



Judgment reserved on **03.06.2022**

Judgment delivered on **31.10.2022**

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P(C) No.2208 OF 2019

STAR CEMENT LTD., a company incorporated under the provisions of the Companies Act, 1956 and having its office situated at Mayur Garden, 2nd floor, opp Rajiv Bhawan, G S Road, Guwahati- 781005, Assam and rep. by Mr. Sanjib Kumar Saharia, Asstt Manager (legal)

.....Petitioner

-Versus-

UNION OF INDIA, rep. by the Secretary to the Govt of India, Min of Finance, Deptt of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min Of Commerce And Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, Central Goods and Service Tax, Gst Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSTT COMMISSIONER, Central Goods and Services Tax, Guwahati- II Division, GST Bhawan, Kedar

Road
Fancy Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

Rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 11000

.....Respondents

W.P(C) No.2430 OF 2019

Assam Enterprise LLP., a limited liability partnership firm incorporated under the provisions of the Limited Liability Partnership Act, 2008 and having its factory situated at Birkuchi, Bonda, Narengi, Guwahati and represented by Sri M, Rajak aged 59 years, one of the partners of the partnership firm and a resident of 26 Prince Ahmed Shah Road, Merline Residency, Flat-5M, Kolkata-23.

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of India

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan

Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER

Central GST,Guwahati-II Division

GST Bhawan, Kedar Road, Fancy Bazar
Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

.....Respondents

W.P(C) No.2757 OF 2019

ASSAM ROOFING LTD., A Company Incorporated
Under The Provision of The Companies Act 1956 and
having its registered Office and factory situated at Bonda,
Narengi, Assam Represented by Sri Bhagirath Pasari, The
Managing Director of the Petitioner Company and resident
of 4A,Rainy Park, Kolkata.

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of
India
Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA
Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA
Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**

Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan
Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER
Central GST,Guwahati-II Division
GST Bhawan, Kedar Road, Fancy Bazar
Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

.....Respondents

W.P(C) No.2761 OF 2019

PDP STEELS LTD.,A Company Incorporated under the Provision of the Companies Act, 1956 and having its registered office at Esplande Mansion, Government Place East, Kolkata- 700069 in the State of West Bengal and its factory situated at Bonda, Narengi, Assam, Rep. by Sri Rahul Pasari

One of the Directors of the Petitioner Company and Resident of 4A, Rainy Park, Kolkata..

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of India

Min of Finance, Deptt of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER

Central GST,Guwahati-II Division
GST Bhawan, Kedar Road, Fancy Bazar
Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

W.P(C) No.3052 OF 2019

CENTURY PLYBOARDS (I) LTD.,A Company
incorporated under the Provisions of the Companies Act,
1956 and having its registered office at Century House, P-
15/1 Taratala Road
Kolkata-700088 and carrying on business in the name and
style of Cent Ply.

2. CENT PLY, A division of Century Plyboards (I) Ltd.
Mirza-Palashbari Road, Palashbari, Kamrup, Assam-781128

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of
India
Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA
Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA
Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**
Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan
Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER
Central GST,Guwahati-II Division
GST Bhawan, Kedar Road, Fancy Bazar
Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

W.P(C) No.3055 OF 2019

CENTURY PLYBOARDS (I) LTD.,A Company
Incorporated Under the Provisions of the Companies Act,
1956 and having its registered office at Century House, P-
15/1 Taratala Road
Kolkata-700088 and carrying on business in the name and
style of Purbanchal Timber Industries.

2. PURBANCHAL TIMBER INDUSTRIES

A division of Century Plyboards (I) Ltd. Mirza-Palashbari
Road, Palashbari, Kamrup, Assam-781128

.....Petitioners

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of
India
Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**

Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan
Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER

Central GST,Guwahati-II Division
GST Bhawan, Kedar Road, Fancy Bazar
Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

.....Respondents

W.P(C) No.3601 OF 2019

INDIA CARBON LTD., A Limited Company Incorporated under the Companies Act, 1956 having its Regd Office at Noonmati, Guwahati- 20 and in the present proceedings Rep. By Sri Shyamal Kumar Bhattacharjya, The General Manager (Admn and Commercial) of the Petitioner Company

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of India
Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER

Central GST,Guwahati-II Division, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue North Block, New Delhi- 110001

.....Respondents

W.P(C) No.3606 OF 2019

CARBON RESOURCES PVT. LTD., A Pvt Limited Company having its Regd office at 55B and its factory at village, Kukurmari, Dhaligaon, P.O- Dhaligaon, Dist- Chirang(BTAD)

Pin- 783385, Assam and in the present proceedings Rep. by

Mr. Rajendra Kumar Sharma, The Director Project of the
Petitioner Company

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of
India
Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA
Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA
Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**
Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan, Kedar
Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER
Central GST,Guwahati-II Division, GST Bhawan, Kedar
Road, Fancy Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

.....Respondents

W.P(C) No.4350 OF 2019

ABDOS LAMITUBES PRIVATE LTD.,A private
Limited Company Incorporated under the Porvisions of the
Companies Act, 1956 and having its office situated at Pub
Boragaon, P.O- Garchuk, Guwahati- 781035 and in the
present proceedings Rep. By Mr.Bijay Agarwal, one of the
Directors of the petitioner Company

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of India
Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER

Central GST,Guwahati-II Division, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue North Block, New Delhi- 110001

.....Respondents

W.P(C) No.5186 OF 2019

CONTROL PRINT LTD., A Ltd Company having its Regd Office At C-106, Hond Saurashtra Industrial Estate, Andheri Kurla Road, Marol Naka, Andheri (East), Mumbai- 400059 and factory at Ward No. 8, Hudumpur, Mauza- Chayani, Palshbari- 781128, Dist- Kamrup(R) and in the present proceedings Rep. by Mr. Mohanty, the Head Accounts and authorised signatory of the Petitioner Company

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of India
Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, Central GST, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER

Central GST,Guwahati-II Division, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue North Block, New Delhi- 110001

.....Respondents

W.P(C) No.5233 OF 2019

ASSAM CARBON PRODUCTS LTD., A Ltd Company incorporated under the Companies Act, 1956 having its registered office at Birkuchi, Narengi Chandrapur Road, Guwahati- 7810026 and in the present proceeding represented by Shri Kailash Chand Joshi, Advisor- Finance & Accounts, of the petitioner company.

.....Petitioner

-Versus-

UNION OF INDIA, Rep. by the Secretary to the Govt of India

Min. of Finance, Deptt. of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, CENTRAL GOODS & SERVICE TAX, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER,

Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue North Block, New Delhi- 110001

.....Respondents

W.P(C) No.6756 OF 2019

CALCOM CEMENT INDIA LIMITED,

(Cement Grinding Unit) Village Pipalpurkhi, P.O. Lanka, Dist.- Nagaon, Assam- 788931, a Company registered under the Companies Act, 1956 having its registered office at 3rd and 4th Floor, Anil Plaza II, ABC, G.S. Road, Guwahati 781005, Assam represented by Shri Sunil Aggarwal, the Executive Director of the petitioner Company.

.....Petitioner

-Versus-

UNION OF INDIA,

Rep. by the Secretary to the Govt. of India,
Min. of Finance, Deptt. of Revenue, North Block, New Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min. of Commerce and Industry, Deptt of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110107

4. THE UNDER SECRETARY TO THE GOVT OF INDIA

Min of Finance, Deptt Of Revenue, North Block, New Delhi- 110001

5. COMMISSIONER, CENTRAL GOODS & SERVICE TAX, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

6. ASSISTANT COMMISSIONER,

Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue North Block, New Delhi- 110001

8. THE GOODS & SERVICE TAX COUNCIL,

5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001

.....Respondents

W.P(C) No.6759 OF 2019

CALCOM CEMENT INDIA LIMITED,

Unit Jamunanagar, Umarangshu, N.C. Hills Assam- 788931, a Company registered under the Companies Act, 1956 having its registered office at 3rd and 4th Floor, Anil Plaza II, ABC, G.S. Road, Guwahati 781005, Assam represented by Shri Sunil Aggarwal, the Executive Director of the petitioner Company.

.....Petitioner

-Versus-

UNION OF INDIA,

Rep. by the Secretary to the Govt. of India,
Min. of Finance, Deptt. of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min. of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**

Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

**5. COMMISSIONER, CENTRAL GOODS & SERVICE
TAX, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001**

6. ASSISTANT COMMISSIONER,

Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy
Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

8. THE GOODS & SERVICE TAX COUNCIL,

5th Floor, Tower II, Jeevan Bharti Building, Janpath Road,
Connaught Place, New Delhi- 110001

.....Respondents

W.P(C) No.6764 OF 2019

ALSTHOM INDUSTRIES LIMTED,

A Company registered under the Companies Act, 1956 having its registered office at 3rd and 4th Floor, Anil Plaza II, ABC, G.S. Road, Guwahati 781005, Assam represented by Shri Sunil Aggarwal, the Executive Director of the petitioner Company.

.....Petitioner

-Versus-

UNION OF INDIA,

Rep. by the Secretary to the Govt. of India,
Min. of Finance, Deptt. of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT. OF INDIA

Min. of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**

Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

**5. COMMISSIONER, CENTRAL GOODS & SERVICE
TAX, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001**

6. ASSISTANT COMMISSIONER,

Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy
Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

8. THE GOODS & SERVICE TAX COUNCIL,

5th Floor, Tower II, Jeevan Bharti Building, Janpath Road,
Connaught Place, New Delhi- 110001

.....Respondents

W.P(C) No.9196 OF 2019

UPPER ASSAM PETROCOKE PVT. LTD.,

A Private limited Company incorporated under the Companies Act, 1956 having its registered office at No. 2, Makum Patheer, P.O. Margherita, Tinsukia, Assam- 786181 represented by, One- Ankit Sharma, one of the Directors of the Company.

.....Petitioner

-Versus-

UNION OF INDIA,

Rep. by the Secretary to the Govt. of India,
Min. of Finance, Deptt. of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min. of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**

Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

**5. COMMISSIONER, CENTRAL GOODS & SERVICE
TAX, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001**

6. ASSISTANT COMMISSIONER,

Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy
Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

.....Respondents

W.P(C) No.9203 OF 2019

NEW AGE PETCOCK PVT. LTD.,

A Private limited Company incorporated under the Companies Act, 1956 having its registered office at Palashbari, NH-31C, P.O. Kajalgaon, District- Chirang, (BTAD) Assam,- 783385 represented by, Mr. Bipul Kumar Dutta, one of the Directors of the petitioner Company.

.....Petitioner

-Versus-

UNION OF INDIA,

Rep. by the Secretary to the Govt. of India,
Min. of Finance, Deptt. of Revenue, North Block, New
Delhi- 110001

2. SECRETARY TO THE GOVT OF INDIA

Min of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

3. JOINT SECRETARY TO THE GOVT OF INDIA

Min. of Commerce and Industry, Deptt of Industrial Policy
and Promotion, Udyog Bhawan, New Delhi- 110107

**4. THE UNDER SECRETARY TO THE GOVT OF
INDIA**

Min of Finance, Deptt Of Revenue, North Block, New
Delhi- 110001

**5. COMMISSIONER, CENTRAL GOODS & SERVICE
TAX, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001**

6. ASSISTANT COMMISSIONER,

Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy
Bazar, Guwahati- 781001

7. CENTRAL BOARD OF EXCISE AND CUSTOMS

rep. by its Chairman, Min of Finance, Deptt of Revenue
North Block, New Delhi- 110001

.....Respondents

WP(C) No. 113 OF 2020

Genus Power Infrastructures Limited,

A company incorporated under the provisions of the Companies Act, 1956 having its registered office at G-14, Sector 63, Noida, U.P. and its industrial unit at Silasindurighopa, Plot No. 104, Brahmaputra Industrial Park, Gouripur, Amingaon, Guwahati in the District of Kamrup (Rural) 781031.

2. Sri Rajendra Kumar Agarwal,

aged about 45 years, resident of Dwarkapuri, Jamanlal Bajaj Marg, Jaipur-Rajasthan and the Managing Director and CEO of the Petitioner No. 1 Company.

.....Petitioners

-Versus-

1. Union of India,

Represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110 001.

2. Secretary to the Government of India,

Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110011.

3. The Joint Secretary,

Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110011.

4. The Under Secretary of the Government of India,

Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.

5. Commissioner, Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001.

6. Assistant Commissioner,
Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy
Bazar, Guwahati- 781001.

7. Central Board of Excise & Customs
Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

WP(C) No. 1838 OF 2020

Barak Valley Cements Limited,

A company incorporated under the Companies Act, 1956 having its registered office at 202, Royal View, B.K. Kakoti Road, Ulubari, Guwahati in the District of Kamrup (M), Assam and its industrial unit at Bebandranagar, Jhoom Basti, Badarpurghat, in the district of Karimganj, Assam. The petition in the present proceedings is being represented by Sri Mukesh Agarwal, the Chief Executive Officer of the Petitioner Company.

.....Petitioner

-Versus-

1. Union of India,
Represented by the Secretary to the
Government of India, Ministry of Finance, Department of
Revenue, North Block,
New Delhi- 110 001.

2. Secretary to the Government of India,
Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110011.

3. The Joint Secretary to the Government of India,
Ministry of Commerce and Industry, Department of
Industrial Policy and Promotion, Udyog Bhawan, New
Delhi- 110011.

4. The Under Secretary of the Government of India,
Ministry of Finance, Department of Revenue, North Block,
New Delhi-110 001.

5. Commissioner, Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001.

6. Assistant Commissioner,
Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy
Bazar, Guwahati- 781001.

7. Central Board of Excise & Customs
Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

WP(C) No. 2558 OF 2020

Shree Shyam Commercial Co.

A partnership firm registered under the Indian Partnership Act, 1932 and having its registered office at Jail Road, Fancy Bazar, Guwahati- 781001 and its factory situated at National Board Complex, near Panikhaity Circle Office, Panikhaity, Guwahati- 781026 in the District of Kamrup, Assam and in the present proceedings represented by Sri Vivek Nimodia, the authorized signatory of the petitioner firm.

.....Petitioner

-Versus-

1. Union of India,
Represented by the Secretary to the
Government of India, Ministry of Finance, Department of
Revenue, North Block,
New Delhi- 110 001.

2. Secretary to the Government of India,
Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110011.

3. The Joint Secretary to the Government of India,
Ministry of Commerce and Industry, Department of
Industrial Policy and Promotion, Udyog Bhawan, New
Delhi- 110017.

4. The Under Secretary of the Government of India,
Ministry of Finance, Department of Revenue, North Block,
New Delhi-110 001.

5. Commissioner, Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001.

6. Assistant Commissioner,
Central Goods & Service Tax,
Guwahati-II Division, Sethi Trust Building, 4th Floor G.S.
Road, Bhangagarh, Guwahati- 781005.

7. Central Board of Excise & Customs
Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

WP(C) No. 2573 OF 2020

Vision Foods and Beverages

A partnership firm registered under the Indian Partnership Act, 1932 and having its Industrial unit located at East Banipur, Dhekeri Gaon, Lahool, Dibrugarh, Assam and its principal place of business at 1st Floor, Jain Enterprise Building, H.S. Road Dibrugarh, Assam and in the present proceedings represented by Sri Vivek Nimodia, the authorized signatory of the partnership firm.

.....Petitioner

-Versus-

1. Union of India,
Represented by the Secretary to the
Government of India, Ministry of Finance, Department of
Revenue, North Block,
New Delhi- 110 001.

2. Secretary to the Government of India,
Ministry of Commerce and Industry,

Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110011.

3. The Joint Secretary to the Government of India,
Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110017.

4. The Under Secretary of the Government of India,
Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.

5. Commissioner, Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001.

6. Assistant Commissioner,
Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001

7. Central Board of Excise & Customs
Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

WP(C) NO. 2582 OF 2020

Shree Shyam Udyog.

A partnership firm registered under the Indian Partnership Act, 1932 and having its registered office at Jail Road, Fancy Bazar, Guwahati- 781001 and its factory situated at National Board Complex, near Panikhaity Circle Office, Panikhaity, Guwahati- 781026 in the District of Kamrup, Assam and in the present proceedings represented by Sri Vivek Nimodia, the authorized signatory of the petitioner firm.

.....Petitioner

-Versus-

1. Union of India,
Represented by the Secretary to the

Government of India, Ministry of Finance, Department of Revenue, North Block,
New Delhi- 110 001.

2. Secretary to the Government of India,
Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110011.

3. Joint Secretary to the Government of India,
Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi- 110017.

4. The Under Secretary of the Government of India,
Ministry of Finance, Department of Revenue, North Block,
New Delhi-110 001.

5. Commissioner, Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati- 781001.

6. Assistant Commissioner,
Central Goods & Service Tax,
Guwahati-II Division, Sethi Trust Building, 4th Floor G.S. Road, Bhangagarh, Guwahati- 781005

7. Central Board of Excise & Customs
Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

WP(C) NO. 2590 OF 2020

Vision Metalik Company

A partnership firm registered under the provisions Indian Partner Act, 1932 having its industrial unit located at Mohanbari Hindu Gaon, N.H. 37, Mohanbari, Lahoal, Dibrugarh, Assam and its principal place of business at 1st Floor, Jain Enterprise Building, H.S. Road Dibrugarh, Assam and in the present proceedings represented by Sri Vivek Nimodia, the authorized signatory of the partnership firm.

.....Petitioner

-Versus-

1. Union of India,

Represented by the Secretary to the
Government of India, Ministry of Finance, Department of
Revenue, North Block,
New Delhi- 110 001.

2. Secretary to the Government of India,

Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110011.

3. Joint Secretary to the Government of India,

Ministry of Commerce and Industry, Department of
Industrial Policy and Promotion, Udyog Bhawan, New
Delhi- 110011.

4. The Under Secretary of the Government of India,

Ministry of Finance, Department of Revenue, North Block,
New Delhi-110 001.

5. Commissioner, Central Goods & Service Tax,

GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001.

6. Assistant Commissioner,

Central Goods & Service Tax,
Guwahati-II Division, GST Bhawan, Kedar Road, Fancy
Bazar, Guwahati - 781001

7. Central Board of Excise & Customs

Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

WP(C) No. 4355 OF 2020

M/s Tirupati Dairytech

A partnership Firm having its office at EPIP, AIDC
Complex, Amingaon, Kamrup- 781031, Assam.

