

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2726 of 2015

M/s Gangotri Iron and Steel Co. Ltd. son of Late Shew Bhagwan Choudhary
resident of 7th Floor, Kataruka Niwas, South Gandhi Maidan, P.S. Gandhi
Maidan, District - Patna - 800 001

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Development Commissioner, Government of Bihar, Main Secretariat,
Patna
3. The Industrial Development Commissioner, Government of Bihar, Vikash
Bhawan, Bailey Road, Patna
4. The Director Technical , Department of Industries, Government of Bihar,
Vikash Bhawan, Bailey Roa
5. The Secretary-cum-Commissioner of Commercial Taxes, Government of
Bihar, Vikash Bhawan, Bailey
6. The Deputy Commissioner of Commercial Taxes, Incharge North Circle,
Patna
7. The General Manager, District Industry Centre, Industrial Area, Paltiputra
Colony, Patliputra, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate Mrs. Priya Gupta, Advocate Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s	:	Mr. Sriram Krishna, Advocate Mr. Kumar Saurav, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
Date: 13-08-2020

The present writ petition has been filed for directing the State Government to take a decision with regard to grant of reimbursement equal to the amount of taxes deposited by the petitioner by way of subsidy in terms of the Industrial Incentive Policy, 2006 and immediately transfer the funds on the head of subsidy towards admitted tax paid on account of Bihar VAT Act, Bihar Entry Tax Act as also the Central Sales Tax Act to the Sales Tax Department, in order to enable it to disburse the amount of such subsidy to the petitioner herein.



The brief facts of the case according to the petitioner is that it is engaged in the business of manufacturing M.S. Billets TMT Steel Bars & Industrial Oxygen Gas. The petitioner is stated to have commenced commercial production at Bihta Unit with effect from 11.01.2009, as per the certificate issued by the Director, Technical Department, Bihar, Patna vide letter dated 22.10.2009. It is the further case of the petitioner that the respondent State of Bihar had announced Industrial Policy, 2006 wherein various incentives were promised for the purposes of attracting investment in the State of Bihar. The said Industrial Incentive Policy, 2006 was published in the official gazette of the State Government on 25.07.2006.

The learned senior counsel appearing for the petitioner has drawn the attention of this Court to the relevant clauses of the Industrial Incentive Policy, 2006, which are reproduced herein below:-

2. POST-PRODUCTION INCENTIVES

“(vi) subsidy/Incentive on VAT:

This facility will be available to small / large / medium industries. The industrial unit will get a passbook from the State Government in which the details of the tax paid under Bihar VAT would be entered and verified by the commercial Taxes Department in the form prescribed in Appendix-III.



The Director, Industries will be authorised to pay the incentive amount on the basis of the verification.

The new Units will avail 80% reimbursement against the admitted VAT amount deposited in the account of the Government, for a period of ten years. The maximum subsidy amount is payable 300% of the capital invested.

Clarification: *The incentive would not be payable on the amounts imposed as penalty and the difference of amount between tax assessed and accepted under the Central Sales Tax/Bihar Value Added Tax Act, 2005 and Bihar Entry Tax Act.”*

Annexure-I:- Relevant clauses thereof are reproduced herein below:-

“1. Effective date: *“Effective date” means the date on which the provisions of this Policy come into force i.e. 01.04.2006. This Policy will remain in force for 5 years from the date of issue of orders.*

4.New Industrial Unit: *“New Industrial Unit” means an industrial unit in which commercial production has commenced within five years from 01.04.2006.*

8. Expansion/Modernisation/Diversification:

“Expansion/Modernisation/Diversification of an existing unit” would mean additional fixed capital investment in plant and machinery to the extent of 50% or more of the undepreciated value of fixed



capital investment in the existing unit leading to incremental production capacity which would not be less than 50% of the initial installed capacity. In order to qualify a unit undertaking expansion/modernisation/diversification should send prior intimation to the General Manager, District Industries Centres or the Managing Director, Bihar Industrial Area Development Authorities & Deputy Commissioner Commercial Taxes, as the case may be in respect of Small Scale Industry or the Director of Industries/director, Technical Development and Commissioner, Commercial Taxes in case of medium and large industries before undertaking such expansion/modernisation/diversification Programme. Such intimation should be accompanied by detailed expansion / modernisation / diversification proposal giving the specific period of proposed additional investment.”

Annexure-III

FORMAT OF PASSBOOK AS DETAILED IN PARA 2(VI) OF THE INDUSTRIAL INCENTIVE POLICY 2006.

1	2	3	4	5	6	7	8
Sl. No.	Month	Amount of Tax admitted under BVATA*/CSTA*/BETA*	Amount paid against the amount admitted under BVATA*/CSTA*/BETA*	Main/Subsidiary headings under which admitted amount deposited	Challan no. & date with Name of Treasury	Name & Designation of certifying officer	Signature with date & seal



TOTAL							

*BVATA = Bihar Value Added Tax Act 2005
*CSTA = Central Sales Tax Act
*BETA = Bihar Entry Tax Act

Note : *The passbook* entries must be certified by the concerned Commercial Taxes Officer in charge of the circle.

It is the submission of the learned senior counsel for the petitioner that the clarification to clause 2 (vi) of the Industrial Incentive Policy, 2006 read with Annexure-III of the said Incentive Policy makes it amply clear that the subsidy/ incentive is to be granted both on VAT as also on Bihar Entry Tax. It is stated that the said Industrial Incentive Policy, 2006 was notified in the official gazette on 25.07.2006 and Annexure-III to the same is similar to the Industrial Incentive Policy, 2006 prepared by the Department of Industries, Bihar. The learned senior counsel for the petitioner has further submitted that in order to make the said Industrial Incentive Policy, 2006 workable, the Annexures to the same are indispensable since the detailed mode and manner of grant of incentives, mentioned in the Industrial Incentive Policy, 2006, is mentioned in the Annexures. It is further submitted that the expression VAT has been used under clause-2.(vi) of the Industrial Incentive Policy,



2006 in generic terms and also include Bihar Entry Tax as is apparent from the clarification to the said clause as also from Annexure-III to the said Policy, 2006. In fact under the Bihar Industrial Incentive Policy, 2011, the tax related incentives have been provided for under clause-3 and the same provides for reimbursement of VAT and Entry Tax to the new M.S.M.E./large industries.

