 of 2020 @ SLP (C) No.21583/2015,
C.A. No. 2286 of 2020 @ SLP (C) No.19320/2015,
C.A. No. 2287 of 2020 @ SLP (C) No.19371/2015,
C.A. No. 2288 of 2020 @ SLP (C) No.20109/2015,
C.A. No. 2289 of 2020 @ SLP (C) No.19378/2015,
C.A. No. 2290 of 2020 @ SLP (C) No.19375/2015,
C.A. No. 2291 of 2020 @ SLP (C) No.21406/2015,

C.A. No. 2292 of 2020 @ SLP (C) No.23331/2015,
C.A. No. 2293 of 2020 @ SLP (C) No.20630/2015,
C.A. No. 2294 of 2020 @ SLP (C) No.20631/2015,
C.A. No. 2295 of 2020 @ SLP (C) No.20628/2015,
C.A. No. 2296 of 2020 @ SLP (C) No.20627/2015,
C.A. No. 2297 of 2020 @ SLP (C) No.19228/2015,
C.A. No. 2298 of 2020 @ SLP (C) No.23394/2015,
C.A. No. 2299 of 2020 @ SLP (C) No.23399/2015,
C.A. No. 2300 of 2020 @ SLP (C) No.23328/2015,
C.A. No. 2301 of 2020 @ SLP (C) No.19373/2015,
C.A. No. 2302 of 2020 @ SLP (C) No.23329/2015,
C.A. No. 2303 of 2020 @ SLP (C) No.23326/2015,
C.A. No. 2304 of 2020 @ SLP (C) No.20442/2015,
C.A. No. 2305 of 2020 @ SLP (C) No.23398/2015,
C.A. No. 2306 of 2020 @ SLP (C) No.23393/2015,
C.A. No. 2307 of 2020 @ SLP (C) No.20370/2015,
C.A. No. 2308 of 2020 @ SLP (C) No.19842/2015,
C.A. No. 2309 of 2020 @ SLP (C) No.22568/2015,
C.A. No. 2310 of 2020 @ SLP (C) No.21605/2015,
C.A. No. 2363 of 2020 @ SLP (C) No.23303/2015,
C.A. No. 2311 of 2020 @ SLP (C) No.23301/2015,
C.A. No. 2312 of 2020 @ SLP (C) No.23334/2015,
C.A. No. 2313 of 2020 @ SLP (C) No.21584/2015,
C.A. No. 2314 of 2020 @ SLP (C) No.23391/2015,
C.A. No. 2315 of 2020 @ SLP (C) No.23297/2015,
C.A. No. 2316 of 2020 @ SLP (C) No.23898/2015,
C.A. No. 2317 of 2020 @ SLP (C) No.23251/2015,
C.A. No. 2318 of 2020 @ SLP (C) No.23896/2015,
C.A. No. 2319 of 2020 @ SLP (C) No.23903/2015,
C.A. No. 2320 of 2020 @ SLP (C) No.23396/2015,
C.A. No. 2321 of 2020 @ SLP (C) No.23294/2015,
C.A. No. 2322 of 2020 @ SLP (C) No.23897/2015,
C.A. No. 2323 of 2020 @ SLP (C) No.23900/2015,
C.A. No. 2324 of 2020 @ SLP (C) No.23295/2015,
C.A. No. 2325 of 2020 @ SLP (C) No.23299/2015,
C.A. No. 2326 of 2020 @ SLP (C) No.23902/2015,
C.A. No. 2327 of 2020 @ SLP (C) No.27036/2015,
C.A. No. 2328 of 2020 @ SLP (C) No.23296/2015,

C.A. No. 2329 of 2020 @ SLP (C) No.26286/2015,
C.A. No. 2330 of 2020 @ SLP (C) No.23693/2015,
C.A. No. 2331 of 2020 @ SLP (C) No.26764/2015,
C.A. No. 2332 of 2020 @ SLP (C) No.23247/2015,
C.A. No. 2333 of 2020 @ SLP (C) No.23899/2015,
C.A. No. 2334 of 2020 @ SLP (C) No.23901/2015,
C.A. No. 2335 of 2020 @ SLP (C) No.27041/2015,
C.A. No. 2364 of 2020 @ SLP (C) No.27024/2015,
C.A. No. 2336 of 2020 @ SLP (C) No.27034/2015,
C.A. No. 2337 of 2020 @ SLP (C) No.26284/2015,
C.A. No. 2338 of 2020 @ SLP (C) No.27053/2015,
C.A. No. 2339 of 2020 @ SLP (C) No.27058/2015,
C.A. No. 2340 of 2020 @ SLP (C) No.25804/2015,
C.A. No. 2341 of 2020 @ SLP (C) No.27046/2015,
C.A. No. 2342 of 2020 @ SLP (C) No.26767/2015,
C.A. No. 2343 of 2020 @ SLP (C) No.27043/2015,
C.A. No. 2344 of 2020 @ SLP (C) No.26821/2015,
C.A. No. 2345 of 2020 @ SLP (C) No.27050/2015,
C.A. No. 2346 of 2020 @ SLP (C) No.26294/2015,
C.A. No. 2347 of 2020 @ SLP (C) No.27048/2015,
C.A. No. 2348 of 2020 @ SLP (C) No.26283/2015,
C.A. No. 2349 of 2020 @ SLP (C) No.27049/2015,
C.A. No. 2350 of 2020 @ SLP (C) No.25799/2015,
C.A. No. 2351 of 2020 @ SLP (C) No.26295/2015,
C.A. No. 2352 of 2020 @ SLP (C) No.26287/2015,
C.A. No. 2353 of 2020 @ SLP (C) No.25797/2015,
C.A. No. 2354 of 2020 @ SLP (C) No.26290/2015,
C.A. No. 2355 of 2020 @ SLP (C) No.27744/2015,
C.A. No. 2356 of 2020 @ SLP (C) No.26972/2015,
C.A. No. 2357 of 2020 @ SLP (C) No.1907/2016,
C.A. No. 2358 of 2020 @ SLP (C) No.7208/2016,
C.A. No. 2359 of 2020 @ SLP (C) No. 10257/2018,
C.A. No. 2360 of 2020 @ SLP (C) No.10253/2018,
C.A. No. 2361 of 2020 @ SLP (C) No.12148/2018 and
C.A. No. 2362 of 2020 @ SLP (C) No.12496/2018.

J U D G M E N T

M.R. SHAH, J.

1. Leave granted in all the special leave petitions.

Civil Appeals @ SLP © Nos. 28194-28201 of 2010

2. As common question of law and facts arise in this group of appeals and as such arise out of the impugned common judgment and order dated 10.03.2010 passed by the High Court of Gujarat at Ahmedabad in respective Special Civil Application Nos. 5909/2008, 6300/2008, 6298/2008, 6299/2008, 5907/2008, 8468/2008, 6334/2008 and 6562/2008, all these appeals are being decided and disposed of by this common judgment and order.

Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 10.03.2010 passed by the High Court of Gujarat at Ahmedabad in respective Special Civil Application Nos. 5909/2008, 6300/2008, 6298/2008, 6299/2008, 5907/2008, 8468/2008, 6334/2008 and 6562/2008, by which the Division Bench of the High Court has allowed the aforesaid writ petitions preferred by the respondents herein – original writ petitioners and by which the High Court has held that the impugned policy of withdrawal of the benefit/incentive to the original writ petitioners is retrospective and not retroactive and quashed and set aside the Notification 16/2008 dated 27.03.2008, on the

ground that bar of promissory estoppel would operate, the Union of India has preferred the present appeals.

