HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 26-09-2024
Pronounced on : 09-10-2024

WP(C) No.2784/2021

Sudhir Power Limited
Through the authorized signatory
Mr. Arvind Samnotra, Age 63 years
Authorized Representative
Unit-III, EPIP, Kathroli, Bari Brahmana
District Samba, Jammu.

...Petitioner(s)

V/s

1. Union Territory of Jammu and Kashmir,
   Through the Financial Commissioner, Finance Department
   1/44, Civil Secretariat Jammu (J&K).
2. Commissioner/ Secretary to Government,
   Finance Department,
   1/44, Civil Secretariat Jammu (J&K).
3. Principal Secretary to Government,
   Finance Department,
   1/44, Civil Secretariat Jammu (J&K).
4. Commissioner/Secretary to Government
   Industries and Commerce Department,
   Civil Secretariat, Jammu (J&K).
5. Principal Secretary to Government
   Industries and Commerce Department,
   Civil Secretariat, Jammu (J&K).
6. Commissioner,
   Sales Tax Department,
   Jammu (J&K).

…..Respondent(s)

WP(C) No.418/2022 and WP (C) No. 419/2022

V J Jindal Cocoa Pvt. Ltd. (CHOCO DIVISION)
Through the authorized signatory
Mr. Rajesh Dogra, Senior Manager
SIDCO Warehouse, EPIP Kartholi
SIDCO Industrial Complex, Bari Brahmana
District Samba, Jammu & Kashmir-181133.

...Petitioner(s)

V/s

1. Union Territory of Jammu and Kashmir,
   Through the Chief Secretary,
   Civil Secretariat Jammu (J&K).
2. Commissioner/ Secretary to Government,
   Finance Department,
   1/44, Civil Secretariat Jammu (J&K).
3. Principal Secretary to Government,
   Finance Department,
   1/44, Civil Secretariat Jammu (J&K).
4. Financial Commissioner,
   Finance Department,
   1/44 Civil Secretariat, Jammu (J&K).
5. Commissioner/ Secretary to Government
   Industries and Commerce Department,
   Civil Secretariat, Jammu (J&K).
6. Principal Secretary to Government,
   Industries & Commerce Department,
   Civil Secretariat Jammu (J&K).
7. Commissioner,
   Sales Tax Department,
   Jammu (J&K).

…..Respondent(s)

WP(C) No.719/2022, 720/2022 and 721/2022

UFLEX LIMITED, UNIT-I, Unit –II and Unit -III
Through the authorized signatory
Mr. Varun Kumar Sharma, Senior Manager,

Lane # 3, SIDCO Industrial Complex,
PHASE-I, Bari Brahmana
District Samba, Jammu & Kashmir-181133.

...Petitioner(s)

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V/s

1. Union Territory of Jammu and Kashmir,
   Through the Financial Commissioner, Finance Department
   1/44, Civil Secretariat Jammu (J&K).
2. Commissioner/ Secretary to Government,
   Finance Department,
   1/44, Civil Secretariat Jammu (J&K).
3. Principal Secretary to Government,
   Finance Department,
   1/44, Civil Secretariat Jammu (J&K).
4. Commissioner/Secretary to Government
   Industries and Commerce Department,
   Civil Secretariat, Jammu (J&K).
5. Principal Secretary to Government
   Industries and Commerce Department,
   Civil Secretariat, Jammu (J&K).
6. Commissioner,
   Sales Tax Department,
   Jammu (J&K).

…..Respondent(s)

WP(C) No.724/2022

ULTIMATE FLEXIPACK LIMITED,
Through the authorized signatory
Mr. Ravindra Adhikari, Senior Manager (Commercial),
Lane 2, Phase-I, SIDCO Industrial Complex,
Bari Brahmana District Samba, Jammu & Kashmir-181133.

...Petitioner(s)

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V/s

1. Union Territory of Jammu and Kashmir,
   Through the Financial Commissioner, Finance Department

1/44, Civil Secretariat Jammu (J&K).