The learned senior counsel for the petitioner has also submitted that from Annexure-III to the Industrial Incentive Policy, 2006, which is also part of the gazette notification, it is evident that in Column 3 of the format of Pass Book, in terms of Clause 2(vi), the amount of tax admitted has been clarified to be the taxes admitted under the Bihar VAT Act, Central Sales Tax Act, 1956 and Bihar Entry Tax Act, 1993. Similarly, in Column 4 of the Annexure-III to the Industrial Incentive Policy, 2006, where the amount paid against the amount of admitted tax has to be specified, again all three types of taxes i.e Bihar VAT, Central Sales Tax and Bihar Entry Tax Act have been mentioned, which has been further clarified, just after the table by putting an asterisk mark before the said three types of taxes. Thus, it is stated that the policy document becomes complete only by taking into consideration all the Annexures in the policy



document. It is further stated that Annexure-I of the Policy document lays down the definitions for the purposes of the policy whereas Annexure-II contains a list of Industries which the Government has deprived from getting any benefit under the Industrial Policy. Thus, it becomes further evident that without consideration of the aforesaid three Annexures, the policy document will not only become vague but shall also be rendered non-functional and non-workable, thus every provision and every part of the policy document are equally important and mandatory for drawing any conclusion.

The learned senior counsel for the petitioner has next contended that what is most important in the policy document for extending the benefit by way of subsidy against the amount of tax is “Admitted Tax/Admitted VAT”. The term “admitted VAT” or the use of the word ‘tax paid under Bihar VAT’ or admitted VAT have been mentioned in Clause 2(vi) of the policy document and further the taxes under the Bihar VAT Act, Central Sales Tax Act, 1956 and Bihar Entry Tax Act, 1993 have also been referred to in the policy document. The meaning is further amplified by Annexure-III of the policy document where amount of Admitted Tax/Admitted VAT has been clarified as the taxes admitted in all the three statutes, mentioned herein above.



Therefore, it cannot be said that in the Industrial Policy no promise was made for making reimbursement of the amount of tax admitted under the Bihar Entry Tax Act, 1993 and paid to be adjusted with VAT Act. The learned senior counsel for the petitioner has further relied upon the form of return under the Bihar VAT Act bearing Form R.T.-III wherein also in the payment details Entry Tax is specified which is considered under the head “admitted VAT” and then only the set-off is allowed. Column no. 24 of the said Form RT-III reflects the total VAT liability of an assessee i.e. the amount of Admitted VAT of the assessee. Further, the payments made by the assessee as against the said liability of Admitted VAT amount are detailed in column no. 27 of the said Form RT-III which clearly allows for payments made by way of Entry Tax. In light of the explanations herein above, it becomes evident that the amount deposited by an assessee by way of Entry Tax, forms an integral part of the amount of Admitted VAT of the assessee. Clause 2(vi) of the Industrial Incentive Policy, 2006 specifically provides for reimbursement to industries on the amount of Admitted VAT deposited by them in the account of the government which by way of definition includes the amount of entry tax as well.

Thus, it is submitted that Entry Tax being an integral



part of the amount of admitted VAT of an assessee, Industrial Incentive Policy, 2006 under clause 2(vi) shall mean to provide reimbursement to the Industries by way of incentive on the amount of admitted VAT deposited by them in the account of the Government by taking care of the Entry Tax amount.

The learned senior counsel for the petitioner has further contended that the Principal Secretary-cum-Commissioner of Commercial Taxes, Bihar, Patna vide Memo No. 188 dated 31.09.2007 has unilaterally changed the format of the pass-book, contained in Annexure-III to the Industrial Incentive Policy, 2006, as notified in the gazette on 25.07.2006, and has excluded the Entry Tax component, without the necessary approval of the Council of Ministers, Bihar, as also without the same being published in the official gazette. In this regard, the learned senior counsel has drawn the attention of this Court to the various file notings made by the government officials as also the concerned Minister, who have raised a question as to under what authority and under what circumstances, the said letter dated 31.09.2007 was issued without the approval of the cabinet. The learned senior counsel for the petitioner has submitted that the term 'Bihar VAT' or 'admitted VAT' has been taken from the provisions of the Bihar



VAT Act, 2005 and the rules framed thereunder. Since the entry tax legislation had come into force earlier to the Bihar VAT Act, 2005, therefore, when the Bihar VAT Act, 2005 was drafted, it had taken into account the existence of Bihar Entry Tax Act, 1993, covering the field of indirect tax in Bihar. The provisions of admitted VAT Tax, i.e. tax payable by a dealer is very clear in the Bihar Value Added Tax Act, 2005 wherein

$$T=A-B$$

Wherein **T** means Tax Payable by a Dealer

A means Output Tax under the Act &

B means the Total amount of Input Tax credit allowable to the dealer under Section 16 or Section 17

The Bihar VAT Rules, 2005 has prescribed the forms. The RT-I Form is the form of Quarterly Return which is required to be filed by a dealer and in this form when the calculation of tax is made, the set-off is to be given as admitted tax on the amount of entry tax, as well. It finds place in Part-V, Serial 26(1) of Form RT-I. Similarly, in the Annual Return in Form- RT-III similar provision is there. Thus, in the calculation of admitted VAT for the purpose of grant of set-off, entry tax is mentioned. Therefore, the State Government while framing the policy document loosely used VAT/Admitted VAT. It appears to have not thought that it may give rise to some confusion or may give



rise to any dispute. However, since the dispute arose and many dealers started making complaint about the authorities trying to deny the benefit of reimbursement on the amount of entry tax deposited, the State Government, with a view to eliminate any sort of confusion, has specifically mentioned about entry tax in the Industrial Incentive Policy, 2011. Nonetheless, it is submitted that there is no scope of interpretation of the Industrial Incentive Policy, 2006 in such a manner so as to deny the benefit of reimbursement to the beneficiaries.

