



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

DATED : 29.07.2013

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**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE PIUS C. KURIAKOSE
HON'BLE MR. JUSTICE S. W. WANGDI, JUDGE**

Writ Petition (Civil) No. 48 of 2011

Sheela Foam Pvt. Ltd.,
National Highway No. 31A,
Baghey Khola, P.O. Majitar,
Rangpo, East Sikkim - 737 132.

Through,
Mr. Alok Sharma,
Son of late H. P. Sharma,
Head of Department - Legal,
M/s. Sheela Foam Pvt. Ltd.,
37/2, Site No. IV, Industrial Area,
Sahibabad, Ghaziabad,
Uttar Pradesh.

..... **Petitioner.**

- versus -

1. The State of Sikkim,
Through
The Commissioner-cum-Secretary,
Department of Commerce &
Industries,
Government of Sikkim,
Secretariat Annexe-I (3rd Floor),
Gangtok.



2. Commissioner of Commercial Taxes,
Commercial Taxes Division,
Finance, Revenue and Expenditure
Department,
Government of Sikkim,
Gangtok - 737 101, Sikkim.
3. The Deputy Commissioner of
Commercial Taxes,
Commercial Taxes Division,
Finance, Revenue and Expenditure
Department,
Government of Sikkim,
Gangtok - 737 101, Sikkim.
4. The Secretary,
Law Department,
Government of Sikkim,
Tashiling,
Gangtok - 737 101 (Sikkim).

..... **Respondents.**

- For Petitioner : M/s. Bhasker Raj Pradhan, Sr.
Advocate with Yangchen D. Gyatso,
Yadev Sharma and Karma Tshering
Bhutia, Advocates.
- For State- Respondents : M/s. J. B. Pradhan, Add. Advocate
General, Karma Thinlay Namgyal,
Sr. Govt. Advocate with S. K.
Chettri, Asstt. Govt. Advocate and
Sonam Dorjee Lepcha, Legal
Retainer, CTD, FR & ED

J U D G M E N T

Pius, CJ.

The petitioner, a company engaged in the
business of manufacture and sale of mattresses and



other foam products, has filed this writ petition under Article 226 of the Constitution of India seeking, *inter alia*, the following reliefs: -

- (i) A declaration that Section 12(A) of the Sikkim Industrial Promotion and Incentive Act, 2000 (Act No. 18 of 2000) as amended by the Sikkim Industrial Promotion and Incentive (Amendment) Act, 2007 (produced as Annexure P-15 in the writ petition) by section 4 thereof as *ultra vires* the Articles 14 and 19 (1) (g) of the Constitution of India and violative of the doctrine of promissory estoppel and quash the same.
- (ii) A writ of certiorari striking down the Assessment Order dated 08.02.211 for the period of April 2003 to March 2005 issued by third respondent.
- (iii) A writ of certiorari striking down order dated 25.04.2011 issued by third respondent on the Review Petition filed by the petitioner holding that the amount of sale declared in Form-C is a primary information received from party of transaction while the amount of sale declared in the return is only report of



the actual sale, therefore, in case of any variation, the former should prevail over the purpose of assessment of tax.

- (iv) A writ of certiorari striking down impugned Notice of Demand No. 115/CT dated 04.07.2011 issued by third respondent to the petitioner directing the petitioner to pay a sum of Rs.46,00,657/- to the Bank (Annexure P-47 Notice).
- (v) Issue a writ of certiorari striking down Annexure P-48 revised Assessment Order dated 16.07.2011 for the period from April, 2003 to March. 2005.
- (vi) Issue a writ of certiorari quashing down Annexure P-51 letter issued by the third respondent seeking recovery of Central Sales Tax amounting to Rs.46,00,657/-.
- (vii) Issue a direction to the State-respondents to issue Central Sales Tax exemption notification in favour of the petitioner company under Section 8(5) of the Central Sales Tax Act, 1956 with effect from the date of its commercial production by the petitioner company i.e. 09.10.2003.



2. The respondents in the writ petition are State of Sikkim represented by the Commissioner-cum-Secretary, Department of Commerce and Industries (R-1), Commissioner of Commercial Taxes (R-2), Deputy Commissioner of Commercial Taxes (R-3) and Secretary, Law Department, Government of Sikkim (R-4). As pleaded, the case of the petitioner is that the State of Sikkim is one of the least industrially developed States in the country and, therefore, it had made all round efforts for the growth of industries and generation of employment to bring it at par with other States of the country. With this purpose, the State Government introduced various policies/schemes/notifications etc. from time to time granting benefits, concessions, subsidies and other reliefs to industrial units. A notification bearing No. G.O./2/DI/96-97 dated 18.12.1996 (referred to as Industrial Policy of 1996) was issued by the first respondent launching an industrial policy of the Government of Sikkim. Under this policy major steps were taken for the promotion of the industries in the State and Annexure P-2 is a copy of the above policy. Under the above policy as a strategy for attracting new industries to the State, the



Government made an "announcement of attractive package and fiscal incentives" to the entrepreneurs. According to the petitioner, for generating the entrepreneurial spirit and encourage investment in the industry, the Government announced an attractive package of incentives and facilities. Petitioner submits that the Industrial Policy of 1996 was later replaced by a fresh scheme in the shape of an Act (Annexure P-3), by name "The Sikkim Industrial Promotion and Incentives Act, 2000". It is submitted that under the provision of that Act also various specific benefits have been provided to the entrepreneurs and Section 13(2) of that Act provides that the sanctioning authority may with the approval of the Government from time to time notify additional benefits and concessions to industrial units. It is then submitted that the first respondent issued Annexure P-4 notification on 03.10.2000 exempting new industrial units other than negative industries set up after enactment of Incentive Act from payment of sales tax for a period of 5 years from the date of going in for commercial production. Copy of this notification is referred to as exemption notification and produced as Annexure P-4.