.....Petitioner

-Versus-

1. Union of India,

Represented by the Secretary to the
Government of India, Ministry of Finance, Department of
Revenue, North Block,
New Delhi- 110 001

2. Secretary to the Government of India,

Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110017.

3. Joint Secretary to the Government of India,

Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110017.

4. The Under Secretary of the Government of India,

Ministry of Finance, Department of Revenue, North Block,
New Delhi-110 001.

5. Commissioner, Central Goods & Service Tax,

GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001.

6. Assistant Commissioner,

Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati -
781001

7. Central Board of Excise & Customs

Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

WP(C) No. 4532 OF 2020

M/s Keshari Industries

A partnership Firm having its office at Abhayapur,
Gauripur, Shila Sundarighopa, Kamrup- 781031, Assam,
represented by one of its Partners Sri Pawan Kumar Soni.

.....Petitioner

-Versus-

1. Union of India,

Represented by the Secretary to the
Government of India, Ministry of Finance, Department of
Revenue, North Block,
New Delhi- 110 001

2. Secretary to the Government of India,

Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110017.

3. Joint Secretary to the Government of India,

Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110107.

4. The Under Secretary of the Government of India,

Ministry of Finance, Department of Revenue, North Block,
New Delhi-110 001.

5. The Commissioner, Central Goods & Service Tax,

GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001.

6. The Assistant Commissioner,

Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati -
781001

7. Central Board of Excise & Customs

Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

WP(C) No. 4591 OF 2020

M/s Keshari Polymer

A partnership Firm having its office EPIP, AIDC
Complex, Amingaon, Kamrup- 781031, Assam

.....Petitioner

-Versus-

1. Union of India,

Represented by the Secretary to the
Government of India, Ministry of Finance, Department of
Revenue, North Block,
New Delhi- 110 001

2. Secretary to the Government of India,

Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110017.

3. Joint Secretary to the Government of India,

Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion, Udyog
Bhawan, New Delhi- 110107.

4. The Under Secretary of the Government of India,

Ministry of Finance, Department of Revenue, North Block,
New Delhi-110 001.

5. The Commissioner, Central Goods & Service Tax,

GST Bhawan, Kedar Road, Fancy Bazar, Guwahati-
781001.

6. The Assistant Commissioner,

Central Goods & Service Tax,
GST Bhawan, Kedar Road, Fancy Bazar, Guwahati -
781001

7. Central Board of Indirect Taxes & Customs

Represented by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi- 110 001

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioners

: Dr. A. Saraf, Senior Counsel
Mr. R. Dubey, learned Counsel
Ms. N Hawelia, learned counsel

Advocate for the respondents

: Mr. S.C. Keyal, SC, GST

JUDGMENT AND ORDER (CAV)

Heard Dr. A. Saraf, learned Senior counsel for the petitioners in WP(C) No. 2208/2019, WP(C) No. 2430/2019, WP(C) No. 2757/2019, WP(C) No. 2761/2019, WP(C) No. 3052/2019, WP(C) No. 3055/2019, WP(C) No. 3601/2019, WP(C) No. 3606/2019, WP(C) No. 4350/2019, WP(C) No. 5186/2019, WP(C) No. 6756/2019, WP(C) No. 6759/2019, WP(C) No. 6764/2019, WP(C) No. 113/2020, WP(C) No. 1838/2020, WP(C) No. 2558/2020, WP(C) No. 2573/2020, WP(C) No. 2582/2020, WP(C) No. 2590/2020; Mr. R. Dubey, learned counsel for the petitioners in WP(C) No. 5233/2019, WP(C) No. 9196/2019, WP(C) No. 9203/2019; Ms. N Hawelia, learned counsel for the petitioners in WP(C) No. 4355/2020, WP(C) No. 4532/2020, WP(C) No. 4591/2020. Also heard Mr. S.C. Keyal, learned Standing Counsel, GST appears for all the respondents.

2. All these petitions have raised common issues and question. As such all these Writ Petitions are taken up for hearing and disposal together. Dr. A. Saraf, learned Senior Counsel leads the arguments on behalf of the petitioners. Mr. S.C. Keyal, learned Standing Counsel appears on behalf of the respondents in all the writ petitions.

3. The Petitioner in W.P(C) No. 2208/2019 is a company incorporated under the provisions of the Companies Act, 1956 having its office

situated at Mayur Garden, 2nd Floor, Opp. Rajiv Bhawan, G.S. Road, Guwahati 781005, Assam and having a factory at Gopinath Bordoloi Road, Chamta Pathar, Sonapur, Guwahati, Assam. The petitioner is engaged in the business of production/ manufacture and sale & supply of cement in the State of Assam as well as other States of the Country. The Petitioner was earlier registered under the provisions of Central Excise Acts & Rules as well as under the Meghalaya VAT Act, 2003 and the Central Sales Tax Act, 1956.

4. The petitioner in W.P(C) No. 4355/2020 is a Partnership Firm having its office at EPIP, AIDC, Complex, Amingaon, Kamrup-781031, Assam. The petitioner is engaged in the business of Manufacturing, Processing etc. The petitioner is also manufacturing of ice creams, frozen desserts, processing and pasteurization of milk.

5. The petitioner in W.P(C) No. 4532/2020 is a Partnership Firm having its office at Abhayapur, Gauripur, Shila Sundarighopa, Kamrup-781031, Assam. The petitioner engaged in the business of manufacturing of excisable goods, viz. Plastics Moulded Furniture.

6. The petitioner in W.P(C) No. 4591/2020 is a Partnership Firm having its office at EPIP, AIDC Complex, Amingaon, Kamrup-781031, Assam. The petitioner is engaged in the business of plastic scrap, plastic granules & allied plastic products etc.

7. The petitioner No. 1 in W.P(C) No. 113/2020 is a company which is incorporated under the provision of the Companies Act, 1956 having its registered office at G-14, Sector 63, Noida, UP and its industrial unit at Silasindurighopa, Plot No. 104, Brahmaputra Industrial Park, Gouripur, Amingaon, Guwahati in the District of Kamrup. The petitioner No. 1 is engaged in the business of manufacture and sale of different type of Electronic Energy Meter and part there off in Assam as well as outside the State of Assam. Petitioner No. 2 is one of the Directors and shareholder of the petitioner No. 1.

8. The petitioner in W.P(C) No. 1838/2020 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 202, Royal View, B.K. Kakoti Road, Ulubari, Guwahati. The petitioner is engaged in the business of manufacture of cement and clinker.

9. The petitioner in W.P(C) No. 2558/2020 is a Partnership firm registered under the Indian Partnership Act, 1932 having its registered office at Jail Road, Fancy Bazar, Guwahati-781001 and its factory situated at National Board Complex, Near Panikhaity Circle Office, Panikhaity, Guwahati-781023.

10. The petitioner in W.P(C) No. 2573/2020 is a Partnership Firm registered under the provision of Indian Partnership Act, 1932 having its

Industrial Unit located at East Banipur, Dhekri Gaon, Lahoal, Dibrugarh, Assam and its principal place of business at 1st Floor, Jain Enterprise Building, H.S. Road, Dibrugrah, Assam . The petitioner is engaged in the business of Manufacture of packaged drinking water.

11. The petitioner in W.P.(C) No. 2582/2020 is a Partnership firm registered under the Indian Partnership Act, 1932 having its registered office at Jail Road, Fancy Bazar, Guwahati-781001 and its factory situated at National Board Complex, Near Panikhaity Circle Office, Panikhaity, Guwahati-781023 in the district of Kamrup.

12. The petitioner in W.P(C) No. 2590/2020 is a registered partnership firm having its principal place of business at 1st Floor, Jain Enterprise Building, H.S. Road, Dibrugarh, Assam. The petitioner is engaged in the business of manufacture of billets.

13 The petitioner in W.P.(C) No. 9203/2019 is a Private Limited Company incorporated under the provision of the Companies Act, 1956 and having its registered office at Palashbari, NH-31C, P.O. Kajalgaon, District- Chirang (BTAD) , Assam-783385. The petitioner is engaged in the manufacture of excisable goods, namely Clacined Petroleum Cook (CPC).

14. The petitioner in W.P(C) No. 9196/2019 is a Private Limited Company incorporated under the provision of the Companies Act, 1956 and having its registered office at No. 2, Makum Patheer, P.O. Margherita, Tinsukia, Assam-786181. The petitioner is engaged in the business of manufacturing and selling Calcined Petroleum Cook (CPC).

15. The petitioner in W.P(C) No. 6764/2019 is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 3rd and 4th Floor Anil Plaza II, ABC, G.S. Road, Guwahati-781005. The petitioner is engaged in the business of manufacture of cement and has got a cement grinding unit at Village: Baghjap, Morigaon Road, Jagiroad in the District of Morigaon, Assam-782410.

16. The petitioner in W.P.(C) No. 6759/2019 is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 3rd and 4th floor, Anil Plaza II, ABC, G.S. Road, Guwahati-781005. The petitioner is engaged in the business of manufacturing of cement clinker and cement and has got a clinker manufacturing factory at Jamunanagar, Umragshu in the District of Dima Hasao, Assam.

17. The petitioner in W.P.(C) No. 6756/2019 company incorporated under the provisions of the Companies Act, 1956 and having its

registered office at 3rd and 4th floor, Anil Plaza II, ABC, G.S. Road, Guwahati-781005. The petitioner is engaged in the business of manufacturing of cement clinker and cement and has got a clinker manufacturing factory at Village Pipalpurkhi, P.O. Lanka in the district of Nagaon, Assam.

18. The petitioner in W.P.(C) No. 5233/2019 is a Company incorporated under the provision of the Companies Act, 1956 and having its registered office at Birkuchi, Narengi Chandrapur Road, Guwahati-7810026. The petitioner is engaged in the business of manufacturing and sale of electrical grade carbon blocks, mechanical grade carbon blocks, metal graphite and silver graphite grade blocks, NH Coke, electrical carbon brushes, Tamping powder, tamping paste etc and has got a factory at Birkuchi, Narengi Chandrapur Road, Guwahati-7810026.

19. The petitioner in W.P.(C) No. 5186/2019 is a company having its registered office at C-106, Hind Saurashtra Industrial Estate, Andheri Kurla Road, Marol Naka, Andheri (East), Mumbai-400059 and factory at ward No. 8, Hudumpur, Mauza-Chayani, Palashbari-781128 in the district of Kamrup(R). The petitioner is engaged in the business of manufacturing of ink, solvent & cleaning solutions, ink roll, filter kits etc.

20. The petitioner in W.P(C) No. 4350/2019 is a private limited company incorporated under the provisions of the Companies Act, 1956

and having its office situated at Pub-Boragaon, P.O. Garchuk, Guwahati-781035, Assam. The petitioner is engaged in the business of manufacture and sale of multilayer plastic laminated tubes and caps. The petitioner was earlier registered under the provisions of Central Excise Act & Rules as well as under the Assam VAT Act, 2003 and the Central Sales Tax Act, 1956.

21. The petitioner in W.P(C) No. 3606/2019 is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 55B, Mirza Ghalib Street, Kolkata-700016 and its industrial unit at Village: Kukurmari, P.O. Dhaligaon in the district of Chirang, BTAD, Assam. The petitioner is engaged in the business of manufacturing of Calcined Petroleum Coke.

22. The petitioner in W.P(C) No. 3601/2019 is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Noonmati, Guwahati-781020. The petitioner is engaged in the business of manufacturing and sale of Calcined Petroleum Coke and has got a factory at Noonmati, Guwahati in the district of Kamrup(M), Assam.

23. In W.P(C) No. 3055/2019, the petitioner No.1 is a Company registered under the provisions of the Companies Act, 1956 and having its registered office at Century House, P-15/1, Taratala Road, Kolkata-

700088. The petitioner No. 1 is carrying on the business in the name and style of Purbanchal Timber Industries and Petitioner No. 2 having its principal place of business at Mirza-Palashbari Road, Palashbari, Kamrup, Assam-781128. The petitioners are engaged in the manufacture of plywood, block board and flush door.

24. In W.P(C) No. 3052/2019, the petitioner No.1 is a Company registered under the provisions of the Companies Act, 1956 and having its registered office at Century House, P-15/1, Taratala Road, Kolkata-700088. The petitioner No. 1 is carrying on the business in the name and style of Purbanchal Timber Industries and Petitioner No. 2 having its principal place of business at Mirza-Palashbari Road, Palashbari, Kamrup, Assam-781128. The petitioners are engaged in the manufacture of plywood, block board and flush door.

25. The petitioner in W.P(C) No. 2761/2019 is a company registered under the provisions of the Companies Act, 1956 and having its registered office located at Esplande Mansion, Government Place East, Kolkata-700069 in the State of West Bengal and its factory situated at Bonda, Narengi, Assam. The petitioner is engaged in the manufacture and sale of Cold Rolled Sheets in Coil Form.

26. The petitioner in W.P(C) No. 2757/2019 is a Company registered under the provisions of the Companies Act, 1956 having its registered

office and factory situated at Bonda, Narengi, Assam. The petitioner is engaged in the manufacture and sale of Galvanized Corrugated and Plain Sheets and Asbestos Sheets.

27. The petitioner in W.P(C) No. 2430/2019 is a Partnership firm registered under the provisions of the Limited Liability Partnership Act, 2008 and having its registered office situated at Bonda, Narengi, Guwahati, Assam The petitioner is engaged in the manufacturing and sale of MS Pipes and Water Tank.

28. The primary challenge in all these writ petitions is the Notification No. F.No.10(1)/2017-DBA-II/NER dated 05.10.2017 issued by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion framing a scheme of budgetary support under the Goods & Service Tax regime for the units located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim providing for budgetary support to the eligible unit for the residual period by way of reimbursement of Goods & Service Tax paid by the unit limited to the Central Government's share of CGST and/or IGST retained after deduction of a part of their taxes to the States in so far as the same curtails the benefit as promised under NEIIPP, 2007 and Notification No. 20/2007. The said Budgetary Scheme has been challenged to be violative of the Doctrine of Promissory Estoppel and

Legitimate Expectation. The said Notification dated 05.10.2017 has also been challenged on the ground that the same is contrary to the promises made under, NEIIPP, 2007.

29. The Government of India by a notification dated 24th December, 1997 was pleased to announce a new Industrial Policy Resolutions (herein after referred to as 'IPR' containing a package of incentives and concessions for the entire North Eastern Region. The said IPR, amongst others, declared all industrial activity in growth Centers; integrated infrastructural development centers, export promotion and industrial parks, export processing zone, industrial estates and industrial areas as completely tax free zones for a period of 10 years. It was announced and promised by the Government of India that all industrial activities for such areas would be free from inter alia income tax, central excise for a period of 10 years from the date of commencement of production and also that the State Government would be moved for exemptions of sales tax, municipal tax and other such local taxes on industrial activity in the said areas. By the aforesaid office memorandum of 24th December, 1997, it was further provided that Ministry of Finance of Government of India, would be moved to amend the existing rules/notifications for

giving effect to the decisions embodied in the Industrial Policy Resolution. Apart from exemption from inter alia, income tax and Central Excise duty, the IPR, envisages other different incentives and concessions like Capital Investment Subsidy, assistance in obtaining Term Loan and Working Capital and Interest Subsidy etc.

30. In terms of the North East Industrial Policy Resolution announced and as contained in the office Memorandum dated 24.12.1997, various Notifications conferring benefits in terms with the promise as visualized in the Industrial Policy Resolution were issued by various authorities of the Central Government. In so far as the exemption of Central Excise was concerned, the respondent No. 3 issued notifications No. 32/99CE and 33/99-CE dated 08.07.99 respectively granting exemption in respect of all excisable goods cleared from a unit located in the Growth or Integrated Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estates or Industrial area or Commercial Estate, as the case may be, specified in the Annexure appended to the said notifications from such of the excise or additional duty of excise leviable thereon as is equivalent to the amount of the duty paid by the manufacturer of goods from the account current maintained under Rule 9 read with Rule 173 G of the Rules. The exemption contained in the said notification was made applicable to only new Industrial Units which

commenced their commercial production on or after the 24th Day of December, 1997 and to the Industrial Units existing before the 24th day of December but which undertook substantial expansion by way of increase in the installed capacity by not less than 25% on or after the 24 day of December, 1997. The exemption contained in the said notifications in terms of para 4 of the Notification was made applicable to any of the above stated Industrial Unit for a period not exceeding 10 years from the date of publication of the Notification in the official Gazette or from the date commencement of commercial production, which ever was later.

31. The Government of India, thereafter, on 1.4.2007 announced a new Policy namely the North East Industrial and Investment Promotion Policy (NEIIPP), 2007. Vide the said Policy, the Government of India has also approved a package of fiscal concessions and other concessions for North East Region. In the said NEIIPP, 2007, on the issue of the excise duty exemption under Clause (v) it was clearly noted that "hundred percent excise duty exemption will be continued on finished products made in the North Eastern Region, as was available in NEIP, 1997.

In terms of the North East Industrial and Investment Promotion Policy (NEIIPP), 2007 the Government of India, Ministry of Finance (Department of Revenue) issued a Notification vide Notification No.

20/2007-CE dated 25.04.2007 conferring benefits in terms with the promise as visualized in the NEIIPP, 2007 in so far as the exemption of Central Excise was concerned, granting exemption in respect of all excisable goods cleared from an unit located in the State of Assam or Tripura or Meghalaya or Mizoram or Manipur or Nagaland or Arunachal Pradesh or Sikkim, from such of the excise or additional 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 under the CENVAT Credit Rules, 2004. The exemption claimed in the said Notification was made applicable to only new Industrial Units which commenced their commercial production on or after the 1st day of April, 2007 but not later than 31st day of March, 2017 and to the Industrial Units existing before the 1st day of April, 2007 which undertook substantial expansion by way of increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purposes of expansion of capacity/modernization and diversification and have commenced commercial production from such expanded capacity on or after the 1st day of April, 2007 but not later than 31st day of March, 2017. The exemption contained in the said Notification was made applicable to any of the above stated Industrial Unit for a period not exceeding ten years from the date of publication of

the Notification in the Official Gazette or from the date of commencement of commercial production, whichever is later.