The learned senior counsel for the petitioner has relied upon the following judgments, which are being detailed herein below along with the relevant paragraphs thereof:-

I. 1995 (2) PLJR 536 (M/s Suprabhat Steel Limited vs. The State of Bihar & Ors.), paragraph-12, 13 to 19 whereof are reproduced herein below:-

“12. I may first of all deal with the submission urged on behalf of the State that having regard to the Preamble of the policy, it must be held that whatever is contained in the policy is applicable only to industries which fulfil the other conditions and additionally came into production on or after 1st April, 1993. Relying upon paragraphs (a) & (b) of the Policy to which I have referred earlier it was submitted that in clear terms it has been provided that the Industrial Incentive Policy shall be



applicable to those industrial units which would go into production from 1.4.1993 to 31.3.1998. According to the learned Advocate General, this was conclusive and permitted no argument. On the other hand, counsel for the petitioners submitted that the Preamble is not always determinative in the matter of interpretation. The language of the provision must be looked at, and if the language employed is clear and unambiguous, it must be given effect, notwithstanding the fact that there is something in the Preamble which may be inconsistent with the substantive provision in a legislation. Counsel relied upon the decisions of the Supreme Court, reported in *AIR 1961 SC 954* (M/s Burrakur Coal Co. Ltd. v. Union of India) and *AIR 1970 SC 540* (Tribhuban Parkash vs. Union of India). In my view, it is not possible to accept the rival contentions in a case of this nature where the Court is concerned with an Industrial Incentive Policy. Such policy decisions are not drafted with the same skill as is required while enacting a legislation. The precision and accuracy expected in a legislation is not expected when such policy decisions are announced by the Government, and therefore, it would not be appropriate to interpret a policy decision in the same manner as a law enacted by the legislature is interpreted, in the sense that the technical rules of interpretation may not be applied with equal rigour. The policy decision must be read as a whole. If the language employed is clear and unequivocal, it must be given meaning and



effect. No doubt, in the opening paragraphs of the Policy it has been stated that the Industrial Incentive Policy shall be applicable to those industrial units, which would come into production from 1.4.1993 to 31.3.1998. This is obviously so because the main emphasis in the Policy was to provide incentives to industries which went into production or even came into existence after 1.4.1993. But, this does not mean that it was not open to the State Government to confer some small benefits on older units as well, while considering the grant of larger incentives and benefits to new units. I have, therefore, no hesitation in coming to the conclusion that the Industrial Incentive Policy of 1993 must be read as a whole with a view to understand its scope and import. If on a reading of the Policy as a whole it appears that some benefit was sought to be conferred on older units as well, such benefits cannot be denied to older units only on the ground that in the opening paragraphs of the Policy it is stated that the Policy shall be applicable to those industrial units which would come into production from 1.4.1993 to 31.3.1998.

13. Then comes the question as to whether paragraph 10.4 (i)(b) extends to old industrial units the facility of sales tax exemption on the purchase of raw material. Sub-paragraph (b) must not be read in isolation. It must be understood in the light of sub-paragraph (a) and other provisions of the Policy.



Sub-paragraph (a) of paragraph 10.4 (i) provides that industrial units coming into production between 1.4.93 and 31.3.1998, whose investment on plant and machinery does not exceed Rs.15.00 crores shall be entitled to the facility of sales tax exemption on the purchase of raw material for a period of seven years from the date of production. Thereafter comes sub-paragraph (b) which begins with the words "such old industrial units whose investment on plant & machinery do not exceed Rs.15.00 Crores on 1.4.93 shall be entitled to this facility for a period of seven years from 1.4.93". Obviously, therefore, the Policy makes a distinction between new industrial units covered by sub-paragraph (a) and old industrial units covered by subparagraph (b). It cannot, therefore, be said that the old industrial units were not entitled to this facility at all. In fact, even the impugned Notification dated 4.4.1994 provides that the facility of sales tax exemption on the purchase of raw material shall be extended to such old industrial units, but lays down a condition that the facility shall be made available only if such old industrial units had not availed of incentive under any earlier Industrial Incentive Policy. It is to this condition that the petitioners object. It is their submission that the Policy does not lay down any such condition and, therefore, the said policy could not be modified by the issuance of the Notification dated 4.4.1994. The Commissioner was bound to issue a notification with a view to give effect to the policy decision of the



Government, and not to deprive the old industrial units of the limited facility granted under the new scheme under the Policy of 1993.

14. In course of his submission the learned Advocate General submitted that the Notification of 4th April, 1994 amounted to a change of policy by the Government. This was objected to by the petitioners, and they challenged the State to produce material to show that the Government had consciously changed its policy by incorporating such a condition. However, ultimately the learned Advocate General did not proceed on the basis that the Government had changed its policy, and submitted that the Notification dated 4th April, 1994 was not inconsistent with the policy decision.

15. I have considerable difficulty in accepting the submission urged by the learned Advocate General that sub-paragraph (b) which refers to old industrial units must mean old industrial units which were established before 1.4.1993, but had not gone into production before that date. He, therefore, submitted that the old industrial units, to which sub-paragraph (b) refers, are such old industrial units which, though established before 1.4.93 went into production later. It is not disputed that those industries which went into production between 1.4.1993 and 31.3.1998 are entitled to all the facilities and incentives under the Policy of 1993. It is also not disputed that the industrial units which came into production before



1.4.1993 are entitled to claim all benefits under the earlier scheme. So far as the third category of industrial units is concerned, namely, industrial units which were established before 1st February 1993, and which came into production on or after 1.4.1993, the industrial policy is quite clear and such units are covered by paragraph (b) of what has been described by the learned Advocate General as "the Preamble". It has been clearly laid down that such units may either claim the benefits announced by the previous incentive policy or may claim benefits announced by the Industrial Incentive Policy of 1993. They have to opt between the complete package of the benefits announced by the previous incentive policy or the package of benefits announced by the Policy of 1993. They could not be allowed to pick and choose. Such being the position, it would be difficult to contend that paragraph 10.4 (i)(b) when it refers "such old industrial units", refers to units which came into production after 1.4.1993 though established before that date. Such units could opt for benefits under the old policy or under the new policy package for package, and could not select a few benefits here and a few benefits there.

