

**THE HIGH COURT OF MEGHALAYA  
SHILLONG**

**WP(C) NO.78 OF 2014**

Meghalaya Bitchem Private Limited  
9<sup>th</sup> Mile, Baridua, Byrnihat  
Ri-Bhoi District, Meghalaya : Petitioner

-Versus-

1. The State of Meghalaya represented by  
Commissioner and Secretary to the  
Government of Meghalaya, Department  
Of Industries, Shillong.
2. The Principal Secretary to the Government of  
Meghalaya, Excise, Registration, Taxation and  
Stamps Department, Shillong.
3. The Commissioner of Taxes  
Meghalaya, Shillong.
4. The Superintendent of Taxes  
Ri-Bhoi District, Nongpoh, Meghalaya. : Respondents

-AND-

**WP(C) NO.79 OF 2014**

M/s Dyna Roof Private Limited  
10<sup>th</sup> Mile, Mawsmal Village  
GS Road, Ri-Bhoi District, Meghalaya. : Petitioner

- Versus -

1. The State of Meghalaya represented by  
Commissioner and Secretary to the  
Government of Meghalaya, Department  
Of Industries, Shillong.
2. The Principal Secretary to the Government of  
Meghalaya, Excise, Registration, Taxation and  
Stamps Department, Shillong.
3. The Commissioner of Taxes  
Meghalaya, Shillong.
4. The Superintendent of Taxes  
Ri-Bhoi District, Nongpoh, Meghalaya. : Respondents

**B E F O R E****HON'BLE MR JUSTICE UMA NATH SINGH  
CHIEF JUSTICE  
THE HON'BLE MR JUSTICE SR SEN**

For the Petitioner : Dr A Saraf, Sr. Advocate  
Mr A Goyal, Advocate  
Mr K Choudhury, Advocate  
Mr P Baruah, Advocate  
Mr L Islam, Advocate

For the Respondents : Mr ND Chullai, Sr. Govt. Advocate  
Mr S Sen Gupta, Govt. Advocate

Date of Judgment : 13.01.2016

**JUDGMENT AND ORDER****Uma Nath Singh, CJ :**

One of two writ petitions, namely, WP(C) No.78/2014 (Meghalaya Bitchem Private Ltd. V. State of Meghalaya & Ors) has been filed, inter alia, with prayers to call for records, issue a Rule calling upon the respondents to show cause as to why a writ in the nature of Certiorari or a like one for setting aside and quashing the impugned orders of Assessment dated 15.11.2013 and Notices of Demand in pursuance thereof not be issued, as to why a writ in the nature of Mandamus not be issued directing the respondents to restrain, recall, refrain and/or forbear from giving effect to the impugned orders of Assessment dated 15.11.2013 and the Notices of Demand issued in pursuance thereof.

2. The brief facts of this case as set out in the pleadings are that the Company is registered under the provisions of the Companies Act, 1956, having its registered office situated at 9<sup>th</sup> Mile, Baridua, Byrnihat, Ri-Bhoi District, Meghalaya. The petitioner-company is represented by Shri Pabitra Mahanta, Assistant Manager, Finance, who is interested in the

day-to-day affairs of the company. All the share holders of the company are the citizens of India and, as such, they claim to be entitled to all the rights and privileges as guaranteed by the Constitution of India and the laws framed thereunder from time to time.

3. All the respondents, being official respondents are also situated in the State of Meghalaya at Shillong or Ri-Bhoi.

4. In the second petition namely, W(C) No.79/2014 also, almost same nature of prayers with similar statement as regards locus standi etc. has been made. However, the address of the registered office of the Company is shown as 10<sup>th</sup> Mile, Mawsmai village, GS Road, Ri-Bhoi District, Meghalaya. The Company is represented by Shri Subir Singha, AGM-Finance and the date of impugned order of Assessment sought to be quashed is 21.1.2014.

