

Sunrise Biscuits Co. Ltd. and anr. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Jun-21-2006

Judge : I.A. Ansari, J.

Appellant : Sunrise Biscuits Co. Ltd. and anr.

Respondent : State of Assam and ors.

Judgement :

I.A. Ansari, J.

1. The material facts and the chronology of events, which have led to the present writ petition and which are not seriously in dispute, may, in brief, be set out as follows:

(i) By a notification, dated December 25, 1986 the Government of Assam announced its industrial policy of 1986 promising thereunder a new package of incentives for establishment of various industries in the State. The incentives, so announced, remained in force from January 1, 1987 to March 31, 1990 and by subsequent notification, this package of incentives was extended till March 31, 1991. This Scheme aimed at encouraging growth and promotion of industries based on local resources, local demands, local conditions of scarcity and local environment. The petitioner No. 1, which is a limited company, incorporated under the Companies Act, 1956, having its registered office, at Guwahati, established an industry for manufacturing of biscuits, in the year 1986, the said industrial unit of

the petitioner-company having been granted registration as a small-scale industrial unit by a registration certificate, dated May 24, 1988 issued, in this regard, by the respondents/authorities concerned. In course of time, the petitioner-company was issued an eligibility certificate, dated January 23, 1990. This eligibility certificate assured to the petitioner, with effect from February 1, 1990 to July 19, 1993, exemption from payment of sales tax in terms of the notification dated December 25, 1986, aforementioned.

(ii) By notifications, dated April 6, 1991 and July 1, 1992, the Government of Assam announced its Industrial Policy of 1991 with the object of encouraging growth and promotion of industries in Assam. With this object in view, the said Industrial Policy of 1991 offered, inter alia, incentives by way of full sales tax exemption for a period of seven years on the sale of finished products as well as on the purchase of raw materials to be used in the manufacture of finished products. This Industrial Policy of 1991 covered new industrial units as well as existing units undertaking expansion, modernisation or diversification in the same location or any other place in the State. The petitioner-company, whose said industrial unit was covered under the Industrial Policy of 1991 as an existing unit, decided to expand its said industrial unit and the petitioner-company accordingly expanded its said industrial unit by incurring expenses to the tune of more than two crores. By virtue of an eligibility certificate granted on July 5, 1994, by the respondents/authorities concerned, the petitioner-company's said industrial unit, which had undergone expansion, became entitled to receive, amongst others, exemption from sales tax, with effect from May 1, 1993 to April 30, 2000, on the sale of finished products as well as on the purchase of raw materials to be used in the manufacture of finished products for a period of seven years.

(iii) In the meanwhile, however, the Assam General Sales Tax Act, 1993 (in short, 'the AGST Act, 1993') was enacted and the same came into force with effect from July 1, 1993. Section 74(3)(f), which was inserted with effect from May 2, 1995 in the AGST Act, 1993, laid down that the provisions of the AGST Act, 1993, shall apply in respect of any exemption of tax by way of grant of relief from any date before the appointed day, i.e., July 1, 1993. Section 9(4) of the AGST Act, 1993, conferred powers on the State Government to frame one or more Schemes by

way of notification for grant of relief to any class of industries within the State by way of full or partial exemption of any tax payable under the AGST Act on the raw materials or other inputs purchased by them within the State or on the manufactured goods sold by them within the State or in the course of inter-State trade or commerce for such period or periods as may be specified.

(iv) The Governor of Assam, in exercise of the powers conferred by Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, framed, vide notification, dated August 16, 1995, a Scheme named as the Assam Industries (Sales Tax Concessions) Scheme, 1995, granting relief by way of full exemption of sales tax on purchase of raw materials within the State of Assam by the eligible industrial units and on sale of finished products manufactured in such industrial units within the State of Assam or in the course of inter-State trade and commerce. The Assam Industries (Sales Tax Concessions) Scheme, 1995 (in short, 'the Scheme of 1995'), came into force with effect from April 1, 1991.

(v) In terms of the Scheme of 1995, the new industrial units, having their registered office within the State of Assam and which had completed the effective financial steps on the date of coming into force of this Scheme, were made eligible industrial units for the purpose of granting of sales tax exemption. In terms of Clause B of paragraph 1 of the Scheme of 1995, an industrial unit, having its registered office within the State of Assam and which is or was being in production at any time prior to April 1, 1991 undertaking expansion, modernisation and diversification to the minimum extent of 25 per cent at the same location or at any other place of the State with an additional employment of, at least, 10 per cent and is, in compliance with the criteria of the industrial unit, employing the people of Assam, shall be treated as an eligible industrial unit for the purpose of the Scheme. An industrial unit, which has been declared as relief undertaking by the Government of Assam, had also been made eligible to the grant of sales tax exemption. Some industries were, however, excluded from the purview of the Scheme of 1995. The Scheme of 1995 also provided for a detailed procedure for applying and granting of eligibility certificate under the Scheme and also the authorisation certificate to be issued by the assessing authority.

