THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 5th February, 2021

DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

WP(C) No.47 of 2018

Petitioner : Sun Pharma Laboratories Limited

versus

Respondents : Union of India and Others

Petition under Article 226 of the
Constitution of India

Appearance

Mr. V. Lakshmi Kumaran, Mr. Karan Sachdev and Ms. Gita Bista, Advocates for the Petitioner.

Mr. B.K. Gupta, Advocate for Respondents No.1 and 2.

Mr. S.K. Chettri, Government Advocate for Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioner herein assails the restrictions imposed by the Scheme of Budgetary Support, issued under the Goods and Services Tax regime vide Notification F.No.10(1)/2017-DBA-II/NER, dated 05.10.2017, by the Respondent No.1, reducing the quantum of benefits earlier availed by the Petitioner, thereby reneging on the promises made under the erstwhile Tax regime and adversely affecting the Petitioner.

1.(a) The Petitioner is a Private Limited Company engaged *inter alia* in the manufacture of P&P Medicaments and Consumer Health Products for which purpose Unit I was set up on 2005 and Unit II later in time, both situated at Ranipool, East Sikkim.

1.(b) The Petitioner's case is that vide a Memorandum, dated 17.02.2003, the Respondent No.1 notified the "New Industrial Policy and other concessions for the State of Sikkim" ("Industrial Policy, 2003") which *inter alia* granted 100 per cent exemption from Excise duty for a period of ten years from the date of commencement of commercial production. Pursuant thereto, various exemption Notifications were issued under the respective Fiscal Statutes, including Central Excise original Notification No.56/2003-C.E., dated 25.06.2003. By this Notification, 100 per cent duty exemption was granted to the goods specified in the Schedule thereto, manufactured and cleared from a Unit located in Sikkim from so much of the duty of Excise leviable under the Central Excise Act, 1944 and other allied Acts as is equivalent to the amount of duty paid by the manufacturer of the goods other than the amount of duty paid by utilization of CENVAT Credit under the CENVAT Credit Rules, 2002 for a period of ten years from the date of commencement of commercial production.

1.(c) On 01.04.2007, the Respondent No.1 notified the North East Industrial and Investment Promotion Policy, 2007 ("Industrial Policy, 2007") thereby discontinuing the Industrial Policy of 2003. The Industrial Policy of 2007 also covered the State of Sikkim and *inter alia* provided that the new Units and existing Units which go in for substantial expansion and commence commercial production within ten years of the date of Notification of the said Policy, would be eligible for incentives for a period of ten years from the date of commencement of commercial production. It further provided that 100 per cent Excise duty exemption would be continued on finished products made in the North Eastern Region as available under

NEIP, 1997. However, in cases where the CENVAT paid on the raw materials and intermediate products going into the production of finished products (other than the products which are otherwise exempt or subject to nil rate of duty) is higher than the Excise Duties payable on the finished products, ways and means to refund such overflow of CENVAT Credit will be separately notified by the Ministry of Finance.

1.(d) Based on the representations of the Respondent No.1, the Petitioner, by making substantial investments, set up the first Unit in 2005 and commenced commercial production on 20.04.2009. The second Unit set up later, commenced commercial production on 14.04.2014. Thus both Units started its commercial production within ten years from the date of issuance of Industrial Policy, 2007 and were enjoying the full refund of the Central Excise Duties paid by them by way of the mechanism provided in the exemption Notification.

1.(e) It is alleged that the Respondent No.1 issued Notifications No.21/2008-C.E. and 20/2008-C.E., both dated 27.03.2008, amending Notifications No.56/2003-C.E., dated 25.06.2003 and 20/2007-C.E., dated 25.04.2007, to curtail 100 per cent Excise duty exemption provided thereof. The benefit of exemption was sought to be reduced to the prescribed percentage of value addition amount i.e. 56 per cent applicable to pharmaceutical products mentioned in the respective Notifications and applicable Chapter. These amendments were challenged before this Court by the Petitioner in W.P.(C) No.41/2015, W.P.(C) No.08/2017, W.P.(C) No.27/2017 and W.P.(C) No.40/2017 and this Court quashed the impugned Notifications No.20/2008-C.E., dated

27.03.2008 and 38/2008-C.E., dated 10.06.2008, vide Judgment dated 21.11.2017.

1.(f) From 01.07.2017, the entire indirect Tax regime in the country underwent a major reform with the introduction of the Goods and Services Tax ("GST") which thereby introduced the Central Goods and Services Tax Act, 2017 (for short "CGST Act"), the Integrated Goods and Services Tax Act, 2017 (for short "IGST Act") and the Sikkim Goods and Service Tax Act, 2017. Section 174 of the CGST Act repealed the Central Excise Act, 1944 with certain exceptions and vide Notification No.21/2017-C.E., dated 18.07.2017, the Respondent No.1 rescinded Notifications No.20/2007-C.E., dated 25.04.2007 and 56/2003-C.E., dated 25.06.2003.