2. Commissioner/ Secretary to Government,
Finance Department,
1/44, Civil Secretariat Jammu (J&K).

3. Principal Secretary to Government,
Finance Department,
1/44, Civil Secretariat Jammu (J&K).

4. Commissioner/Secretary to Government
Industries and Commerce Department,
Civil Secretariat, Jammu (J&K).

5. Principal Secretary to Government
Industries and Commerce Department,
Civil Secretariat, Jammu (J&K).

6. Commissioner,
Sales Tax Department,
Jammu (J&K).

…..Respondent(s)

WP(C) No.1901/2022

CHETAN ALLOYS,
Through the authorized signatory
Mr. Joginder Raj Sharma, Aged 66 years,
Authorized Signatory,
163-164, SIDCO Industrial Estate,
Kathua, Jammu & Kashmir-184101.

...Petitioner(s)

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V/s

1. Union Territory of Jammu and Kashmir,
Through the Financial Commissioner, Finance Department
1/44, Civil Secretariat Jammu (J&K).

2. Commissioner/ Secretary to Government,
Finance Department,
1/44, Civil Secretariat Jammu (J&K).

3. Principal Secretary to Government,
Finance Department,
1/44, Civil Secretariat Jammu (J&K).

4. Commissioner/Secretary to Government
Industries and Commerce Department,
Civil Secretariat, Jammu (J&K).

5. Principal Secretary to Government
Industries and Commerce Department,
Civil Secretariat, Jammu (J&K).
6. Commissioner,
State Taxes Department,
Jammu (J&K).

…..Respondent(s)

Petitioners through: **M/S B. L. Narsimhan, Ankit Awal, J. A. Hamal, Advocates. Mr. Surjit Singh Andotra, Advocate Vice Mr. Jatin Mahajan, Advocate.**

Respondents through: **Mr. D. C. Raina, Advocate General with Mr. K. D. S. Kotwal, Dy.AG.**

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

Sanjeev Kumar J

1. In these petitions the petitioners are Small/ Medium/ Large scale Industries set up in the State of Jammu and Kashmir on different dates in the year 2011 and before. They are aggrieved of and have assailed S.O. 239 dated 16-07-2021 issued by the Government of Jammu and Kashmir, whereby the Budgetary Support Scheme notified earlier vide SRO 431 dated 25-09-2018 has been withdrawn with effect from 01-04-2021. The impugned SO is challenged by the petitioners primarily on the ground that it is hit by the doctrines of promissory estoppel and legitimate expectation.

2. Before we advert to the grounds of challenge urged by the petitioners in these petitions, we deem it appropriate to set out facts germane to the disposal of the controversy raised in these petitions.

3. In the year 2004, the Government of Jammu and Kashmir came up with Industrial Policy-2004 offering certain incentives to the entrepreneurs who would set up their Industries in the State of Jammu and Kashmir. Vide Government Order No. 21-Ind of 2004 dated 27-01-2004 sanction was accorded to the implementation of Industrial Policy-2004. The Industrial Policy-2004 was stated to remain in operation from 01-01-2004 until 31-03-2015. Apart from other incentives granted under the Industrial Policy-2004, the Small Scale Industries, Medium and Large Industrial Units were exempted from charging and payment of Central Sale Tax on sale of their finished goods outside the State up to 31st of March, 2015 except on the items in the negative list.

4. With a view to giving effect to these incentives, the Government issued SRO 24 of 2004 dated 31-01-2004 in exercise of powers conferred by sub-Section (5) of Section 8 of the Central Sales Tax Act, 1956 [‘the CST Act’]. This notification was in supersession of all the previous notifications on the subject and provided that, no tax under the CST Act shall be payable till 31-03-2015 on the sale of goods in the course of interstate trade and commerce made by a manufacturer operating a Small, Medium and Large scale unit. The petitioners, who claim to have established their Units were allured by

the incentives offered by the Industrial Policy-2004 to set up their units. These units, of course, availed the benefits including the benefit of CST exemption till 31-03-2015. However, vide SRO 113 of 2015 dated 01-04-2015 the benefit of CST exemption was extended up to 31-03-2016.