(vi) Pursuant to the application made by the petitioner-company for obtaining of an eligibility certificate under the Scheme of 1995, the eligibility certificate, dated September 5, 1997 was granted in this regard. However, this eligibility certificate made the petitioner-company entitled to receive benefit under the Scheme of 1995 only in respect of increased production of its said industrial unit as a result of expansion, diversification and modernisation. Complaining that it ought to have been granted, in full, sales tax exemption in terms of the Industrial Policy of 1991 not only on the increased production of its said industrial unit, but on its said industrial unit's production as a whole, the petitioner-company came to this Court with the help of Civil Rule No. 5245 of 1996 *Manjushree Extrusions Ltd. v. State of Assam* [1998] 111 STC 146 (Gauhati) and sought for appropriate directions, in this regard, to the respondents/authorities concerned. This civil rule was dismissed by a learned single Judge on April 29, 1998. The petitioner-company preferred an appeal, which came to be registered as Writ Appeal No. 154 of 1998 *Manjushree Extrusions Limited v. State of Assam* [2001] 123 STC 366 (Gauhati). The two learned Judges, who had heard the appeal, gave dissenting judgment on October 13, 1999. The learned third Judge, who came in seisin of the matter, delivered his judgment, on March 27, 2001 *Manjushree Extrusions Limited v. State of Assam* [2001] 123 STC 366 at 388, holding to the effect that the petitioner-company was entitled to full sales tax exemption for a period of seven years as per the eligibility certificate issued by the appropriate authority. The Government carried the matter, by way of special leave petition, to the apex court, but the same was dismissed. A review application, made in this regard, met with similar fate. In the meanwhile and during the pendency of the matter, the Commissioner and Secretary to the Government of Assam, Department of Finance, issued on November 5, 1999 a notification. According to the contents of this notification, the notification has been issued in exercise of powers contained in Sub-section (4) of Section 9 of the AGST Act, 1993, amending the Scheme of 1995 making certain industries ineligible to receive the benefits of sales tax exemption under the Scheme of 1995. The notification issued on November 5, 1999, aforementioned has been made effective from November 17, 1999 and this Scheme has been described as the Assam Industries (Sales Tax Concessions) Scheme, 1999 (in short, 'the amended Scheme of 1999'). In the list of industries included as ineligible industry to receive

the benefit of sales tax exemption, item 21 reads, '21. biscuits manufacturing units where products are not sold in own brand name'. Since the petitioner-company has been selling its products in the brand name of some other company, the petitioner-company has been rendered ineligible to receive benefits under the Scheme of 1995 with effect from November 17, 1999. Claiming that the petitioner-company is entitled to full sales tax exemption up to April 30, 2005 in accordance with the eligibility certificate, dated July 5, 1994, aforementioned, which has been granted in terms of the Scheme of 1995 and that withdrawal of exemption by amended Scheme of 1999 is illegal and cannot be permitted, the petitioner-company has, now, come to this Court with the help of the present writ application, made under Article 226 of the Constitution of India, seeking, inter alia, issuance of writ/writs setting aside and quashing the amended Scheme of 1999 to the extent that the same makes the petitioner-company's said industrial unit ineligible to receive the benefits of the incentives promised under the Scheme of 1995.

2. Though the Department of Industries, Government of Assam, has been made respondent No. 1 in the writ petition, this respondent has not filed any affidavit and has not contested the writ petition. The writ petition has been resisted by the respondent Nos. 2 and 3, namely, Commissioner and Secretary to the Government of Assam, Department of Finance and Commissioner of Taxes, Assam, respectively by filing a joint affidavit-in-opposition, the case of the respondents being, in brief, thus : Because of the nature of the activities indulged in by certain industrial units, which were covered under the Scheme of 1995, it became necessary to enlist them as non-eligible units, the petitioner-company's said industrial unit being one of such non-eligible units. In accordance with the need, which so arose, the amendments to the Scheme of 1995 have been introduced by bringing into effect, vide notification, dated November 5, 1999, the amended Scheme of 1999. The amended Scheme of 1999 is completely valid inasmuch as the amendments are within the powers of the respondents/authorities concerned, as envisaged under Sub-section (4) of Section 9 of the AGST Act, 1993. Since the petitioner-company's said industrial unit sells products not in its own brand name, it is, in terms of the amended Scheme of 1999, not eligible to receive concessions under the Industrial Policy of 1991 or under the Scheme of 1995. A Government's policy cannot override the provisions of law and so long as

necessary notification in terms of the provisions of the relevant statute is not issued, no benefit can be enjoyed by any industrial unit. That apart, the levy of the sales tax is by way of legislative enactment and, therefore, no exemption of sales tax can be granted except in the manner laid down in the said enactment. Section 9(4) of the AGST Act, 1993, lays down the manner and method of granting of relief of exemption of sales tax to any class of industries by notification in the official Gazette and no executive order can override the requirements of the statute. Since the amended Scheme of 1999, issued under Section 9(4) of the AGST Act, 1993, disqualified an industrial unit, which does not sell its product in its own brand name, the petitioner-company no longer remains eligible to receive the benefits of the Scheme of 1995. Since the amended Scheme of 1999 has been issued in exercise of powers under Sub-section (4) of Section 9 of the AGST Act, 1993, the same is legal and valid. The doctrine of promissory estoppel is not attracted to the present case inasmuch as the appropriate authority for appropriate reasons decided not to extend the benefits of the said Industrial Policy of 1991 to, amongst others, an industrial unit, which does not sell its products in its own brand name. So long as the requisite notification under the AGST Act, 1993, is not issued, no legal or equitable right can be said to have accrued to the petitioner-company. Moreover, no relief, based on the doctrine of legitimate expectation, should be granted, when grant of such relief is likely to harm larger public interest. Since the State Government, in exercise of its statutory power, has decided to withdraw and/or not to grant exemptions from payment of sales tax to a particular class of industries on the ground of public policy, the doctrine of promissory estoppel cannot be pressed into service to thwart such exercise of powers by the Government.