3. According to the petitioner, inspired by the Industrial Policy of 1996, the Incentive Act, 2000 and Annexure P-4 exemption notification, the petitioner found it feasible to set up an industry in the State of Sikkim and started investing money for the purpose of establishing the petitioner's company in the State of Sikkim in the year 2001 itself. Annexure P-5, Lease Deed dated 21.09.2011 was entered into by the petitioner company with the State of Sikkim for the above purpose. Thereafter, the petitioner obtained the requisite registration and certificate under the Sikkim Sales Tax Act and Central Sales Tax Act and Annexure P-6 collectively are the copies. According to the petitioner, during the period from 2001 to 2003, they invested an amount of more than Rs.7.00 crores for the purpose of establishment of the petitioner company in the State of Sikkim. The petitioner points out that thereafter for the year 2003 the State Government launched another scheme by name State Scheme of Incentive for Industries, 2003. It is pointed out that a copy of that Scheme is even now available in the official web-site of the first respondent i.e.



www.sikkimindustries.gov.in, which reflects that the said web-site was last updated on 11.05.2007. It is provided therein that the Central and State Sales Tax be exempted for a period of 9 years from the date of commencement of actual commercial production. Annexure P-7 is a copy of the above said Scheme of Incentive for Industries, 2003 downloaded from the web-site.

4. According to the petitioner, the Incentive Act, 2000, exemption notification 2000 and Annexure P-7 Scheme will clearly show that the State Government had clearly promised, held out and provided for exemption from payment of both State and Central Sales Tax. The petitioner submits that they completed setting up their unit for production of foam and foam products by investing more Rs.1.00 crore in the leased premises at Baghey Khola, West Pendam, East Sikkim by October, 2003 and commercial production started with effect from October, 2003. The main reason for installation of the unit in Sikkim was the exemption being available to the petitioner and as per the clear representations made to it by the various policies etc.



of the Government. Had it not been for such representation the petitioner would not have undertaken the huge investment and extra expenses due to the location.

5. It is then submitted that the Incentive Act, 2000 was amended by the Sikkim Industrial Promotion and Incentive (Amendment) Act, 2003 by which section 12 of the Incentive Act was amended and a new section 12 A was inserted, which reads as follows: -

"12A (1) The State Sales Taxes shall be exempted for a period of 10 (ten) years from the date of commencement of actual Commercial Production. However, for the units set up in the thrust areas, the exemption period will be 12 (twelve) years.

(2)

(3) Exemption of Central Sales Taxes and Central Excise Duties will be governed by various Notifications/Orders issued by Government of India in this regard."

A copy of the amendment Act, 2003 is produced as Annexure P-8.

6. The petitioner claims that even after the amendment Act, 2003, the exemption under the Central Sales Tax Act, 1956 which was granted to the

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industries by way of the Incentive Act, 2000 read with Exemption Notification, 2000 and State Scheme of Incentives for Industries, 2003 continued to be in operation. In this connection, it is pointed out that the said amendment Act, 2003 did not specifically repeal the earlier Exemption Notification, 2000 or state that the Central Sales Tax shall not be exempted. According to the petitioner even after the amendment in the absence of any contradictory notifications of the Government of India, it has to be presumed that the Exemption Notification, 2000 and the State Scheme of Incentives for Industries, 2003 will continue to be in operation. The petitioner has pointed out that even after the commencement of the Incentive Act, 2003 the official web-site of the Government continued to represent that Central Sales Tax and State Sales Tax shall be exempted for a period of 9 years from the date of commencement of actual commercial production. According to the petitioner, the State Government has been enjoying the benefits from the investment made by the petitioner in the form of industrial development in the State, contribution to labour and employment. The petitioner has given details of the number of



employees engaged in the Unit and various amounts expended by the petitioner towards various heads including Environment Cess, professional tax, electricity tariff, etc.

7. According to the petitioner, they have been diligently filing their quarterly returns under the Central Sales Tax Act, 1956 read with Sikkim Sales Tax Act, 1983 and the Central Sales Tax (Sikkim) Rules, 1983. Section 11 (1), 11 (2) of the Sikkim Sales Tax Act, 1983 are referred to by the petitioner in this context and produced as Annexure P-9 by the petitioner are copies of the quarterly returns of the petitioner. The petitioner submits with reference to Annexure P-9 that the petitioner had all throughout claimed exemption from payment of Central Sales Tax. Petitioner did not pay to the Government any Central Sales Tax as the same was not payable. No action was taken by the Government or more particularly respondent No. 2 and 3 and therefore it is to be deemed that respondent No. 2 and 3 have all along found that returns filed were in order and accepted the fact that the Central Sales Tax was exempted for the returns filed. The petitioner



submits that after completion of all the formalities he contacted the first respondent for the grant of necessary benefits under the Industrial Policy of the State. The first respondent sent an eligibility letter to the Joint Commissioner, Income and Sales Tax Division, Finance Department informing him that the petitioner has made an investment of more than Rs.1.00 crore and they have become eligible to avail benefits/concessions as admissible under the Industrial Policy and other Acts. Annexure P-10 is a copy of the letter. The petitioner submits that on the basis of above letter petitioner received a communication Annexure P-11 from the Assistant Commissioner, Income Tax and Commercial Tax Division, Finance Department on 10.06.2004. In this letter *inter alia* it is stated that the Central Sales Tax exemption notification issued by the Government of India should be submitted by the petitioner. According to the petitioner it is State Government which has been vested with the power for granting exemption from Central Sales Tax. No action was taken for granting exemption to the petitioner from Central Sales Tax even after the petitioner had started commercial production.



