REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2830 OF 2022
(Arising out of SLP(C)No. 24288 OF 2018)

Augustan Textile Colours Limited Appellant(s)
(Now Augustan Textile Colours Pvt Limited)

VERSUS

Director of Industries & Anr. Respondent(s)

J U D G M E N T

Hrishikesh Roy, J.

Leave granted.

1. Heard Mr. Ritin Rai, the learned Senior Counsel representing the appellant. Also heard Mr. C.K. Sasi, the learned counsel representing the respondents.

2. The issue to be considered here is whether the benefit of tax exemption in respect of works contract granted in the process of revival of the industry, under the relevant provisions of the Sick Industrial Companies Act, 1985 (for short "the SICA") based on the Kerala Government communication dated 20.3.2004 (Ext. P-2) can be withdrawn, by the subsequent government order dated 21.11.2006 (Ext. P-3).

3. It was the appellant's say that they had taken over a sick industrial unit by the name of M/s Teak Tex Processing Complex Ltd., which was engaged in dyeing of clothes. The Kerala based unit was not operational for a considerable period when attempt was made, for revival of the unit under SICA. In the proceedings that were pending before the Board for Industrial and Financial Reconstruction (for short "BIFR"), the authorities were assessing the possibility of revival of the unit. At that stage, the appellant offered to make investment for revival of the company following

which, discussions were held amongst the stakeholders and various concessions were offered to the appellant.

4.1 In tune with the recommendation of the Empowered Committee constituted for the purpose, the Government Order was issued on 20.3.2004 whereby the recommendations of the Committee were accepted. The relevant clause incorporating the measures relating to Sales Tax/Works Contract Tax, are as under:-

> "Sales Tax/Works Contract Tax
>
> (a) The past arrears of Sales Tax/Works contract tax will be completely waived.
> (b) Works contract Tax on processing of Fabrics like bleaching and dyeing etc. will be exempted in the State"

4.2 In furtherance of the 2004 Government Order, the revival proposal envisaged the taking over by the appellant entire assets of the sick unit for a sum of Rs.10 crores and the BIFR Sanctioned Scheme dated 17.01.2005 mentioned the relief measures under clause 7.2.1 pertaining to sales tax/works contract tax. They read as follows:-

> "7.2.1 Sales Tax/Works Contract Tax

(a) To waive past arrears of Sale Tax Works Contract Tax completely
(b) To exempt works contract tax on processing of fabrics like bleaching and dyeing etc. in future."

5. The appellant availed the waiver benefit of past tax arrears of the sick unit on the basis of the BIFR Sanctioned Scheme dated 17.01.2005 (Ext. P-1) which assured waiver of Works Contract Tax on processing of fabrics like bleaching and dyeing etc. After about 30 months of such arrangement, the Government issued another Order on 21.11.2006 exercising the power under Section 10(3) of the Kerala General Sales Tax Act, 1963 (for short "the KGST Act") where it was said that the benefit of exemption can only be granted to a specified class of goods or a particular class of persons, and the appellant who is one amongst several industrial units doing similar nature of work within the State of Kerala, cannot be allowed the benefits of exemption of Works Contract Tax. After issuance of G.O. order dated 21.11.2006, withdrawing the concession in question, on 1.10.2007, the Government has withdrawn

G.O.No.110/06/1D dated 21.11.2006, as the concession was one already allowed in the rehabilitation scheme of the BIFR of the company. However, on 29.02.2008 again, the Government in the Tax Department requested to cancel the GO dated 01.10.2007 as it did not have any legally binding effect and thereupon GO dated 01.10.2007 in turn was cancelled with immediate effect. Accordingly, it was decided to withdraw the tax waiver/exemption granted to the appellant which prompted them to file the W.P.(C) No. 5677 of 2007 before the High Court of Kerala.

6. It was contended by the appellant that they attempted to revive and nurse back a sick company under BIFR and with due deliberations and the recommendations of the Empowered Committee, the incentive measures to be offered to the appellant, have been worked out and finalized as per the scheme. The appellant is actively working in the process of revival of the sick unit and at that stage, it was not open to the State of Kerala to resile from their promise by issuing the Government

Order dated 21.11.2006. According to the appellant, the exemption granted vide the 2004 Government Order was issued as a "*package deal*" in course of revival of the sick unit in conformity with the relevant provisions of the SICA and once consent was given and proceedings were finalized in terms of Section 19(1) or 19(2), the same would be binding upon all the stakeholders as is provided under Section 19(3) of SICA. It was therefore argued that the benefit of tax exemption granted by the State under the Scheme, is binding on the State under the provisions of Section 19(3) of SICA and the State must be held accountable to their promise. It was the say of the appellant that the incentives were not granted under Section 10(1) of the KGST Act, and therefore the tax exemption could not have been withdrawn by invoking the powers under Section 10(3) of the same Act. The appellant unequivocally rejected a suggestion by this Court that the appellant might not constitute a unique class of one, in whose favour a tax exemption under Section 10(1) KGST Act can be granted

legally. The appellant however failed to point out any other provision in any statute, which empowered the State Government to grant such tax exemptions. While reviving the sick unit, the appellant earned profit in 2015, but incurred loss in subsequent three years. The recent years i.e., 2019 and 2020 are however profitable years for the appellant.