3. The facts leading to the present appeals and the List of Dates & Events in nutshell are as under:

Kutch District in the State of Gujarat was struck by a devastating earthquake on 26.01.2001 which destroyed the existing infrastructure in that District, besides causing huge casualties. With a view to attract large scale investment and to generate new employment opportunities in the District of Kutch, the Government of India announced an Incentive Scheme for setting up New Industries in the earthquake affected District of Kutch, by issuing Central Excise Exemption Notification No. 39/2001-CE dated 31.07.2001. The said notification granted exemption to goods cleared from a New Industrial Unit set up in the Kutch District of Gujarat prior to 31.07.2003 (which was subsequently extended to 31.12.2005) from so much of duty of excise as was equivalent to the amount of duty paid in cash/Personal Ledger Account (PLA) on the finished goods. That the said incentive of refund of the duty paid in cash/PLA was available for the period of 5 years from the date of commencement of commercial production. The object of the Incentive Scheme was to revive the economy in Kutch District by attracting fresh large scale investments from entrepreneurs by setting up new industries in the said District so as to generate new employment which in turn would help Kutch

District and its people to be brought back in the main stream with the Nation. The said notification operationalised the incentive scheme in the following manner:

a) The eligible unit was required to produce a certificate from a High Powered Committee comprising of a Chief Commissioner of Central Excise and the Chief Secretary to the Government of Gujarat certifying that the unit was indeed a new industrial unit which had been set up on or after the date of the Exemption Notification but not later than 31.07.2003 (this cut-off date was subsequently extended to 31.12.2005);

b) The unit was to furnish a declaration regarding the value of investment in plant and machinery installed in the factory as on the date of commercial production and also obtain a certificate to this effect from the Committee confirming the original value of the investment;

c) The procedure for claiming refund, envisaged submission of a statement of the total duty payments including duty paid by utilization of Cenvat Credit) to the jurisdictional Central Excise Authority and verification of the above in a time bound manner by such authority;

d) The notification also provided for recovery of any excess refund claimed/granted together with interest in case the value of plant and

machinery was wrongly declared, as also in some other eventualities which were added by various amending notifications;

e) Where fresh investment in the plant and machinery was below Rs. 20 crores – the incentive available was for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year; and

f) Where the investments were more than Rs.20 crores – the Incentive would be unlimited as there was no upper cap.

The original writ petitioners set up new industrial units in the Kutch District. They made an investment in the plant and machinery of more than Rs.20 crores. According to them, almost the entire duty was required to be paid in cash, the whole of which was refundable without any upper cap in terms of the notification No. 39/2001-CE dated 31.07.2001.

It appears that the then Government of Gujarat announced an Incentive Scheme, 2001 dated 09.11.2001 for the economic development of Kutch District. Under the said notification, Sales Tax exemption was provided. The Sales Tax exemption was available only to those industries which were eligible for excise exemption under Notification No. 39/2001-CE dated 31.07.2001.

Various amendments were made to the original Incentive Scheme Notification No. 39/2001-CE dated 31.07.2001 between September, 2001 to September, 2004, inter alia, to clarify certain matters and also to extend the cut-off date for setting up new industrial units from 31.07.2003 to 31.12.2005. One another amendment was made with effect from 06.08.2003 vide notification No. 65/2003-CE to provide that PLA payments could be made to discharge duty liabilities on the finished products only after exhausting the CENVAT Credit balances.

According to the original writ petitioners, in view of the inventive offered under Notification No. 39/2001-CE, the respondents herein -original writ petitioners which had initially planned to expand their manufacturing activities at Maharashtra, decided to instead set up the new units in the Kutch District. That was in the month of December, 2005. According to the original writ petitioners, the said decision was taken only because of the “incentive” promised by the Government to refund excise duty paid in the Kutch area. According to the original writ petitioners, as a result of the decision to set up a new unit in Kutch District, the company had to additionally incur substantial costs towards additional freight, handling charges, storage charges etc., which worked out to approximately Rs.2,200/- PMT. In addition, the company suffered severe locational disadvantages.

Original writ petitioners commenced commercial production of split/crude fatty acid, etc. somewhere between the months of November, 2004 to December, 2005. The primary raw materials for manufacture of these final products was palm kernel oil, crude palm kernel oil, other vegetable oils.

The said Incentive Notification No. 39/2001-CE was amended by another notification No. 16/2008-CE dated 27.03.2008 (impugned before the High Court), which according to the writ petitioners was relating to a virtual withdrawal of the incentive scheme. The amended notification provided that the benefit of refund would be granted with reference to the value addition, which was notionally fixed @ 34% for the commodity manufactured. Notification No. 16/2008-CE also provided for determination of a special rate by the Commissioner, in a situation where the actual value addition was more than the deemed value addition as specified. According to the original writ petitioners, as a consequence of the said amendment, the inventive available to them stood reduced from the refund of the entire of the duty paid in cash/PLA to 34% of the total duty paid. The original writ petitioners challenged the subsequent notification No. 16/2008-CE before the High Court of Gujarat by way of the aforesaid writ petitions. It was the case of the original writ petitioners that the subsequent notification No. 16/2008-CE changed the entire basis of the incentive exemption and had the effect of substantially reducing their entitlement of refund. It was also the case on behalf

of the original writ petitioners that as a result of the said amendment which resulted in their entitlement for refund being reduced from nearly 100% of the duty paid to only 34% of such duty amount. According to the original writ petitioners, since the promised incentive was curtailed midway before the expiry of the five years period, the subsequent notification was in breach of the principle of promissory estoppel.

The aforesaid writ petitions were opposed by the revenue by submitting as under:

i) the Exemption Notification prompted certain unscrupulous manufacturers to indulge in different type of tax evasion tactics;

ii) the intention behind the Exemption Notification was to incentivise genuine manufacturers only to the extent of actual value addition made by them;

iii) duty paid in cash by units set up in District of Kutch pursuant to the Exemption Notification was found to be inordinately high as compared to other similarly placed units in other parts of India;

iv) the Central Government by the very same power by which it grants exemption is empowered to withdraw the same;

v) the impugned notifications are only a modification to give effect to the real intention of the Government and are not withdrawal of the benefit; and

vi) in light of the misuse of the exemption pleaded by UOI, public interest warrants such withdrawal.

Simultaneously, the manufacturing units also filed representations to the Government for re-consideration. Pursuant to the representations, one another notification was issued by the Central Government vide Notification No. 33/2008-CEdated 10.6.2008. Therefore, the original writ petitioners amended the writ petitions challenging the subsequent notification dated 10.6.2008 also. It appears that thereafter the Central Government vide notification No. 51/2008 dated 3.10.2008 revised the deemed value addition at 75% in respect of the products manufactured by the original writ petitioners without giving them any option of applying for a special rate.

The aforesaid writ petitions were heard by the Division Bench. The members of the Division Bench differed. One learned Judge allowed the writ petitions and another learned Judge held that the writ petitions deserve to be dismissed. In view of the difference of opinion between the two learned Judges of the Division Bench, the matter was referred to a third learned Judge. By the

impugned judgment and order, the third learned Judge has agreed with the view taken by the learned Judge who allowed the writ petitions. Consequently, by the impugned judgment and order, the writ petitions are allowed mainly on the ground of doctrine of promissory estoppel. Consequently, it is held by the High Court that the incentive as originally envisaged by notification No. 39/2001-CE was required to be implemented and the differential amount was directed to be refunded to the writ petitioners. Hence, the present appeals.

Civil Appeals @ SLP © Nos. 14751 of 2013,
Civil Appeals @ SLP © Nos. 14752 of 2013 and
Civil Appeals @ SLP © Nos. 14753 of 2013

4. All these appeals arise out of the common judgment and order passed by the High Court of Gujarat at Ahmedabad dated 17.10.2012 in Special Civil Application Nos. 3582/2012, 3569/2012 and 3587/2012 respectively, by which the High Court has dismissed the said petitions.