16. Reading the Industrial Incentive Policy, 1993 as a whole, it appears to me that the industrial policy formulated by the Government was essentially meant for the industrial units going into production between the period 1.4.1993 and 31.3.1998. With



regard to industrial units which had come into production before 1.4.1993, their entitlement to incentive under the earlier policy was protected. With regard to industrial units which were established before 1.4.1993, but came into production in or after 1.4.1993, option was given to them to elect to be governed by the old policy or the new policy package for package. Under the Policy of 1993 the industrial units coming into production between 1.4.1993 and 31.3.1998 were entitled to several benefits, such as subsidy of different types, financial assistance in many matters as also facility of sales tax exemption and deferment on finished products. These facilities/benefits were not extended to other units. However, in paragraph 10.4 where the policy dealt with the grant of sales tax exemption on the purchase of raw material, this facility was extended to the industrial units coming into production between 1.4.1993 and 31.3.1998, and also such old industrial units whose investment on plant and machinery did not exceed Rs.15 crores on 1.4.1993. To the extent of this facility alone a facility was sought to be conferred even on old industrial units. So far as the policy goes, there is no other condition attached to the grant of this facility except that the investment on plant and machinery as on 1.4.1993 must not exceed Rs.15 crores. The clear and unequivocal words employed in the said paragraph of the policy decision permit no other



meaning being given to the policy.

17. If I am right in coming to the conclusion that the facility of sales tax exemption on the purchase of raw material was extended to old industrial units also fulfilling the condition laid down in the policy, the Notification of 4th April, 1994 imposing the condition that such old industrial units must not have taken advantage or benefit under any other industrial policy, appears to deprive the old industrial units of the benefits under the Industrial Incentive Policy of 1993. As has been urged on behalf of the petitioners, industrial units which had come into production earlier did take advantage of the benefits and facilities extended under the earlier policy of the Government. The Government was also aware of this fact and yet provided a limited facility by way of incentive to such old units also. It is not as if the Government was not competent to extend this limited facility to older industrial units, and if it was competent to do so, it has done so in clear words without imposing any condition. The petitioners are, therefore, right in contending that the notification of 4th April, 1994 in so far as it imposes a condition that the old industrial units should not have taken benefit under any earlier industrial incentive policy of the Government is inconsistent with the policy decision. In exercise of authority vested in the Commercial Taxes Department under paragraph 10.5 of the Industrial Incentive Policy, 1993, the



Commercial Taxes Department could not add or subtract to the incentive/benefits granted under the policy decision, but could only issue a separate order/notification for sales tax exemption with a view to give effect to the policy decision. The conditions which it could lay down by issuing such order or notification could be conditions which were essentially to be imposed with a view to keep a check on the persons availing of the benefits and to ensure that the facility was not being misused. They could require the industrial units to furnish such particulars about their purchases and production as was considered necessary, and for that purpose could have prescribed forms and declarations as was considered necessary with a view to give effect to the policy decision and to avoid misuse of facilities/benefits conferred thereby. Such conditions could not be imposed which in effect amended the policy decision itself by depriving industrial units of the benefits/facilities granted by the policy decision. The petitioners on the basis of the Industrial Incentive Policy of 1993 have made purchases of raw materials in the State of Bihar with a view to avail of such facility. Counsel for the petitioners explained that otherwise it could have been beneficial for such industrial units to make purchases outside the State of Bihar so as to avoid the incidence of local taxes. The petitioners have also asserted, which is not denied by the State, that they have purchased more raw materials with a view



to increase their production and take advantage of the incentives announced by the Government. They have also made heavy investment on the basis of the promise held in the Industrial Incentive Policy, 1993, that they shall be given that facility of sales tax exemption on the purchase of raw material. Having done all these, they cannot be deprived of the facility which they were promised under the Industrial Incentive Policy, 1993 and that too by the issuance of notification which is inconsistent with the policy decision, and seeks to modify the same without authority of law. In exercise of his power under the Bihar Finance Act, the Commissioner should have issued appropriate notification granting exemption in the matter of payment of sales tax consistent with the Industrial Incentive Policy decision of 1993, which bound the State.

18. The learned Advocate General did not urge that the principle of estoppel does not apply in the instant case, and in my view, rightly. The impugned notification has been issued with a view to give effect to the policy announced. It does not proceed on the basis that old industrial units which came into production before 1.4.1993 are not entitled to any benefit under the scheme. On the contrary, it concedes that such old industrial units are entitled to the facility of exemption of sales tax on purchase of raw material, provided they have not taken benefit under any earlier incentive policy. The challenge is



on the ground that if the notification is intended to give effect to the policy decision announced by the State, it is not permissible to the Commissioner of Sales Tax to make a further classification by imposing a condition not warranted by the policy. If the policy intended to give a benefit or facility, to a class of industries, he could not impose a further condition so as to create another class of industries out of the industries to whom the benefit or facility was intended, as that would be arbitrary and unreasonable.

19. In these circumstances, these writ petitions are allowed. The Notification bearing S.O. No.95 dated 4.4.94 (Annexure-3) is quashed to the extent that it imposes a condition that the facility of sales tax exemption on purchase of raw material will be available only to old industrial units whose investment on plant and machinery did not exceed Rs.15.00 crores on 1.4.1993, and who had not availed of any facility/benefit under the earlier incentive policy. It is further declared that the petitioners are entitled to the facility of sales tax exemption on the purchase of raw material under paragraph 10.4(i)(b) of the Industrial Incentive Policy, 1993.”