7. The respondents, on the other hand, contend that the 20.03.2004 Government Order confers various benefits, and the exemption from sales tax/works contract tax is only one of those benefits offered for revival of the sick unit. According to the learned Government Counsel, the source of power to grant tax exemption is traceable only to Section 10(1) of the KGST Act and merely because the 20.03.2004 Government Order does not specifically refer to the source of power, the same cannot aid the appellant, as specific reference is made to Section 10(3) of the KGST Act, while withdrawing the exemption. The learned government advocate further argues that when exemption is given,

it is always open for the government to cancel, vary or modify the same, bearing the public interest in mind, and since no time limit was specified on the liability in respect of sales tax/works contract tax, the withdrawal of benefit by the Government Order dated 21.11.2006, is well within the power and competence of the government.

8. The records available would show that the following benefits/concessions were extended to the appellant for revival of the sick unit:

> "1) Sales Tax/Works Contract Tax
> 2) Electricity Dues
> 3) Water Charges
> 4) Pollution Control Water Cess
> 5) Panchayat Taxes and Levies
> 6) The ownership of land"

9. It is further seen that the benefits offered, *inter alia*, were waiver of past arrears particularly under the Sales Tax/Works Contract Tax. For other charges like electricity dues, water charges, Pollution Control Water Cess, the principal amount in the arrears were to be paid without the obligation to bear the interest or

penalty burden, from the date of commencement of the commercial production. Specifically for the Sales Tax/Works Contract Tax, under clause 1(b), it is not very clear as to whether the benefit intended for process of fabrics like bleaching, dyeing etc. will be available individually to the appellant or was intended to be availed by this class of industries, many of which are operating in the State of Kerala. It further raises questions in regard to the scope and extent of exemption that could be provided under Section 10 of the KGST Act.

10. Adverting to the mandate of Section 10 of the KGST Act, the learned Single Judge of the High Court doubted whether the exemption could have been extended to the appellant alone as opposed to a class of industries and the court commented that "*such a course of exemption throughout the State was not brought about*". The learned Judge observed that the 2004 Government Order was based on the recommendation of the Empowered Committee with due discussion amongst the stakeholders,

and those were with specific reference to the concessions to be extended to new promoters for revival of sick units, in light of the government order dated 25.11.1994.

11. It was noted by the learned Single Judge upon perusal of the 1994 Government Order that there are two separate channels of benefits/reliefs i.e. (a) non-fiscal; and (b) fiscal, and under item no. 2, the exemption was granted for works contract tax on processing of fabrics like bleaching, dyeing etc.

12. The above would show that the fiscal measures refer to exemption/deferment of sales tax, purchase tax, electricity dues for two years, but not exceeding five years or till the date, the net worth of the company became positive, whichever is earlier. Thus, the outer cap of five years was specified in the 1994 Government order and the benefits could not have been intended to continue without limit.

13. Even though the 2004 Government Order, and the BIFR Sanctioned Scheme of 2005 were enacted in furtherance

of 1994 Government Order, both these documents do not specify the time line for tax exemptions prescribed in the 1994 government order.

14. Recently this Court in the case of *State of Gujarat Vs. Arcelor Mittal Nippon Steel India Ltd.*[1] has held that exemption provisions and notifications are to be strictly interpreted in accordance with legislative intent without any addition or subtraction. A Division Bench of this Court speaking through Justice M. R. Shah held that:

> *"14.2 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in industrial policy and the exemption notifications.*
>
> *14.3 The exemption notification should be strictly construed and given meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in the light of the words employed in them and*

[1] (2022) SCC OnLine SC 76.

there cannot be any addition or subtraction from the statutory provisions.

14.4 As per the law laid down by this Court in catena of decisions, in the taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining defined meaning. Strict interpretation to the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it alleges to absurd results, which is so not found in the present case."

15. Accordingly, in the present matter, the 2004 government order granting tax exemptions should be read as a whole and in absence of any time line being prescribed, such a time line in our opinion, cannot be imported from the 1994 government order.

16. Furthermore, Sales tax in the State of Kerala is chargeable under Section 5 of the KGST Act which makes it obligatory upon the State to realize the tax in respect of sales transaction. Section 10 deals with the power of exemption and sub-Section (3) thereof confers the power to have the order of exemption "*varied or modified*", in the manner specified.

17. The benefit of exemption to tax must therefore be traceable to powers conferred under the KGST Act and such benefits could not have been granted in terms of the BIFR Scheme dated 17.01.2005 giving effect to the Government Order issued on 20.3.2004. In the 2006 Government Order withdrawing the benefits, the government has specifically adverted to Section 10 of KGST Act and as such the non-mentioning of the provisions of Section 10(1) of the KGST Act in the 2004 Government Order, would not assist the appellant in any significant measure.

18. In *Pournami Oil Mills and Others vs. State of Kerala and Anr.*[2], Justice Ranganath Misra, as he was then, opined as follows:-

> *"6……It is a well settled principle of law that where the authority making an order has power conferred upon it by statute to make an order made by it and an order is made without indicating the provision under which it is made, the order would be deemed to have been made under the provision enabling the making of it…."*

[2] 1986 (Supp) SCC 728

The present understanding finds support from the above proposition of law laid down by this Court in *Pournami Oil Mills* (supra).