Before the High Court, respective original writ petitioners claimed for refund of the excise duty in terms of the original notification No. 29 of 2001. The Excise authorities, however, granted the exemption only in terms of the amended notification Nos. 16/20098-CE and 36/2008-CE (which are subject matter of Civil Appeals @ SLP © Nos. 28194-28201 of 2010). Before the High Court, initially, only the orders passed by the Excise authorities granting refund as per the subsequent notifications were under challenge. However, subsequently, the

original writ petitioners also challenged the subsequent notification Nos. 16/2008-CE and 33/2008-CE. By the impugned Judgment and Order, the High Court has refused to entertain the petitions under Article 226 of the Constitution and dismissed the same filed for refund of the excise duty in view of the provisional Section 11B of the Central Excise Act. So far as the challenge to the subsequent notification Nos. 16/2008-CE and 33/2008-CE is concerned, the High Court has not entered into the merits in view of its earlier decision which is the subject matter before this Court in the case of Civil Appeals @ SLP © Nos. 28194-28201 of 2010. As, in the present appeals, the question is with respect to the challenge to the subsequent notifications which are also the subject-matter of this Court in the case of Civil Appeals @ SLP © Nos. 28194-28201 of 2010, all these appeals are also decided and disposed of together with this common judgment and order.

Civil Appeal Nos ..... of 2020 @ SLP (C) Nos. 15481-15489 of 2011

5. These Civil Appeals arise out of the impugned Judgment and Order passed by the High Court of Sikkim at Gangtok dated 15.11.2010 passed in Writ Petition Nos. 11/2008 and other allied writ petitions, by which the High Court has quashed and set aside the similar notifications dated 27.03.2008 and 10.06.2008 allowing the refund of excise duty on value addition basis, on the ground that the same are against the principle of promissory estoppel. As the original notifications dated 09.09.2003 as well as OM dated 01.04.2007 and the subsequent notifications dated

27.03.2008 and 10.06.2008 are as such similar to the notification No. 16 of 2008 applicable to Kutch area of Gujarat, the present group of Civil Appeals shall also be governed by this common Judgment and Order.

Civil Appeal No .....of 2020 @ SLP © No. 11878/2015 and other allied matters

6. All these appeals arise out of the impugned common Judgment and Order passed by the High Court of Guwahati dated 20.11.2014 in Writ Appeal No. 243 of 2009 and other allied writ petitions, by which the High Court has quashed and set aside the subsequent notification dated 27.03.2008 and the subsequent industrial policies of 2007 on the ground that the same are hit by the doctrine of promissory estoppel. In some of the writ petitions, the High Court has disposed of the respective writ petitions following the common Judgment and Order dated 20.11.2014. The particulars of respective Civil Appeals are as under:

Sl. No.	Item No.	Particulars	High Court	IN	Judgment date
1	3.7	SLP (C) No.11878/2015	Guwahati	WA No.243/2009	20.11.2014
2	3.8	SLP (C) No. 19370/2015	Guwahati	WP C No.1242/2013	20.11.2014
3	3.9	SLP (C) No.19868/2015	Guwahati	WP C No.3940/2009	20.11.2014
4	3.10	SLP (C) No.19386/2015	Guwahati	WP C No.1151/2013	20.11.2014
5	3.11	SLP (C) No.19379/2015	Guwahati	WP C No.84/2013	20.11.2014
6	3.12	SLP (C) No.19376/2015	Guwahati	WP C No.4119/2010	20.11.2014
7	3.13	SLP (C)	Guwahati	WP C No.235/2013	20.11.2014

		No.19384/2015			
8	3.14	SLP (C) No.19380/2015	Guwahati	WP C No.3377/2009	20.11.2014
9	3.15	SLP (C) No.20626/2015	Guwahati	WP C No.6161/2012	20.11.2014
10	3.16	SLP (C) No.21583/2015	Guwahati	WP C No.5444/2014	20.11.2014
11	3.17	SLP (C) No.19320/2015	Guwahati	WP C No.809/2013	20.11.2014
12	3.18	SLP (C) No.19371/2015	Guwahati	WP C No.1975/2013	20.11.2014
13	3.19	SLP (C) No.20109/2015	Guwahati	WP C No.937/2015	20.02.2015
14	3.20	SLP (C) No.19378/2015	Guwahati	WP C No.6786/2013	20.11.2014
15	3.21	SLP (C) No.19375/2015	Guwahati	WP C No.3457/2014	20.11.2014
16	3.22	SLP (C) No.21406/2015	Guwahati	WP C No.4112/2010	20.11.2014
17	3.23	SLP (C) No.23331/2015	Guwahati	WP C No.6685/2013	20.11.2014
18	3.24	SLP (C) No.20630/2015	Guwahati	WP C No.483/2015	31.01.2015
19	3.25	SLP (C) No.20631/2015	Guwahati	WP C No.6883/2014	19.12.2014
20	3.26	SLP (C) No.20628/2015	Guwahati	WP C No.410/2013	20.11.2014
21	3.27	SLP (C) No.20627/2015	Guwahati	WP C No.228/2015	22.01.2015
22	3.28	SLP (C) No.19228/2015	Guwahati	WP C No.932/2015	20.02.2015
23	3.29	SLP (C) No.23394/2015	Guwahati	WP C No.1472/2013	20.11.2014
24	3.30	SLP (C) No.23399/2015	Guwahati	WP C No.227/2015	22.01.2015
25	3.31	SLP (C) No.23328/2015	Guwahati	WP C No.487/2015	31.01.2015
26	3.32	SLP (C) No.19373/2015	Guwahati	WP C No.1694/2014	20.11.2014
27	3.33	SLP (C) No.23329/2015	Guwahati	WP C No.279/2013	20.11.2014
28	3.34	SLP (C) No.23326/2015	Guwahati	WP C No.239/2013	20.11.2014
29	3.35	SLP (C) No.20442/2015	Guwahati	WP C No.972/2015	24.02.2015
30	3.36	SLP (C)	Guwahati	WP C No.723/2014	20.11.2014

		No.23398/2015			
31	3.37	SLP (C) No.23393/2015	Guwahati	WP C No.1696/2014	20.11.2014
32	3.38	SLP (C) No.20370/2015	Guwahati	WP C No.864/2015	19.02.2015
33	3.39	SLP (C) No.19842/2015	Guwahati	WP C No.1433/2015	30.03.2015
34	3.40	SLP (C) No.22568/2015	Guwahati	WP C No.1427/2015	30.03.2015
35	3.41	SLP (C) No.21605/2015	Guwahati	WP C No.931/2015	20.02.2015
36	3.42	SLP (C) No.23303/2015	Guwahati	WP C No.2660/2013	28.11.2014
37	3.43	SLP (C) No.23301/2015	Guwahati	WP C No.933/2015	20.02.2015
38	3.44	SLP (C) No.23334/2015	Guwahati	WP C No.1789/2010	28.11.2014
39	3.45	SLP (C) No.21584/2015	Guwahati	WP C No.4869/2009	20.11.2014
40	3.46	SLP (C) No.23391/2015	Guwahati	WP C No.104/2013	20.11.2014
41	3.47	SLP (C) No.23297/2015	Guwahati	WP C No.5969/2012	20.11.2014
42	3.48	SLP (C) No.23898/2015	Guwahati	WP C No.724/2014	20.11.2014
43	3.49	SLP (C) No.23251/2015	Guwahati	WP C No.3387/2009	20.11.2014
44	3.50	SLP (C) No.23896/2015	Guwahati	WP C No.230/2009	20.11.2014
45	3.51	SLP (C) No.23903/2015	Guwahati	WP C No.186/2015	20.01.2015
46	3.52	SLP (C) No.23396/2015	Guwahati	WP C No.811/2013	20.11.2014
47	3.53	SLP (C) No.23294/2015	Guwahati	WP C No.2918/2010	20.11.2014
48	3.54	SLP (C) No.23897/2015	Guwahati	WP C No.2138/2009	20.11.2014
49	3.55	SLP (C) No.23900/2015	Guwahati	WP C No.41/2013	20.11.2014
50	3.56	SLP (C) No.23295/2015	Guwahati	WP C No.2887/2014	20.11.2014
51	3.57	SLP (C) No.23299/2015	Guwahati	WP C No.3458/2014	20.11.2014
52	3.58	SLP (C) No.23902/2015	Guwahati	WP C No.4433/2014	23.01.2015
53	3.59	SLP (C)	Guwahati	WP C No.5968/2012	20.11.2014