5. In the meanwhile Industrial Policy-2016 came to be promulgated vide Government Order No. 58-Ind of 2016 dated 15-03-2016 and in terms of para 2 of the Government order aforesaid, all existing units were held entitled to incentives specifically provided in the Industrial Policy 2016 subject to guidelines/procedures issued in respect of such incentives. Para 3.17 of the Industrial Policy 2016 provided for exemption from payment of additional toll tax, CST and VAT, as available to the industrial units under Industrial Policy 2004 and any subsequent orders of the State/Central Government till further orders subject to **GST regime**. With a view to extend the aforesaid benefit of incentives to the eligible units, the Government issued SRO 107 of 2016 dated 31-03-2016 extending the benefit envisaged under SRO 113 dated 01-04-2015 up to 30-06-2016. This was further extended vide SRO 166 dated 30-05-2016 up to 31-03-2017.

6. Vide SRO 177 dated 01-06-2016, apart from other SROs, SRO 166 of 2016 was kept in abeyance but was later restored vide SRO 215 dated 29-06-2016 and all eligible units, including the petitioners were allowed to take the benefit of exemption of CST and other benefits till 31st of March, 2017.

7. Vide SRO 36 dated 01-02-2017 the benefit was further extended up to 31-03-2018 or till the same is superseded by any other notification whichever is earlier. In the meanwhile, the Integrated Goods and Service Tax Act 2017 came to be implemented in the State of Jammu and Kashmir and the Government notified a new scheme for providing budgetary support to the manufacturing units in the shape of reimbursement of Integrated Goods and Service Tax ['IGST'] paid under the IGST Act, 2017. This scheme was promulgated vide SRO 431 dated 25th September, 2018. The scheme was stated to remain in force till last date of Industrial Policy 2016 i.e. 31-03-2026. However, in terms of para 7 of SRO 431, a right was reserved in the Finance Department to review the viability of the policy at the end of every financial year with special reference to its continuance in the next financial year, the items in the negative list and determination of the amount of reimbursement etc.

8. While the petitioners were taking the benefit of this budgetary scheme, the Government accorded sanction for Industrial Policy 2021-30 vide Government Order No. 117-IND of 2021 dated 19-04-2021. As per the Industrial Policy 2021-30, the existing units eligible for incentives under the Industrial Policy 2016 were allowed to avail the incentives under the Industrial Policy 2016 till 31-03-2026. Alongside the Industrial Policy 2021-30, the Government also accorded sanction for promulgating the **'Turnover Incentive Scheme 2021'** to provide support to the existing industrial units

located in the Union Territory of Jammu and Kashmir. This scheme was to remain in operation for five years with effect from 01-04-2021. After having promulgated the Turnover Incentive Scheme 2021, the earlier scheme of reimbursement of IGST, 2017 issued vide SRO 431 dated 25-09-2018 was withdrawn with effect from 01-04-2021 by issuing SO 239 dated 16-07-2021, which is impugned in these petitions.

9. The short grievance of the petitioners in all these petitions is that, all the petitioners have set up their units in the erstwhile State of Jammu and Kashmir (now Union Territory of Jammu and Kashmir) being allured by slew of incentives offered by the Government of Jammu and Kashmir from time to time. In terms of clause 3.19 of the Industrial Policy 2016, the Government issued SRO 431 of 2016 dated 25-09-2018 and introduced Budgetary Support Scheme to provide for reimbursement of the IGST paid under the IGST Act, 2017. SRO 431 clearly provided that the benefit of Budgetary Support Scheme shall be available to the eligible units till the last date of Industrial Policy 2016 i.e. 31-03-2026 and, therefore, the Government could not have withdrawn the scheme prematurely without allowing the petitioners to avail the benefit for complete period ending with 31st of March, 2026. By the issuance of impugned SO and withdrawing the Budgetary Scheme promulgated by SRO 431, the Government violated the doctrine of promissory estoppel. It is argued that, relying upon the consistent policy of the