19. Insofar as the benefits of tax exemption from the works contract on processing of fabrics, being in conformity with the stipulations under paragraph 7.2.1 of the BIFR Scheme dated 17.01.2005, it must be noticed that Sub-clause (b) of paragraph 7.2.1 is not exactly the same as paragraph 1(b) of the 2004 Government Order, as in the latter case, it is with reference to proposed plan of action, to provide exemption to similar units within the state of Kerala.

20. What is of significance is that similarly situated fabric processing units in the state are obliged to meet their tax obligation for the Works Contract Tax and that is why in the 2006 Government Order, it was specifically stated that exemption for such taxable events, cannot be confined to the appellant alone. The gap between the 2004 Government Order and the Government Order dated 21.11.2006 shows that the

appellant was enjoying the benefit for a fair duration. Significantly, the power to grant such tax benefit is not seen in any other State Legislation but only in Section 10(1) of the KGST Act. The power to grant exemption under Section 10(1) is however in respect of a class of persons and was never intended for an individual industrial unit like the appellant. When this aberration was noticed and it was seen that amongst similarly engaged units in the same business, the appellant was the only one enjoying the benefit of exemption, the 2006 government order was issued withdrawing the exemption granted on 20.3.2004.

21. Undoubtedly, the government was empowered under Section 10(3) to withdraw the exemption at any time and therefore, it cannot be said that the principle of promissory estoppel by itself, will facilitate the appellant to challenge the 2006 Government Order. It must be pointed out that a number of concessions were offered to the appellant under the 2004 Government Order and it is discernible that payments under several

heads were not set apart for the appellant, notwithstanding their role in revival of the sick unit.

22. The present dispute pertinently is only with regard to the exemption relatable to sales tax/works contract tax and it is nobody's case that past arrears of sales tax/works contract tax payable by the sick units, were completely waived. Factoring this, the writ court as well as the Division Bench opined that sub-clause (1)(b) of 2004 Government Order relating to waiver of tax in the State is of such wide amplitude that the same must be seen as uncertain and vague. Also importantly, such exemption cannot continue indefinitely and particularly not beyond the point at which the revival of the sick unit is seen.

23. As earlier discussed, Section 10(1)(ii) of the KGST Act enables the State to grant exemption from sales tax only with respect to "*any specific class of persons in regard to the whole or any part of their turnover*" and since the 2004 Government Order benefitted only a single unit i.e. the appellant, it is difficult to

accept that the solitary industrial unit which was being revived under the BIFR Scheme, would form a class by itself. Therefore, contention to the contrary by the appellant is considered and rejected with the reasoning that the exemption by 2004 Government Order was not made applicable to all sick industrial units of the state, engaged in the like activities of bleaching, dyeing etc.

24. It is also relevant to point out that the government order dated 25.11.1994 clearly reflected the government's intention to consider each sick industrial unit on a case to case basis.

25. Next, the Court must examine whether the appellant can raise contention on the validity of 2006 Government Order in the context of the sanctioned scheme of restriction approved by the BIFR and the binding nature of the scheme under Section 19(3) of SICA. This question arises since the contentions in this regard were earlier argued and rejected by the learned Single Judge, and the judgment, dated 13.3.2012 in Writ

Petition No.5677 of 2007 has worked itself out with the representations submitted by the appellant pursuant to the Writ Court's judgment and the speaking order passed thereafter by the government on 5.10.2012 rejecting the appellant's representation. Significantly, the speaking order was not challenged. Instead, the appellant filed the Writ Appeal against the learned Single Judge's order, granting limited relief of enabling them to file a representation and directing the State to pass a speaking order after affording hearing to the appellant. As the appellant had presented their representation on the strength of the order of the Writ Court and thereby have accepted the judgment, the appellant cannot thereafter in our view, challenge the said judgment through a Writ Appeal when an adverse order is passed against them, by the government.

26. One is certain that it would be legally impermissible to grant tax exemption, contrary to the provisions of the KGST Act. The special exemption is provided to a single unit under the BIFR proceeding and

the State cannot in our opinion be compelled to act contrary to the provisions of the KGST Act, on the strength of binding nature of the scheme under Section 19(3) of SICA.

27. On the argument of the appellant based on the principles of promissory estoppel, as earlier noted, the tax exemption in the present matter was not given to a class of persons and the appellant is made the sole beneficiary. This is contrary to Section 10 of the KGST Act. The 21.11.2006 withdrawal order was therefore issued, when it was discovered that this was a case of exemption to an individual unit and that is impermissible under Section 10 of the KGST Act. Such being the position, the benefit of the equitable doctrine of estoppel cannot be extended for the appellant as in that case the State authority would be obliged to act in a manner which is contrary to the legislative mandate.