5. The impugned orders of Assessment namely, dated 15.11.2013 in the case of WP(C)No. 78 of 2014 and dated 21.1.2014 impugned in WP(C)No. 79 of 2014 were passed by the Superintendent of Taxes, Ri-Bhoi District, Meghalaya, in purported exercise of powers under Section 9 of the Central Sales Tax Act, 1956, read with Section 45 of the Meghalaya Value Added Tax Act for the financial year ending on 31<sup>st</sup> March, 2013. In pursuance thereof, the notices of demand were also issued. The Superintendent of Tax, Ri-Bhoi (respondent No.4) raised the demand after rejecting the claims of entitlement of 99% remission of tax payable under the Meghalaya Industries (Tax Remission Scheme), 2006, on the ground that, under this Scheme there is no provision for extension of period of eligibility for new industrial units that have

undergone expansion, modernization and diversification. As per the contention on behalf of the petitioner-companies, the impugned orders of Assessment are passed beyond the jurisdiction of the authority who, while rejecting the entitlements of the petitioner-Companies to claim benefits of exemption, has raised the demand in clear violation of the Scheme of 2006, and also in derogation of the order dated 07-01.2008 and 08.09.2009, passed by the Director of Industries-cum-Member Secretary, Single Window Agency, Meghalaya, whereby he has accorded an ex-post facto approval to petitioner's industrial unit for (i) expansion and modernization programme and (ii) grant of eligibility certificate which was issued by appropriate authority on 30.05.2011.

6. We have heard learned counsel for parties and perused the pleadings of writ petition.

7. Learned counsel appearing for the petitioner submitted that, admittedly there was no other Industrial Policy except the Policy of 1997 and there was a Single Window System. The Government, vide letter dated 07.01.2008 through Director of Industries, Meghalaya, granted benefits in the case of expansion of manufacturing capacity of the industrial units. The certificates of eligibility were also issued under the Meghalaya Industrial Policy, 1997 on 30.05.2011 to the petitioners, after taking into account the fact that the commercial production of the petitioner unit in WP(C)No. 78 of 2014 started on 25<sup>th</sup> March, 2005 and in WP(C)No. 79 of 2014 it commenced on 12.12.2004. Besides, the petitioner unit in WP(C)No. 78 of 2014 had undertaken further expansion w.e.f. 15.12.2009, whereas, in the case of petitioner unit in WP(C)NO. 79 of 2014, it was undertaken on 16.12.2009. However, later a Notification

was issued by the Government of Meghalaya, Department of Excise, Registration, Taxation and Stamps, whereby, in exercise of powers conferred under sub-section (3) and (4) of Section 116 of the Meghalaya Value Added Tax Act, 2003 (Meghalaya Act 2 of 2005), the Governor of Meghalaya amended clause 2 and deleted clause 3(2)(b) of the Meghalaya Industries (Tax Remission) Scheme, 2006. The words, “on or before 30.04.2005”, used after “Single Window Agency” were omitted. The proviso added to clause 3(2)(b) and the note provided thereunder appearing in the Meghalaya Industries (Tax Remission) Scheme, 2006 were also deleted. The Notification amending clause 2 was to come into force with retrospective effect namely w.e.f. 16.10.2006 and deletion of the proviso and the note thereunder in clause 3(2)(b) was to come into force with immediate effect.

8. Learned counsel for the petitioner submitted that the exemption and benefits provided to the units for finished products in accordance with the Policy of 1997 could not have been interfered with or taken away by the Department of Taxation as the Taxation Department is only an implementing agency. Moreover, there was no restriction that once the benefits were granted, the same could not be granted again on expansion of the unit. It is not open for the Taxation Department to re-examine the Policy and Scheme and to find out the eligibility of industrial units for grant of certificate of authorization to such units. Learned counsel for the petitioners also cited in support of his contentions the following judgments of Hon’ble the Apex Court, namely, **(i) (1988) 3 SCC 570 [Para 5](Assistant Commissioner of Commercial Taxes (Asst) Dharwar and Ors v. Dharmendra Trading Company and Ors); (ii) (2005) 6 SCC 292.**