32. Being encouraged by the various incentives as announced by the Government of India in its North East Industrial and Investment Promotion Policy (NEIIPP), 2007, as well as the Notification issued conferring benefits in terms with the promise as visualized in the NEIIPP, 2007, the Petitioner Company established its industrial unit at Chamata Pathar in the District of Kamrup, Guwahati 782402 for manufacture and production of cement. In establishing the said Industrial Unit, the Petitioner complied with all statutory requirements for setting up an industrial unit as prescribed by the Government of Assam as well as the Central Government from time to time. According to the Petitioner Company it made huge investments in setting up its industrial unit inspired by the fact that it will get the benefits of exemption as contemplated under the Policy of 2007 including 100% Excise Duty Exemption. The Petitioner further states that the product manufactured by the industrial unit of the Petitioner did not fall in the Negative List under Clause (x) of the Policy nor it is covered by Clause 7 of the Notification No. 20/2007-CE dated 25.04.2007 and was therefore entitled for the benefits of incentives under the said NEIIPP, 2007 and Notification No. 20/2007-CE dated 25.04.2007. According to the

petitioner company, it was eligible for the exemption granted under the Notification No. 20/2007-CE in as much as the same has been accepted by the Central excise authorities which is reflected in the order No. R-1930/ACG/2013-14 dated 21.02.2014 passed by the Assistant Commissioner of Central Excise, Guwahati, Assam.

33. The Government of India, Ministry of Finance (Department of Revenue) vide Notification No. 20/2008-CE dated 27.3.2008 amended the Central Excise Notification No. 20/2007-CE dated 25.04.2007. Vide the said Notification the excise duty refund was restricted to a maximum limit as specified in the rate column of the Table appended to the said Notification whereby different rates of maximum limits has been specified for different Chapter of relatable goods. According to the petitioners, the said amendments had the effect of curtailing the benefit of 100% exemption as was given to the petitioner company vide the NEIIPP, 2007 and vide Notification No. 20/2007-CE dated 25.04.2007. The petitioner's case is that the impugned notification had thus completely modified the promise/incentive granted by the Respondents, on the basis of which the petitioner Company had established its industry believing that full excise exemption under Notification No. 20/2007-CE dated 25.04.2007 would be available to the petitioner Company for a period of 10 years. The Notification No. 20/2008-CE

purporting to reduce the Petitioner's entitlement therefore was in violation to the promises made by the Government of India vide Notification No. 20/2007-CE dated 25.04.2007. Vide a Notification bearing No. 38/2008-CE dated 10.06.2008, the Central Government in purported exercise of its powers conferred by Sub-Section (1) of Section 5A of the Central Excise Act, 1944 further amended the Notification No. 20/2007-CE dated 25.04.2007. However, the Supreme Court in ***Union of India & Anr. Etc. Vs. V.V.F. Ltd. & Anr.*** reported in ***(2020) SCC Online SC 378*** held that the notification No. 20/2007CE dated 25.04.2007 making the exemption limited to the value addition portion only was valid and thereby in view of the said Judgment of the Apex Court, the Petitioner was entitled to the excise duty relief only on the value added portion only.

34. With effect from 01.07.2017, Goods and Service Tax regime was introduced all over the Country and the Central Goods and Service Tax Act, 2017 was enacted whereby apart from the other central tax laws, central excise was also subsumed in the Central Goods and Service Tax. After the introduction of Goods and Service Tax Act, apart from the Central Goods and Service Tax Act, 2017 the State Goods and Service Tax Act, 2017 and Integrated Goods and Service Tax Act, 2017 were also enacted.

After the Constitution (One Hundred and One Amendment) Act, 2016 the CGST Act, 2017 and IGST Act, 2017 were enacted by the Parliament and the SGST Acts were enacted by various State Legislatures for their respective States.

35. Vide Notification No. 21/2017-CE dated 18.07.2017, various area based exemption notifications including Notification No. 20/2007-CE dated 25.04.2007 applicable to new industrial units set up in the States of Assam or Tripura or Meghalaya or Mizoram or Manipur or Nagaland or Arunachal Pradesh or Sikkim were rescinded.

Due to rescinding of the said Notification, the benefits of incentives against investment granted to the Petitioner ceased to continue with effect from 01.07.2017 in terms of the Proviso to Section 174(2)(c) of CGST Act. The direct and immediate effect of rescinding of the said Notification was that the promised exemption was curtailed to the new industrial units for the residual period of their eligibility for such exemption.

36. In continuation of the earlier industrial policies as well as the Central Excise Notifications granting exemption on the levy of central excise duty, Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide Notification dated 05.10.2017 framed a Scheme of budgetary support under the GST Regime to the

units located in States of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim. The said Scheme was in pursuance to the decision of the Government of India to provide budgetary support to the existing eligible manufacturing units operating in the States of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim under different Industrial Promotion Schemes of the Government of India, for a residual period for which each of the units were eligible. The new Scheme was offered, as a measure of goodwill, only to the units which were eligible for drawing benefits under the earlier excise duty exemption/refund schemes. In the said Scheme, it was provided that units which were eligible under the erstwhile Schemes and were in operation through exemption notifications issued by the Department of Revenue in the Ministry of Finance, as listed under Para 2 would be considered eligible under the said Scheme. The said Scheme was made limited to the tax which accrues to the Central Government under Central Goods and Service Tax Act, 2017 and Integrated Goods and Service Tax Act, 2017 after devolution of the Central tax or the Integrated tax to the States, in terms of Article 270 of the Constitution of India.

37. The determination of the amount of budgetary support was laid down in Clause 5 of the said Scheme. It was provided in the said

Scheme that sum total of (i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section(1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax. (ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax of the Central Tax and Integrated Tax shall be the amount of budgetary support under the scheme for specified goods manufactured by the eligible unit.

38. Opening the arguments for the petitioners, Dr. Saraf, learned Senior counsel submits that though the petitioner company was entitled to full exemption from payment of excise duty for a period of 10 years from the date of commencement of commercial production after enactment of the GST Act, the Government of India, Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide Notification dated 05.10.2017 though framed a Scheme namely the Scheme of Budgetary Support to provide budgetary support to the existing eligible manufacturing units operating in the States of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim under different Industrial Promotion Schemes of the Government

of India, for a residual period for which each of the units were eligible but the same was limited to sum total of (i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section(1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax. (ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax of the Central Tax and Integrated Tax. According to the petitioners, the said Scheme of Budgetary Support had therefore, curtailed the benefits of full exemption which were promised in the Industrial Policy and Notification No. 20/2007.

39. On these facts, the petitioner assailed the inaction of the Central Government towards they were promised made in terms of the NEIIPP, 2007 by way of the present writ petitions. According to the petitioners, the curtailment of the benefits of the exemptions as promised under NEIIPP, 2007 and Notification No. 20/2007 dated 25.04.2007 by the budgetary support is absolutely illegal without jurisdiction and in clear violation of the doctrine of promissory estoppel.

40. The submissions of the petitioners are that in response to the promise made by the Government under the NEIIPP 2007 as well as

Notification No. 20/2007 dated 25.04.2007, the petitioners altered its position by making huge investments for undertaking substantial expansion in the existing industrial unit and thereby invoking the doctrine of promissory estoppels. Consequently, the respondents authority cannot be allowed the resile from the promises by curtailing the benefits by issuing the scheme of budgetary support and denying full exemption as per industrial policy 2007.

41. It is further submitted that in spite of the GST being promulgated with effect from July, 2017, the Industrial Policy under which the petitioners are entitled to full exemptions of Central Excise Duty pay, is still in force. The promise made under the said Industrial Policy has not been withdrawn by the Central Government. Under the circumstances, the curtailment of benefit by providing a scheme of budgetary support is completely opposed to the scheme and the promise made under the Industrial Policy of 2007. In view of the substantial investments made by the petitioners on the basis of the promise handed out by the Industrial Policy, the Government is estopped from resiling from the promises made and from curtailing the benefit of exemptions granted in terms of the Industrial Policy. According to the petitioners, even under the budgetary support scheme, the benefit granted by the Central Government is only to the extent of 58% of the Central Excise paid by

the petitioners. It is the contention of the petitioners that notwithstanding such a provision being available under GST, the exemptions which are required to be granted to the petitioners in terms of the Industrial Policy of 2007, no such exemption has been granted rather the Government has taken recourse the budgetary support to the extent of 58% of the Central Excise Duty Paid is clearly opposed from the doctrine promissory estoppel as consistently laid down by the Apex Court. It is contended that the respondents cannot be permitted to withdraw or resile from promise made in the face of the alteration of position by the petitioners relying on the policies made under the Industrial Policy and more particularly when the Industrial Policy is still in force. The Industrial Policy clearly outlines the benefits that will accrue to an Industry like the petitioners, who fulfill the criteria and such benefits inter alia includes 100% exemptions from Central Excise Duty pay. Under such circumstances, it is strenuously urged that the Government cannot be permitted to play with the future of the industries by resiling from the promised made under the Industrial Policy and by budgetary support to the extent of 58% of Central Excise Duty pay. The petitioners unit's are located in an area which are declared to be tax free zone under the Industrial Policy which is still subsisting and therefore, the petitioner company is entitled to complete exemption from payment of Central Excise Duty for a period of 10 years from the

date of commencement of production after undertaking substantial exemption as promised in the NEIIPP, 2007. It is urged that such curtailment of the benefits in the face of the clear promise handed out under the NEIIPP, 2007 is absolutely illegal and arbitrary. It is urged that under such circumstances, the doctrine of promissory estoppels is squarely applicable and the Central Government is bound by the promise it had made through the Industrial Policy i.e. NEIIPP, 2007 and which promise is still subsisting.

42. Referring to the provisions of Section 174 of the CGST, Dr. Saraf, learned Senior counsel submits that in terms of the said provisions any tax exemption granted as an incentive against the investment through a Notification shall not continue as a privilege if the said notification rescinded on or after the appointed day. It is submitted by Dr. Saraf that the benefits be granted under the Industrial Policy and the same was made effective by notification No. 21/2017-CE. According to Dr. Saraf, the said Industrial Policy has not yet been received and the benefits which accrue to the petitioners under the said Policy will continue so long the policy subsists.

43. It is contended that the curtailment of the benefits promise under the Industrial Policy by way of the scheme of the budgetary support is absolutely illegal, arbitrary and in violation of the doctrine of promissory

estoppel. The respondent are liable to be directed to provide for full exemption and/or support in terms of the promise made under the NEEIIPP, 2007.

44. PROMISSORY ESTOPPEL

The challenge mounted by the petitioners in the present proceedings are on the basis of the following submissions:

The petitioners contend that the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation has arisen. The superstructure of the doctrine with its preconditions, strengths and limitations has been outlined by the Apex Court in its landmark judgment of ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409***. The Apex Court reiterated the well known pre conditions for the operation of the Doctrine of Promissory estoppel as under:

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

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

45. It is contended that the Apex Court further observed that that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made contractual, administrative or statutory. The learned Senior counsel for the petitioner in support of his contentions has referred to para 8 and 24 of the Judgment which is extracted below:

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

"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution."

The Apex Court further in the said judgment in para 33 observed as under:

"Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it."

46. So far as the limitation of the Doctrine of Promissory Estoppel is concerned the Apex Court in the said judgment, **Motilal Padampat (Supra)**, held as under:

"1) Since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. But it is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government Should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government.

(2) No representation can be enforced which is prohibited by law in the sense that the person or authority making the representation or promise must have the power to Carry out the promise. If the power is there, then subject to the Preconditions and limitations noted earlier, it must be exercised. Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax."

47. The Apex Court again the case of **Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582 : (1970) 3 SCR 854]** emphasised the strengths as defined earlier by holding as under:

'If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law, if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereupon but the law is not powerless to raise in appropriate Cases an equity against him to compel performance of the obligation arising out of his representation."

48. The Doctrine of Promissory Estoppel has been repeatedly applied by the Apex Court in statutory notifications. **In Pournami Oil Mills v. State of Kerala** [1986 Supp SCC 728 : 1987 SCC (Tax) 134] the Government of Kerala by an order dated 11-4-1979 invited small-scale units to set up their industries in the State of Kerala and with a view to boost industrialisation, exemption from sales tax and purchase tax was extended as a concession for a period of five years, which was to run from the date of commencement of production. By a subsequent notification dated 29-9-1980, published in the gazette on 21-10-1980, the State of Kerala withdrew the exemption relating to the purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the said notification. While quashing the subsequent notification, it was observed:

"If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of M.P. Sugar Mills [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] . On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in Bakul Cashew Co. v. STO [(1986) 2 SCC 365 : 1986 SCC (Tax) 385]. In Bakul Cashew Co. case [(1986) 2 SCC 365 ; 1986 SCC (Tax) 385] this Court found that there was no Clear material to show any definite or certain promise which had been made by the Minister to the persons concerned and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court

proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in M.P. Sugar Mills case [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] . In our view, to the facts of the present case, the ratio of M.P. Sugar Mills case [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] directly applies and the plea of estoppel is unanswerable.

... Such exemption would continue for the full period of five years from the date they started production. New industries set up after 21-10-1980 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries."

The aforesaid decision was followed by a three-Judge Bench in

State of Bihar v. Usha Martin Industries Ltd. [1987 Supp SCC 710 : 1988 SCC (Tax) 116] where it was stated that the matter stands concluded by the decision in **Pournami Oil Mills case**. In **Shri Bakul Oil Industries v. State of Gujarat [(1987) 1 SCC 31 : 1987 SCC (Tax) 74: AIR 1987 SC 142]** it was observed in para 11 as under

"The exemption granted by the Government, as already stated, was only by way of concession for encouraging entrepreneurs to start industries in rural and undeveloped areas and as such it was always open to the State Government to withdraw or revoke the concession. We must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz. the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the Government can withdraw an exemption granted by it earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the Government grants exemption to a new industry and if on the basis of the representation made by the Government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can

legitimately raise a grievance that the exemption could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute. "

Answering the question as to whether the Board is restrained from withdrawing the rebate prematurely before the completion of three/five years' period by virtue of the doctrine of promissory estoppel, the Apex Court in **Pawan Alloys & Casting (P) Ltd. v. U.P. SEB [(1997) 7 SCC 251]** held in paras 10 & 24 as under:

"10. It is now well settled by a series of decisions of this Court that the State authorities as well as its limbs like the Board covered by the sweep of Article 12 of the Constitution of India being treated as 'State' within the meaning of the said article, can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any statutory prohibition, absence of power and authority of the promisor and is otherwise not opposed to public interest. and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.

24, ... We, therefore, agree with the finding of the High Court on Issue 1 that by these notifications the Board had clearly held out a promise to these new industries and as these new industries had admittedly got established in the region where the Board was operating, acting on such promise, the same in equity would bind the Board. Such a promise was not contrary to any statutory provision but on the contrary was in compliance with the directions issued under Section 78-A of the Act. These new industries which got attracted to this region relying upon the promise had altered their position irretrievably. They had spent large amounts of money for establishing the infrastructure, had entered into agreements with the Board for supply of electricity and, therefore, had necessarily altered their position relying on these representations thinking that they would be assured of at least three years' period guaranteeing rebate of 10% on the total bill of electricity to be consumed by them as infancy benefit so that they could effectively compete with the old industries operating in the field and their products could effectively compete with their products. On these well-established facts the

Board can certainly be pinned down to its promise on the doctrine of promissory estoppel."

49. In **Mahabir Vegetable Oils (P) Ltd.v. State of Haryana, (2006) 3 SCC 620**, the Apex Court observed that *"it is beyond any cavil that the doctrine of promissory estoppels operates even in the legislative field"*. This was in connection with a statutory notification under the Haryana General Sales Tax Act.

50. A survey of the earlier decisions has also been made by the Apex Court in **State of Punjab v. Nestle India Ltd., (2004) 6 SCC 465**, wherein the law has been stated in the following terms:

"25. In other words, promissory estoppel long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute."

Referring to its judgment in **Motilal Padampat (Supra)**, the Apex Court in **Nestle India Ltd (Supra)** observed as under:

"29. As for its strengths it was said: that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made — contractual, administrative or statutory. To put it in the words of the Court:

'The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending

that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

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

Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. "

51. The Apex Court distinguished its earlier decision in **Kasinka Trading v. Union of India, (1995) 1 SCC 274**, by holding as under:

"40. The case of Kasinka Trading vs. Union of India [(1995) 1 SCC 274] cited by the appellant is an authority for the proposition that the mere issuance of an exemption notification under a provision in a fiscal statute such as Section 25 of the Customs Act, 1962, could not create any promissory estoppel because such an exemption by its very nature is susceptible to being revoked or modified or subjected to other conditions. In other words, there is no unequivocal representation. The seeds of equivocation are inherent in the power to grant exemption. Therefore, an exemption notification can be revoked without falling foul of the principle of promissory estoppel. It would not, in the circumstances, be necessary for the Government to establish an overriding equity in its favour to defeat the petitioner's plea of promissory estoppel. The Court also held that the Government of India had justified the withdrawal of exemption notification on relevant reasons in the public interest. Incidentally, the Court also noticed the lack of established prejudice to the promises when it said:

'The burden of customs duty, etc. is passed on to the consumer and therefore the question of the appellants being put to a huge loss is not understandable'.

52. In **MRF Ltd. v. Asstt. CST, (2006) 8 SCC 702**, the judgment in **Kasinka Trading (Supra)** was also held to be inapplicable. In the said judgment, it was held that the doctrine of promissory estoppel will also apply to statutory notifications.

53. The law relating to promissory estoppel was again reiterated and crystallised by the Apex Court in its latest judgment, ***State of Jharkhand vs. Brahmaputra Metalics Ltd., Civil Appeal No. 3860-3862 of 2020.***

54. The petitioners contend that the respondent authorities on the basis of the Doctrine of Promissory Estoppel cannot be allowed to resile from the promises made in NEIIPP, 2007 and thereby framing of the Scheme of budgetary support vide Notification No. 05.10.2017 seeking to curtail the benefits of incentives given under NEIIPP, 2007 and Notification No. 20/2007-CE dated 25.4.2007 are in violation of the doctrine of promissory estoppel.

55. It is further submitted that the fact that the aforesaid Curtailment of the benefits of exemption/ incentives prior to the promised period is unreasonable and arbitrary and contrary to the doctrine of promissory estoppel was also recognized in the discussions held in GST Council Meetings as set out above. In the said GST Council Meetings it was also

recognized that in terms of the judgments of the Hon'ble Supreme Court, the Government can resile from the promise only if there is supervening public interest. In spite of this and even though there is no such supervening public interest at all, the Government has resiled from the promise as stated above.