28. The equitable principle of promissory estoppel was propounded by this Court in the case of *M/s. Motilal*

Padampat Sugar Mills Vs. State of Uttar Pradesh & Ors.[3] In the same very case, it was however observed that the legal principle cannot be invoked to compel anyone to do anything, contrary to law. Justice P. N. Bhagawati for the Division Bench wrote the following:-

> *"28…It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law…"*

29. The above judgment in *Motilal Padampat(Supra)* was followed in the case of *Amrit Banaspati Co. Ltd. Vs. State of Punjab & Anr.*[4] wherein, this Court carved out unlawful/illegal promise as an exception to the principle of promissory estoppel. But, the observation in this case in reference to an unlawful promise was not laid down as a *ratio*, but at best an *Obiter dicta.*

30. In the later case of *Bangalore Development Authority Vs. R. Hanumaiah*[5], it was however specifically declared that the equitable principle of promissory

[3] (1979) 2 SCC 409.
[4] (1992) 2 SCC 411.
[5] (2005) 12 SCC 508.

estoppel cannot be invoked for condoning or enforcing a promise, expressly prohibited by a statute. This Court speaking through Justice Ashok Bhan pronounced as under:

> *"34. …In absence of any provision in the Act or the Rules framed thereunder authorizing BDA to reconvey the land, direction cannot be issued to BDA to reconvey a part of the land on the ground that it had promised to do so. The rule of promissory estoppel cannot be availed to permit or condone a breach of law. It cannot be invoked to compel the Government to do an act prohibited by law. It would be going against the statute. The principle of promissory estoppel would under the circumstances be not applicable to the case in hand."*

31. From the above reading of the relevant judgments, it is abundantly clear that the equitable principle of promissory estoppel cannot be invoked for enforcing promises in the teeth of the provisions of law. Having concluded that the Government Order (20.03.2004), granting Sales Tax/ Works Contract Tax exemption was *ultra vires* the Section 10(1) of the KGST Act, the promise, in furtherance of Government Order, in the

form of BIFR Scheme dated 17.01.2005 being unlawful, cannot in our view, be enforced on equitable consideration.

32. Further, in *Arcelor Mittal Nippon Steel (Supra)* this Court has held that:

> *"22….The principle of promissory estoppel shall not be applicable contrary to the Statute. Merely because erroneously and/or on misinterpretation, some benefits in the earlier assessment years were wrongly given, cannot be a ground to continue the wrong and to grant the benefit of exemption though not eligible under the exemption notification."*

33. In the case at hand, even though the appellant was granted benefit of tax exemptions under the 2004 government order, this was *ultra vires* the Section 10 KGST Act. Such exemption cannot be continued for further assessment years, as that would amounts to perpetuating and condoning a wrong, which is opposed to public policy.

34. It would be apposite now to advert to *Voltas Ltd. Vs. State of A.P.,*[6] where a BIFR proceeding was being considered and the ratio therein will shed some light on the present matter. In that case, the *Voltas Ltd.* agreed to take over the refrigeration unit of 'Hyderabad Allwyn Ltd.' (A Sick Company) vide a Memorandum of Understanding with the state government, subject to BIFR approval. The state government, for incentivizing the appellant, issued government order dated 20.01.1994 granting sales tax deferral for a period of 7 years. The said deferral was reflected in the BIFR Sanctioned Scheme dated 04.04.1994. Later, the state government issued another order on 18.08.1995, whereby 18% interest was levied on the sales tax component so deferred. The interest sum was payable after 7 years in lump sum. Dealing with the challenge to the government decision, this Court by a short order upheld the Government Order dated 18.08.1995 with the observation that the interest was imposed under relevant provisions of AP General Sales Tax Act, 1957

[6] (2004) 11 SCC 569.

(APGST Act). Further, even though the payment of sales tax was deferred for 7 years vide Government Order dated 20.01.1994 and the BIFR sanctioned scheme dated 04.04.1994, both pertinently were silent on the interest aspect. Hence, this Court held that as there was no express waiver of interest, the provisions of APGST Act would prevail over the BIFR scheme.

35. In the case at hand, the government order dated 20.03.2004, as well as the BIFR sanctioned scheme, are silent on the duration of tax exemption for the works contract. In any case the tax exemptions cannot continue indefinitely. Hence, the *ratio* in *Voltas Ltd. (Supra)* involving a BIFR scheme and a government decision which diminishes the incentives for the company, do lend support for the impugned decisions of the High Court. In other words, the Kerala government, notwithstanding the BIFR scheme for the sick company was entitled to withdraw the tax exemptions, by issuing the government order dated 21.11.2006 under Section 10(3) of the KGST Act.

36. Justice H. L. Gokhale, in his concurring judgment in the case of *Monnet Ispat & Energy Ltd. Vs. Union of India,*[7] highlighted the difference between the doctrine of promissory estoppel and the doctrine of legitimate expectation:

> *"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…*
>
> *290…. 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…"*

37. While the equitable principle of promissory estoppel requires a valid promise, based on which the promisee has changed its position, it is necessary to observe that the principle of legitimate expectation does not take into account such considerations.

[7] (2012) 11 SCC 1.

Instead, it is rooted in fundamental ideas like reasonableness, fairness and non-arbitrariness.