9. It is the submission of the petitioner that, under the Scheme of 2006, it is nowhere provided that an industrial unit which was established as new unit as per the Meghalaya Industrial Policy 1997 and subsequently underwent the expansion was not entitled to the benefits of tax remission under the Scheme of 2006. The only condition required was that the industrial unit shall not be a non-eligible unit under the Meghalaya Industrial Policy 1997 and the same must be approved by the Single Window Agency on or before 30.4.2005. It also appears that Meghalaya Value Added Tax Act, 2003 was enacted to provide for and consolidate the laws relating to levy of Value Added Tax on sales and purchases of goods within the State of Meghalaya. The said Act was published in the Gazette of Meghalaya Extraordinary No.25 dated 4.3.2005 vide Notification No.LL(B)53/2002/314. In exercise of powers conferred under sub-section(3) and (4) of Section 16 of the VAT Act, the Governor of Meghalaya was pleased to frame the Meghalaya Industries (Tax Remission) Scheme 2006 substituting the Meghalaya Industries (Sales Tax Exemption) Scheme 2001, for providing alternative benefits in lieu of the benefits enjoyed by the eligible units under the existing Scheme without breaking the VAT chain and further, to provide alternative benefits to industrial units in the pipeline which would have enjoyed the same benefits had the Act not come into force. The benefit as envisaged under the Scheme of 2006 was by way of remission by retaining the tax collected as subsidy by the eligible industrial units without breaking the VAT chain which was in conformity with the provision of the Act. The petitioner companies, having commenced the production on 25.3.2005 and 12.12.2004 prior to the commencement of the VAT Act were found eligible under the Meghalaya Industries (Sales Tax Exemption) Scheme 2001 as per the eligibility criteria stated in the

Industrial Policy of Meghalaya 1997. However, the said benefits were withdrawn by the Notification dated 16.10.2006 meaning thereby, the benefits granted earlier vide Notification dated 12.4.2001 to all the eligible industrial units to the extent of 99% remission of VAT were declined. Besides that, the Notification dated 16.10.2006 by way of corrigendum Notification dated 2.4.2007 was made effective retrospectively from 1.10.2006.

10. On the other hand, learned counsel for the respondents supported the impugned assessment orders and tried to justify the reasons for issuance thereof after rejecting the claims of the petitioners to seek benefits under the Industrial Policy and Schemes in question.

11. It is contended on behalf of respondents that since the petitioner unit M/s Meghalaya Bitchem Pvt. Ltd in WP(C)No. 78 of 2014 started commercial production on 25.03.2005, it was entitled to get the benefit of tax exemption only for seven years irrespective of fresh authorisation with subsequent Eligibility Certificate granted to him. In an identical case the State Govt. of Meghalaya vide letter No. ERTS(T) 64/98/496 dated 20.12.2011 had clarified the position that the unit which had undergone expansion is eligible for sales tax incentives for expanded products only up to the date of eligibility based on the First Eligibility Certificate and this was also communicated to the petitioner. Thus, the petitioner's eligibility period had already expired on 24.03.2012.

12. Similarly, in the case of petitioner in WP(C)No. 79 of 2014 (M/s Dyna Roof Pvt. Ltd) since the date of commercial production was recorded as 12.12.2004, the period of seven years eligibility ended on 11.12.2011. This is also a submission that under the Notification dated

16.10.2006, there were two clauses, namely, (i) for providing alternative benefits in lieu of benefits being enjoyed by the eligible industrial units under the existing scheme without breaking the VAT chain and (ii) to provide alternative benefits to the industrial units in the pipeline which would have enjoyed the same benefits had the Act not come into force.

In the instant case, since the petitioner units had already started production in 2004-2005 they were covered under Clause (i). Moreover, there was no provision under the Meghalaya Industrial Policy, 1997 or the Tax Exemption Scheme of 2001 for the new units that have already enjoyed the benefits provided thereunder to claim extended period of eligibility, having undergone expansion, modernisation or diversification.

13. In order to appreciate the rival submissions and decide the controversy, it would be necessary to examine the objectives of the Policy. On reproduction, they would read as :

#### **“OBJECTIVES OF POLICY**

***With a view to take advantage of the liberalised economic scenario in the country, and also to keep pace with developments in the national industrial sector, Government of Meghalaya has decided to frame a new Industrial Policy. The Objectives of this new policy are as follows: -***