1.(g) In continuation of the earlier Industrial Policies as well as Excise Notifications to exempt the levy of Central Excise duty on the Goods manufactured and sold from the Units in the State of Sikkim, the Central Government provided for Budgetary Support Schemes for such Units under the GST regime. The Budgetary Support Scheme is applicable to the Units which were eligible for drawing benefits under the earlier Excise Duty Exemption/Refund Schemes and was applicable for the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production as specified under the erstwhile Notification. The amount of Budgetary Support under the Scheme for specified goods manufactured by the eligible Unit is specified as the sum total of 58 per cent of the Central Tax paid through debit in cash ledger account maintained by the Unit after full utilization of the input Tax Credit of the Central Tax and

Integrated Tax and 29 per cent of the Integrated Tax paid through debit in cash ledger account maintained by the Unit after full utilization of the input Tax Credit of the Central Tax and Integrated Tax. The Excise Duty Exemptions availed by the Petitioner by way of refund in the pre GST regime, for both the Units were curtailed by the Respondent No.1 through the Budgetary Support Policy thereby reducing the benefit granted to the Petitioner. Therefore, the reduction in benefits on the supply of goods by the Petitioner is contrary to Article 14 of the Constitution of India (for short "Constitution") and the Petitioner's right to avail the benefit of exemption cannot be taken away by the limited benefit provided under the Budgetary Support Scheme. That, the Respondent No.1 is estopped from imposition of CGST which was represented by them to be 100 per cent exempt for the specified period. Hence, the prayers in the Writ Petition.

2. Denying and disputing the allegations of the Petitioner, the Respondents No.1 and 2 in their Counter-Affidavit, reagitated that Notification No.20/2007-C.E., dated 25.04.2007, which was subsequently amended by Notification No.20/2008-C.E., dated 27.03.2008, was issued well before the Petitioner started its commercial production, which started after the amendment of exemption Notification restricting the refund. That, the confinement of 58 per cent of the Central Goods and Services Tax (for short "CGST") and 29 per cent of the Integrated Goods and Services Tax (for short "IGST"), has been fixed taking into consideration that at present the Central Government devolves 42 per cent of the Taxes on Goods and Services to the States, as per the recommendation of the 14th Finance Commission. Moreover,

the power of exemption is variously described as conditional legislation and also a piece of delegated legislation. This power of the Central Government has to be exercised in public interest and there is no warrant for reading any limitation into this power. That, the new Budgetary Support Scheme is launched as a measure of goodwill only to the Units which were eligible for drawing benefits under the earlier Excise Duty Exemption/Refund Schemes but otherwise has no relation to the erstwhile Schemes and it is impossible to compare the benefits under the old Scheme and the new Scheme, neither is it feasible or desirable. This has been considered by the Central Government to be expedient in public interest and for revenue. That, in fact, the Petitioner has availed benefits extended by the Government under the Budgetary Support Scheme for various periods from July, 2017 through December, 2017 and after availing the benefits, they have filed the instant Writ Petition which is arbitrary and bad in law, on which ground alone the Petition deserves a dismissal. Moreover, the full benefit in respect of the share of the Central Revenue is being granted to the Petitioner and they have been availing of the said benefit from the Department. Hence, for the aforestated reasons, the Writ Petition is liable to be rejected.

3. The Respondent No.3 chose not to file any Counter-Affidavit.

4. A Rejoinder was filed to the Counter-Affidavit of Respondents No.1 and 2 which, while reiterating the facts stated in the Petition, emphasized that the Respondents No.1 and 2 have not cited the public interest which necessitated the curtailment of benefits promised to the Petitioner under the erstwhile law.

5.(i) Learned Counsel Mr. V. Lakshmi Kumaran for the Petitioner, while relying and reiterating the averments made in the Petition, contended that if the value addition norms were met, then even under the said Scheme, the manufacturer could avail 100 per cent exemption on the Excise duty paid through cash. That, in the Appeals filed by the Department, the Hon'ble Supreme Court in ***Union of India and Another vs. V.V.F. Limited and Another***[1] set aside the Judgments passed by the various High Courts including the Judgment of this High Court passed on 21.11.2017 however, the Judgment (***V.V.F. Limited*** *supra*) does not conclusively decide the issues raised in the instant Petition.

(ii) It was next contended that the Respondents have acted against their promises and reduced the benefits promised to the Petitioner. That, the Budgetary Support Scheme makes a departure from the erstwhile Scheme restricting the Budgetary Support which is *de hors* the value addition norms and limits the benefits available even if value addition norms are met. It was submitted that the principle of Promissory Estoppel is applicable in the instant case as the Respondents have failed to demonstrate any supervening public interest. That, the Hon'ble Supreme Court in ***V.V.F. Limited*** *(supra)* has not diluted the principle of Promissory Estoppel which would continue to apply in the present case, consequently this Court must independently examine whether the present amendment violates the said principle. That, the Hon'ble Supreme Court, in fact, noted that the principle is applicable in all cases except in cases of supervening public interest which necessitates withdrawal of benefits so promised. In light of this