8. The petitioner annexed Annexure P-12 letter dated 04.05.2005 to the second respondent informing the second respondent that the petitioner had already exempted to collect and deposit Sate Sales Tax as well as Central Sales Tax as per Sikkim Industrial Policy and therefore they are not collecting or charging any VAT/CST from their customers. Pursuant to Annexure P-12 some of the officials of the second respondent visited the petitioner's factory premises and asked the petitioner to furnish certain documents. The petitioner submitted Annexure P-13 letter in response and requested that necessary Exemption Certificate be issued at the earliest. The petitioner points out that by Annexures P-13A and P-13B the second respondent granted exemption from payment of Central Sales Tax under section 8(5) of the Central Sales Tax Act, 1956 for the period from 11.03.1999 to 14.11.2000 and 11.3.1999 to 10.03.2006 to M/s Mount Distilleries Ltd., Majitar, Rangpo and it is pointed out that Annexures P-13A and P-13B were issued even after Sikkim Promotion and Incentive Act, 2000 amended by incorporating section 12A. As the Exemption



Notification in the case of the petitioner was not issued forthwith, the petitioner sent Annexure P-14 letter to the fourth respondent. The petitioner then points out that Annexure P-14A Exemption Notification was issued by the Government in favour of M/s Denzong Laboratories Pvt. Ltd. Even during the subsistence of section 12A of the Amendment Act, 2003, according to the petitioner they are also entitled to issue Exemption Notification under section 8(5) of the Central Sales Tax Act, 1956 from the date on their commercial production on the doctrine of parity as the petitioner is similarly placed industrial unit as M/s Mount Distilleries Ltd. and M/s Denzong Laboratories Pvt. Ltd.

9. The petitioner then points out that vide Notification No. 11/LD/P/07 dated 01.05.2007 the Law Department of the Government of Sikkim issued the Sikkim Industrial Promotion and Incentive (Amendment) Act, 2007 (Act No. 11 of 2007) providing squarely under section 12A that Central Sales Tax shall not be exempt. As Annexure P-15 the petitioner has exhibited a copy of the impugned Sikkim Industrial Promotion and Incentive (Amendment) Act, 2007. The



petitioner points out that commencement of the above Act came into force with effect from 01.05.2007 and the above Act therefore had no retrospective effect. According to the petitioner the promulgation of Amendment Act, 2007 amounts to violation of the promise held out by Government for luring units like the petitioner which were earlier granted exemption from payment of Central Sales Tax and local Sales Tax for a period of 12 years. The impugned Amendment Act, 2007 curtails the above exemption midway.

10. The petitioner has produced Annexure P-16 copy of the Notification dated 29.05.2007 under which the second respondent exempted the petitioner from payment of State Sales Tax in respect of inter-State sales of its products for a period of 10 years from the date of commencement of commercial production. Thereafter, Annexure P-17, notice was sent to the petitioner by the second respondent requiring the petitioner to furnish proof of payment of Central Sales Tax on the turnover of inter-State sales made upto 31.12.2007. The petitioner submits that Annexure P-17 notice dated 21.01.2008 was the first letter written



by the second respondent to the petitioner regarding issue of Central Sales Tax. To Annexure P-17, the petitioner sent Annexure P-18 letter dated 31.01.2008 to the first respondent. Thereafter, the petitioner submitted Annexure P-19 letter dated 27.03.2008 to the Chief Minister of the State demanding justice in the matter of withdrawal of Central Sales Tax Exemption by the Government. To Annexure P-19 letter the first respondent gave Annexure P-20 reply. Thereafter, vide notice dated 06.06.2009, the third respondent informed the dealers engaged in inter-State trade and commerce that all dealers engaged in sale in course of inter-State trade or commerce are required to obtain separate declaration Form-C from the buying dealers of other States for all the sales effected during each quarter of a financial year.

11. It was further informed that in pursuance of Rule 12 (5) of the Central Sales Tax (R&T) Rules, 1957 separate declaration Form-F is to be obtained from consignee for stock transfer effected during each month. The petitioner on 23.06.2009 requested the third respondent vide Annexure P-22 letter for issuance

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of Way Bills to enable the petitioner to dispatch its goods outside the State. On the same day (23.06.2009) the third respondent vide its show cause notice dated 23.06.2009 informed the petitioner that the petitioner has refused to pay the CST which is payable and directed the petitioner to appear for a hearing in connection with the proposal to cancel the petitioner's registration. The petitioner was also directed to furnish Bank Guarantee for `30.00 lakhs if the petitioner intends to apply for issuance of Way Bills. To Annexure P-23 the petitioner submitted Annexure P-24 reply to furnish Bank Guarantee of Rs.30.00 lakhs with the request for issuance of Way Bill. The petitioner sent a detailed reply Annexure P-25 also. Thereafter, the petitioner sent Annexure P-26 letter to the first respondent once again requesting for issuance of Exemption Notification under section 8(5) of the Central Sales Tax Act, 1956 for exempting them from payment of CST in terms of the Industrial Policy.

12. Third respondent vide its notice dated 01.09.2009, Annexure P-27 sought to assess the petitioner from October, 2003 to March, 2009 for



Central Sales Tax. Thereafter the petitioner received Annexure P-28 communication from the third respondent informing the petitioner that the competent authority had declined to consider the request of grant of exemption from CST on ground that the industrial unit of the company does not qualify for exemption as per the Sikkim Industrial Promotion and Incentive Act, 2000 and the Sikkim Industrial Promotion and Incentive (Amendment) Act, 2003. On receiving Annexure P-28, the petitioner sent Annexure P-29 representation to the Chief Minister. The petitioner also produced along with the writ petition Annexure P-30 'No Due Certificate' issued by Sikkim Industrial Development & Investment Corporation stating that the consideration payable on account of lease deed had completely settled by the petitioner.