Government to encourage industrialization in the State of Jammu and Kashmir by **doling** out **slew** of incentives, a representation was made to the petitioners to establish their units by investing huge sums. The respondents, therefore, could not have withdrawn SRO 431 of 2018 thereby putting the petitioners to serious detriment. Alternatively the petitioners would argue that, even if the doctrine of promissory estoppels may not be technically attracted, yet the consistent representation made by the respondents through their Industrial Policies issued from time to time, the petitioners entertained legitimate expectation that the Government would act on its promise. The impugned SO issued by the Government violates such promise and is, therefore, hit by doctrine of legitimate expectation, more particularly when issuance of impugned SO has not been issued in public interest. Strong reliance was placed by learned counsel appearing for the petitioners on the judgment of **The State of Jharkhand and ors v. Brahmputra Metallics Ltd. and another**, **(2023) 10 SCC 634**, and couple of other judgments on the question of doctrines of promissory estoppel and legitimate expectation.

10. The stand of the respondents is that, at no point of time any promise was extended to the petitioners with respect to grant of incentives, in particular, exemption from payment of CST for a definite period nor is it the case of the petitioners that they acted upon such promise to their detriment. The learned Advocate General, appearing for the

respondents, would argue that the petitioners have not pleaded the requisite particulars and set up a case on the basis whereof they could claim the benefit of doctrine of promissory estoppel or for that matter the legitimate expectation. To build on these doctrines, it is contended, there must be specific pleadings and in absence thereof it is not permissible for a party to claim the breach of doctrine of promissory estoppel. We were taken through the Industrial Policies issued by the Government from time to time and the statutory SROs and SO issued to grant exemptions by the learned Advocate General to impress upon us that none of the Industrial Policies, in particular SRO 431 of 2018, extended an unequivocal promise that the benefit of budgetary scheme shall remain available to the petitioners till 31-03-2026. Attention of this Court was invited to clause 7 of SRO 431 of 2018 to submit that the budgetary support policy was subject to review at the end of every financial year with special reference to its continuance in the next financial year.

11. Having heard the learned counsel for the parties and perused the material on record we are of the considered opinion that the petitioners have miserably failed to make out a case of breach of promissory estoppel or the doctrine of legitimate expectation.

12. Before we come to specific facts of the case of the petitioners, a look at the latest legal position on the aforesaid twin doctrines enunciated by Hon'ble Supreme Court in the latest judgment in **Brahmputra Mettalics** (supra) is necessary. Hon'ble the Supreme

Court in **Manuelsons Hotels Private Limited v. State of Kerala and ors, 2016 (6) SCC 766** examined the doctrine of promissory estoppel as laid down in **Motilal Padampat Sugar Mills Co. Ltd v. State of U.P, (1979) 2 SCC 409** and as followed in **State of Punjab v. Nestle India Limited, (2004) 6 SCC 465.** It is held that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. The central principle of the doctrine is that the law will not permit an unconscionable or, more accurately, unconscientious departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment, if the assumption be not adhered to for the purposes of the litigation. The doctrine of promissory estoppel would be attracted where one party, by clear and unequivocal representation invites the other party to act upon such promise and that other party, acting bona fide on such representation acts to his detriment or changes his course of conduct by some act or omission, in such eventuality the party making representation shall be held by the representation or the promise made. It is further held that it is not the law that there can be no promissory estoppel against the Government in the exercise of its sovereign or executive functions. It

is true that taxation is a sovereign or governmental function, but no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. 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 not necessary for the petitioner to show that it has suffered detriment and it is enough that petitioner had relied upon the promise or representation held out, and altered its position relying upon such assurance.

13. It is also not in dispute that the doctrine of promissory estoppel operates even in the legislative field. The plea of promissory estoppel is in the nature of equitable plea and must be determined in the facts and circumstances of each case where it is raised. Para 21

and 22 of the judgment encapsulate the legal position in respect of promissory estoppel and are, therefore, set out below:-

> "21. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The Commonwealth of Australia v. Verwayen, 170 C.L.R. 394, by Deane,J. in the following words:
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> > 1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.
> >
> > 2. The central principle of the doctrine is that the law will not permit an unconscionable - or, more accurately, unconscientious - departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.
> >
> > 3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.
> >
> > 4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:
> >
> > (a) has induced the assumption by express or implied representation;
> >
> > (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;

(c) has exercised against the other party rights which would exist only if the assumption were correct;

(d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified

> in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed."
>
> 22. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference – under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel – one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party."