		No.27036/2015			
54	3.60	SLP (C) No.23296/2015	Guwahati	WP C No.526/2015	04.02.2015
55	3.61	SLP (C) No.26286/2015	Guwahati	WP C No.317/2014	20.11.2014
56	3.62	SLP (C) No.23693/2015	Guwahati	WP C No.416/2012	12.05.2015
57	3.63	SLP (C) No.26764/2015	Guwahati	WP C No.5538/2014	20.11.2014
58	3.64	SLP (C) No.23247/2015	Guwahati	WP C No.319/2013	20.11.2014
59	3.65	SLP (C) No.23899/2015	Guwahati	WP C No.3376/2009	20.11.2014
60	3.66	SLP (C) No.23901/2015	Guwahati	WP C No.211/2015	23.01.2015
61	3.67	SLP (C) No.27041/2015	Guwahati	WP C No.632/2013	20.11.2014
62	3.68	SLP (C) No.27024/2015	Guwahati	WP C No.242/2013	20.11.2014
63	3.69	SLP (C) No.27034/2015	Guwahati	WP C No.312/2013	20.11.2014
64	3.70	SLP (C) No.26284/2015	Guwahati	WP C No.486/2015	31.01.2015
65	3.71	SLP (C) No.27053/2015	Guwahati	WP C No.417/2013	20.11.2014
66	3.72	SLP (C) No.27058/2015	Guwahati	WP C No.399/2013	20.11.2014
67	3.73	SLP (C) No.25804/2015	Guwahati	WP C No.528/2015	04.02.2015
68	3.74	SLP (C) No.27046/2015	Guwahati	WP C No.1153/2013	20.11.2014
69	3.75	SLP (C) No.26767/2015	Guwahati	WP C No.240/2013	20.11.2014
70	3.76	SLP (C) No.27043/2015	Guwahati	WP C No.457/2013	20.11.2014
71	3.77	SLP (C) No.26821/2015	Guwahati	WP C No.6698/2013	20.11.2014
72	3.78	SLP (C) No.27050/2015	Guwahati	WP C No.290/2015	28.01.2015
73	3.79	SLP (C) No.26294/2015	Guwahati	WP C No.109/2013	20.11.2014
74	3.80	SLP (C) No.27048/2015	Guwahati	WP C No.2468/2014	20.11.2014
75	3.81	SLP (C) No.26283/2015	Guwahati	WP C No.6864/2014	19.12.2014
76	3.82	SLP (C)	Guwahati	WP C No.259/2015	23.01.2015

		No.27049/2015			
77	3.83	SLP (C) No.25799/2015	Guwahati	WP C No.187/2013	20.11.2014
78	3.84	SLP (C) No.26295/2015	Guwahati	WP C No.527/2015	04.02.2015
79	3.85	SLP (C) No.26287/2015	Guwahati	WP C No.810/2013	20.11.2014
80	3.86	SLP (C) No.25797/2015	Guwahati	WP C No.729/2014	20.11.2014
81	3.87	SLP (C) No.26290/2015	Guwahati	WP C No.1723/2014	20.11.2014
82	3.88	SLP (C) No.27744/2015	Guwahati	WP C No.6865/2014	19.12.2014
83	3.89	SLP (C) No.26972/2015	Guwahati	WP C No. 226/2015	22.01.2015
84	3.90	SLP (C) No.1907/2016	Tripura	WA No. 38/2009	24.08.2015
85	3.91	SLP (C) No.7208/2016	Guwahati	WP C No.6972/2015	02.12.2015

The relevant facts are as under:

The Government of India issued an industrial policy on 01.04.2007 reiterating the terms and conditions of the earlier industrial policy dated 24.12.1997 which provided the fiscal based incentive to new industrial units and their substantial expansion. As per this policy, 100% excise duty exemption was provided on the products manufactured in the North-Eastern region. By the subsequent notifications/industrial policies which were impugned before the High Court, the refund of excise duty was limited to the extent of the value addition. The High Court by the impugned common Judgment and Order has set aside the subsequent notifications/industrial policies which were similar to notification No. 16 of 2008

applicable to Kutch area of Gujarat and subject matter of Civil Appeals @ SLP © Nos. 28194-28201 of 2010.

Civil Appeal No.....of 2020 @ SLP © No. 10257/2018,
Civil Appeal No.....of 2020 @ SLP © No. 10253/2018,
Civil Appeal No.....of 2020 @ SLP © No. 12148/2018 and
Civil Appeal No. ……of 2020 @ SLP © No. 12496/2018

7. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Sikkim dated 21.11.2017 passed in Writ Petition Nos. 8/2017, 27/2017, 40/2015 and 41/2015 respectively, by which the High Court has quashed and set aside the subsequent notification No. 20 of 2008 dated 27.03.2008, notification No. 36 of 2008 dated 10.06.2008 and notification No. 38 of 2008 dated 10.06.2008 on the ground that the same are hit by the doctrine of promissory estoppel, the Union of India has preferred the present Appeals.

In line with the Industrial Policy, 2007, notification No. 20/2008 was issued whereby with respect to the new undertakings established, the goods were exempted from so much of the duty of excise leviable thereon as was to the equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT credit. In the year 2008, subsequent notifications impugned before the High Court were issued, by which the refund was allowable on the duty payable on the goods manufactured on value

addition basis, the same are set aside by the High Court by the impugned common judgment and order on the ground that the same are hit by the doctrine of promissory estoppel. As otherwise, the submissions are common and the reasons on which the High Court has set aside the impugned subsequent notifications are similar to the facts in the case of Civil Appeals @ SLP © Nos. 28194-28201 of 2010, all these Appeals are also decided and disposed of by this common judgment and order.

8. Learned counsel appearing on behalf of the Union of India has vehemently submitted that the High Court has materially erred in quashing and setting aside the notification No. 16 of 2008 dated 27.03.2008 on the ground that the same is retrospective and not retro-active and the same is barred by the doctrine of promissory estoppel.

It is submitted as under:

That the High Court has not properly appreciated and/or considered the notification impugned before it and as such the High Court has misinterpreted and/or misread the notification No. 16 of 2008. It is submitted that the High Court has erred in treating and/or considering the notification No. 16 of 2008 as withdrawal of exemption benefit and/or withdrawal of the incentive provided by notification dated 31.07.2001. It is vehemently submitted that as such the impugned notification No. 16 of 2008 was clarificatory in nature and cannot be

said to be withdrawal of exemption benefit and/or withdrawal of the incentive provided earlier by notification dated 31.07.2001;

The High Court ought to have appreciated that the power of such a kind to grant exemption from levy and collection of duty includes in itself the power to rescind, modify or withdraw such exemption. It is submitted that the liability to pay excise duty under the Central Excise Act arises when a taxable event occurs. An exemption notification issued under Section 5A will not affect the suspending the collection of duty under normal circumstance. It is submitted that in the present case the exemption was by conditions laid down in the notification and in public interest. Such an exemption of this very nature is susceptible of being revoked, annulled, modified or varied or subjected to exercise of statutory power of State under the law itself as is obvious from the language of Section 5A;