38. In the case of *MRF Ltd., Kottayam Vs. Asst. Commissioner (Assessment) Sales Tax & Ors.*[8] the Kerala government in order to incentivize investment and industrial growth, entered into a Memorandum of Understanding on 06.10.1993, under which tax incentives were offered to the company if they invested above Rs. 50 crores for expanding the existing industrial unit in the State. In the government order dated 03.11.1993 issued under Section 10 of KGST Act, exemptions were provided for 7 years for all expanding industrial units. An addendum to the Memorandum of Understanding was executed on 10.04.1996, explicitly stating that the industry was eligible for tax exemptions under government Order dated 03.11.1993. Pursuant to such encouragement, MRF Ltd. invested Rs. 80 Crores for expansion, and then commenced operations on 31.12.1996. They were also issued the eligibility certificate on

[8] (2006) 8 SCC 702.

10.11.1997, granting tax exemption from 31.12.1996 to 29.12.2003, by the Kerala government. Subsequently the government order was issued on 15.01.1998, amending its 1993 Order adding sub-clause (h) to the negative list. This excluded MRF's activities from the definition of 'manufacture'. The same in effect extinguished the tax exemptions granted vide the 1993 government order. By another Notification dated 31.12.1999, the Kerala government notified that the exemptions sanctioned before 01st January, 2000 in furtherance of 1993 government order would continue for full period of 7 years. In this background, the authorities issued a demand notice, seeking to levy purchase tax from 15.01.1998, relying on the 15.1.1998 government order. When this was challenged and the matter eventually came to this Court, the Division Bench speaking through Justice Ashok Bhan, held that the state authority's demand for purchase tax under KGST Act from 15.01.1998, is barred by principle of promissory estoppel since the state cannot renegade its earlier promise of tax

exemption for 7 years until 29.12.2003. This Court held that the state's action of retrospectively amending its 1993 government order, by subsequent order dated 15.01.1998 was arbitrary and unreasonable. The 1998 government order was found to be discriminatory and hit by the principles of Article 14 of the Constitution. Thus, holding the state bound to its promise, MRF was found to be entitled for tax exemptions for the 7 year period, in terms of government order dated 03.11.1993.

39. But, the above judgment of this Court in the case of *MRF Ltd., Kottayam(Supra)* is distinguishable from the facts in the present case. In the above case, the government order granting tax exemptions, clearly mentioned a period of 7 years, before which the tax exemptions could not have been revoked. But, in this case, no such time period was explicitly prescribed. Neither did the state seek to revoke the exemption retrospectively. The appellant here, enjoyed the benefit of exemptions for a considerable period and is now in profit. Hence, it is not open for the appellant

to claim legal entitlement to tax exemption for the period of 5 years.

40. The learned Division Bench of the Kerala High Court has given categorical findings in reference to the 20.03.2004 government order i.e. a) the said government order is issued only in the appellant's favor; b) It was not contended that similar concessions were accorded to any other sick industry engaged in activities of bleaching, dyeing, etc.; c) Vide the 1994 government order, the state has simply promised to consider other sick industries for similar exemptions.

41. Based on the above findings, the learned Division Bench concluded that the appellant does not form a separate class of its own. Hence, the 2004 government order was held to be *ultra vires* the Section 10(1) of the KGST Act. The appellant has failed to bring to our attention, any intelligible differentia, based on which it can be said that they constitute a unique, separate class of its own. In absence of such differentiating factor, the benefit of tax exemptions being granted to

the appellant, to the exclusion of all other sick industries involved in similar activities, do not appear to be reasonable and should be seen as arbitrary. The 2004 government order was not only *ultra vires* Section 10(1) of KGST Act, but also falls short by principle of reasonableness, fairness, and non-arbitrariness. The 2006 government order withdrawing the tax exemption was in fact issued to remedy this very mischief. Hence, the appellant cannot invoke the principle of legitimate expectation against the 2006 government order.

42. Reverting now to another appropriate aspect as presented in *Pawan Alloys & Casting Pvt. Ltd., Meerut Vs. U.P. State Electricity Board and Others*[9] where it was propounded that if the state, in exercise of its sovereign powers, grants any tax exemptions for a specified period, the principle of promissory estoppel does not bar the grantor from prematurely withdrawing such exemptions, if such measure is necessitated for

[9] (1997) 7 SCC 251

protecting public interest. In other words, public interest would outweigh the interest of the individual grantee.

43. While reflecting upon the element of public interest as enunciated in *Pawan Alloys* (supra), in granting or refusing relief on the principle of promissory estoppel, the last public address of the lawyer statesman Abraham Lincoln who served as the 16th President of USA, intrudes into our thought process. Taking a strong stand in support of Black suffrage, Abraham Lincoln, soon after winning the Civil War, refused to give in to his earlier promise of re-construction to the state of Louisiana, with the following resounding words:-

> *"But, as bad promises are better broken than kept, I shall treat this as a bad promise, and break it, whenever I shall be convinced that keeping it is adverse to the public interest. But I have not yet been so convinced."*

Taking a cue from above, and bearing in mind that the appellant here has already availed the exemption

benefits for a substantial period and was the only one of its category which enjoyed such advantage in the State of Kerala and also regard being had for the fact that now the appellant is out of the red and more importantly in a situation where enforcing the promise against the State is likely to affect public interest, we find supplementary support for our present conclusion, in the above quoted insightful words of Abraham Lincoln.