II. (1999)1 SCC 31 (State of Bihar & ors. Vs. Suprabhat Steel Limited & Ors), paragraph nos. 5 to 7 whereof are reproduced herein below:-



“5. We have carefully considered both the contentions raised by the learned counsel for the appellant, but we do not find force in any one of them. It is no doubt true that Clause (a) of the Policy early indicates that the policy would be applicable to those industrial units which would come into production from 1.4.93 to 31.3.98. But in enumerating the benefits which would be available under the Policy, the policy makers have indicated different heads of the benefit dealing with subsidy, financial assistance, exemption in sales tax/deferment facility so on and so forth. Clause (10) deals with facility of sales tax deferment. Clause 10.4 deals with the heading 'Sales tax exemption on the purchase of raw material'. It would be appropriate to extract Clause 10.4 in extenso since the interpretation of this Clause is involved in these appeals.

"10.4. Sales Tax exemption on the purchase of raw material:

(i) This facility will be admissible to the industrial units mentioned in Annexure-V in the following manner:

(a) Industrial Units coming into production between 1.4.93 to 31.3.98 whose investment on plant & machinery does not exceed Rs. 15.00 Crores shall be entitled for this facility for a period of seven years from the date of production.



(b) Such old industrial units whose investment on plant & machinery do not exceed Rs. 15.00 Crores on 1.4.93 shall be entitled for this facility for a period of seven years from 1.4.93.

(ii) All other industrial units shall continue to enjoy the existing facility of purchase of raw material on concessional rate of tax as announced and made applicable by the Sales Tax Department as before."

6. A bare look at the aforesaid Clause makes it crystal clear that under sub-clause (a), while the industrial units coming into production between 1.4.93 to 31.3.98 whose investment on plant & machinery does not exceed Rs. 15 Crores would be entitled to the facility of exemption on the purchase of raw material for a period of seven years from the date of production, under sub-clause (b) the old industrial units whose investment on plant & machinery do not exceed Rs. 15 Crores on 1.4.93. In view of the clear and unambiguous language of sub-clause (b) of Clause 10.4, it is difficult to accept the contention of Mr. Dwivedi, learned Senior Counsel, appearing for the State that even said sub-clause (b) would be subject to the terms indicated in the beginning of the Resolution that the Policy would be applicable only to those industrial units which would come into production from 1.4.93 to 31.3.98. While considering the benefits and incentives given to the



several industrial units under the Policy Resolution of 1993, it would not be appropriate to exclude those industrial units who would be otherwise entitled to the sales tax exemption on the purchase of raw material under Clause 10.4(i)(b) of the Policy. Reading the Policy as a whole, the only conclusion which can be arrived at is while generally the incentives under the 1993 Policy would be available to the industrial units coming into production between 1.4.93 and 31.3.98, but so far as sales tax exemption on the purchase of raw material is concerned which is provided under Clause 10.4, even though the old industrial units have started production prior to 1.4.93, but whose investment on plant and machinery do not exceed Rs. 15 Crores on 1.4.93 would be entitled to the facility for a period of seven years from 1.4.93. We are entirely in agreement with the conclusion arrived at by the High Court in granting the benefits of the said Clause 10.4(i)(b) of the Policy to the respondents' industrial units. We accordingly have no hesitation to affirm the conclusion of the High Court on this score and reject the submission of Mr. Dwivedi, the learned Senior Counsel, appearing for the appellant.

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 4th of April, 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 over-ride 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 4th April, 1994.”

III. (2006)8 SCC 702 (MRF Limited vs. Assistant Commissioner (Assessment) Sales Tax & Ors.), paragraphs no. 32 to 35 & 38 whereof are reproduced herein below:-

“32. Answering the question as to whether the Board is restrained from withdrawing the rebate prematurely before the completion of three/five years period by virtue of doctrine of promissory estoppel, this Court in Pawan Alloys & Casting Pvt. Ltd. Vs. U.P. State Electricity Board, 1997 (7) SCC 251, held:

"10. It is now well settled by a series of decisions of this Court that the State authorities as well as its limbs like the Board



covered by the sweep of [Article 12](#) of the Constitution of India being treated as 'State' within the meaning of the said Article, can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any statutory prohibition, absence of power and authority of the promisor and is otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.

24. ..We, therefore, agree with the that by these notifications the Board had clearly held out a promise to these new industries and as these new industries had admittedly got established in the region where the Board was operating, acting on such promise, the same in equity would bind the Board. Such a promise was not contrary to any statutory provision but on the contrary was in compliance with the directions issued under [Section 78A](#) of the Act. These new industries which got attracted to this region relying upon the promise had altered their position



irretrievably. They had spent "large amounts of money for establishing the infrastructure, had entered into agreements with the Board for supply of electricity and, therefore, had necessarily altered their position relying on these representations thinking that they would be assured of at least three years' period guaranteeing rebate of 10% on the total bill of electricity to be consumed by them as infancy benefit so that they could effectively compete with the old industries operating in the field and their products could effectively compete with their products. On these well-established facts the Board can certainly be pinned down to its promise on the doctrine of promissory estoppel."

[Emphasis supplied]

33. *In a recent judgment in the case of Mahabir Vegetable Oils (P) Ltd. Vs. State of Haryana, 2006 (3) SCC 620, this Court in para 25 observed that "it is beyond any cavil that the doctrine of promissory estoppel operates even in the legislative field." This was in connection with a statutory notification under the Haryana General sales [Tax Act](#).*

34. *In Kasinka Trading's case (supra) and Rom Industries Vs. State of Jammu & Kashmir, 2005 (7) SCC 348, on which reliance has been placed by the learned counsel for the respondent do not disturb the settled position in law that where a right has*



already accrued, for instance, the right to exemption of tax for a fixed period and the conditions for that exemption have been fulfilled, then the withdrawal of the exemption during that fixed period cannot effect the already accrued right. Of course, overriding public interest would prevail over a plea based on promissory estoppel, but in the present case there is not even a whisper of any overriding public interest or equity. Notification SRO 38/98 was an amendment and not a clarification of SRO 1729/93 and was expressly made prospective w.e.f. 15.1.1998.