[1] (2020) SCC Online SC 378

settled principle, the Hon'ble Supreme Court examined the reduction in Excise duty exemption benefits and held that the subsequent Notifications were merely clarificatory in nature and did not take away any vested right and were issued in the larger public interest to prevent misuse and to achieve the original object and purpose of the incentive/exemption. The attention of this Court was invited to Paragraphs 14 and 15 of the said ratio. Support in this context was garnered from the ratio of ***SL Srinavasa Jute Twine Mills (P) Ltd. Vs. Union of India***[2] and ***Southern Petrochemicals Industries Co. Ltd. vs. Electricity Inspector and Etio and Ors.***[3]. That, in the Counter-Affidavit filed by the Respondents No.1 and 2, as also in the Budgetary Support Scheme, it is stated that the limited benefit accorded is due to the reason that the Central Government devolves 42 per cent of the Taxes on goods and services to the State as per the recommendations of the 14th Finance Commission. That, even prior to the GST regime, the Central Government was sharing the revenue of Central Excise duty in the same proportion with the State Governments and at the time of introduction of the exemption Notification in 2003, the Centre was sharing 29.5 per cent of the Central Taxes with the States. However, the Petitioner was promised and granted 100 per cent exemption from Excise duty and it was not restricted to 70.5 per cent of the Tax payable. Hence, when the promises were made, the Parliament was well aware of its obligation to share the revenue with the States. That, the position under the GST Scheme is no different than the position under the erstwhile Central Excise regime, whereby the Taxes were

[2] (2006) 2 SCC 740
[3] (2007) 5 SCC 447

shared by virtue of Article 270(1) of the Constitution. The justification put forward by the Respondents on misuse of previous Scheme, something that was specifically noted and was made the basis of the Judgment in ***V.V.F. Limited*** *(supra),* is wholly without merit and *ex facie* unsustainable. That, the Exemption granted to it under the erstwhile Notifications were vested rights of the Petitioner as recognized by the Hon'ble Supreme Court in ***V.V.F. Limited*** *(supra),* which are saved by Section 174(2)(c) read with Section 6 of the General Clauses Act, 1897 and do not fall under the proviso to Sec 174(2)(c) of the said Act, which only seeks to exclude a privilege and not a vested right. That, the Budgetary Support Scheme being against the principles of Promissory Estoppel is arbitrary and violative of Article 14 of the Constitution and hence the Court may direct the Respondents to grant refund of 50 per cent IGST/100 per cent CGST, paid through cash on the goods cleared by the Petitioner from its eligible units.

6. *Per contra* the arguments submitted by Respondents No.1 and 2 was that the Petitioner had filed an Interlocutory Application being I.A. No.02 of 2019, stating that the Respondents No.1 and 2 had filed an Appeal against the Judgment of this Court dated 21.11.2017. When the matter was heard and reserved for Judgment by the Hon'ble Supreme Court, the Petitioner prayed that as the subject matter in the Special Leave Petitions dealt with the same issue as in the present Writ Petition, this Writ Petition be kept in abeyance till the pronouncement of the Judgment by the Hon'ble Supreme Court. Hence, the Judgment in ***V.V.F. Limited*** *(supra)* is applicable to the facts and circumstances of the instant case as evident from the observation at Paragraph "14.3" therein.

The Hon'ble Supreme Court had rejected the original Petition of the Petitioner wherein they sought benefit on the ground of Promissory Estoppel. Moreover, with the roll out of the GST regime, a new Scheme offered a measure of goodwill unrelated otherwise to the erstwhile Schemes. That, in fact, instead of 56 per cent exemption that was granted earlier, the amount to be refunded is fixed at 58 per cent, giving the Petitioner the benefit of additional 2 per cent. That although any tax exemption granted as an incentive against investment through a Notification has been discounted as a privilege vide Section 174(2)(c) of the CGST Act read with Notification No.21/2017-C.E., dated 18.07.2017, the Petitioner has been compensated for the benefits they were drawing earlier. That, as per the recommendations of the 14th Finance Commission, the Central Government devolves 42 per cent of the taxes on goods and services to the States, hence, it has been considered to be expedient in public interest and in the interest of revenue by the Central Government. In view of the above grounds, the present Petition deserves no consideration and is liable to be dismissed.

7. Learned Government Advocate for the State-Respondent No.3, in his arguments, contended that the distribution of Revenue Tax in accordance with the recommendation of the Finance Commission in the proportion of 58 per cent to the Union and 42 per cent to the States, is a recommendation involving all States in the Indian Union and does not pertain to the State of Sikkim alone. Of the 42 per cent which is distributed to the State, the share of the State of Sikkim is less than 0.5 per cent and in this view of the matter, it would be wholly erroneous to extrapolate the number of 42 per cent on the recommendation, if any, to be

made to the Petitioner without taking into reference the share of the State of Sikkim which is less than 0.5 per cent. That, the "CGST" is a "Central Tax" and liability exacted by the Union. The Union is solely responsible for the refund of the same and any liability, if so found by this Court, would be irrational without any fundamentals or any law.

8. The rival submissions of Learned Counsel for the parties were heard *in extenso* and given due consideration. The decisions relied on by Learned Counsel for the parties have also been perused as also the pleadings and all documents on record. What thereby falls for consideration before this Court is whether the ratio in ***V.V.F. Limited*** *(supra)* would be applicable to the facts and circumstances of the instant case or does this matter require independent examination by this Court.

9.(i) It would be apposite firstly to recapitulate here that the Petitioner had filed W.P.(C) No.41/2015, W.P.(C) No.08/2017, W.P.(C) No.27/2017 and W.P.(C) No.40 of 2017 before this Court, which came to be disposed of vide a common Judgment dated 21.11.2017.