56. It is submitted that that in the GST Council meetings it was duly noted and recognized that withdrawing of duty exemptions before their expiry in all likelihood will be challenged on the ground that after extending such time bound concessions and thereby enticing businesses to make irrevocable decision of making investments in such regions, the Government has gone back on its Promise and imposed tax of such nature, albeit with the introduction of a new tax. It was also noted that under GST regime, the only possible way is to provide a direct transfer of equivalent taxes through budgetary route. In fact, the Minister from Uttarakhand participating in the GST Council meeting had clearly stated that the Government of India had given area based exemption for 10 years and that such exemptions were to continue up to 2020 and that the Centre must reimburse such units for the Central taxes as jobs of lakhs of workers are at stake. After noting the relevant aspects, in the GST Council meetings, some judgments of the Hon'ble Supreme Court were referred to the effect that the Government can resile from the

promise in the cases of supervening public interest. However, no supervening public interest whatsoever was either brought out in the agenda/minutes of the GST Council meetings nor any supervening public interest exists in the present case for curtailing the benefits. The fact that curtailment of the extent of benefits for the residual period would be hit by the doctrine of promissory estoppel was also recognized during the GST Council Meetings.

57. The learned Senior counsel for the petitioners contend that even after admitting the legal and factual position that the promise of offering incentive was unequivocal and any deviation from the same would be hit by the settled principles of promissory estoppel, the GST Council in its meeting on 30th Sept 2016 decided the matter against the settled legal position. As already stated, under the existing laws the tax exemption was granted upfront and the assessee was not supposed to pay the taxes. The basic principle has not been altered under the GST regime also. Materially it does not reckon any change in overall tax collection since as per the promise by the Notification No. 20/2007-CE dated 25.04.2007 no taxes were liable to be paid; and this ought to be continued in GST in respect of the eligible units, if not by way of direct exemption then through reimbursement mechanism.

58. The learned Senior counsel for the petitioners contend that Article 270 of the Constitution of India provides that the tax collected by the Union of India under clause (1) of Article 264 A shall be distributed between the Union and the States in the manner provided in Clause (2). Clause (1B) of Article 270 provides that the tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2). Clause (2) of Article 270 of the Constitution provides that such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3). It is respectfully submitted that clause (2) of Article 270 clearly provides that the **"net proceeds"** of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India.

It is contended that prior to introduction of the GST regime, in terms of the promises and assurances made in the NEIIPP, 2007,

Notification were issued under section 5A of the Central Excise Act, 1944 granting exemption from the payment of excise duty from the account current maintained by an industrial unit. Since the said Notifications were issued under section 5A of the Central Excise Act, 1944, the said amount of exemption granted from the payment of excise duty by way of refund did not form a part of the total proceeds of the excise duty and the net proceeds as per clause (2) of Article 270 was after deduction of the said amount of refund from the total receipt of excise duty. As such, prior to introduction of the GST regime, the amount of excise duty to be collected as per the scheme and then liable to be reimbursed therefore never comprised any part of the overall tax kitty or net proceeds from taxes. The same procedure ought to have been continued after introduction of the GST regime.

It is submitted that there is no larger equity or public interest in restricting the reimbursement to 58%. It is incumbent on the Centre to adjust the collection of taxes after factoring the entire obligation it has held out under the earlier regime. On the contrary the Central Government is purporting to leverage or work out a situation out of nowhere simply to frustrate the benefits promised to the petitioner as also similarity placed industries on the plea that as a matter of goodwill it is extending refund of entire taxes collected by it and it is upto the

States to consider the balance 42%. Without prejudice to the legal position that such portion of taxes which at the outset is liable to be refunded and cannot form a part of the net proceeds, the purported devolution to State cannot be at the cost or expense, prejudice or detriment to the petitioner. It is further submitted that during the pre GST regime when there was complete exemption by virtue of Notification issued under Section 5A of the Central Excise Act, 1944, the said amount of exemption granted by way of refund was not taken in the total proceeds central excise duty and thereby the same did not form part of net proceeds for the Purpose of devolution of the amount of net proceeds of central excise to the State under Article 270 of the Constitution of India. Since, the Central Government is bound to grant the benefits which was promised and assured under the NEIIPP, 2007 and when such a benefit is granted in pursuance to the NEIIPP, 2007, the same cannot form part of total proceeds and thereby the said amount cannot be taken into consideration of devolution by the State Government.

Therefore, it is contended that the taxes now to be collected as per the impugned scheme and then liable to be reimbursed never comprised any part of the overall tax kitty or net proceeds from taxes. The exemption ought to have been continued to be treated as taxes not

flowing in any form and not forming any part of the net proceeds from collection of taxes. Therefore, such portion of Central taxes which was never a part of the State tax kitty at the outset, cannot form any part of the tax collection to be devolved to the States under Art. 270. Hence, the decision to refund only a part of the tax paid by the Petitioner on the pretext that the remaining part is devolved to the State is ex-facie unsustainable and is in violation of the settled principles of law.

59. The learned counsel for the petitioners submits that Article 279A was inserted by the aforesaid Constitution (101st Amendment) Act, 2016 providing for constitution of Goods and Services Tax Council. Clause (4) of Article 279A inter-alia provides as under:

"(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on:

*(a) to (f) ******

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

*(h) *****"*

60. It is submitted that the Constitution itself mandated the GST Council to make recommendations of special provisions with respect to the aforesaid States including Assam. These States, due to their locational, geographical and other disadvantages were, in the pre-GST regime, given special treatment in the manner aforesaid. In so far as

Assam is concerned, as stated above, 100% outright exemption was granted from central excise duty in respect of new industrial units set up in notified areas of the State for a period of 10 years. Article 279 contains a constitutional mandate for making special provisions in respect of these States. The said constitutional mandate has been violated by the GST Council by curtailing the extent of benefits from 100% earlier allowable to only 58%.

61. The learned Senior counsel for the petitioners submits that under the pre-GST regime, Central Excise Duty was being levied by the Parliament under the Central Excise Act, 1944 in terms of Entry 94 of List-I of the Constitution. Even under the GST regime, and after the amendments made to the Constitution by the Constitution (101st Amendment) Act, 2016 both CGST as well as IGST under CGST Act and IGST Act have been levied by the Centre. Article 246A as inserted by the Constitution (101st Amendment) Act is out below:

"246A. Special provision with respect to goods and services tax. –

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature Of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation. - The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

62. The learned Senior counsel for the petitioners contend that under the said Article 246A, Parliament has exclusive power to make laws with respect to GST where the supply of goods or services or both takes place in the course of inter-state trade or commerce. Similarly, under Article 246A, notwithstanding anything contained in the Articles 246 and 254, Parliament and subject to Clause (2) the Legislature of every State has power to make laws with respect of GST imposed by Union and by such State. In exercise of the of the aforesaid powers under Article 246A of the Constitution the CGST Act was enacted by the Parliament for levy of CGST on all intra-state supply of goods and services. Thus, CGST has been levied pursuant to the aforesaid CGST Act of Parliament. As stated in the preamble to the CGST Act, it is an Act "to make a provision for levy and collection of tax on intra-state supply of goods and services or both by the Central Government and for matters connected therewith and incidental thereto". Similarly, IGST Act was also enacted by the Parliament for levy of IGST on all inter-state supplies of goods or services or both and Preamble to IGST Act states that it is an Act "to make a provision for levy and collection of tax on intra-state supply of goods and services or both by the Central Government and for matters connected therewith and incidental thereto". Thus, both CGST and IGST

are the taxes levied by the Central Government under the aforesaid Parliamentary Statutes.

63. The learned Senior counsel for the petitioners further submits that without prejudice to the submissions made above it is relevant to note that as per para 4 of the Notification dated 27.11.2017 issued by the Ministry of Finance, Government of India, refund is to be granted @ 58% of CGST and 29% of IGST as per section 49 of the CGST Act, 2017, which is contrary to para 5 of the notification dated 05.10.2017. As per Section 49/ 49 A of the CGST Act, input credit of SGST is to be utilized for payment of IGST. Therefore, IGST payment will be reduced because of utilization of input credit of SGST with IGST liability. Online portal system does not allow to change any set off rule of input credit and the notification issued by Ministry of Finance dated 27.11.2017 is not at par with the notification dated 27.11.2017 issued by the Department of Industrial Policy & Promotion and portal of GSTIN which has led to lower budgetary support to the petitioner company which is most illegal and arbitrary and not tenable in law.

64. The learned senior counsel for the petitioners submits that with the introduction of GST, Section 174(1) of the CGST Act, 2017 repealed the Central Excise Act, 1944 (except in respect of goods included in Entry-84 of List I of the Seventh Schedule of the Constitution of India)

w.e.f. 01.07.2017. However, Section 174(2)(c) of the CGST Act, 2017 clearly provides that any right, privilege, obligation or liability acquired or incurred under the repealed Act, shall not be effected although the proviso to Section 174 (1)(c) provides that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day. Since the petitioner on undertaking the substantial expansion/modernization on the existing industrial unit on the basis of the promises made in the NEIIPP, 2007 and the Notification No. 20/2007-CE dated 25.04.2007 issued under Section 5A of the Central Excise Act, 1944 prior to its repeal, the petitioner acquired a legally vested right on the grant of the full exemption from the payment of central excise duty, said right cannot be taken away on the introduction of GST regime and on repeal of the Central Excise Act, 1944. It is respectfully submitted that the proviso to Section 174 (1)(c) provides that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day but in the present case the expansion was granted on the basis of the promises and assurances made in NEIIPP, 2007 and Notification No. 20/2007-CE issued under Section 5A of the Central Excise Act, 1944 which was

rescinded after introduction of GST Regime is only to give effect to the promises and assurances made in NEIIPP, 2007.

65. It is submitted that though by framing of the budgetary support scheme by the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, Government of India after the introduction of the GST regime and repeal of the Central Excise Act, 1944, some relief has been granted to the eligible industrial unit who were entitled to the benefits under NEIIPP, 2007, but the same budgetary support scheme having been framed in pursuance of promises and assurances made in NEIIPP, 2007, the said budgetary support scheme cannot curtail the benefit which the industrial unit was entitled to under the NEIIPP, 2007. The petitioner respectfully submits that even after rescinding of the Notification issued under Section 5A of the Central Excise Act, the rights and privileges acquired by the petitioner company on the basis of the NEIIPP, 2007 cannot be taken away and thereby the petitioner is entitled to full benefit under the budgetary support scheme and the respondents are liable to be directed to by this Hon'ble Court to grant full benefit under the budgetary support scheme in conformity with the NEIIPP, 2007.

66. LEGITIMATE EXPECTATION

The learned Senior counsel for the petitioners submits that apart from the above, the Union of India having held out a solemn representation in the NEIIPP, 2007, it is illegal and arbitrary to deprive the industrial unit of the petitioners from the legitimate expectation and entitlement. The doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression.

67. In support of his contentions he has pressed into service the following Judgment of the Apex Court: In **Union of India vs Lt. Col. P.K. Choudhary, (2016) 4 SCC 236**, the Court observed as under:

"This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

As regards the relationship between Article 14 and the doctrine of legitimate expectation, a three judge Bench in **Food Corporation of India vs Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71** held thus:

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'airplay in action. Due observance of this obligation as a part of good

administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the Public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

68. In NOIDA Entrepreneurs Assn. vs NOIDA, (2011) 6 SCC

508, a two-judge bench of this Court, speaking through Justice B. S.

Chauhan, elaborated on this relationship in the following terms:

"39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor

even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

.....

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other...]"

69. It is contended that the aforesaid law has again been reiterated by the Apex Court in **State of Jharkhand vs. Brahmaputra Metalics Ltd., Civil Appeal No. 3860-3862 of 2020.**

70. SECTION 11 OF THE CENTRAL GOODS & SERVICES TAX ACT 2017

It is submitted by the learned Senior counsel, Dr. Saraf, that identical powers have been conferred on the Central Government by section 11 of the CGST Act, 2017 as was conferred by section 5A of the Central Excise Act, 1944 to grant exemption from tax on recommendation of the Council. Relevant portion of section 11 of the CGST Act is reproduced below:

"11. (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in' the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable."

It is contended that in spite there being specific powers conferred on the Central Government under section 11 of the CGST Act to exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification on recommendation of the Council, the Scheme of Budgetary Support was not framed in exercise of powers under section 11 of the CGST Act. However, there is no dispute that the said Scheme of Budgetary Support has been framed to give effect to the promises made in the NEIIPP, 2007. It is respectfully submitted that even though the said Scheme has not been framed in exercise of powers under section 11 of the CGST Act, 2017, but framing of the said Scheme can be traced to section 11 of the CGST Act and can be said to have been framed under section 11 of the CGST Act.

The learned Senior counsel has strenuously urged that in this connection the petitioner relies on the judgment of the Apex Court in **Assistant Commissioner of Commercial Taxes (Asst.), Dharwar and Ors. vs. Dharmendra Trading Company and Ors., (1988) 3**

SCC 570, wherein a contention was advanced that concession granted by the State were of no legal effect as there is no statutory provision under which such concessions could be granted. By the said order, it was contended that there was no provision under the Sales Tax Act under which a refund could be allowed on the total sales tax paid by a new industrial unit. The Apex Court rejected the aforesaid contention by holding that the mere fact that the order did not specify the power under which it was issued would make no difference on the ground that such power is clearly there in the Act. The Apex Court further held that where the source of power under which it was issued was not stated in an order but the same could be found on examination of the relevant Act, the exercise of power must be attributed to that source. The Apex Court further held as under:

"The only submission made on behalf of the appellants Is that since the benefit given is called a refund, it cannot be said to be an exemption or reduction as permitted by Section 8-A. In our view, there is no substance in this submission at all. In order to test the validity of the order dated 30-6-1969, one has to see the substance of the concession granted under the order and not merely certain words used out of context. Although the benefit regarding sales tax granted to the new industries is by way of refunds of sales tax paid to the extent provided in the order, it is clear that, in effect, the benefit granted is in the nature of an exemption from the payment of the sales tax or reduction in the sales tax liability to the extent stated in the order. In view of this, there is no substance whatever in the contention that the State Government had no authority to provide for the grant of refunds. Again, the mere fact that the order of 30-6-1969 did not specify the power under which it was issued will make no difference because such a power is clearly there in Section 8-A and where the source of power under which It is issued is not stated in an order but can be found on the examination of the relevant Act, the exercise of the power must be attributed to that source. The

second submission of the learned counsel for the appellants must, also, therefore, be rejected."

In view of the aforesaid judgment, the Notification dated 05.10.2017 framing the Budgetary Support has to be traced to section 11 of the CGST Act and thereby the same should be constituted to be an exemption granted by the Central Government to give effect to the Industrial Policy of 2007. Since the aforesaid Notification dated 05.10.2017 has been framed to give effect to the promises and assurances made in NEIIPP, 2007, the same cannot go contrary to the said Industrial Policy in so far as the same is contrary to the Industrial Policy, the same has be deemed illegal.

In support of his contentions, learned counsel has relied upon the Judgment of the Apex Court in *State of Jharkhand vs. Tata Cummins Ltd.*, reported in (2006) 4 SCC 57 held hat when an assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute.

He also relies upon the Judgment of the Apex Court in *State of Bihar vs. Suprabhat Steel Ltd.* reported in (1999) 1 SCC 31, the Apex Court while examining a notification issued to give effect to the Industrial and Incentive Policy held that the said notification was issued to carry out the objective and the policy decisions taken in the industrial policy itself and thereby any notification issued by a government order, if found to be repugnant to the industrial policy declared in government resolution, then the Said notification must be held to be bad to that extent.

71. The learned senior counsel submits that in view of the law laid down by the Apex Court in the aforesaid two judgments, it is clear that Notification dated 05.10.2017 cannot be in conflict with the promises and assurances made in NEIIPP, 2007 and thereby the said Notification dated 05.10.2017 framing the Budgetary Support in so far it curtails the benefit to a sum total of (i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section(1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax. (ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax

of the Central Tax and Integrated Tax is clearly contrary to the promises made in the NEIIPP, 2007 and thereby the said curtailment is absolutely illegal and not tenable in law and thereby the respondents are liable to be directed to extend the full benefit as promised under the NEIIPP, 2007 and Notification No. 20/2007.

72. The learned senior counsel concludes his arguments that from the submissions made hereinabove, it will be clear that the curtailment of the benefits under the budgetary support scheme which was promised under the NEIIPP, 2007 is absolutely illegal both by doctrine of promissory estoppel and doctrine of legitimate expectations and thereby the respondents are liable to be directed by this Hon'ble Court to grant full benefit to the petitioner company as otherwise the petitioner shall suffer irreparable loss and injury and shall be put to great hardships and inconvenience. It is therefore, respectfully prayed that the impugned Notification No. 10(1)/2017-DBA-II/NER dated 05.10.2017 issued by the Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion curtailing the benefits as promised under NEIIPP, 2007 and Notification No. 20/2007 dated 25.04.2007 may be set aside and/or quashed and directions may be issued to the respondent authorities to extend the full benefit of exemption as promised under the NEIIPP, 2007 and Notification No. 20/2007.