- 1. Generate employment opportunities for the local people in the industries and allied sectors.***
- 2. Develop human resources and bring about improvements in the quality of life by promoting industries in sectors where the state has comparative advantage.***
- 3. Achieve a balanced and growth oriented development covering the entire state through promotion of village and small scale industries.***
- 4. Create a conducive environment for industrial development by creation of the basic Infrastructural facilities and by setting up of industrial areas, growth centre and export promotion industrial park.***
- 5. Encourage the setting up of selective medium and large industries by utilising the resource base of the state thereby ensuring sustainable industrial growth but***



*compatible with ecological imperatives and hence encourage positive efforts towards the regeneration of the environment.*

6. *Provide preference to local Entrepreneurship in setting up of large, medium and small scale units.*
7. *Promote local interests through joint ventures with external investors so as to facilitate technology transfer and capital flow by a package of suitable incentives.*
8. *Encourage need based development of local entrepreneurial skills through intensive motivation and training programmes at district, Sub-division and block levels.*
9. *Provide guidance to prospective entrepreneurs by building up a data bank of project profiles and other connected information.*
10. *Simplify rules and procedures by providing a single-window clearance facility at the District Levels for the Small Scale Sector and at the State Level for Medium and Large Scale Industries.*
11. *Promote the setting up of ancillary units for catering to the requirements of large and medium scale industries.*
12. *Identify sick units that can be made viable and provide a comprehensive package of assistance for their revival.*
13. *Promote and encourage high-value, low-volume products, in view of the transportation-bottlenecks in the State.*
14. *Encourage setting up of export-oriented, Agro based, Mineral-based, Horticultural based and Electronic units as thrust area”.*

14. It is noticeable that none of the objectives seems to support the stand of the petitioner that a newly established industrial unit upon undertaking further expansion during the subsistence of the period of initial eligibility can be encouraged to claim extended period of eligibility. The thrust of the Policy is basically directed to promote village and small scale industries and that is why only very selective medium and large scale industries are to be promoted and set up. The Policy of 1997 seems to be designed to promote local interest and local entrepreneurship. Further it is only need based with restriction so that the ecological balance is not disturbed and the purpose of the Policy is not defeated.

15. Under the Meghalaya Industrial Policy, 1997, the Government also issued the Meghalaya Incentives Scheme of 1997. This Scheme was to remain in operation for a period of five years commencing from 15<sup>th</sup> August, 1997 or till such time as the Government may deem fit. The State Government also reserved the right to make any amendment to the Scheme from time to time. However, in such cases proper notice was to be given and also final commitments already made were not to be affected by such amendment. As a result of coming into force of the Meghalaya Incentives Scheme, 1997, the earlier Scheme like the Meghalaya Package Scheme of Incentives 1988 and other relevant Industrial Policy Resolution ceased to operate. Para D.2 of the Meghalaya Incentives Scheme 1997 provided for eligible unit. Only new units set up on or after 15<sup>th</sup> August 1997 and existing units undertaking expansion, modernization or diversification at the same local or at any other place in the State of Meghalaya were eligible for grant of incentives under the Meghalaya Incentives Scheme 1997 upon fulfilling certain conditions. Under this Scheme, there was a provision for sales tax exemption, vide Para 8, for large and medium scale industries for sale of finished products for a period of seven years from the date of commercial production. It is worth noting that in the case of petitioner, M/s Bitchem Pvt. Ltd, the commercial production had started on 25.03.2005 and in the case of M/s Dyna Roof, it had commenced on 12.12.2004. Thus, they have availed the sales tax exemption for a period of seven years. In order to facilitate the benefits of the exemption, the Government of Meghalaya, Excise, Registration, Taxation and Stamps Department vide Notification dated 12.04.2001 issued the Scheme called the Meghalaya Industries (Sales Tax Exemption) Scheme 2001 and it was deemed to have come into force with effect from 12.08.1997. The period of