13. In the meanwhile, on 20.11.2010 the petitioner received Annexure P-31 communication from the Assistant Director, Department of Commerce and Industries informing the petitioner that the Government could not consider petitioner's request for exemption from Central Sales Tax. Pursuant to that, on



24.11.2010 the third respondent sent Annexure P-32 letter to the petitioner informing the petitioner that unless the petitioner submits declaration Form-C and F and proof of sale of goods across custom frontier of India, the petitioner's return will be treated as invalid. Thereafter, Annexure P-33 Assessment Order was issued by the third respondent imposing on the petitioner Rs.49,61,781/- towards non-payment of Central Sales Tax together with one-tenth of tax assessed as CST and penalty. According to the petitioner Annexure P-33 is illegal. Annexure P-33 is followed by Annexure P-34 final hearing notice. The petitioner filed application for review under section 9(2) of the Central Sales Tax Act read with section 21 of the Sikkim Sales Tax Act praying therein for review of the Assessment Order. Annexure P-35 is a copy of the application for review. The third respondent sent hearing notice Annexure P-36 in respect of review application. The petitioner submitted Annexure P-37 for time extension application for hearing on review application. To that the third respondent sent Annexure P-38 finally fixing time for hearing of review application. The petitioner vide Annexure P-39 once

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again seeking extension of time for hearing. At last on 25.04.2011 the review petition was heard and Annexure P-40 impugned order dismissing the review petition was passed on 25.04.2011. Based on Annexure P-40, Annexure P-41 demand-cum-notice was sent to the petitioner. To Annexure P-41, the petitioner addressed Annexure P-42 to the third respondent contending that Annexure P-42 was not valid. The petitioner once again made a representation to the Chief Minister vide Annexure P-43 letter dated 30.04.2011 requesting for grant of sales tax exemption and for issuance of notification to that effect. The petitioner sent Annexure P-44 letter dated 03.05.2011 to the third respondent. To that the third respondent sent Annexure P-45 communication on 04.05.2011 to the petitioner.

14. Pursuant to the directions given by the Chief Minister of Sikkim on Annexure P-43 letter submitted by the petitioner to the Chief Minister, the third respondent issued Annexure P-46 letter to the petitioner directing the petitioner to produce security deposit of Rs. 2.00 crores under section 7(3A) of the



Central Sales Tax Act, 1956. The petitioner, however, could not comply with the above direction. Thereafter, the third respondent issued impugned notice dated 04.07.2011 directing the petitioner to pay a sum of Rs.46,00,657/- towards Central Sales Tax and penalty. Annexure P-47 is the impugned notice dated 04.07.2011. Thereafter on 16.07.2011 the third respondent issued revised Assessment Order to the petitioner. Under the revised Assessment Order also Rs.46,00,657/- was assessed on the petitioner as Central Sales Tax. Annexure P-48 is a copy of the revised Assessment Order. On receiving Annexure P-48 the petitioner sent Annexure P-49 letter to the 3rd respondent dated 26.07.2011 informing the third respondent that they had deposited Bank Guarantee of Rs.1,30,00,000/- and requested for 3 months time against the Bank Guarantees. This was followed by another letter dated 29.08.2011 sent by the petitioner to the third respondent seeking extension of period of furnishing security pending decision in the sales tax exemption matter. Annexure P-50 is produced as a copy of the above letter. However, on 19.9.2011, the third respondent issued impugned letter informing the



petitioner that the petitioner's application for grant of exemption from Central Sales Tax was declined. Annexure P-51 is a copy of the third respondent's impugned letter. On the same day (19.9.2011) the third respondent issued Annexure P-52 notice to the petitioner directing the petitioner to appear for hearing on 27.09.2011 regarding the assessment of Central Sales Tax on disposal of inter-State trade effected during the period from 01.04.2005 till 31.03.2011 along with account books etc, failing which assessment case would be decided ex-parte.

15. On receiving Annexure P-52 the petitioner informed the third respondent vide Annexure P-53 letter dated 21.09.2011 that the Hon'ble Chief Minister had been moved and that the matter may be kept in abeyance till the Chief Secretary takes decision pursuant to the direction given to him by the Chief Minister. The petitioner then submitted that on 27.09.2011 there was a fire incident in the premises of the petitioner wherein the entire stock of finished and semi finished goods which are kept in the finished storage area, and even account documents were



destroyed in this fire incident. The information regarding this was sent by the petitioner to the third respondent vide Annexure P-54 letter dated 27.09.2011. On the same day petitioner sent another letter to the third respondent seeking for further time for hearing the matter of Central Sales Tax assessment. Annexure P-55 is a copy of that letter.

16. The third respondent vide its letter dated 10.10.2011 informed the petitioner to appear for hearing on 07.11.2011 with relevant books of accounts and documents for assessment. Annexure P-56 is a copy of that letter. In the meanwhile, on 10.10.2011 the third respondent invoked the Bank Guarantee which had been issued on the Central Bank of India, Gangtok Branch for the recovery of Rs.46,00,657/-. The above letter is produced as Annexure P-57.

17. The petitioner sent Annexure P-58 letter dated 17.10.2011 once again requesting the third respondent that the recovery proceedings be kept in abeyance. Thereafter, Annexure P-59 letter was sent by the petitioner to the third respondent on 19.10.2011 explaining the position and requesting that the



encashment of the bank guarantee furnished should be treated as made "under protest". Following this the petitioner sent Annexure P-60 letter to the Assistant General Manager, Central Bank of India, Gangtok Branch, requesting him to withhold the remittance of Bank Guarantee as the High Court was being moved. On the above facts and raising various grounds the petitioner has filed this writ petition seeking reliefs already indicated.

18. To the writ petition a counter affidavit has been filed on behalf of respondents 1, 2, 3 and 4 denying all the allegations and claims of the petitioner and raising various contentions. Certain preliminary objections have also been raised in the counter affidavit to the following effect: -

- (i) The petitioner has not availed alternative remedies as provided under State Sales Tax Act, Central Sales Tax Act, 1956 and State Value Added Tax Act for filing appeal against the order of assessment. It is also contended by way of preliminary objections that the writ petition is not maintainable as



no fundamental or other legal right of the petitioner has been violated. It is then contended by way of preliminary objection that the petitioner was very well aware from the very beginning that in order to secure an exemption from payment of Central Sales Tax, the petitioner was required to get the approval of the State Government through the Finance Department and for such exemption a notification in the official gazette was necessary.

(ii) It is then contended by way of preliminary objection that the petitioner was aware at least from 17.05.2004 that they are required to pay the Central Sales Tax and the instant writ petition has been filed only on 18.11.2011 i.e. almost after a period of 7 years is liable to be throw out on the grounds of delay and laches.