3. I have heard Dr. A.K. Saraf, learned Senior Counsel, appearing on behalf of the petitioner-company, and Mr. D. Saikia, learned counsel, appearing on behalf of the respondents.

4. It is submitted by Dr. Saraf, learned Senior Counsel for the petitioner-company, that under the Industrial Policy of 1991, the State Government had taken a policy decision to grant sales tax exemption for a period of seven years to the eligible units on the purchase of raw materials and sale of finished products and that the

petitioner-company's said industrial unit, having expanded its said industrial unit in terms of the Industrial Policy of 1991 and having started production with effect from April 30, 1993, is entitled to all the incentives and benefits announced in the Industrial Policy of 1991 even if it sells or manufactures the products not in its own brand name, but in the brand name of some other company. According to Dr. Saraf, what had been announced and promised under the Industrial Policy of 1991 cannot be withdrawn by a Scheme, such as, the amended Scheme of 1999, when the petitioner-company, having acted upon the promises made under the Industrial Policy of 1991, has altered its position to its detriment by incurring heavy expenses and, particularly, when the Industrial Policy of 1991 has remained unaltered. It is pointed out by Dr. Saraf that the Scheme of 1999 having been framed in exercise of powers under Sub-section (4) of Section 9 of the AGST Act, 1993, to give effect to the Industrial Policy of 1991, the impugned notification, dated November 5, 1999 whereby the Scheme of 1995 has been amended by including certain industries in the list of ineligible industry is bad in law inasmuch as the same is repugnant to the industrial policy declared and announced by the Government. Support for these submissions is sought to be derived by Dr. Saraf from the decision in *State of Bihar v. Suprabhat Steel Ltd.* : AIR 1999 SC303 . Support is also sought to be derived by Dr. Saraf for his said submission from the cases of *Manjushree Extrusions Limited v. State of Assam* reported in [2001] 123 STC 366 (Gauhati) : [2001] 2 GLR 218, *Maruti Tea Industries v. State of Assam* [2003] 129 STC 479 (Gauhati) (Civil Rule No. 1223 of 1997) and *Shree Sanyeeji Ispat Pvt. Ltd. v. State of Assam* [2006] 147 STC 146 (Gauhati) decided on October 7, 2005. In the light of the decisions, relied upon by Dr. Saraf, it is contended by Dr. Saraf that the impugned notification dated November 5, 1999 is bad in law, ultra vires and is liable to be struck down so far as the same relates to, at least, the petitioner-company's said industrial unit.

5. It is also submitted by Dr. Saraf that the Industrial Policy of 1991 clearly held out a promise for grant of full sales tax exemption to the eligible industrial units and the petitioner-company having expanded its said industrial unit on the basis of the representations or promise made under the said industrial policy by spending huge amount of money and has thereby altered its position to its detriment by relying upon the representations made in the said industrial policy, the doctrine of

promissory estoppel does not permit withdrawal of the promises made under the said industrial policy by issuing a notification, such as, the present one, by the Finance Department of the State Government. It is submitted by Dr. Saraf that if the statutory authority or an executive authority of the State, functioning on behalf of the State, in exercise of its legally permissible powers, had held out any promise to a party, who, relying on the same, has changed its position to its detriment and such a promise made to the party does not offend any provisions of law or does not fetter any legislative or quasi-judicial power inhering the promisor, then, on the strength of the principle of promissory estoppel, the promisor can be pinned down to keep to the promise made by the promisor. Only in the cases, contends Dr. Saraf, where there is supervening public equity, the Government would be allowed to change its stand and to withdraw from the representation made by it, which induced persons to take certain steps, which may go adverse to the interest of such persons on account of such withdrawal. However, the court must satisfy itself, submits Dr. Saraf, that such a public interest exists. In support of these submissions, Dr. Saraf has placed reliance on *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh* reported in : [1979]118ITR326(SC) , *State of Punjab v. Nestle India Ltd.* reported in [2004] 136 STC 35 (SC), *Shri Guru Ashish Wire Industries v. State of Gujarat* reported in [1994] 92 STC 286 (Guj), *Pournami Oil Mills v. State of Kerala* reported in [1987] 65 STC 1 (SC) : [1986] Suppl. SCC 728 and *State of Bihar v. Usha Martin Industries Ltd.* reported in [1987] 65 STC 430 (SC).

6. Controverting the submissions made on behalf of the petitioner-company, it is submitted by Mr. Saikia, learned Counsel appearing on behalf of the contesting respondents, that for valid reasons, it was felt necessary by the Department of Finance, Government of Assam, that the Scheme of 1991 needs to be suitably amended so as to exclude from the eligibility criteria some of the industries, which were not proving beneficial to the local interest. In this background, points out Mr. Saikia, the impugned notification, dated November 15, 1999 has been issued and since the impugned notification has been issued in exercise of relevant statutory provisions, the same is valid and must be taken to have overridden the Industrial Policy of 1991. According to Mr. Saikia, since the petitioner-company's said industrial unit does not sell its products in its own brand name, it has been, for

good reasons, made ineligible to receive concessions promised under the Industrial Policy of 1991 or under the Scheme of 1995.