44. In view of the foregoing discussion, this Court, with the additional reasoning in the preceding paragraphs, is persuaded to uphold the impugned judgment of the High Court. Accordingly, the appeal stands dismissed without any order on cost.

……J.
[HRISHIKESH ROY]

NEW DELHI
APRIL 8, 2022

Reportable

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CIVIL APPEAL NO. 2830 OF 2022
(Arising out of SLP (CIVIL)NO.24288/2018)

AUGUSTAN TEXTILE COLOURS LIMITED
(NOW AUGUSTAN TEXTILE COLOURS PVT LTD) ..APPELLANT(S)

VERSUS

DIRECTOR OF INDUSTRIES & ANR. ..RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. **While I am in agreement with the final conclusion reached by my esteemed and learned brother that the appeal must be dismissed, in the nature of the questions which arise and the reasoning which appeals to me, I am inclined to author a separate though concurring judgment.**

2. **The facts have been set out by my learned brother. The principal contention of the appellant is that Section 10 of the Kerala General Sales Tax Act, 1963**

(hereinafter referred to as 'the State Act') does not exhaust the power to grant exemption inter alia. Section 10 of the State Act reads as follows:

> **"10. Power of Government to grant exemption and reduction in rate of tax:** –
>
> (1) The Government may, if they consider it necessary in the public interest, by notification in the Gazette, make an exemption or reduction in rate, either prospectively or retrospectively in respect of any tax payable under this Act,
>
> (i) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales or purchases by successive dealers, or
> (ii) by any specified class of persons in regard to the whole or any part of their turnover
>
> (2) Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1) -
>
> (a) may extend to the whole State or to any specified area or areas therein,
> (b) may be subject to such restrictions and conditions as may be specified in the notification
>
> (3) The Government may by notification in the Gazette, cancel or vary any notification issued under sub-section(1).

3. In order to appreciate whether the exemption in favour of the appellant would be ultra vires Section 10 of the State Tax Law and whether there is merit in

the case of the appellant that actually the exemption was not given under Section 10, I may briefly evaluate the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as 'the Act'. The Act defined 'Sick Industrial Company' w.e.f. 01.02.1994 as follows:

> **"3(o) sick industrial company means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.**
>
> **Explanation: For the removal of doubts, it is hereby declared that an industrial company existing immediately before the commencement of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth, shall be deemed to be a sick industrial company;"**

4. The Act envisaged a Board and also an appellate authority. Section 15 contemplated a reference by the Board of Directors of Sick Companies. The Board under the Act was to conduct an inquiry as to whether any industrial unit had become a sick industrial company.

Section 17 contemplated, *inter alia*, suitable orders being passed on completion of inquiry. Section 17 reads as follows: -

> **"17. Powers of Board to make suitable order on the completion of inquiry.** — (1) If after making an inquiry under section 16, the Board is satisfied that a company has become a sick industrial company, the Board shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be by order in writing, whether it is practicable for the company to [make its net worth exceed the accumulated losses] within a reasonable time.
>
> (2) If the Board decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth positive within a reasonable time, the Board, shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to [make its net worth exceed the accumulated losses].

Sub-Section (3) of Section 17 dealt with a different class of sick company:

> (3) If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to [make its net worth exceed the accumulated losses] within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as

may be specified in the order, a scheme providing for such measures in relation to such company.

Section 17 further provided:

> **(4) The Board may, —**
> **(a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, 1 [or if the company fails to revive in pursuance of the said order,] review such order on a reference in that behalf from any agency referred to in sub-section (2) of section 15 or on its own motion and pass a fresh order in respect of such company under sub-section (3);**
> **(b) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate."**

5. **It is clear that under Section 17(3) if the Board decided that it is not practicable within a reasonable time to make the company's net worth exceed the accumulated losses, a scheme may be provided as provided under Section 18. Section 18, therefore, dealt with the circumstances obtaining under Section 17(3) to prepare and sanction the scheme. Section 18 provided in detail as to what could be provided for in the scheme. It reads as follows: -**

> "**18. Preparation and sanction of schemes. —** (1) **Where an order is made under sub-section (3)**

of section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely:—

(a) the financial reconstruction of the sick industrial company;

(b) the proper management of the sick industrial company by change in, or take over of, management of the sick industrial company;

(c) the amalgamation of—
(i) the sick industrial company with any other company, or
(ii) any other company with the sick industrial company;

(hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), the sick industrial company, referred to as "transferee company";

(c) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

(da)the rationalisation of managerial personnel, supervisory staff and workmen in accordance
with law;

(d) such other preventive, ameliorative and remedial measures as may be appropriate;

(f) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the

purposes of the measures specified in clauses (a) to (e).

(2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely: —

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the [transferee company];

(b) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) the continuation by, or against, the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 17;

(f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;

(g) the allotment to the shareholders of the sick industrial company of shares in the sick industrial company or, as the case may be, in the [transferee company] and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder the payment of cash to those shareholders in full satisfaction of their claims—

(i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

(i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;

(j) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;

(k) method of sale of the assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;

(l) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;

(m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3) (a) The scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify;

(b) The Board may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies:

Provided that where the scheme relates to amalgamation the said scheme shall be laid before the company other than the sick industrial company] in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the company other than the sick industrial company.