exemption was available for seven years from the date of commercial production as reported and recorded by the Meghalaya Industrial Development Corporation. The exemption from payment of sales tax was on the sale of finished products within the State or in the course of inter-State trade or commerce which are otherwise taxable under the Meghalaya Sales Tax Act or the Meghalaya Finance Sales Tax Act limited to goods actually produced in the eligible industrial unit not exceeding its installed capacity. Under that Scheme, the Certificate of Authorization was required to be issued by Assessing Officer and the Eligibility Certificate by the Meghalaya Industrial Development Corporation. Thus, in exercise of powers conferred by sub-section 5 of Section 8 of the Central Sales Tax Act, 1956, the Governor of Meghalaya directed that no tax under this Act was to be payable by any eligible industrial unit to whom an Exemption Certificate in the form of Certificate of Authorization has been issued by the Commissioner of Taxes with prior approval of the Taxation Department in respect of sale of goods manufactured by such unit in the course of inter-State trade or commerce during the period of validity of the Certificate of Authorization subject to the condition that such sale to any person outside the State of Meghalaya is supported by proper documents of sale. Thereafter, the notification as aforesaid dated 16.10.2006 of the Meghalaya Industries (Tax Remission) Scheme 2006 was issued. However, the petitioner units had already started commercial production in 2004-2005. Thus, they were covered only under the Clause which provided for alternative benefits in lieu of benefits being enjoyed by eligible industrial unit under the existing Scheme of 2001 without breaking the VAT chain.

16. It appears that the petitioner in WP(C)No. 78 of 2014 M/s

Meghalaya Bitchem Pvt. Ltd. was issued eligibility certificate under the Meghalaya Industrial Policy 1997 on 29.05.2006 by Managing Director, Meghalaya Industrial Development Corporation Ltd. who has recorded the date of commercial production of the Unit as 25.03.2005. The petitioner was granted certificate of authorisation on 16.03.2007. It appears that the certificate was issued retrospectively in respect of commercial production of the petitioner with validity period upto 31.03.2005.

17. In the case of petitioner, M/s Dyna Roof Pvt. Ltd. in WP(C)No. 79 of 2014, the eligibility certificate under the Meghalaya Industrial Policy 1997 was issued on 29.05.2006 and the date of commercial production of the Unit was recorded as 12.12.2004. The petitioner unit was also issued certificate of authorisation on 16.03.2007 by the Superintendent of Taxes, which was to remain valid in respect of commercial production upto 31.03.2005.

Thus, it appears, that respondent No.4, namely the Managing Director, Meghalaya Industrial Development Corporation Ltd issued an Eligibility Certificate under the Meghalaya Industrial Policy, 1997, wherein it was mentioned that the petitioner company was eligible for claiming incentives as per Meghalaya Industrial Policy, 1997 which came into force with effect from 15.8.1997. The petitioner company was also issued a certificate of authorisation by its Assessing Officer in terms of the Meghalaya Industries (Sales Tax Exemption) Scheme, 2001.

18. Thereafter, the Department of Excise, Registration, Taxation and Stamps, Government of Meghalaya, on 16.10.2006 issued the

following Notification :

**“GOVERNMENT OF MEGHALAYA EXCISE, REGISTRATION,  
TAXATION AND STAMPS DEPARTMENT**

**ORDERS BY THE GOVERNOR**

**N O T I F I C A T I O N S**

***The 16th October, 2006.***

***No.ERTS(T)64/98/313: In supersession of of Government Notification No.ERTS(T) 64/98/88 dt. 12.04.2001 and in exercise of the powers conferred by sub-section 5 of Section 8 of the Central Sales Tax 1956 the Governor of Meghalaya being satisfied that it is necessary to do so in the public interest, is pleased to direct that no tax under this Act shall be payable by any eligible industrial unit to whom an exemption certificate in the form of Certificate of Authorisation has been granted by the Commissioner of Taxes with the prior approval of Taxation department in respect of sale of goods manufactured by such unit in the course of inter-state Trade or Commerce to a registered dealer or the Government during period of validity of the Certificate of authorisation subject to the condition that such sale to any person outside the State of Meghalaya is supported by proper documents of sales.***

***This shall come into force with immediate effect.***

***Sd/  
BK Verma  
Principal Secretary to  
The Govt. of Meghalaya Excise,  
Registration,  
Taxation and Stamps Department.”***

19. Thus, it appears that, the petitioners became aggrieved by the aforesaid Notification which, according to them, was contrary to the Industrial Policy of 1997 and the Meghalaya Industries (Sales Tax Exemption) Scheme, 2001 as it superseded the Notification of 2001 and the benefits admissible under the said Notification of 2001 were only restricted to sales made in the course of Inter-State trade or commerce to registered dealers or Government only. Under the earlier Notification

dated 12.4.2001 which was issued in exercise of powers under Sub-Section (5) of Section 8 and in pursuance to the Industrial Policy of 1997, the benefits of sales in the course of Inter-State trade or commerce were not confined only to registered dealers and Government.