The High Court has erred in not appreciating that the Government has validly issued the notifications. The provision of granting of refund of cash paid portion of duty and eligibility of credit of entire amount of duty to the buyers of such excisable goods had prompted certain unscrupulous manufacturers to indulge in different type of tax evasion tactics. An analysis of cases booked by the Excise Department and the representations received from Industry Association had revealed misuse of exemptions given by the Government which was meant to be available only for genuine manufacturers. It is submitted that the modus operandi

which was being followed by such unscrupulous manufacturers revealed that such unscrupulous manufacturers were reporting of bogus production by mere issuance of sale invoice without actual production of goods and supply/clearance of excisable goods, which would result in availment of CENVAT credit by buyers of such excisable goods in other parts of the country without actual production being carried out and in absence of actual receipt of goods; reporting of bogus production by such units in these areas where actual production takes place elsewhere in the country; over valuation of goods resulting in availment of excess credit by buyers; goods were supplied by manufacturers, importers to these units without issuance of sales invoice and these were backed by bogus sale invoices issued by traders who did not undertake actual supply of goods. The actual supplier of these goods issued bogus duty paid invoices to other manufacturers who took credit based on such invoices without receipt of goods. Having found such activities by such unscrupulous manufacturers against the object and purpose of grant of exemption/incentive, therefore, the Government came out with the notification no. 16 of 2008 which as such can be said to be clarificatory in nature. By no stretch of imagination it can be said to be a withdrawal of exemption granted earlier and consequently it cannot be said to be in contravention of doctrine of promissory estoppel;

That the High Court has not properly appreciated and/or considered the reasons for issuance of the subsequent notification. The reason for issuance of the notification No. 16 of 2008 which as such can be said to be clarificatory was that by adopting such modus operandi, the units in these areas were wanting to pay maximum amount of duty in cash so that they became entitled to a claim of refund of entire amount of duty paid in cash. In order to verify this aspect, it is submitted that a study was made by the Excise Department to find out the percentage of duty paid in cash and from the CENVAT credit account by the units availing this area based exemption. On receipt of these details, they were compared with the duty payment details of the same industry groups for all the units across the country to find out whether the percentage of duty paid by the units in cash in the specified areas is comparable with the units in the rest of the country. An analysis of these details clearly showed that the industry sectors in the specified areas were paying a very high percentage of duty in cash i.e. through personal ledger account (PLA) in comparison to the all India payment of duty through PLA on similar goods. Thus there was misuse of excise duty exemption which was considered expedient in public interest and given by the Central Government with a laudable object of having genuine industrialization in either backward areas or areas such like Kutch, which suffered on account of Natural calamity. Misuse of excise duty exemption being rampant and the effect of such manipulated acts were brought to the notice of

the Government. The policy and intention of the Government to provide excise duty exemption was in respect of genuine manufacturing activities carried out in these areas. The entire genesis of the policy manifesting the intention of the Government to grant excise duty exemption was to provide such exemption only to actual value addition made in these areas. It is in the background of these facts and with a view to give effect to such a policy, the Government in exercise of powers conferred under Section 5A of the Central Excise Act modified the refund mechanism so as to provide that excise duty refund would be allowed only to the extent of duty payable on actual value addition made by the manufacturers undertaking manufacturing activities in these areas. As a result of the notification impugned before the High Court, the manufacturers are required to pay duty on full value of the goods manufactured and cleared by them in the same manner as per existing scheme but refund would be granted only to the extent of duty paid on the value addition made by them in these specified areas based on all India average of percentage of duty paid in cash and CENVAT credit;

The High Court has erred in not appreciating that the notification No. 16 of 2008 was issued by the Government in public interest and in the interest of revenue.

Learned counsel appearing on behalf of the Union of India has made further submissions while assailing the impugned judgment and order passed by the High Court as follows:

That the Central Government has the power to provide for exemption from duty on goods either wholly or partly with or without condition as may be called for in public interest. The guiding factor for exercise of power is public interest. When the exemption notification was issued under Section 5A of the Central Excise Act, it was implicit in it that it could be rescinded or modified at any time if the public interest so demands;

The amendment notification is non-discriminatory and treat all industries at par. It only rationalizes the quantum of exemption by proposing rate of refund on the total duty payable. In the field of taxation, the Court shall be the slow to interfere with fiscal policy, more particularly when the same is issued with respect to exemption/incentive on fulfillment of certain conditions and when the same is in the public interest and in the interest of revenue. Reliance is placed upon the decision of this Court in the case of ***R.K. Garg v. Union of India*** (1981) 4 SCC 675; that the basic principle of original notification is not altered. The Central Government has only streamlined the provisions of the notification relating to refund of duty paid through other than CENVAT utilization;

Prior to issuance of notification dated 31.07.2001, representations were received from State Government as well as representations of the people and Trade and Industry that tax holidays be provided to areas affected by earthquake. The Government considering the representations issued exemption notification dated 31.07.2001 subject to conditions, the intention behind the exemption scheme was to attract immediate fresh investment by incentivizing setting up of new industrial units so as to generate employment. The exemptions are subject to periodic review to weed out those which have outlived their utility, to meet the objectives of the Government, to curb misuse and revenue consideration. It is submitted that it was a part of review exercise and in background of reports of misuse that the amendment notification dated 27.3.2008 was issued;

The doctrine of promissory estoppel cannot be invoked against exercise of powers under the statute;

The bar of promissory estoppel is not applicable in fiscal matters;

The Court has to look into the notification with a presumption of validity, and not examining the matter with microscopic view to weigh the sufficiency of the material available;

The doctrine of promissory estoppel sought to be invoked in the present case is not available. The doctrine of promissory estoppel will not be applicable if the

change in stand of the Government is made on account of public policy and in the public interest;

There are limitations while invoking the doctrine of promissory estoppel. If the statute has permitted the power on withdrawal to the same authority, it may result into allowing the doctrine to operate in contravention to the statute;

The Word 'Promissory Estoppel" means that a party is prevented by his own acts from claiming a right to detriment of the other party who was entitled to rely on such conduct and has acted accordingly;

In respect of the exemptions that have been made by the Government, the doctrine of promissory estoppel will not be applicable if the change in the stand of the Government is made on account of public policy.

Heavy reliance is placed upon the decisions of this Court on "Promissory Estoppel" in the cases of ***Kasinka Trading v. Union of India*** (1995) 1 SCC 274, ***Darshan Oils (P) Ltd. v. Union of India*** (1995) 1 SCC 345, ***Shrijee Sales Corporation v. Union of India*** (1997) 3 SCC 398, ***STO v. Shree Durga Oil Mills*** (1998) 1 SCC 572, ***Papu Sweets and Biscuits v. Commissioner of Trade Tax, U.P.*** (1998) 7 SCC 228, ***State of Rajasthan v. Mahaveer Oil Industries*** (1999) 4 SCC 357, ***Shree Sidhbali Steels Ltd. v. State of U.P.*** (2011) 3 SCC 193, ***DG of Foreign Trade v. Kanak Exports*** (2016) 2 SCC 226 and ***Commissioner of Customs v. Dilip Kumar & Co.*** (2018) 9 SCC 1.

It is further submitted by the learned counsel appearing on behalf of the Union of India that the High Court has not properly appreciated the fact that by notification No. 16 of 2008, as such, there is no material change in the earlier policy and, therefore, as such the amendment in the notification No. 39/2001 dated 31.07.2001 vide Notification No. 16/2008 cannot be said to be withdrawal of benefit already promised earlier. Therefore it cannot be said that the subsequent notification is hit by the principle of promissory estoppel, as held by the High Court.

Making the above submissions, it is vehemently submitted that the High Court has erred in concluding that the bar of promissory estoppel would operate against the Union of India by withdrawal of the exemption benefits and that the policy of withdrawal of benefit/incentive is retrospective and not retro-active.