(ii) In W.P.(C) No.41/2015, Notification No.21/2008-C.E. of 27.03.2008 and Notification No.36/2008-C.E. of 10.06.2008, were impugned with the prayer that the Petitioner Units be permitted to avail the benefits of Excise duty exemption provided in terms of Notification No.56/2003-C.E. of 25.06.2003. Notification No.20/2008-C.E. of 27.03.2008 and Notification No.38/2008-C.E. of 10.06.2008, were also impugned with the prayer seeking to avail the benefit of Excise duty exemption, as provided in Notification No.20/2007-C.E. of 25.04.2007.

(iii) Notification No.21/2008-C.E., dated 27.03.2008; Notification No.36/2008-C.E., dated 10.06.2008; Notification No.20/2008-C.E., dated 27.03.2008 and Notification No.38/2008-C.E., dated 10.06.2008 *(also impugned in W.P.(C) No.41/2015)* were impugned in W.P.(C) No.27 of 2017.

(iv) W.P.(C) No.40/2017 assailed Notification No.20/2008-C.E., dated 27.03.2008 and Notification No.38/2008-C.E., dated 10.06.2008 *(also impugned in W.P.(C) No.41/2015 and W.P.(C) No.27/2017).*

(v) It is worthwhile mentioning that in the said Writ Petitions, Learned Senior Counsel submitting on behalf of the Petitioner *inter alia* canvassed the contention that based on the Industrial Policy of 2003 and in terms of the promises made, which also exempted from so much of the duty of Excise leviable thereon as is equivalent to the amount of duty paid by manufacturer of the goods other than the amount of duty paid by utilization of CENVAT Credit under the CENVAT Credit Rules, 2002, for a period of ten years from the date of commencement of commercial production, the Petitioner, by investing large amounts of money, established Units for the manufacture of P&P Medicaments falling under Serial No.11 of the Schedule to the Notification No.56/2003-C.E., dated 25.06.2003. In the meanwhile, Office Memorandum dated 01.04.2007, was issued notifying the Industrial Policy, 2007, which also granted 100 per cent Excise duty exemption as provided in the Industrial Policy, 2003. That, however, the Industrial Policy, 2007, specifically provided that the new Industrial Units which commenced production within ten years of the said Memorandum, would be eligible for the incentive thereunder. In line with the

Industrial Policy, 2007, Notification No.20/2007-C.E., dated 25.04.2007, was issued whereby the Petitioner's goods were exempted from so much of the duty of Excise leviable thereon as is equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT Credit. In the year 2008, the earlier notified 100 per cent Excise duty exemption was significantly curtailed by issuing two amending impugned Notifications No.21/2008 and 20/2008 *supra,* by which the benefit of exemption was limited to the certain prescribed percentage of value addition i.e. 56 per cent applicable to Pharmaceutical Products, as mentioned in the respective Notifications. Further, amendment to Notifications No.56/2003 and No.20/2007 was made vide impugned Notification No.36/2008-C.E. (amending Notification No.56/2003) and impugned Notification No.38/2008-C.E. (amending Notification No.20/2007) both dated 10.06.2008, whereby an option for fixation of special rates for representing the actual value addition in respect of any goods manufactured and cleared under the respective original Notification was given. That, although the Petitioner was eligible to get the benefit of exemption under the Industrial Policy, 2007, inadvertently, after commencing commercial production from 20.04.2009, the Petitioner started claiming Excise duty benefit by way of self-credit of Excise duty in cash for the period April, 2009 to May, 2012 at the reduced rate of 56 per cent instead of 100 per cent of the amount paid in cash. No objection was taken to this credit by the Petitioner. On coming to learn of the decision of this Court in ***Unicorn Industries vs. Union of India***[4] and of the High Court

[4] 2013 (289) ELT 117 (Sikkim)

of Jammu and Kashmir in ***Reckitt Benckiser vs. Union of India***[5], wherein the Notifications curtailing benefits promised under Industrial Policy, 2003, were quashed, the Petitioner informed the authorities on 22.10.2011 that it would avail 100 per cent self-credit of the Excise duty paid, placing reliance on the aforesaid Judgments. For the period June, 2012 to February, 2014, the authorities denied self-credit on monthly basis on the ground that the Petitioner was not eligible to claim the benefit at the rate of 100 per cent of the amount paid in cash but was eligible for refund at the rate of 56 per cent on account of the amendment vide impugned Notification No.21/2008-C.E., dated 27.03.2008, which reduced the benefit from 100 per cent. That, the impugned Notifications reduced the 100 per cent Excise duty guarantee to 56 per cent, hence, on the ground of Promissory Estoppel alone, the Writ Petitions were liable to be allowed and the offending Notifications and Orders of the Commissionerate quashed. Further, once an exemption Notification has been issued in public interest, the authority cannot, by simply saying it is in public interest, withdraw or reduce its benefit and the onus would be on the authority to establish a superior public interest for such curtailment or withdrawal.