20. Thereafter, Government of Meghalaya, Department of Excise, Registration, Taxation and Stamps by the order of the Governor issued the Meghalaya Industries (Tax Remission) Schemes, 2006 as under :

***“ The 16th October, 2006.***

***No.ERTS(T)64/98/314 In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, the Governor of Meghalaya is pleased to withdraw the benefit of exemption from payment of CST granted earlier under this Department's Notification No.ERTS(T)64/98/88, dt. 12.4.2001 which was superseded by Notification No.ERTS (T)64/98/211, dt. 5.9.2005, and to further direct in public interest that all industrial units eligible to 99% remission of VAT under para 3(2)(b) of the Meghalaya Industries (Tax Remission) Scheme, 2006 shall pay CST @ 1% provided the sale is made to a registered dealer outside the State or to the Government. Sales to others will attract normal rates of CST.***

***Other industrial units which are eligible to 96% remission of VAT under the proviso to para 3(2) (b) of the Meghalaya Industries (Tax Remission) Scheme, 2006 shall pay CST @ 1% at normal rates as provided under Central Sales Tax Act, 1956. This Notification shall come into force with immediate effect.***

***Sd/-***

***B.K. Dev Verma***

***Principal Secretary to the Government of Meghalaya,  
Excise, Registration, Taxation & Stamps Department”.***

However, on the same date, yet another Notification No.ERTS(T)64/98/314 dated 16.10.2006 was issued by the Governor as

a part of the Scheme of 2006 whereby the Governor of Meghalaya withdrew the benefits of exemption from payment of Central Sales Tax granted earlier by the Department's Notification No.ERTS (T) 98/88 dated 12.4.2001 which was superseded by Notification No. ERTS(T) 64/98/211 dated 5.9.2005. The Notification No.ERTS(T) 64/98/314 dated 16.10.2006 was to come into force with immediate effect. Moreover, subsequent thereto, a corrigendum was issued by Notification dated 2.4.2007 giving the Notification dated 16.10.2006 retrospective effect with effect from 1.10.2006. The corrigendum is also reproduced as under :

**“ANNEXURE – G  
GOVERNMENT OF MEGHALAYA  
EXCISE, REGISTRATION, TAXATION & STAMPS DEPARTMENT  
.....  
CORRIGENDUM**

***Dated Shillong, the 2<sup>nd</sup> April, 2007***

***No. ERTS(T)64/98/331/- Delete the word “This Notification shall come into force with immediate effect” appearing in the last line of the Notification No. ERTS(T)64/98/314, dated 16.10.2006 and substitute with the word “This Notification shall be deemed to have come into force with effect from 1<sup>st</sup> October, 2006.***

***Sd/-  
Principal Secretary to the Govt. of Meghalaya  
Excise, Registration, Taxation & Stamps Deptt.”***

21. Thus, petitioner being aggrieved by the Notification dated 16.10.2006 and Corrigendum dated 2.4.2007, filed writ petitions wherein the following directions were given by this Court :

***“1. The State respondents shall consider the grievances of the petitioner and take a decision thereof in accordance with law without and loss of time.***

***2. Pending such decisions taken by the State respondents, the impugned Notification No. ERTS(T) 64/98/314 dated 16.10.2006 shall not be given effect to.***

***3. The State respondents shall also, in the meantime, issue "C" Form and Road permits in favour of the petitioner".***

22. It also appears that the Assessing Authority, following the Notification No.ERTS(T)64/98/211 dated 5.9.2005 carried out the assessment of the petitioner companies levying tax on the inter-State sale made by the Company which was also challenged by way of petitions before this Court. In WP(C) No.113(SH) of 2007, vide order dated 13.8.2010, the Shillong Bench of the Gauhati High Court held that the State-respondents are barred by the doctrine of Promissory Estoppel from issuing the Notification No.ERTS(T)64/98/211 dated 5.9.2005 and thus, quashed the Notification as well as Assessment orders and Demand Notices issued pursuant thereto.