35. Besides, a plea of promissory estoppel is in the nature of an equitable plea and must be determined in the facts and circumstances of each case where it is raised. In the case of Rom Industries (supra) the deciding factor was that the exemption notification in question had been itself held to be unconstitutional in an earlier case as violative of Articles 301 and 304 of the Constitution of India and, therefore, could not form the basis of any right. The observation made in para 8 of that judgment have to be read in that context. Besides, the State Government in that case had no option except to withdraw the notification. It is so observed in that judgment in para 9:

"The State Government, in view of the decision of this Court had no other option but to place edible oils in the Negative List. The



questions whether Shree Mahavir Oil Mills, 1996 (11) SCC 39 has been rightly decided or not and whether it is in conflict with the principles enunciated in Video Electronics, 1990 (3) SCC 87, are moot. But while the decision stands, the State Government is bound to comply with it."

*38. The principle underlying legitimate expectation which is based on [Article 14](#) and the rule of fairness has been re-stated by this Court in **Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer, 2005 (1) SCC 625**. It was observed in paras 8 & 9:*

"8. A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for



judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision maker should justify the denial of such expectation by showing some overriding public interest. ([See Union of India and Ors. v. Hindustan Development Corporation and Ors.](#) (AIR 1994 SC 988).

9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of [Article 14](#) is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or



by any ulterior criteria. The wide sweep of [Article 14](#) and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of [Article 14](#) is fairness in action by the State, and non- arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

IV. (2015) 9 SCC 132 (*Devi Multiplex & Anr. vs. The State of Gajarat & Ors.*), paragraphs no. 20, 25 and 26 whereof are reproduced herein below:-

“20. The law on the subject of Promissory Estoppel was recapitulated and succinctly dealt with by this



Court in State of Punjab Vs. Nestle India Ltd.[1] It found the foundation of the doctrine laid in the decision in Collector of Bombay Vs. Municipal Corporation of the City of Bombay[2], the principle built upon in Union of India Vs. Anglo Afghan Agencies[3] and the superstructure of the doctrine, with its pre-conditions, strengths and limitations outlined in the decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of UP[4]. This Court then dealt with the discordant note in Jit Ram Vs. State of Haryana[5] and how that was firmly disapproved in Union of India Vs. Godfrey Philips India Ltd.[6] by a bench of three judges. We deem it appropriate to quote paras 27, 28, 29, 34, 35 and 36 from the decision in State of Punjab Vs. Nestle India Ltd. (Supra):-

“27. However, the superstructure of the doctrine with its preconditions, strengths and limitations has been outlined in the decision of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.3 Briefly stated: the case related to a representation made by the State Government that the petitioners’ [pic]factory would be exempted from payment of sales tax for a period of three years from the date of commencement of production. It was proved that the petitioners had, as a consequence of the representation, set up the factory in the State. But the State Government refused to



honour its representation. It claimed sales tax for the period it had said that it would not. When the petitioners went to court, the State Government took the pleas:

(1) in the absence of notification under Section 4-A, 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.

28. This Court rejected all the three pleas of the Government. It reiterated the well-known preconditions for the operation of the doctrine:

(1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;

(2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

29. As for its strengths it was said: that the doctrine was not limited only to cases where



there was some contractual relationship or other pre- existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made—contractual, administrative or statutory. To put it in the words of the Court:

“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.

* * *

[E]quity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his



own title deeds or under statute. (SCC p.425, para 8)

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Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel [pic]and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it.” (SCC p. 453, para 33)

34. The discordant note struck by Jit Ram case was firmly disapproved by a Bench of three Judges in Union of India v. Godfrey Philips India Ltd. It was affirmed that: (SCC p. 387, para 12) “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 executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel.”

35. It was held that irrespective of the nature of power wielded the Government is bound to wield that power provided it possessed such power and has promised to do so knowing and intending that the promisee would act on such promise and the promisee has done so:



(SCC p. 389, para 14) “We think that the Central Government had power under Rule 8 sub-rule (1) of the Rules to issue a notification excluding the cost of corrugated fibreboard containers from the value of the cigarettes and thereby exempting the cigarettes from that part of the excise duty which would be attributable to the cost of corrugated fibreboard containers. So also the Central Board of Excise and Customs had power under Rule 8 sub-rule (2) to make a special order in the case of each of the respondents granting the same exemption, because it could legitimately be said that, having regard to the representation made by the Cigarette Manufacturers’ Association, there were circumstances of an exceptional nature which required the exercise of the power under sub-rule (2) of Rule 8. The Central Government and the Central Board of Excise and Customs were therefore clearly bound by promissory estoppel to exclude the cost of corrugated fibreboard containers from the value of the goods for the purpose of assessment of excise duty for the period 24-5-1976 to 2-11-1982.”

36. The limitations to the doctrine delineated in Motilal Padampat Sugar Mills³ however, were also reaffirmed when it was said: (SCC



pp. 387-88, para 13) “[T]hat there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a 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. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour [pic]of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority.”

25.The record indicates that the progress of the project of the appellants was greatly hampered as a result of major earth quake in the State on



26.01.2001 and large scale communal riots in the State in February 2002. The State Level Committee was satisfied that the commencement and continuation of the project was so affected as a result of these major difficulties and had granted initial extension of six months but the appellants had benefit of only few days out of such extension. The subsequent request for further extension which was backed with relevant certificate from the Chartered Accountant certainly persuaded the State Level Committee to find that the facts justified grant of further extension but it felt it had lost the power to grant such extension because of G. R. dated 28.06.2000. In the light of the view that we have taken, the State Level Committee was still competent to consider the request for grant of extension.