(4) The scheme shall thereafter be sanctioned, as soon as may be, by the Board (hereinafter referred to as the "sanctioned scheme") and shall come into force on such date as the Board may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(5) The Board may on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines as may be specified in the order, to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

(6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue

of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

(7) The sanction accorded by the Board under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence.

(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(9) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Board may, on the recommendation of the operating agency or otherwise, by order to anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(10) The Board may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to such sick

industrial company as may be specified in the order.

(11) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of the Companies Act, 1956 (1 of 1956).

(12) The Board may monitor periodically the implementation of the sanctioned scheme."

6. **Section 19 provided for rehabilitation giving financial assistance. It reads as follows:**

"19. **Rehabilitation by giving financial assistance.**—(1) **Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.**

(2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation [or within such further period, not exceeding sixty days,

as may be allowed by the Board, and if no consent is received within such period or further period, it shall be deemed that consent has been given].

(3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Board may, as soon as may be, sanction the scheme and on and from the date of such sanction the scheme shall be binding on all concerned.

(3A) On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(3B) The financial institution and the bank designated under sub-section (3A) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfilment of the requirement in this regard.

(4) Where in respect of any scheme consent under sub-section (2) is not given by any person required by the scheme to provide financial assistance, the Board may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit."

(Emphasis supplied)

7. **Section 20 provided for winding up. Even though the Sick Industrial Companies (Special Provisions)**

Repeal Act, 2003 was passed repealing the Act, it was not enforced, and it is only with effect from 1.12.2016 when the IBC came into force that the Act was repealed.

8. The definition of Sick Industrial Company has been noticed. It is to be further noticed that not every sick industrial company becomes the subject matter of a scheme contemplated under Section 18 read with Section 19 of the Act. Not every sick industrial unit which becomes the subject matter of the draft scheme becomes the beneficiary of the final scheme or sanctioned scheme. The procedure by which it attains finality does involve affording an opportunity to every person required by the scheme to providing financial assistance. Either express consent is granted or there is deemed consent under Section 19(2). It may be possible to find that a sick industrial company as defined is different from a sick industrial company which is the subject matter of the final scheme under Section 19(3). The processes that are involved and the procedures that are undergone may result in the particular company which is at the centre stage of the

final scheme being entitled to be treated in terms thereof.

9. Therefore, on the scheme of the Sick Industrial Companies Act, the law contemplated concessions, and sacrifices inter alia being undertaken by the State Government inter alia in terms of financial assistance. Section 19(4) appears to indicate that if consent is not given to any person, the Board is free to adopt other measures including winding up of the sick industrial company. A sick industrial company is defined in the Act. In terms of the definition, it is undoubtedly true that there may be more than one sick industrial companies operating in the same business or rather dealing in the same goods and services. The scheme of Section 17 appears to be that such sick industrial companies that could be nursed back to health under section 17(1) and 17(2), did not go on to be dealt with under Section 18 and 19. It is in regard to a sick industrial company which fell within the four walls of Section 17(3) that the special provisions under sections 18 and 19 were applicable. It is such a company on account of the acuteness of the problem that

cried out to be dealt with, as contemplated in Sections 18 and 19. The law contemplated the deliberative process involving all parties having a stake. Draft scheme may give way to a final one. Section 19 dealt with a scheme envisaging financial assistance. Having regard to Section 19(1), which, *inter alia*, contemplated financial assistance in the form of concessions or sacrifices from the State Government, it may be incongruous to not read the words 'reliefs or concessions or sacrifices' as not meaning a tax exemption or a reduction in the rate of tax. It is only when the State gave consent or there was deemed consent under Section 19(2), that Section 19(3) kicked in, and the scheme on being sanctioned by the Board was binding on all concerned.

10. There is the aspect of fairness involved. An exemption under Section 10 cannot ordinarily be claimed as a legal right. The provisions of Section 19 of the Act made an inroad into the said principle. In other words, when to a scheme under Section 19 of the Act the State Government has given consent or its deemed consent, the law commanded the State Government to

honour its consent. In this regard we may notice that under Section 19(4), if consent is not given, the Board was left free to take appropriate steps including the winding up of the company. To give consent and to allow the State to renege on its consent and defy the binding nature of the sanctioned scheme would enable the State to frustrate the scheme. In fact, if consent is refused at the early and appropriate stage, as contemplated under Section 19(4), then the Board is left free to take action including winding up the company as is considered appropriate.

11. There is merit in the contention of the appellant that the exemption granted initially, dated 20.03.2004, was not one which is premised under Section 10 of the Act. The exemption was granted in terms of the scheme under Section 19 of the Act. This is an exemption which was given under statutory provisions. In other words, consent being forthcoming from the state, a scheme being sanctioned under section 19 providing for financial assistance in the form of tax exemption, inter alia, the Government became obliged to honour its consent and the dictate of the statute.