14. The Supreme Court in **Brahmputra Mettalics** (supra) has also drawn distinction between the doctrine of promissory estoppel and doctrine of legitimate expectation. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings and would come into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. So far as difference between the doctrine of promissory estoppel and doctrine of legitimate expectation under English law is concerned; 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. Another difference is that the legitimate expectation can constitute a cause of action whereas the doctrine of promissory estoppel can only be used as a shield. The scope of legitimate expectation is wider than the

promissory estoppel because it not only takes into consideration a promise made by a public body but also official promise, as well. 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. However, under Indian Law there is often a conflation and overlapping between the two doctrines. 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'.

15. With a view to steer clear the confusion between the two doctrines, Hon'ble the Supreme Court in **Brahmputra Mettalics** case (supra) endeavored to draw distinction between the two doctrines. The discussion in para 40 and 41 of the judgment clears the mist surrounding the true import and scope of the two doctrines and is, thus, reproduced hereunder:-

> "40. In a concurring opinion in Monnet Ispat and Energy Ltd. vs Union of India31 ("Monnet Ispat"), Justice H L Gokhale highlighted the different considerations that underlie the doctrines of promissory estoppel and legitimate expectation. The learned judge held that for the application of the doctrine of promissory estoppel, there has to be a promise, based on which the promisee has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the State action. He observed thus:
>
> "Promissory Estoppel and Legitimate Expectations
>
> 289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.

> 290…..In any case, in the absence of any promise, the Appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the Appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest." (emphasis supplied)
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> 41. In Union of India vs Lt. Col. P.K. Choudhary32, speaking through Chief Justice T S Thakur, the Court discussed the decision in Monnet Ispat (supra) and noted its reliance on the judgment in Attorney General for New South Wales vs. Quinn 33. It then observed:
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> "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."
>
> Thus, the 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."

16. From the aforesaid annunciation of law by the Hon'ble Supreme Court in its latest judgment in **Brahmputra Mettalics** case (supra), it is abundantly clear that for invoking the principle of promissory estoppel there has to be a clear and unequivocal promise and on that basis the party concerned must have acted to its prejudice, whereas the basis of doctrine of legitimate expectation is in reasonableness and fairness. True it is that the doctrine of legitimate expectation cannot be claimed as a matter of right and can be used when the denial of legitimate expectation leads to violation of Article 14 of the Constitution. The relationship between Article 14 and the doctrine of legitimate expectation is aptly explained by a three Judge Bench of Hon'ble the Supreme Court in **Food Corporation of India vs. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71**.

17. If, because of a previous practice, which is clear and consistent, a party is led to legitimately expect that such practice shall be continued, the withdrawal or discontinuance of such practice arbitrarily and without any justifiable reasons would invite wrath of Article 14 of the Constitution of India. Whether the expectation of the claimant is reasonable or legitimate in a particular 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 that extent. (*excerpts drawn from the judgment of Kamdhenu Cattle case*)

18. Having explained the two doctrines and their sweep and area of operation, we need not delve more on the two doctrines which are aptly explained in the latest judgment in **Brahmputra Mettalics** (supra).

19. Let us now apply this legal position to the facts of the cases on hand. Indisputably, the petitioners established their units while the Industrial Policy 2004 was in operation. The Industrial Policy 2004,

as is apparent from its clause 1.2, was to remain in operation till 31-03-2015. It is not the case of the petitioners that the incentives provided in the policy were not availed by them or the same were prematurely withdrawn. It is true that Industrial Policy 2004 worked its full tenure till 31-03-2015 when it was replaced by Industrial Policy 2016. Clause 3.17 of the Policy provided exemptions *inter alia* from payment of CST to the industrial units under the Industrial Policy 2016. For facility of reference clause 3.17 is reproduced hereunder:-

> "**3.17 Tax Exemptions**.
> The exemption from payment of additional toll tax, CST, VAT as available to the industrial units under Industrial Policy 2004 and any subsequent orders of the State and Central Government shall continue for now and also be applicable to all new MSME/Large scale units in Zone- A and Zone- B till further orders, subject to the GST regime."