(iii) It is then contended by way of preliminary objection the petitioner cannot claim parity with other two companies who are exempted



from paying Central Sales Tax as the petitioner does not fall within the same footing of those companies.

19. Along with the counter affidavit a copy of State Scheme of Incentives of for Industries, 1996 is produced as Annexure R-1 also produced as Annexure R-2 is a copy of the Government Gazette dated 07.07.2000 notifying the Sikkim Industrial Promotion and Incentive Act, 2000 (Act No. 18 of 2000). Section 13 (1) of the above Act is also highlighted in the counter affidavit. A copy of Government notification dated 03.10.2000 notifying concession or exemption towards State Excise Duty and Sales Tax is produced as Annexure R-3.

20. Also produced along with the counter affidavit is the notification by which the Sikkim Industrial Promotion and Incentive (Amendment) Act, 2003 incorporating section 12A was notified by the Government in the Gazette (Annexure R-4). Along with the counter affidavit a copy of Sikkim Industrial Promotion and Incentive (Amendment) Act, 2007



granting section 12 A and declaring that the Central Sales Tax shall not be exempted, is produced as Annexure R-5. The counter affidavit refers to section 20 of the Central Sales Tax, 1956 and clause 73 of Sikkim Value Added Tax and points out that if a person is aggrieved by an order of assessment he is to prefer a statutory appeal before the appellate authority.

21. Produced as Annexures R-8 and R-9 along with the counter affidavit are copies of the notifications published in the Government Gazette granting exemption from payment of State Sales Tax to various industrial units and it is submitted that this exemption are granted under sub-section (1) and (2) of section 13 of Sikkim Sales Tax Act and under section 5(2) of the same Act. It is pointed out that the petitioner was also issued with an exemption certificate under sub-section (2) of section 5 of the Sikkim Sales Tax Act granting exemption from payment of Sales Tax.

22. The petitioner's claim for parity with M/s Mount Distilleries Ltd. and M/s Denzong Laboratories Pvt. Ltd. is repudiated giving reason. It is pointed out



that M/s Mount Distilleries Ltd. and M/s Denzong Laboratories Pvt. Ltd. had established their units on 23.04.1998 and 27.05.1999 respectively and they had commenced their commercial production on 11.03.1999 and 15.07.1999 respectively. Therefore, these two industrial units are governed by notification No. G.O./2DI/96-97 dated 18.12.1996 by the Industrial policy of 1996. This is why these two industrial units were granted exemption from CST under section 8(5). Produced is Annexure R-12, copies of the application form submitted by two industrial units for permanent registration. The counter affidavit has given details of various industrial units in Sikkim who were established and commenced their commercial production after the Sikkim Industrial Promotion and Incentive Act, 2000 and are paying CST. The table giving details of 16 industrial units who were established, and started commercial production after coming into force of Sikkim Industrial Promotion and Incentive Act, 2000 is given at Annexure R-13, copy of the statement of payment of CST by the above companies is also produced.



23. Produced along with the counter affidavit are Annexures R-14 and R-15, copies of letters dated 07.04.2006 and 21.01.2008 by which it has been clarified that the petitioner is liable to pay Central Sales Tax. Copies of letter dated 27.03.2008, 22.08.2009 and 14.09.2009 are marked collectively as Annexure R-16 and are produced to show that the government has never accepted the petitioner's request for issuance of notification granting Central Sales Tax exemption.

24. Each and every allegation, averment and claim of the petitioner in the writ petition has been strongly repudiated in the counter affidavit, wherein parawise replies to the averments in the writ petition are given. To the above counter affidavit, the rejoinder affidavit which was later amended, has been filed by the petitioner. In the rejoinder affidavit the petitioner has reiterated the contentions raised by them earlier and along with the same Annexure P-61. Copy of the notification bearing No. G.O./2/DI96-97 dated 18.12.1996 announcing the industrial policy of the Sikkim Government from the official web-site of the first respondent is also produced.



25. We have heard the submissions of Mr. B. R. Pradhan, learned senior counsel for the petitioner and Mr. J. B. Pradhan, learned Additional Advocate General for the State and its public offices.

26. Mr. B. R. Pradhan, would expatiate the principles of promissory estoppel and legitimate expectation. According to him these two principles would bar the Government from contending now that the petitioner company is not entitled for Central Sales Tax exemption. In this connection he drew our attention at Annexures P-33, P-48, P-47, P-51 and P-57 and submitted that the State is bound by the promise held out by them vide notification dated 03.10.2000 acting on which the petitioner company set up its factory at Majitar, East Sikkim investing more than Rs.7.00 crores, the fact which has not been specifically denied by the State.

27. Reliance was placed by Mr. B.R. Pradhan on the judgments of the **Hon'ble Supreme Court** in (i) **State of Bihar vs. Kalyanpur Cement Ltd : (2010)**



3 SCC 274; (ii) MRF Ltd., Kottayam vs. Asstt. Commissioner (Assessment) Sales Tax : (2006) 8 SCC 702; (iii) Pepsico India Holdings Private Ltd. vs. State of Kerala : (2009) 13 SCC 55; (iv) Mahabir Vegetable Oils (P) Ltd. vs. State of Haryana : (2006) 3 SCC 620; (v) Union of India vs. Anglo Afghan Agencies : AIR 1968 SC 718; (vi) State of Uttar Pradesh vs. Vam Organic Chemicals Ltd. : (2010) 6 SCC 222; (vii) Pine Chemicals Ltd. vs. Assessing Authority : (1992) 2 SCC 683; (viii) DCM vs. Union of India : (1998) 1 SCC 86; and (ix) Pournami Oil Mills vs. State of Kerala : (1986) Supp SCC 728.