23. Now, the controversy as impugned herein, appears to be limited to the question as to whether the newly established petitioner industrial units having once enjoyed the tax exemption and also remission for seven years under the Meghalaya Industrial Policy of 1997 and the Meghalaya Industries (Tax Exemption) Scheme 2001 can claim benefits of tax remission for extended period under the new Scheme namely, the Meghalaya Industries (Tax Remission) Scheme 2006. As noticed hereinabove, we do not find anything in any of the provisions of the Meghalaya Industrial Policy of 1997; the Meghalaya Industries (Tax Exemption) Scheme 2001 and the Meghalaya Industries (Tax Remission) Scheme 2006 to say that the second time benefits of tax remission would be available to the petitioners. Moreover, the Govt. of Meghalaya vide



letter No. ERTS(T)64/98/496 dated 20.12.2011 has already clarified that the petitioner industrial units would be eligible for sales tax incentives even in respect of expanded products only up to the date of eligibility based on the First Eligibility Certificate issued upon establishment of the units as new industrial units. Besides, it is a case of the petitioner units that since they had undertaken expansion and production before the 2012 Policy called “Meghalaya Industrial & Investment Promotion Policy, 2012” came into force, therefore, they were not claiming any benefits thereunder. Further, the submission of the petitioner that the Single Window Agency (SWA) clearance for undertaking expansion work was a clear promise to the petitioner that the company would be eligible for 99% remission of tax under the Scheme of 2006 seems to be based on a misunderstanding or misinterpretation of the terms and conditions of the approval granted by the Single Window Agency and would thus not attract the doctrine of promissory estoppels. In fact, the second Eligibility Certificates dated 30.05.2011 were issued to enable the petitioner units to claim the eligible incentives only as per the Meghalaya Industrial Policy 1997 and thus, they were valid only for the period of entitlement of remission of tax as provided by the First Eligibility Certificate by way of exemption or remission, by way of alternative available under the Meghalaya Industries (Tax Remission) Scheme 2006.

24. The petitioners having commenced commercial production on 12.12.2004 and 25.03.2005 as new units were found eligible under the criteria laid down by the Meghalaya Industrial Policy 1997 and the Meghalaya Industries (Tax Exemption) Scheme 2001, and thus, were granted and have enjoyed for seven years the benefits of tax exemption under the Meghalaya Industries (Tax Exemption) Scheme 2001 and

subsequently remission under the Meghalaya Industries (Tax Remission) Scheme 2006 which substituted the Meghalaya Industries (Tax Exemption) Scheme 2001 for providing alternative benefits in lieu of benefits being enjoyed by the eligible industrial units under the existing Scheme without breaking the VAT chain. In fact the petitioner units fell under the first part of the eligibility criteria mentioned in Clause (2) containing the definition of eligibility under the Meghalaya Industries (Tax Remission) Scheme 2006 as :

**“2. Definition of Eligibility**

**An industrial unit, having commenced commercial production before the commencement of the Act and was already found eligible under the Meghalaya Industries (Sales Tax Exemption) Schemes, 2001 as per the eligibility criteria of the Industrial Policy of Meghalaya 1997, or an industrial unit other than a non eligible unit under the Industrial Policy approved by the Single Window Agency on or before 30.4.05 and having taken effective steps shall be treated as an eligible industrial unit.”**

Thus, the petitioner industrial units came in the category which had commenced commercial production before the commencement of the Act and was already found eligible under the Meghalaya Industrial (Tax Exemption) Scheme 2001 as per eligibility criteria of the Meghalaya Industrial Policy 1997. Therefore, the petitioner units were covered by the first part of definition of the eligibility and, as such, from the dates of their commercial production, they were entitled to get tax exemption and remission only for seven years.