7. It is further submitted by Mr. Saikia that laws are amended as per the needs of time and since it was deemed necessary by the appropriate authority to amend the Scheme of 1995, the same was amended by the impugned notification, whereby the Scheme of 1999 has been introduced. Since the power to amend a notification issued under Sub-section (4) of Section 9 of the AGST Act, 1993, vests in the authority, which has, now, issued the impugned notification, the notification in question, cannot be said to be ultra vires or bad because of promissory estoppel.

8. Reacting to the submissions made on behalf of the contesting respondents, Dr. Saraf has submitted that under the Industrial Policy of 1991, no such condition was imposed that biscuit manufacturing units, which manufacture biscuits under some other brand name, shall not be entitled to exemption. This apart, points out Dr. Saraf, the Department of Finance, which is a mere administrative wing of the Government of Assam, has no power and authority to curtail the benefits announced and promised under the Industrial Policy of 1991, for, the Industrial Policy of 1991 was adopted by the cabinet of the State. Without amending the Industrial Policy of 1991, submits Dr. Saraf, the Department of Finance cannot curtail or withdraw the incentives promised under the Industrial Policy of 1991.

9. Before entering into the rival submissions made on behalf of the parties, certain facts, which are necessary for disposal of this writ petition, may, once again, be noticed for clearly appreciating the issues involved in the present writ petition. These salient facts are : The industrial policy of 1991 was aimed at achieving speedy industrial development in the State as well as generation of adequate employment opportunity in industrial sector. The policy, in question, was announced under two notifications, namely, notifications, dated April 6, 1991 and July 1, 1992. The incentives, covered by the said industrial policy, were made available for a period of seven years to the new industrial units to be set up in the State of Assam on or after April 1, 1991. One of the promises made under the said industrial policy was exemption from payment of sales tax for a period of seven years. The sales tax exemption, so announced, covered the sales tax on purchase

of raw materials as well as on sale of finished products for a period of seven years. Even the Scheme of 1995 introduced by notification dated August 16, 1995, acknowledged and continued the Government's promise that it would make full sales tax exemption available to eligible industrial units for a period of seven years on purchase of raw materials as well as on sale of finished products. At no stage, the Industrial Policy of 1991 made a manufacturer of biscuits, who is, otherwise, entitled to receive the benefits of the incentives promised under the Industrial Policy of 1991, ineligible if it manufactures or sells biscuits not in its own brand name, but in the brand name of others. Without, however, making amendment of the Industrial Policy of 1991, the Department of Finance issued the impugned notification, dated November 5, 1999, amending the Scheme of 1995 and rendering thereby those industrial units, which were, otherwise, entitled to receive incentives promised under the Industrial Policy of 1991, ineligible to receive the benefits of the promises so made if it manufactures a product, such as biscuit, not in its own brand name or sell its product not in its own brand name.

10. The most important question, therefore, which falls for consideration, in the present writ petition, is this : when the Government of a State announces an industrial policy and invites investors to make investments in order to receive the benefits and incentives promised under an industrial policy, can another department of the Government, namely, Department of Finance, while preparing, in exercise of its powers under the relevant statute, a Scheme, such as, the Scheme of 1999, refuse to grant exemption from payment of sales tax to an industrial unit, which is, otherwise, eligible to receive benefits of the industrial policy announced by the Government or withdraw the exemption, which the industrial unit is, otherwise, entitled to receive under the relevant industrial policy? While considering the question, so posed, it is important to bear in mind that a Government, perceived under the Constitution of India, runs as an organised, harmonious, orderly, coherent, systematic and homogenous body and it functions on the principles of collective responsibility. Two different departments of a Government cannot adopt policies, which are contrary to, and inconsistent with, each other, for, the citizens must know what the policy of the Government of the State is. The Government must, therefore, as warranted by the Constitution, behave with such responsibility as is conceived under the Constitution and eschew

such a course, which would make its functions impossible to be carried out in accordance with the provisions of the Constitution, for, collision between two departments of a State will reveal arbitrary manner of functioning of the Government and such arbitrary functioning will jeopardise rule of law and make a mockery of the Constitution, which perceives a coherent functioning of various organs or departments of the Government in the spirit of collective responsibility. Bearing in mind this subtle, but definite pre-requisite for effective functioning of the Government, let me, now, turn to the Scheme of 1999.