(vi) The Respondents (in the Writ Petitions under consideration then) while defending their action, claimed that a different mechanism was devised in public good and that the impugned Notification No.20/2008-C.E., dated 27.03.2008, does not deviate from the 100 per cent policy. This was sought to be explained by placing two separate calculations of Re-Credit/Refund

[5] 2011 (269) ELT 194

under Area Based Exemption Notification. That, the Petitioner had started availing credit of the amount of duty paid other than by way of utilization of CENVAT Credit under the CENVAT Credit Rules, 2004 at the rate of 56 per cent right from the beginning. That, the Petitioner started paying Central Excise duty from the Personal Ledger Account with effect from August, 2009, by which time, the impugned Notifications No.21/2008, dated 27.03.2008 and 36/2008, dated 10.06.2008, were already in existence and the Respondent No.1 was empowered under Section 5A of the Central Excise Act, 1944, to grant exemption from duty of Excise if the Government was satisfied that it was necessary and in public interest so to do by a Notification in the Official Gazette. That, the Petitioner was duly entitled to claim the option for fixation of special rate on the basis of the impugned Notification No.36/2008, dated 10.06.2008.

(vii) After hearing Learned Counsel for the parties and on consideration of the averments thereto, the Court then took up the following question for determination;

> *"**47**. The crucial question which must necessarily be answered is whether the Petitioner has been able to establish that the Respondents had vide the Industrial Policy, 2007 and Notification No. 20/2007 made a promise, which the Petitioner had acted upon putting itself in a detrimental position which would compel the Respondent No.1 to make good the promise. If the answer to the first question is in the affirmative then the second question which also needs to be answered is whether by issuing the impugned Notification No.20/2008 the Respondents has done away or curtailed the benefit granted under Notification No.20/2007. To answer the first question it is necessary to examine the pleadings in the present proceedings."*

(viii) On due consideration of all the facts and circumstances placed before it, this Court observed as follows;

> *"**64**. As the Petitioner had failed to commence commercial production within the period 23.12.2002 to 31.03.2017 as specified by Notification No. 56/2003 as*

> *amended by Notification No.27/2004 it was not entitled to claim exemption under the aforesaid notification as held above.* ***Consequently, we shall refrain from examining the challenge to the impugned Notification Nos. 27/2004, 21/2008 and 36/2008****."*
>
> **(emphasis supplied)**

(ix) While examining the impugned Notification No.20/2008-C.E., dated 27.03.2008 and the point canvassed by the Learned Additional Solicitor General that it does not actually digress from the Industrial Policy, 2007, as put into operation by Notification No.20/2007-C.E., dated 25.04.2007, the Court noted *inter alia* as follows;

> *"**67**. Under the amended paragraph 2A of Notification No.20/2007 as amended by impugned Notification No. 20/2008 the duty payable on value addition shall be equivalent to the amount calculated as a percentage of the total duty payable on the excisable goods. For the goods i.e. P & P medicaments falling under chapter 30 of the first schedule, the rate prescribed in the table to the amended paragraph 2A was 56%. Reading of the amended paragraph 2A leaves no room for doubt that the total 100% exemption once declared by the Industrial Policy, 2007 and as put into operation by Notification No. 20/2007 was hugely reduced to only 56% that too only on the value addition undertaken in the manufacture of the said goods. Simply put value addition is the amount by which the value of any good is increased at each stage of its production, exclusive of initial cost. Whereas in the original Notification No. 20/2007, the exemption on payment of excise duty was referable to the excise duty payable on the finished goods in the impugned Notification No. 20/2008 the excise duty was restricted to the quantum of value addition only. This surely was something not promised vide the Industrial Policy, 2007 and Notification No. 20/2007."*

(x) This Court further expressed its agreement with the views of the High Court of Gujarat in ***Sal Steel Limited vs. Union of India[6], Reckitt Benckiser*** *(supra)*, ***Unicorn Industries*** *(supra)*, ***Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and Others[7]*** and ***Pawan Alloys and Casting Pvt. Ltd., Meerut vs. U.P. State Electricity Board and Others[8]*** and at Paragraph "87" concluded, as follows;