25. As regards the judgment cited by learned senior counsel for the petitioner in **Assistant Commissioner of Commercial Taxes (ASST) Dharwar and others v. Dharmendra Trading Company and others**, reported in **(1988) 3 SCC 570**, the ratio of the same may not be

applicable in the facts of this case, for the reason that the petitioner units had been granted exemption under the Meghalaya Industrial Policy 1997 and the Meghalaya (Sales Tax Exemption) Scheme of 2001 for 7 (seven) years which they had already enjoyed. Moreover, the judgment does not deal with the issue involved herein, namely, as to whether a newly established Industrial unit having already availed the benefits of exemption and remission under the initial Eligibility Certificate and letter of authorization would be entitled to claim the benefits of remission for the second time under a new scheme, namely, the Meghalaya Industries (Tax Remission) Scheme 2006 on the basis of subsequent Eligibility Certificate issued on 30.5.2011.

26. In so far as the second judgment referred to by learned senior counsel, namely, ***Vadilal Chemicals Ltd., v. State of A.P. and others***, reported in **(2005) 6 SCC 292** is concerned, this judgment also does not deal with second time entitlement of benefits to a newly established industrial unit which has already enjoyed tax exemption under the First Eligibility Certificate. Moreover, the State has also reserved the right to amend the Meghalaya Industrial Policy 1997 and the Scheme issued thereunder. Further, the power to levy, collect, exempt or remit sales tax is conferred on the State Government by Acts of the State Legislature or the Parliament. Again, the power for carrying out the purpose of the Acts is vested on the sales tax authorities appointed as per the provisions of the concerned Sales Tax Acts. It is only because of these legal provisions, that in order to give effect to the sales tax incentives promised under the Industrial Policy, the Government framed the relevant Schemes and notified them by

exercising the powers conferred by relevant provisions of the Sales Tax laws.

Thus, it is well within the powers of the Assessing Authority under the Sales Tax laws, which have got the sanction of law, to levy and assess the sales tax liability of a dealer and to grant exemption/remission under the Schemes notified by the State Government. Therefore, the contention of the petitioners, that it is the Directorate of Industries for small scale industries sector and the Meghalaya Industrial Development Corporation for medium and large units, that have the authority to decide the eligibility for the benefit of 99% remission of tax appears to be unfounded, not being in consonance with the provisions of Tax Exemption Scheme 2001; Tax Remission Scheme 2006 and the Meghalaya Value Added Tax Act 2003 (Act 2 of 2005). Besides, the Directorate of Industries and the Meghalaya Industrial Development Corporation have not been empowered under the MVAT Act to levy and assess the tax liability of any dealer. Therefore, under the second Eligibility Certificate issued on 30.5.2011 by the Meghalaya Industrial Development Corporation, the period of remission benefits cannot be extended.

27. Thus, to sum up, since the petitioner units were set up only as new units under the Meghalaya Industrial Policy, 1997 and as medium and large scale industries, were granted incentives for seven years under the Meghalaya Industries (Tax Exemption) Scheme 2001, that period have already expired in the case of petitioner unit in WP(C)No. 78 of 2014 on 24.03.2012 and in that of petitioner unit in WP(C)No. 79 of 2014 on 11.12.2011. None of the provisions of the Meghalaya Industrial Policy, 1997; the Meghalaya Industries (Tax

Exemption) Scheme 2001 or the Meghalaya Industries (Tax Remission) Scheme 2006 provides that a new industrial unit set up under the Meghalaya Industrial Policy 1997 having already enjoyed tax exemption and remission under the Meghalaya Industries (Tax Remission) Scheme 2006 for a period of seven years under the initial Eligibility Certificate, upon undertaking expansion or modernization, can legitimately claim fresh benefits of tax remission under the Meghalaya Industries (Tax Remission) Scheme 2006 on the strength of a fresh Eligibility Certificate beyond the validity period of the First Eligibility Certificate granted upon establishment as new industrial unit. The petitioner units are only entitled to get the benefits by way of alternative benefits in lieu of benefits being enjoyed under the existing Scheme in terms of part one of the definition of eligibility under the Meghalaya Industries (Tax Remission) Scheme 2006 and that too, for the remainder period of First Eligibility Certificate of seven years which they have already enjoyed.

28. Besides, the Directorate of Industries and the Meghalaya Industrial Development Corporation have not been empowered under the Meghalaya Value Added Tax Act to levy and assess the tax liability of any dealer for the reasons discussed hereinabove.

29. In the premises discussed hereinabove, we do not find any merits in the writ petitions. Hence, they are dismissed with no order as to costs.

**JUDGE**

**CHIEF JUSTICE**