11. Section 9(4) of the AGST Act, 1993, vests in the Government the power to frame one or more schemes by way of notification for grant of relief to any class of industries within the State by way of full or partial exemption of any tax payable under the AGST Act, 1993, on the raw materials or other inputs purchased by the industries within the State or on the manufactured goods sold by them within the State or in the course of inter-State trade or commerce for such period or periods as may be specified. In exercise of the powers, conferred by Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, the Governor of Assam framed and announced, on August 16, 1995, the Scheme of 1995 granting relief by way of full exemption of sales tax on purchase of raw materials within the State of Assam by eligible industrial units and on sale of finished products by such industrial units within the State of Assam or in the course of inter-State trade and commerce. This Scheme came into force on April 1, 1991. Under this Scheme, the petitioner-company's said industrial unit, which manufactures biscuits in the brand name of some other company, remained entitled to receive the benefit of full sales tax exemption. It was, however, as indicated hereinabove, by virtue of the impugned notification, dated November 5, 1999, that the promise made under the Industrial Policy of 1991 and the Scheme of 1995 has been withdrawn. In short, with the help of the impugned notification, the Department of Finance, Government of Assam, has opted the Scheme of 1999, which goes contrary to the scheme announced by the Department of Industries, Government of Assam, under its Industrial Policy of 1991. Can the Government of Assam do so, is the prime question. Whereas the Department of Finance, speaking on behalf of the respondent Nos. 2, 3 and 6, contends that it is possible for the Finance Department to do so, the petitioner disputes such

proposition. These contesting respondents trace their powers to Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993.

12. There can be no doubt that in exercise of powers conferred on the Government under Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, the Government can frame scheme and grant relief in the form of total or partial exemption from sales tax. Can the power, so conferred, be unguided, uncanalised and leave room for complete arbitrariness? Since arbitrariness cuts at the root of the rule of law, no provisions of the Constitution and/or of any enactment can be read to confer on a State or any of its instrumentalities arbitrary, unguided and uncanalised powers. It is to be, therefore, read into Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, that the powers conferred on the State Government to prepare scheme for grant of relief, in the form of sales tax exemption, cannot be arbitrarily exercised, for, if it is held otherwise, it will prove destructive of the rule of law and disintegrate the Government itself.

13. In order to understand the controversy involved in the present case, let us, instead of looking into the case from the point of view of the petitioner-company, imagine a situation in which the industrial policy announced by the Government makes a particular industrial unit ineligible to receive sales tax exemption. Can, in the face of such an industrial policy, the Department of Finance of the State Government concerned grant, in exercise of powers under a statute, sales tax exemption to such an ineligible industrial unit? The unhesitant answer to this question has to be an emphatic 'no', for, a contrary answer would deny coherent working of the Government and the rule of law. Considered thus, it is abundantly clear that the exercise of power of granting exemption conferred on the State Government, under Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, has to be consistent with the industrial policy and cannot be in collision course thereto.¹⁴ It, further, logically follows from the above that when the Department of Industries, Government of Assam, had announced its industrial policy and invited people to make investments on the basis of the said policy promising, amongst others, exemption

from payment of sales tax on purchase of raw materials and on sale of finished products, the exercise of powers under Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, shall be consistent with such a policy until, at least, the industrial policy itself is changed denying such exemptions as the industrial policy had promised. Hence, unless it can be shown otherwise, the impugned notification, dated November 5, 1999, aforementioned to the extent that it takes away the benefits of sales tax exemption granted under the industrial policy of 1991 and/or under the Scheme of 1995 cannot be allowed to survive. The reference made, in this regard, by Dr. Saraf to the case of State of Bihar v. Suprabhat Steel Ltd. reported in : AIR 1999 SC303 , is therefore, not misplaced.

15. In Suprabhat Steel Ltd. : AIR 1999 SC303 , the State Government issued notification, on April 4, 1994 in exercise of the powers under Section 7 of the Bihar Finance Act, 1987 whereunder the old industrial units, which had started production prior to April 1, 1993, but whose investments in the plants and machinery had not exceeded Rs. 15 crores on April 1, 1993 were denied the benefit of sales tax exemption on the purchase of raw materials. In other words, the industrial units, which were, otherwise, entitled to the sales tax exemption on the basis of the Industrial Policy of 1993, were denied the exemption on the basis of the fact that those industries had already taken some benefits under the prior industrial policy of 1986. The notification, dated April 4, 1994, aforementioned, issued by the State Government was challenged before the High Court and the High Court struck down the notification. The State of Bihar approached the apex court, and the apex court, while dealing with the said notification, observed and held as under:

7. Coming to the second question, namely, the issuance of notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. The industrial incentive policy is issued by the

State Government after such policy is approved by the Cabinet itself. The issuance of the notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decisions taken in the industrial policy itself. In this view of the matter, any notification issued by the Government order in exercise of power under Section 7 of the Bihar Finance Act, if is found to be repugnant to the Industrial Policy declared in a Government resolution, then the said notification must be held to be bad to that extent. In the case in hand, the notification issued by the State Government on April 4, 1994, has been examined by the High Court and has been found, rightly, to be contrary to the industrial incentive policy, more particularly the policy engrafted in Clause 10.4(i)(b). Consequently, the High Court was fully justified in striking down that part of the notification which is repugnant to Sub-clause (b) of Clause 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a notification in exercise of power under Section 7 of the Bihar Finance Act, which may override the incentive policy itself. In our considered opinion the expression 'such conditions and restrictions as it may impose' in Sub-section (3) of Section 7 of the Bihar Finance Act will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general Policy Resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the notification dated April 4, 1994.