12. It will be inequitable to the company and against public interest also, as it frustrates the object of law to allow a scheme to be sanctioned inducing all parties to proceed on the basis that a company would be redeemed from its financial dire-straits and the crucial financial assistance indispensable to the said process is not forthcoming from the State. The aforesaid interpretation placed in para 11 hereinbefore would harmonise the Central and the State Act. It will also give life to the Sick Companies Act as it would clearly further the object of the law. Therefore, the exemption granted can be understood as springing from the provisions of Section 19(3) read with 19(1) in this regard. Thus, the exemption is not to be treated as falling under Section 10 of the State Act. In other words, Section 10 cannot be treated as the sole repository of power to grant exemption.

13. The Government of Kerala, had in fact issued G.O.M.S. dated 25th November 1994. It, *inter alia*, deals with the aspect of benefits given under the Act. In fact, the said order provided for guidelines in the model package which is appended to be followed by

government while formulating rehabilitation scheme within the purview of the Sick Industrial Companies (Special Provisions) Act, 1985. Relief and concessions were to be extended on a case-to-case basis, keeping in view all relevant factors by the government in the Industries Department. Therein, under the heading 'fiscal', the following is relevant:

> **"FISCAL**
>
> **1. Exemption/deferment of sales tax, purchases tax and electricity duty for two years but not exceeding 5 years or the date the net worth of the company become positive, which ever is earlier. The deferment will be interest free/simple interest not exceeding 12 per cent per annum. Dues deferred repayable in, say, 36 monthly instalments, repayment commencing after one/two years' moratorium from date of sanction of B.I.F.R. scheme."**

14. **This again fortifies the view that no resort to Section 10 of the State Act is necessary. The Government Order dated 25.11.1994 provides support to the working of the scheme.**

15. **The expression 'class of persons' in Section 10 of the State Act, no doubt, acts as a limitation on the**

power of the state in exercise of its power. It also is an indication of the extent of the power. Then the question would arise as to whether a class of persons includes a single person. To break it down, whether the words 'persons' is capable of comprehending a single person. Would the plural include the singular?

16. The High Court has proceeded on the basis that the power under Section 10(1) can be exercised in favour of only a class of persons and not *qua* an individual unit like the appellant. It has also proceeded on the basis that had the exemption been made applicable to all sick industrial units which is in the activity of bleaching etc, there would have been force in the contention that the appellant would form a class by itself. The sick company, which falls to be dealt with under Section 17(3) read with Section 18 and finally Section 19, is clearly distinct from the generality of sick companies both under the definition of a sick company and even those which are covered by Section 17(1) and 17(2) of the Act. Therefore, the question would arise as to whether the appellant would constitute a class by itself. In this regard, we may

notice the decision of Andhra Pradesh High Court in *Mahindra and Mahindra Limited and Ors. vs. State of Andhra Pradesh and Ors.*[1]. Section 9 of the Andhra Pradesh General Sales Tax Act is similarly worded as Section 10 of the State Tax Law with which we are concerned. A reduction of tax was given to the second respondent therein. The second respondent was a Government Company. We notice the following observations:

> **"27. …. Apart from that, we are of the opinion taking into account that the second respondent is a Government company, and, it is established in a centrally notified backward area, and it provides employment opportunities to those people in that area and it is a new entrant in the filed, the concession shown to the second respondent is clearly sustainable as the second respondent unit constitutes a class by itself and the classification so made in its favour is justified with the object in view as stated above."**

17. A sick industrial company which is the subject matter of the sanctioned scheme may constitute a class by itself. However, it is not necessary to explore this

[1] **1986 (63) STC 274**

aspect further as the exemption granted to the sick company covered by Section 19(3) is safely anchored in Section 19 of the Act.

18. The question would arise as to whether on the said view the appellant should be granted relief? There is merit in the view that the exemption does not envisage any outer time limit. But it is obvious that it could not be an unending bonanza even after the company breaks even and even made profits.

19. It is quite clear that the appellant cannot pitch its case higher than at the limit under Order dated 25.11.1994 referred to in paragraph-14. Therefore, exemption of sales tax is contemplated for a period of two years. However, it further provides that it cannot be for more than five years or beyond the date the net worth of the company becomes positive whichever is earlier. Therefore, the maximum period in any case is 5 years. In the case of the appellant, the appellant enjoyed the benefit of the exemption till it was withdrawn on 21.11 2006. The said order in turn was withdrawn on 01.10.2007. It is no doubt true that on 29.02.2008, the order dated 01.10.2007 came to be

withdrawn. The writ petition was filed by the appellant. It would appear that for a period of nearly 4 years, the appellant enjoyed the benefit of exemption in all. No doubt, the learned counsel for the appellant did point out that there is no exercise carried out to find out as to when the net worth has turned positive. The conduct of the appellant submitting a representation in terms of the judgment of the learned judge has been noticed by my learned brother.

20. As noted in the Judgment of my learned Brother, appellant is a company which is out of the woods and making profits. Therefore, I would concur with the final conclusion that the appeal must fail though on grounds as stated hereinbefore. The appeal will stand accordingly dismissed, however, without any order as to costs.

.....J.
[K.M. JOSEPH]

NEW DELHI,
DATED: 8TH APRIL, 2022