---

[6] (2010) 260 ELT 158 (Guj)
[7] (1979) 2 SCC 409
[8] (1997) 7 SCC 251

> *"**87**. We find that the Respondent No.1, right from the year 2003, had declared a clear policy of 100% excise duty exemption to those new industrial units who would set up industry in Sikkim as well as to those industries who went in for substantial expansion. This policy was put into operation vide Notification No.56/2003. The Respondent No.1 had vide impugned Notification No. 24/2004 limited the period within which new industrial units were required to commence commercial production. The Petitioner started the process of investment in the year 2005 only and could not start commercial production until 20.04.2009 by which time, by the operation of a subsequent impugned Notification No.27/2004, the Petitioner did not qualify to take the benefit of the said Industrial Policy, 2003. The Petitioner therefore, is not entitled to the benefit of Notification No. 56/2003. The industrial policy however, did not change. In 2007 the Respondent No.1 declared the Industrial Policy, 2007 by which identical 100% excise duty exemption was once again promised. This Industrial Policy, 2007 was put into operation vide Notification No.20/2007. The Petitioner's subsequent investments were obviously intended to reap the benefit of the said Notification No.20/2007. The Petitioner having commenced commercial production on and from 20.04.2009 for the first unit and from 14.04.2014 for the second unit were well within the period notified therein. The policy of the Respondent No.1 was clear and cogent. It was intended to draw investors to Sikkim which was industrially backward. Having acted on the said promise made by the Respondent No.1, the Petitioner made huge investments and altered its position to its detriment. Having issued the said Notification No.20/2007 in public interest it was incumbent upon the Respondent No.1 to place before this Court all materials available to establish a superior public interest which the Respondent No.1 has failed to do. **The facts and circumstances of the present writ petitions, therefore, squarely falls within the parameters of the doctrine of promissory estoppel and that it would be unconscionable on the part of the Respondent No.1 to shy away from it without fulfilling its promise. The relief that must, therefore be granted on the facts of the present case is that for the period declared vide Notification No.20/2007 the Petitioner would be entitled to the excise duty exemption as promised therein. Consequently impugned Notification Nos.20/2008 and 38/2008 are liable to be quashed to the extent they curtail and whittle down the 100% excise duty exemption benefit as promised vide Notification No.20/2007 and is hereby quashed**. All impugned orders/ demand notices/show cause notices which are against the aforestated declarations of law are also quashed."*
>
> **(emphasis supplied)**

10.(i) As already stated, against the Judgment of this Court dated 21.11.2017, the Union of India was in appeal before the Hon'ble Supreme Court along with Judgments of various other High Courts on similar issues. The Hon'ble Supreme Court, while considering the Civil Appeals arising out of the various impugned Judgments, observed in the case of Sikkim, that the High Court

had quashed and set aside Notification No.20 of 2008-C.E., dated 27.03.2008, Notification No.36 of 2008-C.E., dated 10.06.2008 and Notification No.38 of 2008-C.E., dated 10.06.2008, on the ground that the same were against the principle of Promissory Estoppel and the Union of India.

(ii) Before the Hon'ble Supreme Court, the Union of India *inter alia* agitated that there was rampant misuse of Excise duty exemption which was brought to the notice of the Government as the Policy and intention of the Government to provide Excise duty exemption was in respect of genuine manufacturing activities carried out in those areas. The entire genesis of the Policy manifesting the intention of the Government to grant Excise duty exemption, was to provide such exemption only to actual value addition made in these areas. In this background and with a view to give effect to such a Policy, the Government in exercise of powers conferred under Section 5A of the Central Excise Act, 1944 modified the refund mechanism so as to provide that Excise duty refund would be allowed only to the extent of duty payable on actual value addition made by the manufacturer undertaking manufacturing activities in these areas. That, as a result of the Notifications impugned before the High Court, the manufacturers are required to pay duty on full value of the goods manufactured and cleared by them in the same manner as per existing Scheme but refund would be granted only to the extent of duty paid on the value addition made by them in these specified areas based on all India average of percentage of duty paid in cash and CENVAT Credit. That, the Central Government has the power to provide for exemption from duty on goods either wholly or partly with or

without condition as may be called for in public interest which is the guiding factor for exercise of power. That, the amendment Notification is non-discriminatory and treats all industries at par, and only rationalizes the quantum of exemption by proposing rate of refund on the total duty payable and the Central Government has only streamlined the provisions of the Notification relating to refund of duty paid through, other than CENVAT utilization. That, moreover, the doctrine of Promissory Estoppel cannot be invoked against exercise of powers under the statute and the bar of Promissory Estoppel is not applicable in fiscal matters, besides which, the doctrine of Promissory Estoppel will not be applicable if the change in stand of the Government is made on account of public policy and in public interest.

(iii) The Hon'ble Supreme Court *inter alia* held as follows;

> "**10**. ……Therefore, the questions which are posed for consideration of this Court are whether in the facts and circumstances of the case the subsequent notification which has been quashed and set aside by the High Court being notification No. 16 of 2008 dated 27.03.2008 can be said to be clarificatory in nature and can it be said that it takes away the vested right conferred pursuant to the earlier notification of 2001 and whether the same can be made applicable retrospectively and whether the same has been issued in the public interest and whether the same is hit by the Doctrine of Promissory Estoppel?
>
> **11**. While considering the aforesaid questions and before considering the nature of the subsequent notification of 2008, few decisions of this Court on retrospectivity/clarificatory/applicability of promissory estoppel in the fiscal statute are required to be referred to, which are as under:
>
> **11.1** In the case of Kasinka Trading (supra), in paragraphs 12, 20 and 23, it is observed and held as follows:
>
> > "12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of

promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

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

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

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

Thus, it can be seen that this Court has specifically and clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the objective to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present to the mind of the court, while considering the applicability of the doctrine. It is further held that the doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. It is further held that an exemption notification does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself. It has been further held that under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. It has been observed that the withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". It has been held that where the Government acts in "public interest" and neither any fraud or lack of bonafides is alleged, much less established, it would not be appropriate for the court to interfere with the same.

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

.....