16. The decision in *Suprabhat Steel Ltd.* [1999] 112 STC 258 (SC) : [1999] 1 SCC 31, squarely applies to the facts of the present case. When the policy decision of the Government was, in terms of the Industrial Policy of 1991, as announced by notification, dated April 6, 1991 and July 1, 1992 issued in this regard, to grant sales tax exemption to the manufacturers of biscuits even if the manufacturers sell their products in the brand name of some other company and when this policy remained unchanged and unamended even under the Scheme of 1995 issued in exercise of powers under Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, another notification could not have been issued, in exercise of the powers under Sub-section (4) of Section 9

read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, making the industries, such as, the present one, ineligible to receive sales tax exemption if they sell their products not in their brand name, but in the brand name of some other company. Thus, the extent to which the Scheme of 1999, as announced under notification, dated November 5, 1999, aforesaid is repugnant to the Industrial Policy of 1991 and/or the Scheme of 1995, which had been issued in terms of the said industrial policy of the Government, the same (i.e., the impugned notification, in question), cannot stand and must be interfered with. In, no uncertain words, the Supreme Court made it clear in *Suprabhat Steel Ltd.* [1999] 112 STC 258 : [1999] 1 SCC 31, that even in exercise of powers under a statute, the exemptions, which relate to the incentives promised under the industrial policy, cannot be taken away.

17. Turning to the decision of a three-Judge Bench in *Motilal Padampat Sugar Mills Co. Ltd.* [1979] 44 STC 42 (SC) : [1979] 2 SCC 409, what needs to be noted is that in the said case, acting on the basis of the representations made by the Government that the sugar factories, if set up, would be exempted from payment of sales tax for a period of three years from the date of commencement of the production, the petitioners had set up their sugar factories. When the State Government refused to honour its representation and wanted to force the petitioners to pay sales tax for the period for which the Government had made such a promise, the petitioners approached the court. The plea taken by the Government for not keeping to its promises were, to a great extent, same as in the present case. The pleas were as follows:

- (1) in the absence of notification under Section 4A, the State Government could not be prevented from enforcing the liability to sales tax imposed on the petitioners under the provisions of the Sales Tax Act;
- (2) that the petitioners had waived their right to claim exemption; and
- (3) that there could be no promissory estoppel against the State Government so as to inhibit it from formulating and implementing its policies in public interest.

18. The Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd.* [1979] 44 STC 42 (SC) : [1979] 2 SCC 409, speaking through P.N. Bhagwati, J. (as his Lordship then was) rejected all the above three pleas of the Government and observed:

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. Every one is subject to the law as fully and completely as any other and the Government is no exception.... If 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.... 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 Legislatures 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 subsequently transpired, it would be inequitable to hold the Government to the promise made by it.... 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 [1968] 2 SCR 366, 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 appraisalment of the circumstances'. If the Government wants to resist the liability, it will have to disclose to the court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the court to decide whether those events 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.... 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.. Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948, did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948, confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case the Government was bound to exempt the appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date

of commencement of the production and was not entitled to recover such sales tax from the appellant.

19. Making the ambit of the doctrine of promissory estoppel explicit, the Supreme Court observed in *State of Punjab v. Nestle India Ltd.* reported in : [2004]269ITR97(SC) :. Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax.

20. What emerges from the above discussion is that where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee, acting upon the promise so made, 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 the fact that there was no consideration for the promise and the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. The doctrine of promissory estoppel would be attracted in such a case, because, on the facts, equity would require that the Government should be held bound by the promise made by it. When the Government is able to show that public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest vis-a-vis the position of the one, who has altered his position, and it is the court, which has the duty to determine which way the equity lies. It would, however, not be enough for the Government merely 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. 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 exempted 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 its liability; the Government would have to show what precisely is its 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. The court would not act on the mere ipse dixit of the Government, for, the Government cannot be the judge of its own cause and it is the court, which has to decide and not the Government, whether the Government should be held exempt from liability. This is, as Bhagwati, J., in *Motilal Padampat Sugar Mills Co. Ltd.* : [1979]118ITR326(SC) observes, 'the essence of the rule of law'. However, when the relevant statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute; but if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax.

21. It may, now, be noted that it was in *fit Ram Shiv Kumar v. State of Haryana* : [1980]3SCR689 , that a two-Judge Bench took the view that the plea of estoppel is not available against the Government in exercise of its legislative or statutory functions.

22. *Jit Ram Shiv Kumar* : [1980]3SCR689 , is, of course, a case in which the representation was made by a person, who had no authority to make the representation. The note of disagreement, which was so struck in *Jit Ram Shiv Kumar* [1981] 1 SCC 11, from the one, which the three-Judge Bench in *Motilal Padampat Sugar Mills Co. Ltd.* : [1979]118ITR326(SC) had propounded, was formally disapproved by a Bench of three Judges in *Union of India v. Godfrey Philips India Ltd.* reported in : [1986]158ITR574(SC) , and the law, which was laid down in *Motilal Padampat Sugar Mills* : [1979]118ITR326(SC) , was reaffirmed in the following words:

12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of the executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine

of promissory estoppel. We must concede that the subsequent decision of this Court in *Jit Ram Shiv Kumar v. State of Haryana* : [1980]3SCR689 , takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in *Motilal Padampat Sugar Mills case* : [1979]118ITR326(SC) , that the doctrine of promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in *Jit Ram's case* : [1980]3SCR689 , could possibly overturn or disagree with what was said by another Bench of two Judges in *Motilal Sugar Mills' case* [: [1979]118ITR326(SC) . If the Bench of two Judges in *Jit Ram's case* : [1980]3SCR689 , found themselves unable to agree with the law laid down in *Motilal Sugar Mills case* : [1979]118ITR326(SC) , they could have referred *Jit Ram's case* : [1980]3SCR689 , to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by co-ordinate Bench of the same court in *Motilal Sugar Mills case* : [1979]118ITR326(SC) .