20. Clause 3.19 of the Industrial Policy 2016 made it clear that in the event of adoption of GST regime by the State Government, fresh guidelines/ orders/ notification separately relating to Tax matters and incentives in supersession of the existing notifications/orders and circulars, shall be issued by the Finance Department. Clause 3.19 reads thus:-

> "**3.19** In the event of adoption of GST regime by the State Government, the Finance Department shall issue fresh guidelines/ orders/ notification separately relating to Tax matters and incentives in supersession of the existing notifications /orders and circulars etc in the matter."

21. From these two clauses it is abundantly clear that while the benefit of exemption, *inter alia* from payment of CST envisaged under Industrial Policy 2016 was promulgated for a period of 10 years i.e. up to 31-03-2026, but it was also made clear that, in the event of State Government adopting the GST Regime, the Finance Department shall issue fresh guidelines/ orders/ notification separately relating to Tax matters and incentives in supersession of the existing notifications /orders and circulars and this was rightly so as the adoption of GST regime would have changed the entire tax structure. It is because of this reason, the Government, while issuing statutory notifications under Section 8 of the Central Sales Tax Act, 1956, extended the period of exemption on year to year basis. Under SRO 24 dated 31.01-2004 the benefit of CST exemption was till 31-03-2015. Vide SRO 113 dated 01-04-2015 it was extended till 31-03-2016 and vide SRO 107 dated 31-03-2016 it was extended up to 30-06-2016. This was a time when the adoption of GST regime was under contemplation of the State Government. Vide SRO 166 dated 30-05-2016 the benefit was extended up to 31-03-2017, which was later on withdrawn and restored in terms of SRO 177 dated 01-06-2016 and SRO 215 of 2016 dated 29-06-2016.

22. While the benefit of CST was being extended on year to year basis awaiting implementation of Integrated Goods and Services Tax Act, 2017 (IGST) and adoption of GST regime, the GST regime came to be adopted by the State with effect from 08-07-2017 and with that

the entire tax structure in the State underwent a change. It was no longer possible to continue with the exemption from payment of GST as the scheme was now replaced by IGST payable under the Integrated Goods and Services Tax, 2017. However, with a view to continue supporting the entrepreneurs, who had established their industrial units in the State, the Government came up with a Budgetary Support Scheme which was promulgated vide SRO 431 of 2018 dated 25-09-2018. Initially it was envisaged in the scheme that the benefit of budgetary support to the manufacturing units in the shape of IGST shall be continued till 31-03-2026. This is evident from the preamble of the Scheme in the heading 'Short title and commencement' which reads thus:-

> "The scheme shall be called as Jammu and Kashmir Reimbursement of Integrated Goods and Services Tax for promotion of Small/ Medium/ Large Scale Industries in the State of Jammu and Kashmir. The said scheme shall deemed to have come into operation w.e.f. 01-04-2018 for an eligible unit and shall remain in force till the last date of Industrial Policy 2016."

23. The mode of determination of amount of reimbursement was laid down in clause 3.1, which reads thus:-

> "3.1. The amount of Reimbursement under the scheme for specified goods manufactured by the eligible unit shall be the:

> two percent of the taxable turnover with respect to the interstate supplies made by the Industrial Unit under Integrated Goods and Services Tax Act, 2017 provided that the maximum amount of annual reimbursement shall be limited to 2% of the interstate sales turnover reflected by the dealer in his returns for the accounting year 2016-17."

24. The other noticeable clause is clause 7, which is also produced below:-

> "7. The Finance Department shall review the viability of the policy at the end of every financial year with special reference to its continuance in the next financial year, the items in the Negative list, determination of the amount of reimbursement etc."

25. From reading of clause 3.1 and clause 7 it clearly transpires that SRO 431, envisaging budgetary support in the shape of reimbursement of IGST which was required to be determined at the rate of 2% of the taxable turnover with respect to interstate supplies made by the industrial unit under IGST Act, 2017 it was unequivocally and clearly made it known to the industrial units that the scheme of budgetary support is though envisaged for a period ending 31-03-2026 but same shall be reviewed by the Finance Department at the end of every financial year to find out its viability with reference to its continuance in the next financial year, the items in the negative list and determination of the amount of reimbursement etc. The representation made to the Industrial Units was, therefore, conditional and not unequivocal.