26. In the circumstances, we allow the appeal and set aside the decision of the High Court in so far as it held that the operative period of the Scheme came to an end on 30.11.2000 and that there could be no further extension of time limit. Since the appellants have already commenced commercial operations, it now needs to be assessed by the State Level Committee whether in the facts of the case the appellants could justifiably have claimed extension under Clause 10 of the Scheme. We direct the State Level Committee to make such assessment in accordance with Clause 10, in three months of the



receipt of this decision. Needless to say, if such assessment is found in favour of the appellants, they shall be entitled to the incentives and benefits under the Scheme. ”

Per contra, the learned counsel appearing for the respondent-State has submitted that the petitioner had filed an application for reimbursement under the Industrial Incentive Policy, 2006 on 18.02.2012 for the period 2006-07 to 2010-11, separately for its two units situated at Fhulwari Sharif & Bihta and far as the old unit is concerned, reimbursement was applied for 25 per cent whereas for the new unit 80 per cent reimbursement was applied for, as against the total amount of tax paid. Thereafter, as per clause-2(vi) of the Industrial Incentive Policy, 2006, the admissible amount of reimbursement on VAT was allowed to the petitioner herein, however, no reimbursement was allowed on Entry Tax, since the same was/is not admissible under the Industrial Incentive Policy, 2006. In this connection, the learned counsel for the respondent-State has submitted that the Industrial Incentive Policy, 2006 is very clear and as per clause 2(vi), facility of subsidy/incentive on VAT is to be granted to the small/large/medium Industries and the new units would get 80 per cent reimbursement against the admitted VAT amount deposited in the account of the government for a



period of 10 years. Hence, it is clear that the Industrial Incentive Policy, 2006 envisages reimbursement of only VAT and Luxury Tax and no other tax. It is further submitted that Annexure-III of the Industrial Incentive Policy, 2006 calls for the details of CST and Entry Tax apart from VAT tax, which was done with a purpose i.e. to ascertain the exact amount of VAT paid by the dealers and the said Annexure-III was later on amended in order to avoid any ambiguity. It has been further submitted that the claim of the petitioner on the basis of pass-book for reimbursement of the Entry Tax amount paid by it is not worth consideration inasmuch as the prescribed format of pass-book is only an annexure to the policy. Thus it is the case of the respondents that the Industrial Incentive Policy, 2006 envisages reimbursement of no other tax except VAT and luxury tax. It has been further submitted that the 2006 Industrial Policy was reviewed and the State Government came out with the 2011 Industrial Policy, wherein grant of subsidy/incentive was also extended on the payment of Entry Tax, however, there is nothing to suggest that the said subsidy/incentive qua the Entry Tax amount was also extended to the 2006 Industrial Policy. The learned counsel for the respondent-State has also submitted that under the 2006 Industrial Policy, certain benefits were decided to



be extended, which were specified and specifically incorporated in the Industrial Policy, 2006 itself and the benefits of tax reimbursement pertaining to the Bihar Entry Tax, was apparently never specified nor promised by the State Government under the 2006 Industrial Policy, hence, the case of the petitioner is required to be rejected as far as its claim to subsidy/incentive regarding Entry Tax is concerned.

The learned counsel for the respondent-State has relied on a judgment rendered by the Hon'ble Apex Court in the case of *Securities & Exchange Board of India vs. Prebon Yamani (India) Limited* reported in (2015) 16 SCC 89, paragraphs no. 10 & 16 whereof are reproduced herein below:-

“10. Reliance has also been placed on letter dated 4.4.1999 issued by the Appellant to the Respondent, by which a certificate of registration was issued to the Respondent subject, inter alia, to condition (d) which provides that the Respondent and similarly situated entities shall pay the amount of fees for registration in the manner provided in SEBI (Brokers and Sub Brokers) Regulations, 1992. This letter also requested the Respondent to study the Rules and Regulations carefully. Learned Senior Counsel for the Appellant contended that the Respondent could not claim “fee continuity” on the basis of internal file notings. Reliance has been placed on the well entrenched legal principle that estoppel has no efficacy against a



statute. Sethi Auto Service Station vs. Delhi Development Authority 2009 (1) SCC 180 clarifies this position thus -

13. Thus, the first question arising for consideration is whether the recommendation of the Technical Committee vide minutes dated 17th May, 2002 for re-sitement of appellants petrol pumps constitutes an order/decision binding on the DDA?

14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned.

15. In Bachhittar Singh v. The State of Punjab AIR 1963 SC 395, a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file,



which order was not communicated to the person concerned. Referring to the [Article 166\(1\)](#) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said Article and was then communicated to the party concerned. The court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.

16. To the like effect are the observations of this Court in [Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr. 2003 \(3\)](#)



SCR 409, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right. ”

16. After considering the submissions of the learned Senior Counsel for both parties and appreciating the facts of the case, it is evident to us that as per Clause 4 of Schedule III, the Respondent was not an ‘entity’ as envisaged in the Regulations as would be entitled to “fee continuity” or exemption from payment of fees. The Regulation 4 clearly refers to a newly formed entity through conversion from either a sole proprietorship or a partnership to a limited Company, which alone has been bestowed the benefit of continuity. Given that the Respondent is barred by the provisions, the Appellant’s internal file notings are of no consequence and the Appellant is not estopped from coming to a contrary conclusion. The Respondent’s argument that the Appellant experienced a change of heart after the issuance of the Circular dated 28.3.2002 is untenable, because if that was indeed what the Respondent believed, it would not have written a letter requesting fee continuity on 4.2.2002, a date prior to the issuance of the circular dated 28.3.2002. Thus, the Respondent has failed to prove that it believed it was granted fee continuity, in light of its letter to the Appellant requesting the same. Further, it appears to us that the Respondent was an entity quite distinct from Oracle, with the



consequence that it would be bound to pay the fee in accordance with Schedule III, Clause (a) or (b) as the case may be, and would not be entitled to claim the advantage of Clause (c). In fact, this is the very understanding of the Respondent since fees were deposited by them under Clause (a) in sharp contradistinction of Clause (c). ”

The learned counsel for the respondent-State has also relied on a judgment rendered by the Hon’ble Apex Court in the case of *Sarva Shramik Sanghatana (KV) vs. The State of Maharashtra & Ors.*, reported in (2008) 1 SCC 494, paragraphs no. 14, 15, 16 & 17 whereof are reproduced herein below:-

“14. On the subject of precedents Lord Halsbury, L.C., said in *Quinn v. Leathem*, **1901 AC 495**:

"Before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually



decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

We entirely agree with the above observations.