13. We have carefully considered both the decisions in *Motilal Sugar Mills case* : [1979]118ITR326(SC) and *Jit Ram's case* : [1980]3SCR689 , and we are clearly of the view that what has been laid down in *Motilal Sugar Mills case* : [1979]118ITR326(SC) , represents the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in *Jit Ram's case* : [1980]3SCR689 , to the extent that they conflict with the statement of the law in *Motilal Sugar Mills case* : [1979]118ITR326(SC) and introduce reservations cutting down the full width and amplitude of the propositions of law laid down in that case.

23. The principles governing the application of promissory estoppel against the Government flowing from the decision in *Godfrey Philips India Ltd. :* [1986]158ITR574(SC) are that if the Government possesses a power, it is bound to wield that power to enforce its promise, the limitation on the enforcement of the

promise being when the statute prohibits the exercise of powers necessary for carrying out the representation made by the Government or when the overriding public interest permits the Government not to keep itself within the bounds of the promise made by it. In short, as long as, by asking the Government to keep to its promise, the court does not force the Government to act contrary to law or against supervening public interest, the court will not be doing anything wrong.

24. When a statute prohibits or bars enforcement of the representation made by the Government, the court would not enforce the representation against the Government, for, the Government cannot be compelled to act contrary to the statute. Logically, therefore, when a sales tax enactment contains provisions enabling the Government to grant exemption from payment of sales tax, the court can, in an appropriate case, force the Government to act in terms of its representation and it would be no defence for the Government to say that necessary notification, in terms of the taxing statute, has not been brought out or published, for, the Government, in such a case, can be bound by its promise to exempt person(s) from payment of sales tax.

25. Moreover, it further emerges from the decision in *Pournami Oil Mills v. State of Kerala* reported in [1987] 65 STC 1 (SC) : [1986] Suppl SCC 728, that when the Government makes an announcement promising to grant exemption from sales tax if specified industries are set up at specified place(s) within a specified date without, however, bringing out a corresponding notification granting exemption in terms of the relevant statute, the notification, which makes no reference to the provisions of the relevant statute, while making the announcement, would still be treated as a notification under the relevant provisions of the statute and the doctrine of promissory estoppel would force the Government not to deny the incentive of exemption from payment of sales tax promised by it provided, of course, that the other conditions for application of the doctrine exist.

26. I may also pause here to point that in *Assistant Commissioner of Commercial Taxes (Asst.) v. Dharmendra Trading Company* reported in : [1988]172ITR395(SC) , it was contended that the impugned order was of no legal effect as there was no statutory provision whereunder such concession could have

been granted. Heavily deprecating the practice of the Assistant Commissioner or the Deputy Commissioner of Sales Tax raising such contention, the court, in Dharmendra Trading Company : [1988]172ITR395(SC) observed:

The next submission of learned Counsel for the appellants was that the concessions granted by the said order dated 30th June, 1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of 30th June, 1969 was ultra vires and bad in law. We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either. Moreover, if the said argument of learned Counsel is correct, the result would be that even the second order of January 12, 1977 would be equally invalid as it also grants concessions by way of refunds, although in a more limited manner and that is not even the case of the appellants.

27. In the case at hand too, the affidavit, on behalf of the contesting respondents, has been sworn by a Joint Commissioner of Taxes, who is a functionary of the State. In tune with the decision in Dharmendra Trading Company : [1988]172ITR395(SC) , I am bound to hold that I fail to see as to how a Joint Commissioner of Taxes, who is functionary of the State, can say that the concession granted by the State itself was beyond the power of the State or how the State can say so either. 28. What surfaces from the above discussion, as a whole, is that if the representation made by the Government is not barred under any law or if the same is not against larger public interest, the Government will be bound by the representation that it has made if a person, acting on the representations made by the Government, has altered his position to his detriment. In such a case, it will be no defence for the Government to say that no notification, in terms of the relevant statute, having been brought out to give effect to the representations made by the Government, the Government is not bound by the promise. In fact, in a case of the present nature, promissory estoppel will come into operation and the court can force the Government to carry out the representations that it had made. Any notification, issued under the relevant statute, which runs contrary to the Government's representation, may be interfered

with. A mere claim by the Government that larger public interest permits the Government not to abide by its representation will not be enough to free the Government from the commitments that it had made, for, the Government cannot be the judge of its own cause and the Government would have to lay bare all the facts and circumstances, which had induced the Government not to carry out the representation that it has made, and if, on balancing between the two competing equities, that is, the commitment made to the promisee, on the one hand, and the public interest, on the other, the court finds that the public interest has the overriding effect, the promise would not be enforced, for, the doctrine of promissory estoppel, being an equitable relief, must yield, when so required - see Assistant Commissioner of Commercial Taxes (Asst.) v. Dharmendra Trading Company reported in : [1988]172ITR395(SC) , Pine Chemicals Ltd. v. Assessing Authority reported in : 1993(67)ELT25(SC) and Pournami Oil Mills v. State of Kerala reported in [1987] 65 STC 1 (SC) : [1986] Suppl. SCC 728.