26. It is not the case of any of the petitioners that, acting upon representation contained in SRO 431 with regard to the Budgetary Support, they changed their position in a particular manner to their detriment or otherwise.

27. While the Budgetary Support Scheme was in operation in terms of SRO 431 of 2018, the Government accorded sanction for adoption of Industrial Policy 2021-30 vide Government Order No. 117-Ind of 2021 dated 19-04-2021. The Industrial Policy 2021-30 envisaged the grant of benefit of incentives to the existing units as per the erstwhile Industrial Policy 2016. Undoubtedly, the Budgetary Support scheme was to be extended till 31-03-2026 subject to review by the Finance Department at the end of every financial year to see the viability to continue it. Simultaneously, with the issuance of Industrial Policy 2021-30, the Government promulgated new scheme, namely, Turnover Incentive Scheme 2021 vide Government Order No. 127-Ind of 2021 dated 21-05-2021. As per this scheme the quantum of incentives admissible to Industrial Units located in the Union Territory of Jammu and Kashmir was laid down in clause 7, which reads as under:-

> " **7. Quantum of Refund**:
> i. Unless otherwise specified, the quantum of incentive admissible to an Existing Industrial Unit located in Jammu and Kashmir as per applicability of incentive given at para 6 above is:-
> a. 3% of the gross turnover of the industrial unit for the year, in case of Micro category units as defined under the MSMED Act 2006 and

modified vide notification of Government of India dated 01-06-2020, subject to a maximum of Rs. 10 lakh per annum per unit for a period of 5 years from the appointed date.

b. 2% of the gross turnover of the unit for the year, in case of Small, Medium and Large category Industrial Units as defined under the MSMED Act 2006 and modified vide notification of Government of India, dated: 01-06-20020, subject to a maximum of Rs 50 lakh per annum per unit for a period of 5 years from the appointed date.

ii. Notwithstanding anything contained in this Scheme, the turnover incentive shall be available subject to availability of funds on proportionate basis of the turnover disclosed.

iii. The incentive shall be calculated on the basis of turnover so determined. For the purpose of determining the turnover, the highest turnover of the three preceding years up to 2020-21 shall form the turnover for calculation of the incentives. However, in no case it shall be higher than the turnover of the current financial year.

Explanation: For example, for determining turnover for the current financial year 2025-26, the turnover for Financial Year 2018-19, 2019-20, 2020-21 & 2025-26 is Rs 2.00 Lakh, Rs. 1.00 Lakh, Rs. 4.00 Lakh & Rs. 3.00 Lakh respectively. The turnover for determining turnover incentive shall be Rs 3.00 Lakh."

28. It is thus clear that under the Budgetary Support Scheme envisaged under SRO 431 of 2018, the budgetary support was in the shape of reimbursement of IGST paid under IGST Act, 2017 in respect of interstate supplies, whereas under the Turnover Incentive Scheme 2021, the incentive was to be calculated on the gross turnover of the Industrial Unit subject, of course, to the maximum provided under clause 7. The incentive in terms of percentage of gross turnover of Industrial Unit would include the incentive on the taxable turnover with respect to interstate supplies made by the industrial unit under

IGST Act as well. There was, thus, overlapping of the Turnover Incentive Scheme 2021 and the Budgetary Support Scheme promulgated by SRO 431 of 2018. It is with a view to set the record straight and also to remove the ambiguity, the impugned SO 239 dated 16-07-2021 was issued and the Budgetary Support Scheme envisaged under SRO 431 of 2018 was withdrawn with effect from 01-04-2021 i.e. with effect from the date the Turnover Incentive Scheme came into force.