Submissions of the Respondents:

73. Mr. S. C. Keyal, learned standing counsel, GST, representing the respondents opposes the contentions made by the learned counsels for the petitioners disputing their contentions he submits that before 2017, the taxation system included the central taxes which included the custom duty/central excise duty, central sales tax on commodities and services, surcharge and cesses. The sales taxes included VAT, WCT etc. Under this old taxation system the Government of India announced a package of fiscal incentives and other concessions for the "North Eastern Region" namely North East Industrial and Investment Promotion Policy (NEEIIPP) 2007 w.e.f. 01/04/2007 which provided the Central Excise Duty exemption for 10 years as well as 100% Income tax exemption for 10 years. The previous tax structure has been replaced by GST and a number of changes have taken place as a result. The Goods and Service tax (GST) is an indirect tax, came into effect from 1st July 2017. Under the GST, all Central and State tax will be levied on all commodities and services, apart from motor spirit, petroleum, natural gas and diesel. The GST council further explained that the Central and State Government had already given various incentives of VAT and CST under the old

taxation system and any such incentives could not be continued as it needs to be kept in mind that GST is a destination based tax and any such incentives could lead to double outflow for the origin state, one by way of transfer of tax and other by way of reimbursement to the supplier. The implementation was done in accordance with the statutory provisions of law. As Section 174(2)(c) of CGST Act provides that any tax exemption granted as an incentives against investment through a notification under the erstwhile Central Excise Act Shall not continue as a privilege if the said notification is rescinded, and in the present case, the notification which granted 100% Excise duty exemption was, in fact rescinded on 18.07.2017 vide Notification No. 21/2017 dated 18.07.2017. However, with the objective of continuation of benefit the Government of India introduced a budgetary support scheme under the GST regime w.e.f. 01/07/2017, which was being enjoyed by the "eligible units" located in the states of Jammu & Kashmir, Uttrakhand, Himachal Pradesh and North East including Sikkim, this scheme was introduced as a measure of goodwill and based on the hardships encountered by the units. It is important to mention here that one incentive schemes were withdrawn, the taxes paid would be accounted for in the Consolidated Fund of India and 42% of the amount would be devolved to the States. The Centre, therefore, could be expected to only reimburse the units out of the remaining 58% of the fund which was not part of the devolution

and the States would also need to correspondingly reimburse such units out of the share of revenue received through devolution.

74. It is further submitted by Mr. S. C. Keyal, learned standing counsel, GST, summarized as under:-

i. The Budgetary Support Scheme is not against the law of promissory estoppels or that the Government of India has not withdrawn the benefit granted to the petitioner. The Notification No. 20/2007-CE had granted exemption from the Central Excise duty to the goods manufactured in the State of North East Region which was not a vested right but a privilege/incentive available to certain units subject to fulfillment of conditions prescribed therein. The existing area based Excise Duty Exemptions have become infructuous and nugatory consequent upon switch over to the GST regime. GST being a new tax, there is no one-to-one correlation with the erstwhile Excise Duty leviable on the product. However, keeping in view the likely hardship faced by industrial units that were already availing excise duty exemptions, under the new Scheme, budgetary support is sought to be provided to these units.

ii. Mr. Keyal, learned standing counsel further submits that it must be noted that while considering the applicability of the doctrine of

promissory estoppel, 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. 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 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. (Union of India Vs V.V.F. Limited (Date of Judgment 22.04.2020)).

iii. Once the excise notifications have been rescinded, the privilege bestowed therein extinguished and there is no one-to-one correlation between budgetary support sought to be provided under this scheme and the excise duty exemption provided earlier. It is also submitted that this is a Budgetary Support Scheme and does not provide any exemption from taxes. The new scheme offered as measure of goodwill to fulfill the promise, only to units which were eligible for drawing benefits under the earlier excise duty exemption schemes, but otherwise had no relation to erstwhile scheme.

iv. It is emphasized that with the coming into force of the Constitutional amendment and associated enactments passed by the Parliament of India and the Legislatures of States, the Central Excise Duty and the State Level Value Added Tax and Service Tax stood abolished, three new taxes called; Central GST, State GST, and Integrated GST have come into force. With the abolishing of the pre-GST taxes, all associated exempted notifications also stand consequently repudiated and rendered nugatory by implication. For this action flowing from a Constitutional amendment and law passed by the competent Legislatures, there cannot be any estoppel. No entity has the right to claim that it may be subjected

to the same treatment and be entitled to the same tax related benefits forever. A tax cannot be mandated to continue merely because some entity is enjoying exemption from the tax. Changes in tax law, schemes, regulations, orders affecting taxes and subsidies are matters of the government policy and statutes are liable to change without any legal right to recompense as there is no estoppel against the changes in the statute or policy.

v. Notwithstanding, discontinuation of Central Excise Duty and consequent rendering of Central Excise exemptions nugatory, there is no violation of Article 14 of the Constitution of India because the Petitioner has not been singled out for any adverse treatment. The Scheme notified by the DPIIT is applicable to all industries units located in the State of Assam meeting a common criterion.

vi. It is submitted that the plea of promissory estoppel cannot be enforced against an act done in accordance with the statutory provisions of law. under Section 174(2)(c) of the CGST Act, express provision has been made by the Parliament to provide that any tax exemption granted as an incentive against investment through a notification under, inter alia, the erstwhile Central Excise Act, shall not continue as a privilege if the said notification is

rescinded and in the present case, the notification was, in fact, rescinded. Thus, in the absence of any challenge by the petitioner to the rescission of the said notification which granted exemption or to the vires of the proviso to Section 174(2)(c) of the CGST Act, no plea of promissory estoppel is maintainable. The language used in the proviso to Section 174(2)(c) is clear and unequivocal, and leaves no room for a different interpretation.

vii. It is submitted that the scheme of Budgetary Support under GST regime introduced vide the Government of India, Ministry of Commerce and Industry vide notification dated 05.10.2017 for existing eligible manufacturing units under the different Industrial Promotion Schemes of the Government of India is not without jurisdiction and is not violative of the fundamental rights of the Petitioner.

viii. With regards to the questioning the validity of governmental policy, it is submitted that the same is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning except whether it is arbitrary or violative of any constitutional, statutory or any other

provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based in its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive.

ix. Doctrine of promissory estoppel is inapplicable against a statutory act - The judgments mentioned below dilute the effectiveness of the doctrine when invoked against curtailment of benefits owing to a change in regime.

75. Mr. Keyal, learned standing counsel, GST, submits that 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. 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.

76. Mr. Keyal, learned standing counsel by referring to the Judgment of *Shrijee Sales Corp Vs. Union of India* reported in (1997) 3 SCC 398, 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.

77. The learned counsel for the respondents contends 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". The courts do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud nor 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.

78. It is further submitted by the learned counsel for the respondents that where public interest warrants, the principles of promissory

estoppel cannot be invoked. The Government can change the policy in public interest. However, it is well settled that taking clue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law.

79. Mr. Keyal, learned standing counsel strenuously urges that due to the repeal provisions under Section 174(2)(c) of the Central Goods and Services Tax Act, 2017, a tax incentive scheme would not continue as a privilege and the plea of promissory estoppel was not maintainable.

80. Therefore, plea of promissory estoppel cannot be enforced against an act done in accordance with the statutory provisions of law. Under Section 174(2)(c) of the CGST Act, express provision has been made by the Parliament to provide that any tax exemption granted as an incentive against investment through a notification under, inter alia, the erstwhile Central Excise Act, shall not continue as a privilege if the said notification is rescinded, and in the present case, the notification was, in fact, rescinded. Thus, in the absence of any challenge by the Petitioner

to the rescission of the said notification which granted exemption or to the vires of the proviso to Section 174(2) (c) of the CGST Act, no plea of promissory estoppel is maintainable. The language used in the proviso to Section 174(2)(c) is clear and unequivocal, and leaves no room for a different interpretation. (Para 35 of Hero Motocorp: vs. Union of India)

81. Subsequently, Dr. Saraf, learned senior counsel leading the arguments for the petitioners sought leave of this Court to make further submission on issues which he feels are relevant for the purposes of the present proceedings.

82. Mr. Keyal, learned standing counsel, GST, did not object to the submissions made requesting for making additional submissions but however he prays that he also be permitted a liberty to reply to such further submissions made by Dr. Saraf, learned senior counsel for the petitioners, if required.

83. Upon being granted liberty, the learned senior counsel for the petitioners submits that the Respondents have filed a Written Submission after completion of the hearing and after going through the Written Submission filed by the Respondents, it has become necessary to give reply to some of the submissions advanced by the Respondents in their Written Submission and thereby Additional Written Submission is being filed on behalf of the Petitioners.

84. The respondents have raised the followings contentions:

(1) That the Budgetary Support Scheme is not against the law of promissory estoppel or that the Government of India has not withdrawn the benefit granted to the Petitioner.

(2) That the existing area based Excise Duty Exemptions have become infructuous and nugatory consequent upon switch over to the GST regime. GST being a new tax, there is no one-to-one correlation with the erstwhile Excise Duty leviable on the product. However, keeping in view the likely hardship faced by industrial units that were already availing excise duty exemptions, under the new Scheme, budgetary support is sought to be provided to these units.

(3) That considering the applicability of the doctrine of promissory estoppel, the Courts have to do equity and the fundamental principles of equity must forever be present in the mind of the Court.

(4) That 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 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".

(5) That once the excise notifications have been rescinded, the privilege bestowed therein extinguished and there is no one-to-one correlation between budgetary support sought to be provided under this scheme and the excise duty exemption provided earlier. This is a Budgetary Support Scheme and does not provide any exemption from taxes. The new scheme offered as measure of goodwill to fulfill the promise, only to units which were eligible for drawing benefits under the earlier excise duty exemption schemes, but otherwise had no relation to erstwhile scheme.

(6) That the action taken by the Respondents is flowing from the Constitutional amendment and law passed by the competent Legislatures, and there cannot be any estoppel. No entity has the right to claim that it may be subjected to the same treatment and be entitled to the same tax related benefits forever. A tax cannot be mandated to continue merely because some entity is enjoying exemption from the tax. Changes in tax law, schemes, regulations, orders affecting taxes and subsidies are matters of the Government policy and statutes are liable to change without any legal right to recompense as there is no estoppels against the changes in the statute or policy.

(7) That notwithstanding, discontinuation of Central Excise Duty and consequent rendering of Central Excise exemptions nugatory, there is no violation of Article 14 of the Constitution of India because the Petitioner has not been singled out for any adverse treatment. The Scheme notified by the DPIIT is applicable to all industries units located in the State of Assam meeting a common criterion.

(8) That the plea of promissory estoppel cannot be enforced against an act done in accordance with the statutory provisions of law Under Section 174(2)(c) of the CGST Act, express provision has been made by the Parliament to provide that any tax exemption granted as an incentive against investment through a notification under, inter alia, the erstwhile Central Excise Act, shall not continue as a privilege if the said notification is rescinded.

(9) That the Scheme of Budgetary Support under GST regime introduced vide the Government of India, Ministry of Commerce and Industry vide notification dated 05.10.2017 for existing eligible manufacturing units under the different Industrial Promotion Schemes of the Government of India is not without jurisdiction and is not violative of the fundamental rights of the Petitioner.

(10) That with regards to the questioning the validity of governmental policy, it is submitted that the same is not normally within the domain of any court, to weigh the pros and cons of the

policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning except whether it is arbitrary or violative of any constitutional, statutory or any other provision of law.

(11) 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.

(12) 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".

(13) That while applying the doctrine of promissory estoppel, the authority cannot be compelled to do something which is not allowed

by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law.

(14) That the doctrine of promissory estoppel is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promise must establish that he suffered in detriment or altered his position by reliance on the promise.

85. It is submitted by the learned Senior counsel for the petitioner that Since the Respondents have contended that the doctrine of promissory estoppel cannot be made applicable in the instant case for various reasons, it has become necessary to make additional submit submissions in that regard on behalf of the Petitioners. He also sought leave of this Court to file such additional Written submissions.

86. The learned Senior counsel for the petitioners referring to the Judgment of the Apex Court in ***Union of India Vs. Anglo Afgan Agencies***, reported in ***AIR 1968 SC 718*** submits that the said decision

of the Apex Court not only not only strengthened the application of the doctrine of promissory estoppel, in India, against the Government by firmly laying down that the Government is not exempted from carrying out the representation made by it as regards its future conduct, the court, further, emphasized that in order to save itself from the operation of the doctrine of promissory estoppel, the Government must disclose the grounds of necessity or expediency, which make the Government fail to carry out the promise made by it.

87. It is submitted that after *Anglo Afgan Agencies (Supra)*, the Apex Court in the case of *Century Spinning & Mfg. C. Ltd. Vs. Ulhasnagar Municipal Council*, reported in **(1970) 1 SCC 582** held that if the representation is acted upon by another person it may, unless the statute governing the person making the representation provided otherwise, result in an agreement enforceable at law, if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereafter, but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation.

88. It is submitted that from the decision of the Apex Court *Century Spinning & Mfg. C. Ltd. (Supra)* it is clear that if the statute prescribes a particular manner, which has to be followed by the Government for the purpose of enabling it to keep to its promises, law is not powerless, in

appropriate cases, to compel the Government to act in such a manner as would be necessary to enforce the contract. Logically, therefore, when the statute does not bar making of a promise or the statute does not bar the Government from granting exemption the Government must, acting upon its industrial policy, bring out a notification in terms of the taxing statute in order to keep to its promises rather than resile therefrom on the pretext that unless exemption is granted in the manner in which the statute has prescribed for granting of exemption, no enforceable contract can be made out.

89. A careful reading of the decision in Century Spinning & Manufacturing Co., (supra) shows that if the conditions precedent for application of the doctrine exist, the court may compel the Government to act in terms of its promises by forcing it to act in accordance with law, that it to say, if the law permits or does not prohibit act of granting of exemption or if the law does not prohibit the Government from acting upon the representation that it had made, Court can force the Government to act in terms of its promises by bringing, if necessary, to act in accord with law. For instance, if, for granting of exemption a Notification under the relevant statute is required to be published and if the Government has declared its Industrial Policy promising to grant exemption if particular type of industry is set up at a particular place, it will be no defence for the Government to say that so long as no

requisite Notification is brought out under the relevant statute, the promise made by the Government is not enforceable against it, for, the law is not powerless and will force the Government to bring out a Notification in tune with its Industrial Policy if the person affected has, acting upon the representations made by the Government, set up the industry at the specified place.

90. The learned Senior counsel for the petitioners submits that the Apex Court in ***Motilal Padmapat Sugar Mills Co. Ltd. V. State of Uttar Pradesh***, reported in ***(1979) 2 SCC 409*** built a complete structure for application of the doctrine, in India, against the Government, for, this decision lays down the conditions precedent subject to which the doctrine can be resorted to, it also lays down as to when the Government can be forced, with the help of the equitable doctrine of promissory estoppels, to abide by, and carry out, its promises, and as to when this doctrine may not be allowed to prevail upon and shall succumb to the Government's decision not to abide by or carry out the promises made by the Government. The decision of the Apex Court in ***Motilal Padmapat Sugar Mills Co. Ltd.(Supra)*** made it explicit that the doctrine of promissory estoppels can form a cause of action against the Government.

91. It is submitted that in ***Motilal Padmapat Sugar Mills Co. Ltd., (Supra)***, the questions before the Apex Court was that on the basis

basis of the representations made by the Government that the sugar factories, if set up, would be exempted from payment of sales tax for a period of three years from the date of commencement of the production, the petitioners had set up their sugar factories. When the State Government refused to honour its representation and wanted to force the petitioners to pay sales tax for the period for which the Government had made such a promise, the petitioners approached the court. The plea taken by the Government for not keeping to its promises were, to a great extent, same as in the present case. The pleas were as follows:-

- (1) in the absence of notification under section 44, the State Government could not be prevented from enforcing the liability to sales tax imposed on the petitioners under the provisions of the Sales Tax. Act;
- (2) that the petitioners had waived their right to claim exemption; and
- (3) that there could be no promissory estoppel against the State Government so as to inhibit it from formulating and implementing its policies in public interest.

92. It is submitted that the Apex Court, *in Motilal Padmapat Sugar Mills Co. Ltd. (Supra)*, rejected all the above three pleas of the

Government and held that the law may, therefore now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter, it is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel.

93. It is further submitted that the Apex Court in ***Motilal Padmapat Sugar Mills Co. Ltd., (Supra)*** further held that if the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee

would alter his position relying upon it. But if the Government makes such a promise and the promise acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual.

94. It is submitted by learned Senior counsel for the petitioners that in ***State of Punjab Vs. Nestle India Ltd.***, reported in ***(2004) 6 SCC 465*** held that if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promise from payment of sales tax. As such, from the aforesaid decision, it is clear that when the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute; but if the statute confers power on the Government, to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promise from payment of sales tax.

95. It is submitted by learned Senior counsel for the petitioners that the principle governing the application of promissory estoppels against

the Government flowing from the decision in ***Godfrey Philips India Ltd.***, reported in ***(1985) 4 SCC 369*** are that if the Government possesses a power, it is bound to wield that power to enforce its promise, the limitation on the enforcement of the promise being when the statute prohibits the exercise of powers necessary for carrying out the representation made by the Government or when the overriding public interest permits the Government not keep itself within the bounds of the promise made by it. In short, as long as, by asking the Government to keep to its promise, the Court does not force the Government to act contrary to law or against supervening public interest, the Court will not be doing anything wrong. As such, when a statute prohibits or bars enforcement of the representation made by the Government, the Court would not enforce the representation against the Government, for, the Government cannot be compelled, to act contrary to the statute. Logically, therefore, when the statute contains provisions enabling the Government to grant exemption from payment of sales tax, the Court can in an appropriate case, force the Government to act in terms of its representation and it would be no defence for the Government to say that necessary notification, in terms of the taxing statute has not been brought out or published, for the Government, in such a case, can be bound by its promise to exempt person(s) from payment of sales tax.

96. Reliance is also placed on ***Pournami Oil Mills & ors. Vs. State of Kerala & Anr.***, reported in ***1986 (Supp) SCC 728***, wherein the Apex Court held that when the Government make an announcement promising to grant exemption from sales tax if specified industries are set up at specified place(s) within a specified date without, however, bringing out corresponding notification granting exemption in terms of the relevant statute, the notification, which makes no reference to the provisions of the relevant statute, while making the announcement, would still be treated as a notification under the relevant provisions of the statute and the doctrine of promissory estoppels would force the Government not to deny the incentive of exemption from payment of sales tax promised by it provided, of course, that the other conditions for application of the doctrine exist.

97. Reference is also made to the Judgment of the Apex Court in ***Commissioner of Commercial Taxes (Asstt.) Vs. Dharmendra Trading Co. Ltd.***, reported in 1988) 3 SCC 570 made it abundantly clear that when an order or notification is issued by a Government promising incentives in the form of exemption of, or reduction from payment of sales tax if specified type or types of industries are, within the date(s) prescribed in this regard, set up within the place(s) specified therefore and when such order or notification does not refer to the relevant statute, yet if the power to grant such exemption exists with

the Government under a relevant statute, the Government would be bound to act on its promises and would be restrained, by taking recourse to the doctrine of promissory estoppel, from going back on the promises that it had made if anyone, acting upon the promises made by the Government, has altered his position to his detriment.