29. In the case at hand, the respondents have not been able to disclose and establish any overriding public interest, which would make it inequitable to enforce the doctrine of estoppel against the State Government. Thus, the Government cannot resile from the promises that it had made in its Industrial Policy of 1991 as well as in the Scheme of 1995 notified, on August 16, 1995, in terms of its said industrial policy.

30. Coupled with what I have pointed out above, it is of immense importance to note, as already indicated above, that no affidavit, in the present case, has been filed by respondent No. 1, i.e., the Department of Industries, Government of Assam. The Government cannot speak in different voices. As long as the industrial policy remains what it is and the same is not changed, the benefits promised thereunder cannot be taken away by another Department of the Government by taking resort to its statutory powers. If the granting of sales tax exemption is to the manufacturers of biscuits, who sell their products in the brand name of other companies, nothing stops the Government from modifying its own industrial policy and/or withdrawing the incentives. When the State Government does not change its policy, which it has announced, its Finance Department cannot, in exercise of its statutory powers, act in a manner, which would run contrary to the

Government's own policy.

31. The true meaning and scope of the doctrine of promissory estoppel, in the realm of governmental promises and application of this doctrine to the facts of the present case, may be summarised thus : Where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee, acting upon the promise, 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 the fact that there was no consideration for the promise and the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution or in accordance with the procedure prescribed by the relevant statute. The doctrine of promissory estoppel would be attracted in such a case, for, on the facts, equity would require that the Government should be held bound by the promise made by it. When the Government is able to show that public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest vis-a-vis the position of the promisee, who has altered his position, and it is the court, which has to, eventually determine which way the equity lies. It would, however, not be enough for the Government merely to contend 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 its promise. 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 exempted 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. The court would not act on the mere ipse dixit of the Government, for, the Government cannot be the judge of its own cause and it is the court, which has to, ultimately decide and not the Government whether the Government should be held exempt from liability. The doctrine of promissory estoppel would apply even when

the promise would, if acted upon, give rise to a legal relationship in future. The doctrine of promissory estoppel would not be attracted if the promise made by the Government is barred by law. However, when the law does not bar the Government from making the promise, as might have been made by the Government, or when making of the promise itself is not contrary to law, the Government would be required to abide by the promise. The Government has to function as a cohesive body and its different organs or departments have to act in tandem with each other and in harmony with each other on the principles of collective responsibility. The Constitutional Scheme of governance of the Government does not permit the Government to work in violation of the principles of collective responsibility. It will, therefore, be no defence for the Finance Department, in a case of the present nature, to merely contend that until the time requisite notification, in terms of the relevant statute, is published, the promise for tax exemption made by the Government under its industrial policy cannot force the Government to grant such exemption, for, there is no estoppel against the statute. In a case of this nature, if the promise made by the Government is not barred by law, though the same might not have been made strictly in accordance with the relevant statute, yet it will be the duty of the court to trace out the source of power of the Government and if the power is found to exist with the Government, the Government cannot be allowed to resile from its promise by merely citing lack of issuance of appropriate notification(s) in terms of the relevant statute. Since the doctrine of promissory estoppel can be used not merely as a shield but also as a sword and for forming cause of action, it would be permissible for the court to insist upon the Government to issue requisite notification or, conversely, not to demand payment of taxes contrary to the promises made by the Government. If the industrial policy invites investment made by making promises of exemption from payment of sales tax, neither the Finance Department can levy sales tax on the ground that until necessary notifications in terms of the relevant statute is issued, the industry, in question, would be liable to pay sales tax nor would it be permissible for even the Government to say that until the notification in terms of the relevant statute is brought out or published, the promise cannot be enforced against the Government. In a given case, however, even when the promise is not barred by law and there is no supervening public interest permitting the

Government to resile from the promise, it will be still permissible for the Government to resile from the promise made by it. It is possible for the promisee to resume its original position or to restore status quo ante if, on a reasonable opportunity being given to the promisee, the promisee can resume his original position. If the status quo ante cannot be restored, the promise would become irrevocable and can be enforced against the Government. It will be no defence for the Government to say that the promisee ought to have known the position of law that without issuance or publication of the requisite notification under the relevant statute, the promise would not be binding.

32. What crystallises from the discussions held, as a whole, above is that the Finance Department has miserably failed to justify the withdrawal of the promise of exemption of sales tax made under its Industrial Policy of 1991 and/or under the Scheme of 1995 notified, on August 16, 1995, by issuing the impugned notification, dated November 5, 1999, bringing into force the amended scheme of 1995. In a situation, such as the one at hand, this Court has no option, but to interfere and stop the respondents from realising sales tax for the period specified in the Industrial Policy of 1991 read with the notification, dated August 16, 1995, aforementioned.

33. In the result and for the reasons discussed above, this writ petition succeeds. The impugned notification, dated November 5, 1999, aforementioned, to the extent that the same is repugnant to the Industrial Policy of 1991 and to the extent that it has the effect of withdrawing the facilities provided under the Scheme of 1995 notified on August 16, 1995, is hereby set aside and quashed. The respondents are directed not to force the petitioner-company to pay sales tax for the period, which the petitioner-company, but for the notification, dated November 5, 1999, aforementioned, is not liable to pay.

34. With the above observations and directions, this writ petition is disposed of.

35. No order as to costs.