9. Learned Senior Advocates/Counsel appearing on behalf of the respective respondents-original writ petitioners before the High Court, while supporting the impugned common judgment and order passed by the High Court have vehemently submitted that in the facts and circumstances of the case, the High Court has rightly set aside the impugned notification no. 16 of 2008 dated 27.03.2008 on the ground that the withdrawal of exemption is retrospective and not retro-active and also on the ground that the same is hit by the doctrine of promissory estoppel.

Learned Senior Advocates/Counsel appearing on behalf of the respective respondents-original writ petitioners have made the following submissions:

A massive earthquake struck the Kutch district, in the State of Gujarat on 26.01.2001 destroying virtually the entire industrial infrastructure in the said district. With a view to revive the industry and to offer employment opportunities, the Ministry of Finance, Government of India announced incentives for setting up new industries in the earthquake affected district of Kutch by issuing Central Excise Exemption Notification No. 39/2001-CE dated 31.07.200. The Notification granted exemption for a period of five years from the date of commencement of commercial production, to goods cleared from a new industrial units set up in the Kutch District of Gujarat from so much of duty of excise as was equivalent to the amount of duty paid in cash/PLA i.e. the duty paid on the goods other than the amount of duty paid by utilization of CENVAT Credit under the Cenvat Credit Rules, 2001. The incentive offered by the notification was the refund of the total amount of Central Excise Duty paid in cash/PLA;

Respective original writ petitioners based on the promise held out by the Government of India to refund the Central Excise Duty paid in cash/PLA for a period of five years from the commencement of commercial production by new industrial units set up in Kutch. They invested a very huge amount only in view of the promise held out by the Government of India;

Explanatory Memorandum to the notification as also the Press Release issued by the Press Information Bureau record, that Ministry of Finance had notified a scheme of exemption for the District of Kutch, in the State of Gujarat for a period of five years from the date of commencement of commercial production. The then State Government on 09.11.2001 also announced a Sales Tax incentive scheme, wherein it noted that the economic activity in the Kutch district has come to a standstill on account of the devastating earthquake and that new employment opportunities could be created if new investments take place. Taking note of the Excise Duty exemption for the new industries announced by the Government of India, the State Government also introduced a Sales Tax incentive scheme which would be available to only those industries which were eligible for the Excise incentive;

Respondents-original writ petitioners were extended the benefit of exemption promised by the Government of India from 26.12.2005 till 31.03.2008 by way of the refund of the entire duty paid in cash/PLA.

It is submitted that therefore the impugned amendment by notification No. 16 of 2008 violated the doctrine of promissory estoppel.

The following submissions have been made on the violation of Doctrine of Promissory Estoppel:

Notification No. 16/2008 dated 27.03.2008, amended Notification No. 39/2001-CE by providing that the benefit of refund would be granted with reference to the value addition undertaken by manufacturing units in Kutch district. Value addition of 34% was notionally fixed by Notification 16/2008-CE for the commodities manufactured by the respondents. The said notification also provided for determination of special rate by the Commissioner of Central Excise in a situation where the actual value addition was more than the deemed value addition of 34%. As a consequence of the said amendment the incentive was reduced from refund of the entire of the duty paid in cash/PLA to 34% of the total duty paid, in so far as the respondents are concerned. Thus the respondents suffered a loss to the extent of 66% of the duty paid, which it was hitherto entitled to as refund;

From 03.09.2008 the notional value addition of the products manufactured by the respondent was capped at 75%. The respondents hence suffered detriment to the extent of 25% of the duty paid, which it could not seek as refund;

The amendment made to Notification 39/2001 by the Notification No. 16/2008 and amendments thereto had the effect of reneging upon the promise made by the Central Government to grant incentive by way of refund of the duty paid in cash/PLA for a period of five years starting from the date of commencement of commercial production. It is settled law laid down by this Court that the Government is bound to implement its promise, if a person has irrevocably altered

his position acting on an unequivocal promise held out by the Government, save and except in a situation where the withdrawal of the incentive is justified on grounds of supervening public interest.

On the applicability of Principle of Promissory Estoppel, the respondents rely upon the decisions of this Court in the cases of ***Union of India v. Godfrey Philips India Ltd.*** (1985) 4 SCC 369, ***Pournami Oil Mills v. State of Kerala*** 1986 (Supp) SCC 728, ***Shri Bakul Oil Industries v. State of Gujarat*** (1987) 1 SCC 31, ***Pawan Alloys & Casting Pvt. Ltd. v. U.P. Electricity Board*** (1997) 7 SCC 251, ***Dai Ichi Karkaria Ltd. v. Union of India*** (2000) 4 SCC 57, ***Mahabir Vegetable Oils (P) Ltd. v. State of Haryana*** (2006) 3 SCC 620, ***State of Punjab v. Nestle India*** (2004) 6 SCC 465, ***MRF Ltd. Kottayam v. Assistant Commissioner of Sales Tax*** (2006) 6 SCC 702, ***Southern Petrochemical Industries Co. Ltd. v. ETIO*** (2007) 5 SCC 447;

It is submitted therefore that the High Court has correctly applied the settled Doctrine of Promissory Estoppel by examining whether the facts and the circumstances leading to the curtailment of incentive were indeed in public interest or not so as to justify a midway withdrawal of the incentive;

That in fact the incentive promised under the original notification No. 39/2001 was not dependent upon the extent of value addition. It is submitted that this concept was introduced only by the impugned notification No. 16 of 2008;

Exemption was granted by way of refund to the duty paid in cash/PLA. The payment from PLA is not necessarily duty on value addition. The proposition that the payment from PLA represents such value addition may hold good only if the inputs used in the manufacture of final products are duty paid and the rates of duty on inputs and final products are the same;

The amendments to notification No. 16/2008 dated 27.03.2008, notification Nos. 33/2008 dated 10.06.2008 and 51/2008 dated 03.10.2008 clearly show that the Government itself has jettisoned the concept of value addition, introduced with effect from 27.03.2008, in as much as for finished goods whose starting raw material was a natural product/mineral, and therefore subject to NIL input stage duty, the refund in respect of final products using such inputs was fixed at an arbitrary rate of 75% of the duty paid, without option of a special rate, irrespective of the supposed value addition;

Mere misuse of the exemption notification by some of the manufacturers cannot justify the withdrawal of incentive since there is an adequate machinery available with the Revenue under the Central Excise Act and under the notification itself, to curb, deduct, as well as punish the offenders for any such misuse, otherwise the Revenue would suffer adverse consequences for no fault of theirs. It is submitted that the notification itself specifically provides for recovery of refunds

along with interest if such refunds were wrongly claimed/granted. It is submitted that therefore the so-called object and purpose for issuing the impugned notification is irrational and arbitrary and as such cannot be a ground to withdraw the earlier exemption notification.

FINDINGS:

10. By the impugned Judgment and Order, the High Court has set aside the subsequent notification No. 16 of 2008 dated 27.03.2008 mainly on the ground that the same is retrospective and not retro-active in nature and the same is hit by the Doctrine of Promissory Estoppel. It is the case on behalf of the Union of India that the subsequent notification is as such in continuation of the earlier notification and the same is clarificatory and therefore can be made applicable retrospectively. It is also the case on behalf of the Union of India that the subsequent notification/amendment in the original notification did not in any way alter the basis of the original first notification of 2001. It is also the case on behalf of the Union of India that the subsequent notification of 2008 has been issued in the public interest and has been issued in exercise of the powers conferred under Section 5A of the Central Excise Act. Therefore, the questions which are posed for consideration of this Court are whether in the facts and circumstances of the case the subsequent notification which has been quashed and set aside by the High

Court being notification No. 16 of 2008 dated 27.03.2008 can be said to be clarificatory in nature and can it be said that it takes away the vested right conferred pursuant to the earlier notification of 2001 and whether the same can be made applicable retrospectively and whether the same has been issued in the public interest and whether the same is hit by the Doctrine of Promissory Estoppel?