98. The learned Senior counsel for the petitioners submits that in the case of ***Pine Chemicals and Ors, Vs. Assessing Authority & Ors***, reported in ***(1992) 2 SCC 683***, the Apex Court referred to the decision of in ***Dharmendra Trading Co. Ltd. (Supra)*** and held as under:

"Though this again was in the form of a government order giving incentives and concessions, this court held that since there is a power to grant an exemption or concessions under the statute the mere fact that it did not specify the power under which it was issued will make no difference and that the assessee would be entitled to the benefit of this order."

99. The decision of the three Judges Bench in ***Pine Chemicals (supra)*** too makes it clear that when an order granting exemption or reduction on payment of sales tax can be referred to an enabling provision in the relevant statute, the order granting exemption shall be deemed to have been one made under the enabling provisions of the relevant statute.

100. The learned Senior counsel for the petitioners submits that what emerges from the aforesaid decisions of the Apex Court is that if the representation made by the Government is not barred under any law or if the same is not against larger public interest, the Government will be bound by the representation that, it has made and if a person, acting on the representations made by the Government, has altered his position to his detriment in such a case, it will be no defence for the Government to say that no notification, in terms of the relevant salute, having been brought out to give effect to the representations made by the Government, the Government is not bound by the promise. In fact, in a case of present nature, promissory estoppel will come into operation and the court can force the Government to carry out the representations that it had made. Any notification, issued under the relevant statute, which runs contrary to the Government's representation, may be interfered with. Mere claim by the Government that larger public interest permit the Government not to abide by its representation will not be enough to free the Government from the commitments that it had made, for, the Government cannot, be the judge of its own cause and the Government would have to lay bare all the facts and circumstances, which had induced the Government not to carry out the representation that it has made, and if, on balancing between the two competing equities, that is, the commitment made to the promisee, on the one hand, and the public

interest, on the other, the court finds that the public interest has the overriding effect, the promise would not be enforced, for, the doctrine of promissory estoppel, being an equitable relief, must yield, when so required.

101. It is submitted by learned Senior counsel for the petitioners that although the Respondents have relied on the decision of the Apex Court in ***S.T.O. & Anr. Vs. Sri Durga Oil Mills*** reported in ***AIR (1998) SC 597*** wherein it was held that the Government can change its Industrial Policy or the promises made therein but in the present case, the Industrial Policy of the Government has remained unchanged. Without changing the Industrial Policy, the benefits of exemption granted under the Industrial Policy have been sought to be curtailed in the present case. As such the case referred to by the Respondents in ***Sri Durga Oil Mills (Supra)*** has no application, more particularly because of the fact that in ***Sri Durga Oil Mills (Supra)***, the Industrial Policy was amended and the virus of the second Industrial Policy was not under challenge. This apart, in ***Sri Durga Oil Mill, (supra)***, the Industrial Policy Resolution by itself had not granted any exemption to the persons, who had set up industries pursuant to the Industrial Policy Resolution; whereas, in the present case, a clear and unequivocal representation was made in the Industrial Policy.

102. It is further submitted on behalf of the petitioners that the decision, in ***Sri Durga Oil Mills case (supra)***, was referred to in ***State of Punjab vs. Nestle India Ltd.***, reported in ***(2004) 136 STC 35*** and the Apex Court observed that the said decision had no relevance, for, in ***Nestle India Ltd., (supra)***, the representations were clear and unequivocal. Furthermore, the decision ***in State of Bihar vs. Suprabhat Steel***, reported in ***(1999) 1 SCC 31***, is a later decision and rendered by a Bench of three Judges, as already indicated hereinabove wherein, it has clearly been held that a notification issued under the sales-tax enactment cannot go contrary to the Industrial Policy. Hence, the decision in ***Sri Durga Oil Mills, (supra)*** can be of no assistance to the respondents.

103. The learned Senior counsel for the petitioners submits that though reliance has been placed on by the respondents in the decision of the Apex Court in ***Kaniska Trading Vs. Union of India***, reported in ***(1995) 1 SCC 274*** and in ***Shrijee Sales Corporation Vs. Union of India***, reported in ***(1997) 3 SCC 398***, however, it is respectfully submitted that the aforesaid two decisions of the Apex Court were considered by the Apex Court in the case of ***Pawan Alloys Casting (P) Ltd. Vs. U.P. State Electricity Board***, reported in ***(1997) 7 SCC 251***, and the Court held that the notifications, impugned therein, were not designed or issued to induce the appellants to import PVC resin and,

strictly speaking, therefore, the notifications could not have been said to have extended any 'representation', much less a 'promise', to anyone enabling him to invoke the doctrine of promissory estoppels against the State. In the light of the decision in ***Pawan Alloys & Casting (P.) Ltd., (Supra)***, the decision in ***Kaniska Trading, (Supra)*** proceeded on the basis that by issuing the earlier notification under Section 25 of the Customs Act no promise had been held out to any of the importers that the notification's life would not be curtailed earlier. The Apex Court, however, clarified, in ***Pawan Alloys & Casting (P) Ltd. (Supra)***, that the decision in ***Kaniska Trading, (Supra)*** is not an authority for the proposition that even if a claim of exemption from import duty was resorted to in public interest by way of an incentive for a class of importers, though such public interest continued to subsist during the currency of such exemption notification and even though the promise, for whose benefit such exemption was granted, had changed their position relying on the said exemption notification, it could still be withdrawn before the time mentioned therein.

104. In ***Pawan Alloys & Casting (P) Ltd. Vs. UP State Electricity Board***, reported in **(1997) 7 SCC 251**, the Court's specific finding, based on the given fact situation, was that the notification, in question, had indeed, held out promises and made representations to the general public inviting them to set up, industries on the basis of the said

representations and it was, acting upon such promises, that the industries had, in fact, been set up.

105. It is submitted by the learned Senior counsel for the petitioners that from the observations made in *Motilal Padmapat Sugar Mills Co.Ltd.* (Supra) it appears that even when there is no overriding public interest enabling the Government to resile from the promise, which it has made, yet, if on giving reasonable opportunity to the promisee, it is possible for the promisee, to restore status quo ante, the Government may resile from the promise made by it, If, however, the promisee cannot resume his position, the promise would become final and irrevocable and, thereafter, it would be impermissible for the Government to resile from the promise made by it except if it can plead and prove to the satisfaction of the court that overriding public interest constrains it to withdraw the incentives promised.

106. The learned Senior counsel contends that from a combined reading of the decision *Kaniska Trading*, (supra), *Shreeji Sales Corporation*, (supra) and *Pawan Alloys & Casting (P,) Ltd.*, (supra), it is clear that where the Government makes representation inviting investments against incentives promised by it and a person acts or; such a promise, yet the Government may, even where no overriding public interest so demands, resile from such promise by giving reasonable notice or opportunity to the promisee to resume his original position; but

if it is impossible for the promisee to resume his original position or restore status quo ante, the promise would become final and irrevocable. To put it differently, the Government can, even in the absence of supervening public interest, resile from its promise until such a stage is reached, when the promise becomes irrevocable due to the fact that the promisee cannot resume his original position or that the status quo ante cannot be restored.

107. It is contended by Dr. Saraf that the aforesaid two decisions in Kasinka Trading & Anr (Supra) and Shrijee Salex Corporation (Supra) were distinguished by the Apex Court. In paragraph 26 of the Judgment of Manuelsons Hotels Private Limited (Supra) wherein the Apex Court held as under.

"in that case a new Industrial Policy dated 30.4.1990 was declared by the State Government assuring the grant of 33.33o/o hill development rebate on the total amount of electricity bills to new entrepreneurs for a period of 5 years. This period was extended by another period of 5 years to be made available to new industrial units set up till 31.3.1997. Vide Notifications dated 18.6.1998 and 25.1.1999, uniform tariffs of electricity were introduced by which the rebate so given was reduced to 17o/o. Post 2000, vide a Notification dated 7.8.2000, a new tariff challenge to the aforesaid notifications was turned down by this Court. This Court was

concerned with an earlier decision in U.P. Power Corpn Ltd. V. Sant Steels and Alloys (P) Ltd., which took a very restrictive view of Section 49 of the Electricity (Supply) Act of 1948, stating that any notification issued thereunder can only be revoked or modified if express provision was made for such revocation under Section 49 itself. Further, such revocation could take place under the General Clauses Act only if such withdrawal was in larger public interest, or if legislation was enacted by the legislature authorizing the Government to withdraw the benefit granted by the notification. The larger Bench overruled Sant Steels Case stating that its view of Section 49 of the Electricity Supply Act was plainly incorrect, and that Section 14 and 21 of the General Clauses Act made it clear that a notification issued under Section 49 could be exercised from time to time including the power to revoke such notification.

108. However, when it came to the applicability of the doctrine of promissory estoppel, it is contended by the learned Senior counsel that the Apex Court relied upon the observations made in ***State of Rajasthan Vs. J.K. Udaipur Udyog Ltd.***, reported in (2004) 7 SCC 673 and ***Arvind Industries Vs. State of Gujarat*** reported in (1995)

6 SCC 53 and as such no reliance can be placed on the aforesaid two decision of the Apex Court.

109. It is submitted that the decision of the Apex Court in Union of India Vs. Godfrey Philips India Pvt., Ltd reported in, (1985) 4 SCC 369 in fact supports the case of the Petitioners. In the said case the Court directed an exemption to be granted on the basis of promissory estoppel even though Rule B of the Central Excise Rules, 1944 required exemption to be granted by way of notification. In the present case, there is a specific provision in the Central Goods and Service Tax Act, 2017 empowering the Government to grant exemption and thereby the aforesaid decision of the Apex Court in Godfrey Philips India Pvt. Ltd. (Supra) helps the case of the Petitioner.

110. Learned senior counsel for the petitioners referring to the decision in the case of State of Rajasthan Vs. Mahaveer Oil Industries & Anr, reported in (1999) 4 SCC 857 relied on by the Respondents submits that it is distinguishable on facts. In the said case, the Sales Tax Incentive Scheme for Industries, 1987 was notified by the Rajasthan Government under Section 4(2) of the Rajasthan Sales Tax Act exempting subject to certain condition, now industrial units from tax under the State Act as well as under the Central Act on sale of goods manufactured by them for sale within the State for specified period. Oil extraction and manufacturing was one of the industries eligible for the

benefit of the Scheme. During the currency of the Scheme, the Government vide Notification dated 07.05.1990 included the oil extraction and manufacturing industry in Annexure - B to the Scheme and thereby rendering the said industry ineligible for the benefit of the Scheme. On the said facts, the Apex Court found that the Scheme had failed to achieve its object and had rather adversely affected the oil industry and under that circumstances, the Notification dated 07.05.1990 was held to be in public interest and thereby the Apex Court held that the doctrine of promissory estoppel could not preclude the Government from issuing such a notification. Further, in that case, it was found that the Respondents' industry had not taken effective steps for starting a new unit prior to the issuance of the Notification withdrawing the benefit of the exemption and thereby the Apex Court held that the Respondents' industry was not entitled to invoke the doctrine of promissory estoppel and to claim the benefit of the incentive Scheme.

111. The learned senior counsel for the petitioners submits that the facts of the present case is altogether different than the facts of the case of Mahaveer Oil Industries & Anr. (Supra). In the present case, the Industrial Policy, 2007 is still continuing and it is not the case of the Respondents that the Industrial Policy had failed to achieve its objects. Secondly, all the industrial units were established prior to withdrawal of the excise exemption unlike the case in Mahaveer Oil industries & Anr

(Supra) wherein the Respondents' industry had not taken the effective steps for starting a new industry prior to the issuance of the Notification withdrawing the exemption. As such the decision relied on by the Respondents does not help the case of the Respondents.

112. It is further submitted by the learned senior counsel for the petitioners that the decision of the Apex Court in the case of Bhavesh D. Parish Vs. Union of India, reported in (2000) 5 SCC 477 wherein the Apex Court held that in the context relied on by the Respondents economic scenario, the expertise of people dealing with the subject should not be lightly interfered with. The Apex Court held that it is necessary that while dealing with the economic legislation, the Court while not jettisoning its jurisdiction to call arbitrary action or unconstitutional legislation should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all. In the said case, the Apex Court was examining the Constitutionality of Section 45-S of the Reserve Bank of India Act, 1934 and in that context, the Apex Court held as under:

"RBI has not acted hastily. Before amending Section 45-S of the Act in 1997, it had the benefit of having with it the reports of a number of committees, all of whom had recommended that the unincorporated business firms/individuals be brought under certain discipline and if

possible non-banking financial business was not to be permitted to be carried on by the unincorporated bodies. The question of restricting such financial activity by unincorporated bodies, is a question of economic policy as it involves regulation of economic activities by different constituents. In such matters of economic policy, the Supreme Court does not interfere with the decision of the expert bodies which have examined the matter."

113. As such, it is contended that the observations made by the Apex Court in Bhavesh D. Parish (Supra) were altogether in different context. In the present case, the Industrial Policy of 2007 has not been amended and is still continuing and as such it cannot be said that there was any change of the policy decision of the Government as reflected in the Industrial Policy, 2007. The Petitioner, in fact, is praying in the present writ petitions that the promises made in the Industrial Policy, 2007 should be honoured and the Union cannot resile from the promises made in the said Industrial Policy, 2007. As such, the decision of the Apex Court in Bhavesh D. Parish (Supra) relied on by the Respondents does not help the case of the Respondents.

114. It is submitted by the learned senior counsel for the petitioners that similarly, in the case of State of Punjab & Ors. Vs. Ram Lubhaya Bagga & Ors, reported in (1998) 4 SCC 117 , the Apex Court

held that the right of the State to change its policy from time to time, under the changing circumstances is neither changed nor could it be. In that context, the Apex Court observed as under:

"It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

115. The learned senior counsel contends that there is no dispute about the proposition laid down in the aforesaid case in Ram Lubhaya Bagga (Supra) but in the present case, there is no change of policy inasmuch as the Industrial Policy, 2007 has not been amended and is

still continuing and thereby the observations made by the Apex Court in Ram Lubhaya Bagga (Supra) are not applicable in the case of the Respondents.

116. The learned senior counsel for the petitioners contends that insofar as the reliance place down the decision of the Apex Court in Shree Sidhballi Steels Ltd. Vs, State of U.P., reported in (2011) 3 SCC 193 by the Respondents, it is respectfully submitted by the petitioners that in that case, a new Industrial Policy dated 30.04.1990 was declared by the State Government assuring the grant of 33.33% hill development rebate on the total amount of electricity bills to new entrepreneurs for a period of 5 years. This period was extended by another period of 5 years to be made available to new industrial units set up till 31.03.1997. Vide Notifications dated 18.6.1998 and 25.1.1999, uniform tariffs of electricity were introduced by which the rebate so given was reduced to 17%. Post 2000, vide a Notification dated 7.8.2000, a new tariff was announced which completely withdrew the hill development rebate. A challenge to the aforesaid notifications was turned down by the Apex Court. The Apex Court was concerned with an earlier decision in U.P. Power Corpn. Ltd. Vs. Sant Steels and Alloys (P) Ltd. (2008) 2 SCC 777, which took a very restrictive view of Section 49 of the Electricity (Supply) Act of 1948, stating that any notification issued thereunder can only be revoked or modified if express provision was made for such revocation under

Section 49 itself. Further, such revocation could take place under the General Clauses Act only if such withdrawal was in larger public interest, or if legislation was enacted by the legislature authorizing the Government to withdraw the benefit granted by the notification. The larger Bench overruled Sant Steels Case (Supra) stating that its view of Section 49 of the Electricity Supply Act was plainly incorrect, and that Sections 14 and 21 of the General Clauses Act made it clear that a notification issued under Section 49 could be exercised from time to time, including the power to revoke such notification.

117. It is strenuously urged by the learned Senior counsel for the petitioners that when it came to the applicability of the doctrine of promissory estoppel, the Apex Court relied upon the observations made in State of Rajasthan Vs. J.K. Udaipur Udyog Ltd, reported in (2004) 7 SCC 673 and Arvind Industries Vs. State of Gujarat, reported in (1995) 6 SCC 53.

118. It is contended that in Para 25 of the State of Rajasthan (Supra) was quoted by the Apex Court in order to arrive at a conclusion that the recipient of an exemption granted by a fiscal statute would have no legally enforceable right against the Government inasmuch as such right is a defeasible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted. The

learned Senior Counsel for the petitioners, however refers to Para 26 of the said Judgment which is extracted as under:-

"26. In this case the Scheme being notified under the power in the State Government to grant exemptions both under Section 15 of the RST Act and Section 8(5) of the CST Act in the public interest, the State Government was competent to modify or revoke the grant for the same reason. Thus what is granted can be withdrawn unless the Government is precluded from doing so on the ground of promissory estoppel, which principle is itself subject to considerations of equity and public interest. (See STO V. Shree Durga Oil Mills (1998) 1 SCC 572). The vesting of a defeasible right is therefore a contradiction in terms. There being no indefeasible right to the continued grant of an exemption (absent the exemption of promissory estoppel), the question of the respondent Companies having an indefeasible right to any facet of such exemption such as the rate, period etc. does not arise."

119. It is submitted by the learned senior counsel for the petitioners that the aforesaid para 26 was noticed by the Apex Court in Mahabir Vegetable Oils (P) Ltd. Vs, State of Haryana, reported in (2006) 3 SCC 620(see paras 34 and 35). It is clear, therefore, that the reliance on the decision in Shree Sidhballi Steels Ltd Vs. State of U.P. (2011) 3 SCC 193 upon the aforesaid judgment when it comes to non-application

of the principle of promissory estoppels to exemptions granted under statute would be wrongly incorporated.

120. It is strenuously urged by the learned senior counsel for the petitioners that the aforesaid anomalies were noticed by the Apex Court in *Manuelsons Hotels Private Limited Vs. State of Kerala and Others*, reported in (2016) 6 SCC 766 and the Apex Court in the said case at paragraph 31 held as under:

"It is clear, therefore that Shree Sidhballi Steels Ltd. was a case which was concerned only with whether a benefit given by a statutory notification can be withdrawn by the Government by another statutory notification in the public interest if circumstances change (see paras 30 and 42). Such is not the case before us. On the facts before us, a notification which ought to have been issued under Section 3-A after it was introduced pursuant to a promise made was not issued at all. And change in circumstances leading to overriding public interest displacing the doctrine of promissory estoppel is absent in the facts of the present case. We are thus, satisfied that the aforesaid judgment can have no application whatsoever to the facts of the present case."