28. In the context of the principle of legitimate expectation, Mr. B.R. Pradhan submitted that the State Government in the year 2003 floated yet another Scheme called the State Scheme of Incentive for Industries, 2003 under which it was specifically provided that Central Sales Tax and State Sales Tax shall be exempted for a period of 9 years from the date of commencement of actual production. This scheme was widely published from the year 2003 and it



continues to be available in the official website of the Industries Department, Government of Sikkim. Mr. Pradhan referred to Annexure P-7 and Annexure P-61 and submitted that the State Government has not denied the existence of the said Scheme and has in fact failed to explain why such scheme has been widely publicized in the official website till date. According to him the petitioner had a legitimate expectation that they would be granted Central Sales Tax as well as State Tax exemption for a period of 9 years from the date of commencement of commercial production i.e. 09.10.2003. Acting on the promise held out the petitioner did not burden its customers with CST liability and have informed the State Government time and again about the same vide Annexure P-18 and P-59. Mr. Pradhan placed strong reliance on the Supreme Court judgment in **State of Bihar vs. Kalyanpur Cement Ltd. (supra)** in this context. He also relied on Supreme Court judgment in **Assistant Commissioner (CT) LTU vs. Amara Raja Batteries Ltd : (2009) 8 SCC 209.**



29. Mr. Pradhan also argued on malice in law and malice in fact. As regards, malice in law, Mr. Pradhan submitted that the petitioner was lured to establishing its factory in an industrially under developed State and investing huge amounts of monies by making a promise of exemption from Central Sales Tax and State Sales Tax for specific period and having thereafter enjoyed benefits from its investments not only failed to keep its promise but in spite of repeated requests and reminders declined to grant such exemption and instead, first sought to wriggle out of its promise by issuing the Sikkim Industrial Promotion and Incentive (Amendment) Act, 2003 and providing that the exemption of Central Sales Tax would be governed by notifications/orders issued by the Government of India, although under section 8(5) of the Central Sales Tax Act, 1956 it was the State which had the power to grant such exemption. Thereafter, on 24.07.2006 the petitioner specifically pointed out to the Secretary, Law Department (Respondent 4) that under section 8(5) of the Central Sales Tax Act, 1956 that it was for the State to grant Central Sales Tax exemption and not the Government of India as mentioned in section 12A of



the Sikkim Industrial Promotion and Incentive (Amendment) Act, 2003. Within a few months thereafter the respondent No. 4 State issued the impugned notification dated 01.04.2007 yet again amending the Incentive Act, 2000 and providing under the amendment section 12A that Central Sales Tax shall not be exempted. The sequence unequivocally establishes that the State's action is actuated by malice in law and therefore vitiated. Thereafter, according to learned senior counsel the action of the State violates Articles 14 and 19(1)(g) of the Constitution of India.

30. Arguing that the action of State amounts to malice in fact, Mr. Pradhan submitted that the writ petitioner filed the present writ petition on 18.11.2011. The State filed its counter affidavit on 17.3.2012. In the said counter affidavit the State did not mention about the factum of having not been able to find the relevant materials or having lost the relevant and material documents pertaining to the facts in issue in the present case. But during the final hearing when this Court was compelled to direct the State vide Order dated 07.05.2012 to produce the relevant materials,



the State filed two affidavits stating that the vital material documents relating to the crucial issues were found misplaced and also stating that the State had lodged FIR on 30.05.2012 and on 26.05.2012. This Court was therefore compelled to pass the order dated 02.07.2012 observing, *inter alia*, "it is further revealed that the factum of missing records was also discovered by the respondents only during the pendency of this writ petition. This demonstrates a sorry state of affairs. The Department was not aware of the missing records at all and even the enquiry has been initiated after some observations by this Court. Enquiry Report further reveals that the enquiry has not been held with all seriousness as required by the Government Department. It seems an attempt is being made to withhold information from this Court. However, this aspect shall be considered at the time of final hearing and the Court is at liberty to draw adverse inference taking into consideration the relevant facts placed on records by the parties." The learned senior counsel further stated that the State is guilty of suppression of materials documents and also of misleading this Court by making false statements. Adverse inference against



the State under section 114(g) of the Indian Evidence Act must be taken. In the context of the above averments Mr. Pradhan relied on judgment of the Supreme Court in **S.R. Venkataraman vs. Union of India : (1979) 2 SCC 491** and **Punjab SEB Ltd. vs. Zora Singh : (2005) 6 SCC 776**.

31. Mr. Pradhan advanced arguments on the principle of doctrine of parity also and referred Annexures R-7, R-8 and R-6. Mr. Pradhan submitted that M/s Denzong Laboratories Pvt. Ltd. and M/s Mount Distilleries Ltd. were issued with exemption order under section 8(5) of the Central Sales Tax Act even after the commencement of the Amendment Act. On the principle of parity the petitioner company also deserves exemption. Lastly, Mr. Pradhan also referred to rules 11 and 12 of the Central Sales Tax (Sikkim) Rules, 1983 and section 13 of the Sikkim Sales Tax Act, 1983 and submitted that the present Assessment Order are barred by limitation. According to him, on the ground of limitation also the assessment and demand are to be quashed.



32. Mr. J.B. Pradhan, learned Addl. Advocate General supported by Mr. Karma Thinlay, learned Sr. Govt. Advocate would resist all the submissions of Mr. Bhaskar Raj Pradhan, learned senior counsel for the petitioner. He submitted that the Sikkim Government Industrial Policy of 1996 dated 18.12.1996 published in Sikkim Government Gazette dated 31.12.1996 was valid till 06.07.2000, when it got repealed and replaced by Sikkim Industrial Promotion & Incentive Act, 2000 (in short 'SIPI 2000') which came into effect on 07.07.2000. The petitioner-company started investing money for the purpose of establishing his unit only from 21.09.2001 when the Lease Deed was executed. Thus the petitioner cannot claim that their company was established prior to 21.09.2001. Annexure P-6 will show that commercial production was started by the petitioner's industry only from 09.10.2003. Therefore, the claim that the petitioner-company established its industrial unit during the currency of the 1996 Industrial Policy is without basis.