29. Viewed thus, it cannot be contended by the petitioners that the Government has acted arbitrarily and in breach of legitimate expectations entertained by them on the basis of consistent policy adopted by the State to encourage the entrepreneurs to set up their industrial units in the State of Jammu and Kashmir. The doctrine of promissory estoppel is clearly not attracted in the instant case. SRO 431 of 2018 was issued immediately upon adoption of GST regime by the State of Jammu and Kashmir. With the coming into operation of the IGST Act, 2017, the CST Act stood abolished and, therefore, continuance of the benefit of exemption from payment of CST was out of question. However, keeping in view the policy of the State to encourage industrialization in the State of Jammu and Kashmir, the Government came up with a scheme for providing budgetary support to the manufacturing units in the shape of reimbursement of IGST which was to be calculated at the rate of 2% of the taxable turnover in respect to interstate supplies made by the Industrial Units under

IGST Act, 2017. This was obviously a benefit extended to the manufacturing units like the petitioners in lieu of benefit of exemptions like the CST which was being enjoyed by the petitioners under the Industrial Policy 2016. In terms of clause 7 of SRO 431 it was clearly and unequivocally made clear to the industrial units that though the Budgetary Support Scheme is envisaged to remain in operation till 31-03-2026, yet the Finance Department will review its viability at the end of every financial year with respect to its continuance in the next financial year.

30. While the scheme was operating, the Industrial Policy 2021-30 came to be promulgated by the Government vide Government Order No. 117-Ind of 2021 dated 19-04-2021. The policy, of course, made a representation to the existing industrial units that they shall be entitled to avail all the incentives envisaged under the erstwhile Industrial Policy 2016, undoubtedly the Budgetary Support Scheme, was issued in lieu of GST exemption envisaged under the Industrial Policy 2016. It seems that after the promulgation of Industrial Policy 2021-30, the Government came up with a new scheme to support the existing industrial units located in the Union Territory of Jammu and Kashmir. This scheme was named as Turnover Incentive Scheme 2021 and was promulgated by Government Order No. 127-Ind of 2021 dated 21-05-2021. Instead of extending the refund/budgetary support in respect of IGST, the new scheme gave benefit to existing industrial units on the basis of fixed percentage of the gross turnover

of a unit which would necessarily include the taxable turnover with respect to interstate supplies made under IGST Act 2017. As a matter of fact the Budgetary Support Scheme promulgated vide SRO 431 of 2018 has subsumed under the Turnover Incentive Scheme 2021. The petitioners are not deprived of the incentives but have been extended the same in different form. In the absence of any prejudice pleaded by the petitioners, the action of the respondents, replacing the Budgetary Support Scheme by the other scheme, both aimed at providing incentives to the industrial units like the petitioners, cannot be said to be irrational, unreasonable or arbitrary. Firstly, there is nothing in the conduct exhibited by the Government of Jammu and Kashmir to raise any legitimate expectation in the petitioners and, secondly, even if it were there, the Government has not acted arbitrarily, unjustly or in an unfair manner. The benefit of incentives in the shape of reimbursement paid under IGST Act, 2017 is continued to be paid now under the Turnover Incentive Scheme 2021. It is only the mode and manner which has been changed. The Turnover Incentive Scheme 2021 came into operation with effect from 01-04-2021 and, therefore, it was necessary to do away with the Budgetary Support Scheme promulgated vide SRO N431 of 2018. It is because of this reason the impugned SO was issued and given effect from 01-04-2021.

31. The two schemes, the Budgetary Support Scheme, 2018 and the Turnover Incentive Scheme 2021 could not have operated

simultaneously. At the cost of repetition we may say once again that the Budgetary Support Scheme envisaged under SRO 431 of 2018 stood subsumed in the Turnover Incentive Scheme 2021 which brought within its sweep the gross turnover of the industrial unit and the gross turnover would include the taxable turnover with respect to interstate supplies made under the IGST Act, 2017.

32. Viewed from any angle, both the doctrines i.e. doctrine of promissory estoppel and the doctrine of legitimate expectations are not attracted nor do we find issuance of the impugned SO in violation of Article 14 of the Constitution of India.

33. For all these reasons, the writ petitions are found to be without any merit and are, accordingly, dismissed.

(Rajesh Sekhri)
Judge

(Sanjeev Kumar)
Judge

JAMMU:
09.10.2024
Anil Raina, Addl. Reg/Secy

Whether the order is reportable: Yes