As such the decision of the Apex Court in *Shree Sidhballi Steels Ltd.*, (Supra) is not applicable in the facts of the present case.

121. It is submitted by the learned senior counsel for the petitioners that the decision in R.C. Tobacco (P) LH A Anr. Vs. Union of India & Anr, reported in (2005) 7 SCC 725 also does not help the case of the Respondents inasmuch as in the said case, the Apex Court came to a specific finding that the object of the grant of the package of incentives including an exemption from payment of excise duty was not attained because of the misuse of the exemption by the industrial units. The Apex Court in that context held as under:

"The obvious intention behind the grant of the package of incentives including an exemption from payment of excise duties was to stimulate further industrial growth in the area which enduring benefits not only to the local populace by way of employment opportunities but also to the economic welfare of the State. The State Government insistence from the very outset on the need to regulate the industries which were claiming the benefit of the exemption was to ensure that these objects were attained. According to the Union of India the exemption notification, at least as interpreted by the High Court, did not effectuate that intent. As it transpired, none of the industrial units manufacturing cigarettes were prepared to contribute to this object and their investment in the manufacture of cigarettes was co-extensive with the period of the exemption. The loss of revenue suffered by the Union and the

State by the various subsidies and exemptions granted was the quid in return for which the petitioners were not prepared to suffer any quo. With the withdrawal of the exemption, all of them without exception immediately closed down their cigarette manufacturing units and a large majority have shifted out of the State. Clearly, if the grant of the exemption had operated as it was intended to, it would have been unnecessary to enact Section 154."

However, it is submitted that such is not the case in the case in hand. Secondly, in the said case, the exemption notifications were withdrawn by the Finance Act of 2003 and the validity of the said provision of Section 154 of the Finance Act, 2003 was a subject matter of consideration before the Apex Court. In the present set of petitions, the facts are altogether different and thereby the decision of the Apex Court in R.C. Tobacco (P) Ltd & Anr. (Supra) is not applicable in the present case.

122. The learned senior counsel for the petitioners contends that the decision relied on by the Respondents in Union of India and Anr. Vs. V.V.F. Limited and Ann, reported in (2020) SCC Online SC 378 also cannot be made applicable in the present case inasmuch as in paragraph 12 of the Judgment, the Apex Court held that the decision relied on by the Respondents' Industrial Units on promissory estoppel were not

applicable because the subsequent notification curtailing the benefits of the excise exemption were clarificatory in nature and same did not take away the vested rights conferred under earlier notification. Paragraph 12 of the said Judgment is reproduced below:-

"12. Now, so far as 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."

124. The learned Senior counsel for the petitioners submits that in view of the submissions made and the Judgments referred showing the development of the Law of promissory estoppel by the Apex Court, the case laws referred to by the respondents in support of their contentions have no application in the present case. The respondents have miserably failed to dispute the contentions raised by the petitioners and therefore the prayers made by the petitioners be granted by allowing the writ petitions and rejecting the contentions of the respondents.

Ms. N. Hawelia, learned counsel appearing for the petitioners in W.P(C) No. 4355/2020, W.P(C) No. 4532/2020 and W.P(C) 4591/2020, adopts the arguments of Dr. A. Saraf, learned Senior Counsel.

125. Mr. S.C. Keyal, learned Senior Standing counsel, GST in response to the further/additional submissions made by the learned counsel for the petitioners reiterated his submissions made earlier that the plea of promissory estoppels cannot be enforced against an act done in accordance with the statutory provisions of law. Under Section 174(2)(c) of the CGST Act, express provision has been made by the Parliament to provide that any tax exemption granted as an incentive against investment through a notification under, inter alia, the erstwhile Central Excise Act, shall not continue as a privilege if the said notification is rescinded, and in the present case, the notification was, in fact, rescinded. Thus, in the absence of any challenge by the Petitioner to the rescission of the said notification which granted exemption or to the vires of the proviso to Section 174(2)(c) of the CGST Act, no plea of promissory estoppel is maintainable. The language used in the proviso to Section 174(2)(c) is clear and unequivocal, and leaves no room for different interpretation.

126. Mr. S.C Keyal, learned Standing Counsel, GST also submits that a common affidavit has been filed in this matter on behalf of Central Board of Indirect Taxes (CBIT), Ministry of Commerce & Industry, Department for Promotion and Industry and Internal Trade (GST Subsidy Scheme Section). Mr. Keyal referring to the Judgment of the Delhi High Court of Hero Motocorp Vs. Union of India submits that

similar issues were before the Delhi High Court which have been rejection by the Delhi High Court and the matter has travelled to Supreme Court although the SLP filed has not been finally disposed of by the Apex Court. Mr. Keyal referring to Para 35 of the Judgment of Hero Motocorp(supra) submits that although the Judgment of the Delhi High Court is not binding but the same is referred to for persuading this Court to close the writ petitions by passing similar orders.

127. The learned counsels for the parties have been heard. The elaborate pleadings and case reference placed have been carefully perused.

128. From the pleadings, it is seen that the Government of India had by way of the NEIIPP, 2007 had granted incentives to various industries to set up and open their industrial units within the northeastern region. In order to bring about industrial progress in this region, several incentives were granted for such industries who in response to the Industrial Policy announced, will set up their industries and carry on the manufacturing of the various articles and items which are notified in the policy itself. The petitioners are some of such industries who have set up their industries and factories in response to the incentives granted by the Government of India through the NEIIPP, 2007. There are several requirements which are to be fulfilled by these industries in order to make themselves eligible for the

benefits/incentives offered under the NEIIPP, 2007. There is no dispute of facts with regard to the eligibility of the industries who are before this Court. All these petitioners have been receiving the incentives offered under the NEIIPP, 2007 in terms of the parameters provided therein. There is also no dispute that although initially the exemptions was to the extent of 100% subsequently, it came to be available only to the extent of 'value addition' made by the concerned industries. Such reduction of the benefits during the currency of the NEIIPP, 2007 by the respondents were also assailed before several High Courts including this Court at an earlier point in time. These issues came to be decided by a Judgment of Apex Court rendered in ***Union of India and Anr. Vs. V.V.F. Limited and Anr***, reported in ***AIR 2020 SC 2954***. The Apex Court upheld the grant of exemptions/benefit/incentives to be extent of value addition made by the industries including the petitioners industries. There is also no dispute that after the advent of GST, the Central Excise Duty which was imposed earlier came to be subsumed. The GST came to be enforced with effect from 01.01.2017. It is also noteworthy that the GST Tax Structure required a constitutional amendment which was brought in w.e.f. 19.09.2016 by the 101st Constitutional Amendment. As such, it is seen that the petitioners are aware of the nature and structure of the GST which have been in force with effect from 01.01.2017. It is seen that no challenge has been brought about questioning of the

constitutional vires of the GST Tax Structure and/or the constitutional amendments brought in before this Court by the petitioners. As such, the main thrust of the grievance of the petitioners are that in view of the subsisting NEIIPP, 2007 and in view of the petitioners being issued eligibility certificate and considered to be eligible industries to avail the various benefits under the NEIIPP, 2007, which benefit they were availing, the denial of the benefit goes contrary to the very principle of promissory estoppel. It is contended by the petitioners that in response to the promise made by the Government of India, they have altered their positions to their detriment by making huge financial investments in setting up the factories and in employment of personnel to run the factories and for sale of their products. The denial of the benefits under the NEIIPP, 2007 has caused severe financial losses to the petitioners industries. Such withdrawal of the promise midway without taking into consideration of the grievances of the petitioners is completely opposed to the doctrine of promissory estoppel as developed by catena of Judgments rendered by the Apex Court over the years. It is contended that the budgetary scheme which is presently enforced by the respondents is outside the purview of the GST Scheme of the Tax Structure.

129. Since the doctrine of the promissory estoppel has been very strenuously urged by the petitioners is necessary to refer to the same.

In ***State of Jharkhand and Ors. Vs. Brahmputra Metalics Ltd., Ranchi and Anr***, reported in ***2020 SCC Online SC 968***, the Apex Court has traced the origins and evolution of promissory estoppels. The relevant paragraphs are extracted below:

"28. Before the High Court, the State of Jharkhand sought to sustain its action on the ground that though the follow-up notification under Section 9 was issued on 8 January 2015, no outer limit for the issuance of a notification was prescribed and there was no vested right on the part of the respondent to get the notification implemented from an earlier date or to obtain the benefit of the policy until it was implemented by a follow-up notification. The decision in Kalyanpur Cement (supra) was sought to be distinguished on the ground that in that case no follow-up notification had been issued at all until the policy lapsed. In sum and substance, the objection was that the writ petitioner - the respondent here - had no vested right to claim that a follow-up notification should be issued and that the doctrine of promissory estoppel would not, in the facts, apply.

29. In order to analyze the contentions relating to the doctrine of promissory estoppel in the present case, it is necessary to discuss the origin of the doctrine and the evolution of its application. The common law recognizes various kinds of equitable estoppel, one of which is promissory estoppel. In Crabb v. Arun DC¹³, Lord Denning, speaking for the Court of Appeal, traced the genesis of promissory estoppel in equity, and observed:

"The basis of this proprietary estoppel - as indeed of promissory estoppel - is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as "estoppel". They spoke of it as "raising an equity" If I may expand that, Lord Cairns said:"It is the first principle upon which all Courts of Equity proceed", that it will prevent a person from insisting on his legal rights - whether arising under a contract or on his title deed, or by statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties."

30. *The requirements of the doctrine of promissory estoppel have also been formulated in Chitty on Contracts¹⁴ ("Chitty"):*

"4.086. For the equitable doctrine to operate there must be a legal relationship giving rise to rights and duties between the parties; a promise or a representation by one party that he will not enforce against the other his strict legal rights arising out of that relationship; an intention on the part of the former party that the latter will rely on the representation; and such reliance by the latter party. Even if these requirements are satisfied, the operation of the doctrine may be excluded if it is, nevertheless, not "inequitable" for the first party to go back on his promise. The doctrine most commonly applies to promises not to enforce contractual rights, but it also extends to certain other relationships.

4.088.....The doctrine can also apply where the relationship giving rise to rights and correlative duties is non-contractual : e.g. to prevent the enforcement of a liability imposed by statute on a company director for signing a bill of exchange on which the company's name is not correctly given; or to prevent a man from ejecting a woman, with whom he has been cohabitating, from the family home."

31. *Chitty (supra) clarifies that the doctrine of promissory estoppel may be enforced even in the absence of a legal relationship. However, it is argued that this would be an incorrect application of the doctrine since it gives rise to new rights between the parties, when the intent of the doctrine is to restrict the enforcement of previously existing rights:*

"4.089. It has, indeed, been suggested that the doctrine can apply where, before the making of the promise or representation, there is no legal relationship giving rise to rights and duties between the parties, or where there is only a putative contract between them : e.g. where the promisee is induced to believe that a contract into which he had undoubtedly entered was between him and the promisor, when in fact it was between the promisee and another person. But it is submitted that these suggestions mistake the nature of the doctrine, which is to restrict the enforcement by the promisor of previously existing rights against the promisee. Such rights can arise only out of a legal relationship existing

between these parties before the making of the promise or representation. To apply doctrine where there was no such relationship would contravene the rule (to be discussed in para.4-099 below) that the doctrine creates no new rights."

32. *Generally speaking under English Law, judicial decisions have in the past postulated that the doctrine of promissory estoppel cannot be used as a 'sword', to give rise to a cause of action for the enforcement of a promise lacking any consideration. Its use in those decisions has been limited as a 'shield', where the promisor is estopped from claiming enforcement of its strict legal rights, when a representation by words or conduct has been made to suspend such rights. In *Combe v. Combe*¹⁵ ("Combe"), the Court of Appeal held that consideration is an essential element of the cause of action:*

"It [promissory estoppel] may be part of a cause of action, but not a cause of action itself.

.....

The principle [promissory estoppel] never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of consideration is too firmly fixed to be overthrown by a side-wind."

33. *Even within English Law, the application of the rule laid down in *Combe* (supra) has been noticed to be inconsistent¹⁶. The scope of the rule has also been doubted on the ground that it has been widely framed¹⁷. Hence, in the absence of a definitive pronouncement by the House of Lords holding that promissory estoppel can be a cause of action, a difficulty was expressed in stating with certainty that English Law has evolved from the traditional approach of treating promissory estoppel as a 'shield' instead of a 'sword'¹⁸. By contrast, the law in the United States¹⁹ and Australia²⁰ is less restrictive in this regard.*

34. *India, as we shall explore shortly, adopted a more expansive statement of the doctrine. Comparative law enables countries which apply*

a doctrine from across international frontiers to have the benefit of hindsight.

35. *This Court has given an expansive interpretation to the doctrine of promissory estoppel in order to remedy the injustice being done to a party who has relied on a promise. In Motilal Padampat (supra), this Court viewed promissory estoppel as a principle in equity, which was not hampered by the doctrine of consideration as was the case under English Law. This Court, speaking through Justice P N Bhagwati (as he was then), held thus:*

"12....having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to project this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a justice device for preventing injustice...We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so."

H.4 From estoppel to expectations

36. *Under English Law, the doctrine of promissory estoppel has developed parallel to the doctrine of legitimate expectations. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. The doctrine of substantive legitimate expectation has been explained in R v. North and East Devon Health Authority, ex p Coughlan²¹ in the following terms:*

"55.... But what was their legitimate expectation?" Where there is a dispute as to this, the dispute has to be determined by the court, as happened in In re Findlay. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.

.....

56....Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy."

(emphasis supplied)

37. *Under English Law, the doctrine of legitimate expectation initially developed in the context of public law as an analogy to the doctrine of promissory estoppel found in private law. However, since then, English Law has distinguished between the doctrines of promissory estoppel and legitimate expectation as distinct remedies under private law and public law, respectively. De Smith's Judicial Review²² notes the contrast between the public law approach of the doctrine of legitimate expectation and the private law approach of the doctrine of promissory estoppel:*

"[d]espite dicta to the contrary [Rootkin v. Kent CC, [1981] 1 WLR 1186 (CA); R v. Jockey Club Ex p RAM Racecourses Ltd., [1993] A.C. 380 (HL); R v. IRC Ex p Camacq Corp, [1990] 1 WLR 191 (CA)], it is not normally necessary for a person to have changed his position or to have acted to his detriment in order to qualify as the holder of a legitimate expectation [R v. Ministry for Agriculture, Fisheries and Foods Ex p Hamble Fisheries (Offshore) Ltd., (1995) 2 All ER 714 (QB)]... Private law analogies from the field of estoppel are, we have seen, of limited relevance where a public law principle requires public officials to honour their undertakings and respect legal certainty, irrespective of whether the loss has been incurred by the individual concerned [Simon Atrill, 'The End of Estoppel in Public Law?' (2003) 62 Cambridge Law Journal 3]."

(emphasis supplied)

38. *Another difference between the doctrines of promissory estoppel and legitimate expectation under English Law is that the latter can*

constitute a cause of action²³. The scope of the doctrine of legitimate expectation is wider than promissory estoppel because it not only takes into consideration a promise made by a public body but also official practice, as well. Further, under the doctrine of promissory estoppel, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although typically it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been caused to the promisee may be relevant to hold that it would not be "inequitable" for the promisor to go back on their promise.²⁴ However, no such requirement is present under the doctrine of legitimate expectation. In *Regina (Bibi) v. Newham London Borough Council*²⁵, the Court of Appeal held:

"55 The present case is one of reliance without concrete detriment. We use this phrase because there is moral detriment, which should not be dismissed lightly, in the prolonged disappointment which has ensued; and potential detriment in the deflection of the possibility, for a refugee family, of seeking at the start to settle somewhere in the United Kingdom where secure housing was less hard to come by. In our view these things matter in public law, even though they might not found an estoppel or actionable misrepresentation in private law, because they go to fairness and through fairness to possible abuse of power. To disregard the legitimate expectation because no concrete detriment can be shown would be to place the weakest in society at a particular disadvantage. It would mean that those who have a choice and the means to exercise it in reliance on some official practice or promise would gain a legal toehold inaccessible to those who, lacking any means of escape, are compelled simply to place their trust in what has been represented to them."

(emphasis supplied)

39. Consequently, while the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of promissory

estoppel has no application in circumstances when a State entity has entered into a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has made representation to a private party, in furtherance of its public functions²⁶."

130. The Apex Court also examined the doctrine from the perspective of the Indian Laws and the doctrine of legitimate expectation. The Apex Court held as under:

"40. Under Indian Law, there is often a conflation between the doctrines of promissory estoppel and legitimate expectation. This has been described in Jain and Jain's well known treatise, Principles of Administrative Law²⁷:

"At times, the expressions 'legitimate expectation' and 'promissory estoppel' are used interchangeably, but that is not a correct usage because 'legitimate expectation' is a concept much broader in scope than 'promissory estoppel'.

...

A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet crystallised as regards the nature and scope of the doctrine. At times, it has been referred to as merely a procedural doctrine; at times, it has been treated interchangeably as promissory estoppel. However both these ideas are incorrect. As stated above, legitimate expectation is a substantive doctrine as well and has much broader scope than promissory estoppel.

...

In Punjab Communications Ltd. v. Union of India, the Supreme Court has observed in relation to the doctrine of legitimate expectation:

"the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way Reliance must have been placed on the said representation and the representee must have thereby suffered detriment."

It is suggested that this formulation of the doctrine of legitimate expectation is not correct as it makes "legitimate expectation" practically synonymous with promissory estoppel. Legitimate expectation may arise from conduct of the authority; a promise is not always necessary for the purpose."