33. Learned Addl. Advocate General referred to Section 14 of SIPI Act, 2000 which provided for repeal



of this extended notifications, orders, instructions, circulars, schemes, etc. issued for the purpose of extending benefits to entrepreneurs. The learned Addl. Advocate General referred us also to Section 13 of SIPI Act, 2000 enabling the sanctioning authority to extend benefits, concessions or exemptions, etc. to entrepreneurs.

34. Our attention was drawn to Annexure R-3 notification dated 03.10.2000 gazetted by the Government on 04.10.2000 and it was argued that if at all the petitioner's company is entitled for benefits it is only under SIPI Act, 2000 and Annexure R-3 notification highlighting clauses 1 to 5. Placing Annexure R-3 notification before us, Mr. J.B. Pradhan would argue that it is clear on careful reading of the above notification that the exemption and benefits granted under the above notification is only in respect of State Excise Duty and State Sales Tax and not in respect of Central Sales Tax as argued by the petitioner's counsel.



35. Learned Addl. Advocate General would submit that the above position is clarified by sub-section (3) of Section 12 (a) of the SIPI Act, 2003, wherein it is provided that the exemption of Central Sales Tax and Central Excise Duty is governed by various notifications/ orders issued by the Government of India in this regard. Learned Additional Advocate General has submitted that the petitioner-company was well aware of the above position of law and the learned counsel referred to Annexure R-10 letter dated 30.03.2004 issued by the petitioner-company to the Special Secretary, Department of IT & ST, Government of Sikkim in this regard. The learned Additional Advocate General submitted that even after undertaking through the above letter that they would avail sales tax exemption as per Annexures R-2, R-3 and R-4 notifications, wherein it is clearly stated that the Central Sales Tax and Central Excise Duty will be governed by notifications issued by the Government of India, the petitioner is now taking a completely contrary stand of being exempted under the 1996 Industrial Policy. Annexure R-10, letter dated 30.03.2004 was deliberately suppressed by the



petitioner while filing this writ petition and therefore, according to the Addl. Advocate General the writ petition is liable to be dismissed on that score alone. Referring to Annexure P-14, a letter of the petitioner dated 24.07.2006 addressed to the Law Secretary, Government of Sikkim wherein the petitioner has sought for issuance of a notification under Section 8(5) of the Central Sales Tax Act exempting their unit from the payment of Central Sales Tax.

36. The learned Addl. Advocate General submitted that the petitioner has been taking a dual stand which shows the absence of bona fides in his conduct. The Addl. Advocate General would submit that the petitioner is already enjoying the State Sales Tax and Excise Duty exemption provided by the Scheme to the entrepreneurs from time to time under the SIPI Act, 2000.

37. Answering the allegation that the petitioner has been discriminated against vis-a-vis Mount Distilleries, Denzong Laboratories and M/s Akshay Ispat, Mr. Pradhan submitted that those three



industries were established on 23.04.1998, 15.07.1999 and 21.02.1999 respectively. Thus all those three industries were established prior to 06.07.2000 and during the currency of 1996 Industrial Policy, which clearly stipulated that Central and State Sales Tax shall be exempted for a period of 7 years from the date of commercial production. In order that an industry becomes eligible for benefits/concessions under 1996 Industrial Policy, the industry had to be established during the currency of the industrial policy, but as the petitioner-company was established its industry unit only on 21.09.2001. As such the petitioner-company cannot have eligibility to get any benefits or concession under the 1996 policy and the allegation that the discrimination has been argued based on the principles of promissory estoppels will not succeed.

38. Coming to the prayers for quashment of assessment order, Annexures P-33, P-40, P-47, P-48 and P-57 on the ground of the same being barred by limitation, Mr. J.B. Pradhan, learned Addl. Advocate General submitted that the petitioner-company had already subjected itself to the jurisdiction of the



statutory authority by filing the review petition. It is also argued that statutory efficacious alternative remedy is available to the petitioner under Section 20 of the CST Act, 1956 and the petitioner is also not entitled to seek such a relief in the constitutional jurisdiction of this Court.

39. We have given our anxious consideration to the rival submissions addressed at the bar. We have carefully gone through the pleadings raised by the parties in the form of affidavit, counter affidavit and rejoinder affidavit. We have scanned the various materials placed on record on either side. We have considered the principles emerging from the decisions cited at the bar. We find ourselves unable to grant any reliefs to the petitioner.

40. The petitioner is seeking relief on principles of promissory estoppel on the ground that after perusing the Industrial Policy of 1996 of the Government of Sikkim notified in the web-site of the Department of Commerce and Industries, under the caption "Concession on State and Central Sales Tax"



wherein it was provided that "Central and State sales tax shall be exempted for a period of 9 (nine) years, from the date of commencement of actual commercial production", the petitioner made a huge investment of Rs.7.00 crore to establish his industry in East Sikkim. The petitioner is now slapped with an assessment order directing him to pay a staggering amount of Rs.46,00,657/- towards the Central Sales Tax. The stand of the Government of Sikkim is that the petitioner the very grievance voiced by the petitioner is misconceived, the petitioner is not entitled for the benefits and concessions granted under the Industrial Policy of 1996 as this industry is not established during the currency of above policy of 1996 and the petitioner's industry was established during the currency of SIPI Act, 2000 under which the petitioner is eligible only for the benefits and concessions on account of State Sales Tax and State Excise Duty. Annexure R-2 notification dated 07.07.2000 clearly shows that the Industrial Policy of 1996 dated 18.12.1996 stood repealed and replaced by the Act No.18 of 2000 (in short SIPI Act, 2000), which came into force on 07.07.2000. The Lease Deed produced by



the petitioner itself at paragraph 15 of the writ petition supports the contention of the Government that the petitioner's industry was established only on 21.09.2001. Annexure P-6 Certificate dated 06.07.2004 produced by the petitioner itself will show that the petitioner-company started commercial production from 09.10.2003. We do not find any difficulty to accept the argument of learned Additional Advocate General as the petitioner's industry was established after the repeal of Industrial Policy, 1996 and during the currency of the SIPI Act, 2000. The petitioner-company cannot aspire for the benefit and concession extended to the entrepreneurs under the policy of 1996. The latter part of Section 14 of SIPI Act, 2000 provided for repeal and the above part is extracted herein below: -

"14. All the Notifications, orders, instructions, circulars, schemes etc. issued from time to time for the purpose of extending benefits/incentives/ concessions to industry both tiny, small scale or medium scale industry are hereby repealed....."