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

(emphasis supplied)

(iv) Reference was also made to the ratio in ***Sales Tax Officer and Another vs. Shree Durga Oil Mills and Another***[9]***, State of Rajasthan and Another vs. Mahaveer Oil Industries and Others***[10] and ***Shree Sidhbali Steels Limited and Others vs. State of Uttar Pradesh and Others***[11]. The Hon'ble Supreme Court also explained that any legislation or instrument having force of law, if clarificatory, declaratory or explanatory in nature or purport, will have retrospective operation especially in the absence of any indication to the contrary as to retrospectivity either in parent Act or Rules or Notifications involved and held *inter alia* as follows;

"**14.1** The main objective of the earlier respective notifications/industrial policies was to encourage the entrepreneurs to put new industries in the area so as to generate employment and for that an incentive was offered to get back by way of refund the excise duty paid either in cash or PLA, namely, the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization paid by CENVAT credit. The same was subject to conditions that it will be applied to the new industrial units, i.e. the units which are set up on and after the publication of the said notification in the Official Gazette, i.e. not later than 31.07.2003. The notification was modified from time to time. However, during the operation of the earlier notifications, it was noticed that the provision of granting refund of cash paid portion of duty and eligibility of credit the entire amount of duty to the buyers of such excisable goods had prompted certain unscrupulous manufacturers to indulge in different types of tax evasion tactics. It was revealed on analysis of cases booked by the Excise Department and even the representations received from the Industry Association about misuse of exemptions granted by the Government, which was meant to be available only for genuine manufacturers. It was noticed as under:

i) Reporting of bogus production by mere issuance of sale invoices without actual production of goods and supply/clearance of

[9] (1998) 1 SCC 572
[10] (1999) 4 SCC 357
[11] (2011) 3 SCC 193

excisable goods. This would result in availment of CENVAT credit by buyers of such excisable goods in other parts of the country without actual production being carried out and in absence of actual receipt of goods.

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

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

iv) Goods are supplied by manufacturers, importers to these units without issuance of sales invoice and these are backed by bogus sale invoices issued by traders who do not undertake actual supply of goods. The actual supplier of these goods issue bogus duty paid invoices to other manufacturers who take credit based on such invoices without receipt of goods.

Therefore, the Government came out with the impugned notifications/industrial policies that the refund of excise duty shall be provided on actual and calculated on the basis of actual value addition. On a fair reading of the earlier notifications/ industrial policies, it is clear that the object of granting the refund was to refund the excise duty paid on genuine manufacturing activities. The intention would not have been that irrespective of actual manufacturing/ manufacturing activities and even if the goods are not actually manufactured, but are manufactured on paper, there shall be refund of excise duty which are manufactured on paper. **Therefore, it can be said that the object of the subsequent notifications/industrial policies was the prevention of tax evasion. It can be said that by the subsequent notifications/industrial policies, they only rationalizes the quantum of exemption and proposing rate of refund on the total duty payable on the genuine manufactured goods. At the time when the earlier notifications were issued, the Government did not visualize that such a modus operandi would be followed by the unscrupulous manufacturers who indulge in different types of tax evasion tactics. It is only by experience and on analysis of cases detected the Excise Department the Government came to know about such tax evasion tactics being followed by the unscrupulous manufacturers which prompted the Government to come out with the subsequent notifications which, as observed hereinabove, was to clarify the refund mechanism so as to provide that excise duty refund would be allowed only to the extent of duty payable on actual value addition made by the manufacturer undertaking manufacturing activities in the concerned areas. The entire genesis of the policy manifesting the intention of the Government to grant excise duty exemption/refund of excise duty paid was to provide such exemption only to actual value addition made in the respective areas. As it was found that there was misuse of excise duty exemption it was considered expedient in the public interest and with a laudable object of having genuine industrialization in backward areas or the concerned areas, the subsequent notifications/ industrial policies have been issued by the Government. Therefore, the subsequent notifications/industrial policies impugned before the respective High Courts were in the public interest and even issued after thorough analysis of the cases of tax evasion and even after receipt of the reports. The earlier notifications were issued under Section 5A of the Central Excise Act and even the subsequent notifications which were issued in public interest and in the interest of Revenue were also issued under Section 5A of the Central Excise Act, which can not be said to be bad**

in law, arbitrary and/or hit by the doctrine of promissory estoppel.

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

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

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

> and therefore cannot be said to be hit by the doctrine of promissory estoppel, the same is to be applied retrospectively and they cannot be said to be irrational and/or arbitrary."
>
> **(emphasis supplied)**

Learned Counsel for the Petitioner has admitted that the Hon'ble Supreme Court, while examining the reduction in Excise duty exemption benefits, held that the subsequent Notifications were merely clarificatory in nature and did not take away any vested right and had, in fact, been issued in the larger public interest to prevent misuse and to achieve the original object and purpose of the incentive/exemption.

11. On a meticulous scrutiny of the pleadings before us and from a careful consideration of the facts canvassed by Learned Counsel for the parties, it goes without saying that the issues raised in the previous Writ Petitions determined by this Court vide Judgment dated 21.11.2017, are identical to the issues raised in the instant Writ Petition *viz.* W.P.(C) No.47 of 2018, the only distinguishing factor being that the Notification challenged herein is "Notification F.No.10(1)/2017-DBA-II/NER," dated 05.10.2017, while the Notifications challenged in the earlier Writ Petitions have already been enumerated hereinabove.