41. *While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims. Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfil the expectations which it generates. Professors Jain and Deshpande characterize the consequences of this doctrinal confusion in the following terms:*

"Thus, in India, the characterization of legitimate expectations is on a weaker footing, than in jurisdictions like UK where the courts are now willing to recognize the capacity of public law to absorb the moral values underlying the notion of estoppel in the light of the evolution of doctrines like LE [Legitimate Expectations] and abuse of power. If the Supreme Court of India has shown its creativity in transforming the notion of promissory estoppel from the limitations of private law, then it does not stand to reason as to why it should also not articulate and evolve the doctrine of LE for judicial review of resilement of administrative authorities from policies and longstanding practices. If such a notion of LE is adopted, then not only would the Court be able to do away with the artificial hierarchy between promissory estoppel and legitimate expectation, but, it would also be able to hold the administrative authorities to account on the footing of public law outside the zone of promises on a stronger and principled anvil. Presently, in the absence of a like doctrine to that of promissory estoppel outside the promissory zone, the administrative law adjudication of resilement of policies stands on a shaky public law foundation."

42. *We shall therefore attempt to provide a cogent basis for the doctrine of legitimate expectation, which is not merely grounded on analogy with the doctrine of promissory estoppel. The need for this doctrine to have an independent existence was articulated by Justice Frankfurter of the United State Supreme Court in Vitarelli v. Seton²⁸:*

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

131. The Apex Court proceeded to clarify the understanding of the doctrine of legitimate expectation as had been dealt with in the earlier Judgment of the Apex Court. Reference was made to the Judgment rendered in ***National Buildings Construction Corporation Vs. S Raghunathan***, wherein paragraph 18 of the said Judgment it was held under:

"18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppels."

132. The Apex Court held that In India, there was substantial overlapping between the doctrine of legitimate expectation and promissory estoppels. However, in the said Judgment of the ***National Buildings Construction Corporation (Supra)***, two doctrines were

attempted to be separated. In the Judgment of ***National Buildings Construction Corporation (Supra)*** reference was made in the English Law by referring to *Rejina (Reprotech Pebsham Ltd) Vs. East Sussex County Council*, wherein the House of Lords has held as thus:

*“33 In any case, I think that it is unhelpful to introduce private law concepts of estoppel into planning law. As Lord Scarman pointed out in Newbury District Council v. Secretary of State for the Environment [1981] A.C. 578, 616, estoppels bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into “the public law of planning control, which binds everyone”. (See also Dyson J in *R v. Leicester City Council, Ex p Powergen UK Ltd.* [2000] JPL 629, 637.)*

*34 There is of course an analogy between a private law estoppel and the public law concept of a legitimate expectation created by a public authority, the denial of which may amount to an abuse of power... But it is no more than an analogy because remedies against public authorities also have to take into account the interests of the general public which the authority exists to promote. Public law can also take into account the hierarchy of individual rights which exist under the Human Rights Act 1998, so that, for example, the individual's right to a home is accorded a high degree of protection (see Coughlan's case, at pp 254-255) while ordinary property rights are in general far more limited by considerations of public interest : see *R (Alconbury Developments Ltd) v. Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389.*

*35 It is true that in early cases such as the Wells case [1967] 1 WLR 1000 and *Lever Finance Ltd. v. Westminster (City) London Borough Council* [1971] 1*

Q.B. 222, Lord Denning MR used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of estoppel seemed useful.....It seems to me that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet."

(emphasis supplied)

133. In the Judgment of Brahmaputra Metallic (Supra) reference was also made to the Judgment of the Apex Court rendered in Monnet Ispat and Energy Ltd. Vs. Union of India. In Monnet Ispat and Energy Ltd (Supra) regarding promissory estoppels and legitimate expectation, there has to be a promise, based on which the promise has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation, the primary consideration are reasonableness and fairness of the State action.

135. Thus, the Apex Court in Brahmaputra Metallic (Supra) after referring to the earlier judgments of the Apex Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

136. After elaborately examining the doctrines of promissory estoppels and the doctrine of legitimate expectation, the Apex Court held that the State having held out a solemn representation in the above

terms, it would be manifestly unfair and arbitrary to deprive industrial units within the State of their legitimate entitlement. The State government did as a matter of fact, issue a statutory notification under Section 9 but by doing so prospectively with effect from 8 January 2015 it negated the nature of the representation which was held out in the Industrial Policy 2012. The Apex Court held that absolutely no justification bearing on the reasons of policy or public interest has been offered before the High Court or before the Apex Court for the delay in issuing a notification. The Apex Court observed that the pleadings are completely silent on the reasons for the delay on the part of the government and offer no justification for making the exemption prospective, contrary to the terms of the representation held out in the Industrial Policy 2012. It is one thing for the State to assert that the writ petitioner had no vested right but quite another for the State to assert that it is not duty bound to disclose its reasons for not giving effect to the exemption notification within the period that was envisaged in the Industrial Policy 2012. It was held that both the accountability of the State and the solemn obligation which it undertook in terms of the policy document militate against accepting such a notion of state power and the state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. Apex Court held that in all its actions, the State is bound to act fairly, in a

transparent manner and that this is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest. This conception of state power has been recognized by this Court in a consistent line of decisions. The relevant paragraphs of the said Judgments are extracted below:

"52. *The State having held out a solemn representation in the above terms, it would be manifestly unfair and arbitrary to deprive industrial units within the State of their legitimate entitlement. The State government did as a matter of fact, issue a statutory notification under Section 9 but by doing so prospectively with effect from 8 January 2015 it negated the nature of the representation which was held out in the Industrial Policy 2012. Absolutely no justification bearing on reasons of policy or public interest has been offered before the High Court or before this Court for the delay in issuing a notification. The pleadings are completely silent on the reasons for the delay on the part of the government and offer no justification for making the exemption prospective, contrary to the terms of the representation held out in the Industrial Policy 2012.*

53. *It is one thing for the State to assert that the writ petitioner had no vested right but quite another for the State to assert that it is not duty bound to disclose its reasons for not giving effect to the exemption notification within the period that was envisaged in the Industrial Policy 2012. Both the accountability of the State and the solemn obligation which it undertook in terms of the policy document militate against accepting such a notion of state power. The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest. This conception of state power has been recognized by this Court in a*

consistent line of decisions. As an illustration, we would like to extract this Court's observations in National Buildings Construction Corporation (supra):

"The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice."

54. *Therefore, it is clear that the State had made a representation to the respondent and similarly situated industrial units under the Industrial Policy 2012. This representation gave rise to a legitimate expectation on their behalf, that they would be offered a 50 per cent rebate/deduction in electricity duty for the next five years. However, due to the failure to issue a notification within the stipulated time and by the grant of the exemption only prospectively, the expectation and trust in the State stood violated. Since the State has offered no justification for the delay in issuance of the notification, or provided reasons for it being in public interest, we hold that such a course of action by the State is arbitrary and is violative of Article 14."*

137. In Hero Motorcorp Limited –Vs- Union of India and Ors., the Delhi High Court was considering similar claims made by the petitioner therein in respect of the Industrial Policy accounted by the State of Uttarakhand. The petitioner, therein, based on the incentives issued under Industrial Policy by the State of Uttarakhand had set up its industries. The petitioners, therein, qualified for the exemptions under the said Industrial Policy of the State of Uttarakhand and thereafter continued to avail the benefits under the exemptions Notification till 01.07.2017. After the 101st amendment of Constitution of India whereby the GST was introduced, the petitioner therein migrated to new GST Regime and thereafter was required to pay GST and IGST under the

provisions of the GST Tax Regime. By Notification No. 21/2017-CE issued by the respondent-authority, the various area based exemptions notification were rescinded including the notification under which the petitioner was availed exemption. Consequently, the financial incentives granted to the petitioner ceased to continue w.e.f. 01.07.2017. Considering the hardship faced by such industries, the GST council introduced budgetary support to eligible units for the residual exemption period by part-reimbursement of the GST paid by the unit, limited to the Central Government share or CGST and/or IGST after devolution of the part of the taxes to the State. The petitioner approached the Delhi High Court under Article 226 of the Constitution of India seeking direction to the respondent No. 1 therein to grant complete exemption by way of reimbursement of the amount of GST and IGST for the residual period of exemption notification which had earlier granted 100% exemption on excise duty.

138. The petitioner before the Delhi High Court urged that in view of the doctrine of promissory estoppel, the respondents therein cannot resile from the promise handed out to the petitioner therein to grant 100% exemption under the Industrial Policy.

139. The Delhi High Court upon hearing the matter rejected the contentions of the petitioner and dismissed the writ petition. The matter

travelled to the Apex Court and during the hearing of the present proceedings, the Apex Court had rendered an authoritative finding in the matter. The Apex Court examined the doctrine of promissory estoppel in great detail by referring to various earlier Judgments rendered by the Apex Court. Upon due consideration of all the matter in its entirety the Apex Court held that the consistent view of the Courts has been that there is no estoppel against the legislature in exercise of the legislative function. It was held that the notification dated 18th July, 2017 withdrawing the exemption notifications was issued in pursuance of the statutory mandate as provided under Section 174(2)(c) of the GST Act. The Apex Court held that if the contentions raised by the appellants are to be accepted then it would make provisions under proviso to Section 147(2)(c) of CGST Act redundant and otiose. It was held that the legislature in its wisdom has specifically incorporated the proviso to Section 174(2)(c) providing therein that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded.

140. The Apex Court held that the claims of the appellants on estoppel is without merit deserves to be rejected. It was held by the Apex Court that even on the ground of change of policy, which is in public interest or in view of the change in the statutory regime itself on

account of the GST Act being introduced as in the instant case, it will not be correct to hold the Union bound by the representation made by it, i.e. by the said O.M. of 2003 and it would be contrary to the statutory provisions as enacted under Section 174(2)(c) of the CGST Act.

141. The Apex Court further held that unless the appellants can show any statutory duty cast upon the respondent-Union of India to grant them 100% refund of writ of mandamus as sought for could not be issued. Undoubtedly, in the present case there is no duty cast on the Union to refund 100% CGST. The reliefs sought for by the appellants therefore, were declined. The relevant paragraphs of the said Judgments are extracted below:-

"54. However, a common thread in all these judgments that could be noticed is that all these judgments consistently hold that there can be no estoppel against the legislature in the exercise of its legislative functions. The Constitution Bench in the case of M. Ramanatha Pillai (supra) has approved the view in American Jurisprudence that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. It further held that the only exception with regard to applicability of the doctrine of estoppel is where it is necessary to prevent fraud or manifest injustice. The analysis of all the judgments of this Court on the issue would reveal that it is a consistent view of this Court, reiterated again in Godfrey Philips India Ltd. (supra),

that there can be no promissory estoppel against the legislature in the exercise of its legislative functions.

55. Undisputedly, the Notification dated 18th July 2017 withdrawing the exemption notifications was issued in pursuance of the statutory mandate as provided under Section 174(2)(c) of the CGST Act. If the contention as raised by the appellants is to be accepted, it would make the provisions under the proviso to Section 174(2)(c) of the CGST Act redundant and otiose. The legislature in its wisdom has specifically incorporated the proviso to Section 174(2)(c) providing therein that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded. If the contention is accepted, it will amount to enforcing a representation made in the said O.M. of 2003 and 2003 Notification contrary to the legislative incorporation in the proviso to Section 174(2)(c) of the CGST Act. In other words, it will permit an estoppel to be operated against the legislative functions of the Parliament. We are, therefore, of the considered view that the claim of the appellants on estoppel is without merit and deserves to be rejected.

56. It is further to be noted that this Court has also consistently held that when an exemption granted earlier is withdrawn by a subsequent notification based on a change in policy, even in such cases, the doctrine of promissory estoppel could not be invoked. It has been consistently held that where the change of policy is in the larger public interest, the State cannot be prevented from withdrawing an incentive which it had granted through an earlier notification. Reliance in this respect could be placed on the

judgments of this Court in the cases of Kasinka Trading and another vs. Union of India and another, Shrijee Sales Corpn. vs. Union of India, State of Rajasthan vs. Mahaveer Oil Industries, Shree Sidhballi Steels Ltd. vs. State of U.P. , and Director General of Foreign Trade vs. Kanak Exports

57. Recently, this Court, in the case of Unicorn Industries (supra), after surveying the earlier judgments of this Court on the issue has observed thus:

"26. It could thus be seen that, it is more than well settled that the exemption granted, even when the notification granting exemption prescribes a particular period till which it is available, can be withdrawn by the State, if it is found that such a withdrawal is in the public interest. In such a case, the larger public interest would outweigh the individual interest, if any. In such a case, even the doctrine of promissory estoppel would not come to the rescue of the persons claiming exemptions and compel the State not to resile from its promise, if the act of the State is found to be in public interest to do so."

58. We are, therefore, of the considered view that even on the ground of change of policy, which is in public interest or in view of the change in the statutory regime itself on account of the GST Act being introduced as in the instant case, it will not be correct to hold the Union bound by the representation made by it, i.e. by the said O.M. of 2003. Further, this would be contrary to the statutory provisions as enacted under Section 174(2)(c) of the CGST Act. 59. There is another reason which, in our view, could disentitle the relief as was claimed by the appellants before the

High Courts. The appellants, in effect, are seeking a writ of mandamus against the Union of India to reimburse 100% CGST for the remainder of the period instead of only 58%.

61. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent-Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in the case of K.S. Jagannathan and another (supra) as under:

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass

an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

62. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion malafidely or on an irrelevant consideration.

64. Undoubtedly, in the present case, there is no duty cast on the Union to refund 100% of CGST. As such, we find that the relief as sought cannot be granted.”

142. However, the Apex Court held that though the appellants may not have a claim in law, they do have a legitimate expectations that their claims deserves due consideration. Accordingly, the appellants were permitted to make representations to the respective State High Courts as well as to the GST council. The State Governments and the GST council is required to consider such representation if the same are made in accordance with direction observations in the Judgment. The observation made in Paragraph 72 to 80 of the said judgment is extracted below:

"72. This Court in the case of The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. (supra) had an occasion to consider when a writ of mandamus could be issued. This Court held that:

"15.There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a

case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. **It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.** (See *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer* [AIR 1966 SC 334 : (1966) 1 SCR 120 : (1966) 1 SCJ 24], *Rai Shivendra Bahadur Dr v. Governing Body of the Nalanda College* [AIR 1962 SC 1210 : 1962 Supp 2 SCR 144 : (1962) 1 LLJ 247] and *Umakant Saran Dr v. State of Bihar* [(1973) 1 SCC 485 : AIR 1973 SC 964]). In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

[emphasis supplied]

73. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent-Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in the case of *K.S. Jagannathan (supra)* as under:

"20. *There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."*

74. *It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion malafidely or on an irrelevant consideration.*

75. *This position was again reiterated by this Court recently in the case of Bharat Forge Ltd. (supra) as follows:*

"18. *Therefore, it is clear that a Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. **This is subject only to the indispensable***

requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a Statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public 25 duty in a Statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority. A Writ of Mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court."

[emphasis supplied]

76. Undoubtedly, in the present case, there is no duty cast on the Union to refund 100% of CGST. As such, we find that the relief as sought cannot be granted.

77. That leaves us with the judgments cited by Shri S. Ganesh and Shri V. Sridharan, learned Senior Counsel.

78. Insofar as the judgment of this Court in the case of Suprabhat Steel Ltd. (*supra*) is concerned, the question that arose for consideration was whether the Notification issued under Section 7 of the Bihar Finance Act by the State Government to carry out the objectives and the policy

decisions taken in the industrial policy could be held to be bad in law if it is in contravention of the industrial policy. In the case of Tata Cummins Ltd. (supra), the question that fell for consideration was whether a Notification that was issued for implementation of the industrial policy of the State could be construed strictly or liberally. In the case of Lloyd Electric and Engineering Limited (supra), the question was, as to whether the delay on the part of the Excise and Taxation Department in issuing Notification pursuant to the decision taken by the Council of Ministers could deny the benefit of Notification to the entities which were entitled thereto.

79. *Insofar as the judgment of this Court in the case of MRF Ltd., Kottayam (supra) is concerned, this Court, in the facts of the said case, specifically came to a finding that the decision to deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years was highly arbitrary, unjust and unreasonable. In the case of Manuelsons Hotels Private Limited (supra), perusal of the impugned judgment therein would reveal that the provision on which Manuelsons Hotels Private Limited was claiming benefit under was deleted with effect from the 1st of March 1993. This Court, therefore, made it clear that the benefit would only be available during the period when the said statutory provision existed in the statute book, i.e., from 6th November 1990 to 1st March 1993. This Court, therefore, clearly rejected the claim of benefit from the date on which the statutory provision was deleted from the statute book.*

80. *In the case of Nestle India Ltd. (supra), the respondent milk producers did not pay the purchase tax for the period between 1st April 1996 and 4th June 1997 since the Government had decided to abolish purchase tax for the said period. For the rest of the period, the tax was paid. The State had attempted to recover the purchase tax*

retrospectively for the aforesaid period. In this background, the claim of the respondents therein before this Court was found to be meritorious.”

143. In view of the very recent Judgment of the Apex Court rendered in M/s Hero Motorcorp Limited –vs Union of India (Civil Appeal No. 7405 of 2022) dated 17th October, 2022 and in view of the authoritative findings rendered by the Apex Court in the said Judgment, nothing further is required to be decided in the present proceedings. The findings rendered in the said Judgment by the Apex Court also squarely covers the issue raised in the present proceedings. It is seen that although the Apex Court has dismissed the appeals preferred by the appellants, herein, namely, Hero Motorcorp Limited and Sun Pharma Laboratories Limited, the Apex Court also arrived at a finding that although the appellants therein may not have a claim in law, they do have a legitimate expectation that their claim deserves due consideration. The Apex Court therefore, permitted the appellants therein to make representation to the respective State Government as well as to the GST Council and the said representations if made will be given due consideration in expeditious manner.

144. In view of the above representations being covered by the Apex Court dated 17.10.2022 rendered in Hero Motorcorp Limited and Sun

Pharma Laboratories Limited, the writ petitions are dismissed. Since the Apex Court had granted the liberty to the appellant to prefer their representations before the GST council and the State Governments in terms of the findings and observations rendered in the said Judgment, similar liberty is granted to the writ petitioners herein to prefer such representations before the State Government and the GST council provided the same are in terms of the findings and the observations of the Apex Court in the Judgment of Hero Motorcorp Limited (supra) vide Judgment dated 17th October, 2022, the writ petitions are, therefore, closed in terms of the above. No order as to cost.

Pending I.As, if any, are also disposed of in terms of the above.

JUDGE

Comparing Assistant