11. While considering the aforesaid questions and before considering the nature of the subsequent notification of 2008, few decisions of this Court on retrospectivity/clarificatory/applicability of promissory estoppel in the fiscal statute are required to be referred to, which are as under:

In the case of ***Kasinka Trading*** (supra), in paragraphs 12, 20 and 23, it is observed and held as follows:

> **"12.** It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including

the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

20. The facts of the appeals before us are not analogous to the facts in *Indo-Afghan Agencies* [(1968) 2 SCR 366 : AIR 1968 SC 718] or *M.P. Sugar Mills* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] . In the first case the petitioner therein had acted upon the unequivocal promises held out to it and exported goods on the specific assurance given to it and it was in that fact situation that it was held that Textile Commissioner who had enunciated the scheme was bound by the assurance thereof and obliged to carry out the promise made thereunder. As already noticed, in the present batch of cases neither the notification is of an executive character nor does it represent a scheme designed to achieve a particular purpose. It was a notification issued in public interest and again withdrawn in public interest. So far as the second case (*M.P. Sugar Mills case* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641]) is concerned the facts were totally different. In the correspondence exchanged between the State and the petitioners therein it was held out to the petitioners that the industry would be exempted from sales tax for a particular number of initial years but when the State sought to levy the sales tax it was held by this Court that it was precluded from doing so because of the categorical representation made by it to the petitioners through letters in writing, who had relied upon the same and set up the industry.

23. The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had been issued. The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the

> policy was necessary in the "public interest". The courts, do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act."

Thus, it can be seen that this Court has specifically and clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the objective to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present to the mind of the court, while considering the applicability of the doctrine. It is further held that the doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. It is further held that an exemption notification does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption

notification in the "public interest" is an exercise of the statutory power of the State under the law itself. It has been further held that under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. It has been observed that the withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". It has been held that where the Government acts in "public interest" and neither any fraud or lack of bonafides is alleged, much less established, it would not be appropriate for the court to interfere with the same.

In the case of ***Shrijee Sales Corporation*** (supra), it is observed and held that the principle of promissory estoppel may be applicable against the Government. But the determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or "public interest". In case there is a supervening public interest, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Once public interest is accepted as the superior equity which can override individual equity, the aforesaid principle

should be applicable even in cases where a period has been indicated for operation of the promise.

In the case of ***Shree Durga Oil Mills*** (supra), it has been held that when the withdrawal of exemption is in public interest, the public interest must override any consideration of private loss or gain. In the said case, the change in policy and withdrawal of the exemption on the ground of severe resource crunch have been found to be a valid ground and to be in public interest.

In the case of ***Mahaveer Oil Industries*** (supra), after considering the decision of this Court in the case of ***Kasinka Trading*** (supra), a similar view has been taken and it has been observed that public interest requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from withdrawing the benefit prospectively even during the period of the Scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel.

In the case of ***Shree Sidhbali Steels Ltd.*** (supra), in paragraphs 32 and 33, it has been observed and held as follows:

"32. The doctrine of promissory estoppel is by now well recognised and well defined by a catena of decisions of this Court. 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 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.

33. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the court. However, if it can be shown by the Government that having regard to the facts as they have subsequently 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. Where public interest warrants, the principles of promissory estoppel cannot be invoked. The Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law."

Thus, as held by this Court, when the public interest warrants, the principles of promissory estoppel cannot be invoked.

It is further held that the rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do Justice between the parties and to extend an equitable treatment to them.

12. Now, so far as the decisions relied upon by the learned counsel appearing on behalf of the respective original writ petitioners-respondents herein are concerned, once it is held that the subsequent notifications/industrial policies impugned before the respective High Court are clarificatory in nature and it does not take away any vested rights conferred under the earlier notifications/industrial policies, none of the decisions relied upon shall be applicable to the facts of the case on hand.

CASE LAW ON RETROSPECTIVITY/CLARIFICATORY

13. In the case of ***State Bank of India v. V. Ramakrishnan*** (2018) 17 SCC 394, it is observed and held that the presumption against retrospective operation is not applicable to declaratory statutes. For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective.

In the case of ***State of Bihar v. Ramesh Prasad Verma*** (2017) 5 SCC 665, it is observed and held that any legislation or instrument having force of law, if clarificatory, declaratory or explanatory in nature and purport, will have retrospective operation especially in the absence of any indication to the contrary as to retrospectivity either in parent Act or Rules or notifications involved.

In the case of ***Union of India v. Martin Lottery Agencies Ltd.*** (2009) 12 SCC 209, it is observed and held that whether a subordinate legislation or a parliamentary statute would be held to be clarificatory or declaratory would depend upon the nature thereof as also the object it seeks to achieve.

In the case of ***T.N. Electricity Board v. Status Spg. Mills Ltd.*** (2008) 7 SCC 353 it is observed and held that a clarificatory order can be given retrospective effect as it can throw light on substantive provision by principle of *contemporanea expositio*.

In the case of ***Zile Singh v. State of Haryana*** (2004) 8 SCC 1, it is observed that the presumption against retrospective operation is not applicable to declaratory statutes. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is “to explain” an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is

generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect.

CASE LAW ON "INTERPRETATION OF FISCAL STATUTES"

13.5. In the case of ***R. K. Garg v. Union of India*** (1981) 4 SCC 675, this Court observed and held as follows:

> "8. xxx xxx xxx
>
> The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture* v. *Central Roig Refining Company* [94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any

> legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

13.6 In the of ***Commissioner of Customs (Import) v. Dilip Kumar and Company*** (2018) 9 SCC 1, after considering various decisions on the Interpretation of Fiscal Statutes, it is ultimately concluded that every taxing statute including, charging, computation and exemption clauses, at the threshold stage should be interpreted strictly. Further, though in case of ambiguity in charging provisions, the benefit necessarily goes in favour of the assessee, but for an exemption notification or exemption clause the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

It is further observed and held that a person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the assessee in case of ambiguity. A person who claims exemption has to establish his case.

14. Applying the law laid down by this Court in the aforesaid decisions to the subsequent notifications/industrial policies which were the subject-matter before the High Court and for the reasons stated hereinbelow, we are of the opinion that the respective notifications/industrial policies impugned before the High Courts can be said to be clarificatory in nature and it can be defined as an Act to remove doubts. It cannot be said that by the subsequent notifications/industrial policies the benefits which were accrued/granted under the earlier notifications were sought to be taken away. It also cannot be said that by the subsequent notifications/industrial policies, the rights which have been accrued under the earlier notifications had been taken away.

The main objective of the earlier respective notifications/industrial policies was to encourage the entrepreneurs to put new industries in the area so as to generate employment and for that an incentive was offered to get back by way of refund the excise duty paid either in cash or PLA, namely, the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization paid by CENVAT credit. The same was subject to conditions that it will be applied to the new industrial units, i.e. the units which are set up on and after the publication of the said notification in the Official Gazette, i.e. not later than 31.07.2003. The notification was modified from time to time. However, during the operation of the

earlier notifications, it was noticed that the provision of granting refund of cash paid portion of duty and eligibility of credit the entire amount of duty to the buyers of such excisable goods had prompted certain unscrupulous manufacturers to indulge in different types of tax evasion tactics. It was revealed on analysis of cases booked by the Excise Department and even the representations received from the Industry Association about misuse of exemptions granted by the Government, which was meant to be available only for genuine manufacturers. It was noticed as under:

i) Reporting of bogus production by mere issuance of sale invoices without actual production of goods and supply/clearance of excisable goods. This would result in availment of CENVAT credit by buyers of such excisable goods in other parts of the country without actual production being carried out and in absence of actual receipt of goods.

ii) Reporting of bogus production by such units in these areas where actual production takes place elsewhere in the country.

iii) Over valuation of goods resulting in availment of excess credit by buyers.

iv) Goods are supplied by manufacturers, importers to these units without issuance of sales invoice and these are backed by bogus sale invoices issued by traders who do not undertake actual supply of goods. The

actual supplier of these goods issue bogus duty paid invoices to other manufacturers who take credit based on such invoices without receipt of goods.