12.(i) The Petitioner, in the instant Writ Petition, is aggrieved by the alleged curtailment of 100 per cent Excise duty exemption granted vide the earlier Policies of the Government, which underwent a sea change under the new Tax regime in 2017. That, the 100 per cent Excise duty exemption by way of refund availed by the Petitioner prior to the Tax Reform of 2017, was curtailed by the Respondents under the GST regime through the Budgetary Support Schemes reducing the benefits earlier granted inasmuch

as the Budgetary Support for specified goods manufactured by the eligible Unit is 58 per cent of CGST and 29 per cent of IGST paid through debit in cash ledger account maintained by the Unit after full utilization of the input Tax Credit of the Central Tax and Integrated Tax. The Petitioner in W.P.(C) No.41/2015, W.P.(C) No.08/2017, W.P.(C) No.27/2017 and W.P.(C) No.40 of 2017 had in sum and substance, the same grievances. Promissory Estoppel has been agitated previously, as also in this Writ Petition. In W.P.(C) No.41/2015, the challenge to the impugned Notifications therein was for the reason that the benefit of exemption was sought to be reduced to the prescribed percentage of value addition amount i.e. 56 per cent applicable to pharmaceutical products mentioned in the respective Notifications and applicable Chapter. In the instant Petition, it is contended that the amount of Budgetary Support under the Scheme for specified goods manufactured by the eligible Unit is specified as the sum total of 58 per cent of the Central Tax paid through debit in cash ledger account maintained by the Unit after full utilization of the input Tax Credit of the Central Tax and Integrated Tax and 29 per cent of the Integrated Tax paid through debit in cash ledger account maintained by the Unit after full utilization of the input Tax Credit of the Central Tax and Integrated Tax. That, hence the Excise duty Exemptions availed by the Petitioner by way of refund in the pre GST regime, for both the Units were curtailed by the Respondent No.1 through the Budgetary Support Policy thereby reducing the benefit granted to the Petitioner, as the Petitioner is not allowed to take refund of full amount of CGST paid from electronic cash ledger and the refund of 50 per cent of the IGST paid from electronic cash

ledger. In fact, it was the submission of Learned Counsel for the Petitioner in I.A. No.02 of 2019, before this Court, that the subject matter in the SLP(s) supra dealt with the same issue as in the instant Writ Petition. It is relevant to notice that the Order of this Court, dated 17.09.2019, in the said I.A., reads *inter alia* as follows;

> *"Heard on I.A. No.02 of 2019 which is an application filed by the Petitioner, i.e., Sun Pharma Laboratories Limited, bringing on record subsequent developments relating to the subject-matter of WP(C) No.47 of 2018, which was finally heard on 03-09-2019 and Judgment reserved.*
>
> *It is submitted by Learned Counsel for the Petitioner that the Respondents No.1 and 2 filed SLP(C) Nos.10257 of 2018, 10253 of 2018, 12148 of 2018 and 12496 of 2018, before the Hon'ble Supreme Court, against the Judgment of this Court dated 21-11-2017 in WP(C) Nos. 41 of 2015, 8 of 2017, 27 of 2017 and 40 of 2017. That, the said Appeals have been heard by the Hon'ble Supreme Court and Judgment is reserved in those matters.* ***As the subject-matter in the SLP(s) supra deal with the same issue as in WP(C) No.47 of 2018, it is prayed that the Judgment in this Writ Petition be kept in abeyance till the pronouncement of the Judgment by the Hon'ble Supreme Court in the aforestated SLP(s)****.*
>
> *The other parties have no objection.*
>
> *Considered and ordered accordingly.*
>
> *Let the Petitioner inform this Court after the pronouncement of the Judgment by the Hon'ble Supreme Court by filing a Petition to that effect."*
>
> **(emphasis supplied)**

13. The question framed in Paragraph "47" by this Court in the impugned Judgment, dated 21.11.2017, as already extracted *supra,* clearly deals with Promissory Estoppel and has been duly examined by this Court. The Judgment of the Hon'ble Supreme Court extracted hereinabove, therefore, elucidates and clarifies the nature of the Notifications, while dealing with the amendments to the impugned Notifications, as also the principle of Promissory Estoppel and has clarified all points in controversy raised in the Appeals, which without a shade of doubt, are similar to the issue raised herein *viz.* curtailment of benefits granted vide exemptions. Thus, these issues stand truncated and there is no question of this

Court delving any further into the question of the Promissory Estoppel.

14. That having been said, we may notably refer to the ratio of the Hon'ble Supreme Court in ***Director of Settlements, A.P. and Others vs. M.R. Apparao and Another***[12] which, while dealing with the principle of binding precedent, held *inter alia* as follows;

> "**7.** …….Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. **The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court**……..."
>
> **(emphasis supplied)**

15. In conclusion, the grievances of the Petitioner raised in the matter at hand is soundly quelled by the Hon'ble Supreme Court in all aspects by the ratio in ***V.V.F. Limited*** *(supra)* and this Court does not intend to venture further.

---

[12] (2002) 4 SCC 638

16. Hence, in view of all of the foregoing discussions, we find no merit in the Writ Petition, which deserves to be and is accordingly dismissed.

17. No order as to costs.

(Bhaskar Raj Pradhan)
Judge
05.02.2021

(Meenakshi Madan Rai)
Judge
05.02.2021

ml Approved for reporting : **Yes**