15. [In Ambica Quarry Works vs. State of Gujarat & others \(1987\) 1 SCC 213](#) (vide paragraph 18) this Court observed:-

"18. The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

16. [In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd \(2003\) 2 SCC 111](#) (vide paragraph 59), this Court observed:-

"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

17. As held in [Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another \(AIR 2004 SC 4778\)](#), a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:-



"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

10. In *London Graving Dock Co. Ltd. vs. Horton* (1951 AC 737 at page 761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In *Home Office vs. Dorset Yacht Co.* (1970 (2) All ER



294) Lord Reid said,

"Lord Atkin's speech is not to be treated as if it was a statute definition; it will require qualification in new circumstances." Megarry, J. in *(1971)1 WLR 1062* observed:

"One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament."

And, in *Herrington v. British Railways Board (1972 (2) WLR 537)* Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such



cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

I have heard the learned counsel for the parties and perused the materials on record and I find from a bare perusal of the Industrial Incentive Policy, 2006 and the Annexures thereto that the said Policy, as notified in the gazette on 25.07.2006, under clause-2(vi) provides for availing 80% reimbursement by the new units, against the admitted VAT amount deposited in the account of the Government, for a period of ten years and the clarification thereof admittedly postulates that incentive would not be payable on the amount imposed as penalty and the difference of amount between tax assessed and accepted under the Central Sales Tax/Bihar Value Added Tax Act, 2005 and Bihar Entry Tax Act, meaning thereby that the incentive would



be payable on the rest of the amount under the aforesaid three types of taxes i.e. Central Sales Tax, Bihar Value Added Tax and the Bihar Entry Tax. Moreover, Annexure-III to the Industrial Incentive Policy, 2006 contains the format of pass-book to be maintained for the purposes of claiming the incentive under clause-2(vi) and the same takes into consideration the amount of tax admitted under the Bihar Value Added Tax Act as also the amount paid against the amount of tax admitted under the Bihar Entry Tax Act, hence, there is nothing left for either speculation or determination or adjudication and the plain meaning thereof would definitely have only one connotation i.e. subsidy/incentive would not only be available on VAT but also on Entry Tax. This Court further finds that the form of return under the Bihar VAT Act, bearing Form RT-III clearly depicts that the amount deposited by an assessee by way of Entry Tax forms an integral part of amount of admitted VAT of the assessee, hence the two cannot be separated, thus, the subsidy/incentive under clause 2(vi) of the Industrial Incentive Policy, 2006 shall also cover subsidy/ incentive on Entry Tax. Furthermore, there is no provision in the entire Industrial Incentive Policy, 2006 which postulates exclusion of the amount of Entry Tax from the term “admitted VAT”, nonetheless, the Policy has specifically excluded the



amount of penalty and the amount of difference between the admitted tax and assessed tax under the Central Sales Tax, Bihar Value Added Tax, 2005 and the Bihar Entry Tax. Thus, it is amply demonstrable that the State Government has envisaged to give subsidy/incentive, under the Industrial Incentive Policy, 2006, qua the amount of admitted VAT, which apparently also includes Bihar Entry Tax. This Court is of the view that merely the heading of a provision/clause cannot be relied upon since the same is not always determinative in the matter of interpretation of the policy and the language of the provision coupled with the policy as a whole must be looked into and if the language employed is clear, unambiguous and unequivocal, it must be given effect to, notwithstanding the fact that certain portion of the heading may be inconsistent with the substantive provision. Thus, upon a wholesome reading of the entire Industrial Incentive Policy, 2006 along with its Annexures, this court finds that the provisions contained in the Industrial Incentive Policy, 2006 regarding grant of subsidy/incentive on VAT/Entry Tax is clear, unambiguous as also unequivocal and the only meaning and effect thereof is that subsidy/incentive is to be granted on payment made towards admitted Tax on account of Bihar VAT Act, Bihar Entry Tax Act as well as the Central Sales tax Act.



This Court is of the further view that once the State Government has made a clear and unequivocal promise regarding grant of subsidy/incentive, as aforesaid, knowing and intending that it would be acted upon by the promisee and 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. It is a well settled law that the doctrine of promissory estoppel is applicable against the government in exercise of its governmental, public or executive functions and the doctrine of executive necessity on the freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel.

This Court is of the further view that reliance of the respondent-State on the heading of clause-2(vi) of the Industrial Incentive Policy, 2006, to contend that subsidy/incentive is available only on VAT, is a clear misinterpretation of the policy as also a myopic view arising out of constricted and circumscribed reading of the Industrial Incentive Policy, 2006. The reliance of the learned counsel for the respondent-State on the circular dated 31.09.2007, whereby and whereunder the format of the pass-book at Annexure-III to the Industrial



Incentive Policy, 2006 has been changed, is also misplaced inasmuch as by an executive fiat, the Industrial Incentive Policy, 2006 which has been approved by the Legislature as well as has been notified in the official gazette of the State on 25.07.2006, cannot be amended. Consequently, the said circular of the State government dated 31.09.2007 has got no force and applicability as far as grant of subsidy/incentive under the Industrial Incentive Policy, 2006 is concerned.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition stands allowed with a direction to the respondents to grant subsidy / reimbursement to the petitioner under the Industrial Incentive Policy, 2006, qua the payments made by it towards admitted Tax under the Bihar VAT Act, Bihar Entry Tax Act and the Central Sales tax Act, for the relevant period for which the petitioner is entitled to, within a period of three months of receipt/production of a copy of this Order.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	22.08.2019
Uploading Date	19.08.2020
Transmission Date	19.08.2020