Section 13 of SIPI Act, 2000 also provided for period of exemption and Annexure R-3 notification dated



03.10.2000 notified the benefits, concessions or exemptions to the entrepreneurs in Sikkim.

41. Let us see what are the concessions and benefits that are extended to the entrepreneurs under the Annexure R-3 notification dated 03.10.2000. Under the above notification concessions of State Excise Duty has been granted for 3 (three) years and for State Sales Tax for 5 (five) years for both existing and new industrial units as classified in paragraph 1 of the above notification. The argument of the learned Addl. Advocate General that the petitioner-company will be entitled only benefits and concessions granted under Annexure R-3 notification is sound and only to be accepted. Clauses 1 to 5 of Annexure R-3 notification ought to be perused and analyzed for appreciating the rival contentions in this regard. Those clauses are quoted below: -

"1. For the purpose of concessions and incentives existing units are classified as those industrial units set up prior to 18.12.1996 and the period of concession beings from the date of prior approval accorded for their expansion/diversification/ modernization programmes by the Industries Department



whereas the new industrial units are classified as industrial units set up after 18.12.1996 and the period of concessions begins from the date of going into commercial production.

2. Concessions on State Excise Duty would be for a period of 3 (three) years and for Sales Tax would be for 5 (five) years for both existing and new industries units as classified in paragraph 1 above.

3. Levy of State Excise Duty and Sales Tax on the products of industrial units manufacturing/bottling liquors and beer would be as follows: -

Product		Levy of State Duty	Rate of Sales Tax
(a)	Liquor products manufactured by existing units other than beer.	100%	15%
(b)	Liquor products manufactured by new units other than beer.	85%	10%
(c)	Beer manufactured by existing units.	65%	10%

4. The new rates of State Excise Duty and Sales Tax shall be deemed to have been operative from 1st day of October, 2000 to the industrial units for the remaining period of their entitlement.

5. New industrial units other than negative industries set up after the enactment of Sikkim Industrial Promotion and Incentive Act, 2000 shall be exempted from payment of Sales Tax for a period of 5 (five) years from the date of going into commercial production. The other incentives/ concessions notified under the Act shall also be for a period of 5 years from the date of going of commercial production."



42. From the terminology of "State Excise Duty and Sales Tax" used in clause 2, 3 and 4 above, it is seen that the word "State" is applicable not only to the "Excise Duty" but also to the "Sales Tax". According to us on a plain reading of the above clauses it is clear that the exemption and benefit in the above notification is provided only in respect of State Excise Duty and State Sales Tax. If Sales Tax is interpreted to mean to include Central Sales Tax then the rate of exemption would be much higher than the CST levied. The rate of CST is only 4% whereas, exemption under Clause 3 for Sales Tax is given at 15% and 10%. The position, therefore, is quite clear that the word "Excise Duty and Sales Tax" used in the above notification mean only the State Excise Duty and State Sales Tax. According to us the position is re-clarified by the provisions contained in sub-section (3) of Section 12 (a) of the SIPI Act, 2000, wherein it is provided that the exemption of Central Sales Tax and Central Excise Duty will be governed by various notifications /orders issued by the Government of India in this regard.



43. The argument of learned Additional Advocate General was that the petitioner-company was well aware of the above position of law is clear from Annexure R-10 letter dated 30.03.2004, which contains an undertaking that they would avail the sales tax exemption as per the notifications Annexures R-2, R-3 and R-4, wherein it has been clearly stipulated that Central Sales Tax and Central Excise Duty would be governed by notification issued by the Government of India. The present stand taken by the petitioner-company that they are entitled for exemption by virtue of Industrial Policy, 1996 is in conflict of stand taken by them in Annexure R-10, letter of undertaking. Interestingly after having submitted the Annexure R-10 letter, the petitioner on 24.07.2006 submitted Annexure P-14 letter, wherein the petitioner requested that the State Government may issue a suitable notification under Section 8(5) of the Central Sales Tax Act exempting the petitioner's unit from the levy of Central Sales Tax located in the State of Sikkim. The stand taken in this letter is also in conflict with the petitioner's present stand that he is also exempted from Central Sales Tax by virtue of 1996 policy.



44. The contention of the petitioner-company that there has been discrimination against them vis-a-vis Mount Distilleries, Denzong Laboratories and M/s Akshay Ispat is also difficult to accept. It is clear from the materials placed on record before us that those three industries were established prior to 06.07.2000 and during the currency of 1996 Industrial Policy. True, the commencing of commercial production by some of these units may have been later and during the currency of SIPI Act, 2000. What is relevant for getting eligibility is establishment of the unit and unlike the petitioner's unit, all the three units were established during the currency of Industrial Policy, 1996. Thus, the allegation that the petitioner has discriminated against vis-a-vis the three companies is without basis.

45. Coming to the petitioner's prayer for quashment assessment orders, Annexures P-33, P-40, P-47, P-48 and P-57 we are of the view that as the petitioner has efficacious alternative remedy available in the form of appeal as provided under Section 20 of



the CST Act, 1956, the petitioner is not entitled to seek the above relief under Article 226 of the Constitution of India. We also notice in this context that the petitioner-company has already filed a petition for review before the assessing authority and therefore the petitioner cannot aspire for any order of quashment of the assessment order.

46. The upshot of the above discussion is that the petitioner is not entitled for any relief at all. The writ petition is dismissed, however, without any order as to costs.


(Pius C. Kuriakose)
Chief Justice
29.07.2013


(S. P. Wangdi)
Judge
29.07.2013

Approved for Reporting: Yes/No. ☒ Yes
Internet: Yes/No. ☒ Yes