Therefore, the Government came out with the impugned notifications/industrial policies that the refund of excise duty shall be provided on actual and calculated on the basis of actual value addition. On a fair reading of the earlier notifications/industrial policies, it is clear that the object of granting the refund was to refund the excise duty paid on genuine manufacturing activities. The intention would not have been that irrespective of actual manufacturing/manufacturing activities and even if the goods are not actually manufactured, but are manufactured on paper, there shall be refund of excise duty which are manufactured on paper. Therefore, it can be said that the object of the subsequent notifications/industrial policies was the prevention of tax evasion. It can be said that by the subsequent notifications/industrial policies, they only rationalizes the quantum of exemption and proposing rate of refund on the total duty payable on the genuine manufactured goods. At the time when the earlier notifications were issued, the Government did not visualize that such a modus operandi would be followed by the unscrupulous manufacturers who indulge in different types of tax evasion tactics. It is only by experience and on analysis of cases detected the Excise Department the Government came to know about such tax evasion tactics

being followed by the unscrupulous manufacturers which prompted the Government to come out with the subsequent notifications which, as observed hereinabove, was to clarify the refund mechanism so as to provide that excise duty refund would be allowed only to the extent of duty payable on actual value addition made by the manufacturer undertaking manufacturing activities in the concerned areas. The entire genesis of the policy manifesting the intention of the Government to grant excise duty exemption/refund of excise duty paid was to provide such exemption only to actual value addition made in the respective areas. As it was found that there was misuse of excise duty exemption it was considered expedient in the public interest and with a laudable object of having genuine industrialization in backward areas or the concerned areas, the subsequent notifications/industrial policies have been issued by the Government. Therefore, the subsequent notifications/industrial policies impugned before the respective High Courts were in the public interest and even issued after thorough analysis of the cases of tax evasion and even after receipt of the reports. The earlier notifications were issued under Section 5A of the Central Excise Act and even the subsequent notifications which were issued in public interest and in the interest of Revenue were also issued under Section 5A of the Central Excise Act, which can not be said to be bad in law, arbitrary and/or hit by the doctrine of promissory estoppel.

The purpose of the original scheme was not to give benefit of refund of the excise duty paid on the goods manufactured only on paper or in fact not manufactured at all. As the purpose of the original notifications/incentive schemes was being frustrated by such unscrupulous manufacturers who had indulged in different types of tax evasion tactics, the subsequent notifications/industrial policies have been issued allowing refund of excise duty only to the extent of duty payable on the actual value addition made by the manufacturers undertaking manufacturing activities in these areas which is absolutely in consonance with the incentive scheme and the intention of the Government to provide the excise duty exemption only in respect of genuine manufacturing activities carried out in these areas.

As observed hereinabove, the subsequent notifications/industrial policies do not take away any vested right conferred under the earlier notifications/industrial policies. Under the subsequent notifications/industrial policies, the persons who establish the new undertakings shall be continue to get the refund of the excise duty. However, it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities. Therefore, it cannot be said that subsequent notifications/industrial policies are hit by the doctrine of promissory estoppel. The respective High Courts have committed grave error in

holding that the subsequent notifications/industrial policies impugned before the respective High Courts were hit by the doctrine of promissory estoppel. As observed and held hereinabove, the subsequent notifications/industrial policies which were impugned before the respective High Court can be said to be clarificatory in nature and the same have been issued in the larger public interest and in the interest of the Revenue, the same can be made applicable retrospectively, otherwise the object and purpose and the intention of the Government to provide excise duty exemption only in respect of genuine manufacturing activities carried out in the concerned areas shall be frustrated. As the subsequent notifications/industrial policies are "to explain" the earlier notifications/industrial policies, it would be without object unless construed retrospectively. The subsequent notifications impugned before the respective High Courts as such provide the manner and method of calculating the amount of refund of excise duty paid on actual manufacturing of goods. The notifications impugned before the respective High Courts can be said to be providing mode on determination of the refund of excise duty to achieve the object and purpose of providing incentive/exemption. As observed hereinabove, they do not take away any vested right conferred under the earlier notifications. The subsequent notifications therefore are clarificatory in nature, since it declares the refund of excise duty paid genuinely and paid on actual manufacturing of goods and not on

the duty paid on the goods manufactured only on paper and without undertaking any manufacturing activities of such goods.

15. In view of the above and for the reasons stated above and once it is held that the subsequent notifications/industrial policies which were impugned before the respective High Courts are clarificatory in nature and are issued in public interest and in the interest of the Revenue and they seek to achieve the original object and purpose of giving incentive/exemption while inviting the persons to make investment on establishing the new undertakings and they do not take away any vested rights conferred under the earlier notifications/industrial policies and therefore cannot be said to be hit by the doctrine of promissory estoppel, the same is to be applied retrospectively and they cannot be said to be irrational and/or arbitrary.

16 Under the circumstances, the respective High Courts have committed a grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not retro-active. Consequently, all these appeals are **ALLOWED**. The impugned Judgments and Orders passed by the respective High Courts, which are impugned in the present appeals, quashing and setting aside the subsequent

notifications/industrial policies impugned in the respective writ petitions before the respective High Courts, are hereby quashed and set aside. Consequently, the original writ petitions filed by the respective original writ petitioners before the respective High Courts challenging the respective subsequent notifications/industrial policies stand dismissed and for the reasons stated hereinabove, the challenge to the respective subsequent notifications/industrial policies impugned before the respective High Courts **FAIL**. However, it is **CLARIFIED** that the present judgment shall not affect the amount of excise duty already refunded, meaning thereby, the cases in which the excise duty is already refunded prior to the subsequent notifications/industrial policies impugned before the respective High Court, they are not to be reopened. However, it is further **CLARIFIED** that the pending refund applications shall be decided as per the subsequent notifications/industrial policies which were impugned before the respective High Courts and they shall be decided in accordance with the law and on merits and as per the subsequent notifications/industrial policies impugned before the respective High Courts. All these appeals stand disposed of accordingly. NO COSTS.

Now, so far as the Civil Appeals @ SLP © Nos. 14751/2013, 14752/2013 and 14753/2013 are concerned, the challenge to notification Nos. 16/2008-CE and

33/2008-CE **FAIL** and the Excise authorities have in fact allowed the refund of excise in line with the subsequent notification Nos. 16/2008-CE and 33/2008-CE which are now upheld by this Court, the present appeals deserve to be dismissed and are accordingly dismissed. NO COSTS

……..J.
(Arun Mishra)

……..J.
(M. R. Shah)

……..J.
(B.R. Gavai)

New Delhi,
April 22, 2020

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 19998/2013

M/s. Barak Valley Cement Ltd. …Petitioner(s)

Versus

The Union of India & Ors. …Respondents

WITH
SLP ….CC No. 1787/2014

O R D E R

M. R. Shah, J.

Both these petitions arise out of the Interlocutory Order passed by the High Court of Guwahati in Writ Petition No. 1153/2013 and Writ Petition No. 1151/2013, by which the High Court has refused to grant the relief as prayed for. It is reported that subsequently by the common judgment and order dated 20.11.2014, the High Court has disposed of the main Writ Petition Nos. 1153 of 2013 and 1151

of 2013 also, and the final Judgment and Orders have also been challenged in the group of matters being Civil Appeal @ SLP © No. 19386/2015 and Civil Appeal @ SLP © No. 27046/2015, both these petitions stand dismissed as having become infructuous.

……..J.
(Arun Mishra)

……..J.
(M. R. Shah)

……..J.
(B.R. Gavai)

New Delhi,
April 22, 2020