M/S. A.P. Steel Re-Rolling Mill Ltd. .. ... vs State Of Kerala & Ors. .. Respondents on 14 December, 2006

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

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           CASE NO.:
Appeal (civil)  5814 of 2006

PETITIONER:
M/s. A.P. Steel Re-Rolling Mill Ltd.                    ..      Appellant

RESPONDENT:
State of Kerala & Ors.                                          ..      Respondents

DATE OF JUDGMENT: 14/12/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
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J U D G M E N T (Arising out of S.L.P.(C)Nos.7972-7973 of 2005) With CIVIL APPEAL NO. 5816 /2006 (Arising out of S.L.P.(C)No.6809 of 2005) M/s. Victory Papers and Boards India Ltd. .. Appellant Versus State of Kerala & Ors. .. Respondents S.B. Sinha, J.

Leave granted.

These two appeals, involving common questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment.

We will, however, notice the fact of the matter from M/s. Victory Papers and Boards India Ltd.'s case.

The State of Kerala adopted an industrial policy in the year 1992 and in the light thereof a notification bearing No.G.O.(MS)No.4/92/PD dated 6.2.1992, was issued, which reads as under :

> "ORDER In the light of the statement of Industrial Policy approved for implementation by Government the following incentives in respect of electricity are ordered :
>
> 1. New industrial units will be exempted for 5 years from payment of enhanced power tariff which came into effect on 1.1.92. This concession will be available.

i. to new units from the date of commercial production, which start such production between 1.1.92 and 31.12.96.

ii. to manufacturing units only and not to service and entertainment units.

iii. To existing units for substantial expansion/ modernization/diversification the concession in such cases will be available only for the consumption of the new machinery and equipments which adds to the capital asset, by not less than 25% of the exiting fixed capital investment excluding land and building, the installation of which is to be certified by the competent authority.

iv. for modernization, to industrial units having a contract demand not exceeding 500 KVA. In such cases, new equipments alone will be eligible for the concession."

The said industrial policy of the State was accepted by the Kerala State Electricity Board, which is a body constituted and incorporated under the provisions of the Electricity (Supply) Act, 1948, in respect of which a notification was issued on 27.3.1992. By reason of the said notification, some guidelines were also issued. The appellant herein contended that pursuant to or in furtherance of the representation made by the State of Kerala and/or the respondent-Board, they altered their position by investing a huge amount by setting up factories/new units.

The State, admittedly, at the district level constituted a 'Green Channel Clearance Committee' (GCC).

The appellant had applied for grant of electric power allocation to the extent of 2500 KVA. It obtained loan on 19.1.1995. As the application of the appellant had not allegedly been processed, GCC issued several reminders to the Board. On or about 17.11.1995, Appellant informed the Board that the project was at an advanced stage. It was recorded that despite recommendations by GCC, sanction for grant of electrical connection had not been issued, stating :

> "We wish to add at this juncture that the Government is inviting entrepreneurs to start their industrial units in the State and are offering Power, Water and other infrastructural facilities availability so easily. But on the contrary the concerned authorities are reluctant to sanction the necessary infrastructural facilities to the units. Our case is one of the examples. Your goodself will appreciate that without electric power we cannot start out production as schedule, which will hamper the work and finally affect the production of the unit. The delay in implementing the project will, finally, escalate the cost of the project.
>
> Since more than one year has lapsed after submitting our application to the KSEB, we have so far not received sanction of Power to our unit. Hence we request to your goodself to kind enough to prevail upon the authority to sanction Electric Power to out unit to the extent of our requirement."

It, allegedly, imported machinery from abroad, which fact was intimated to the Board by a letter dated 24th June, 1996, stating :

> "Under the circumstances, our Bankers are reluctant to clear term loan because of non-sanctioning of Power to the Project. Presently, the total machinery worth Rs.3.5 Crore have already arrived at site and the erection is in progress. Any further delay in receiving the power allocation will affect our total project which will lead to a financial constraint. It is really unexpected from the authorities such a situation by the entrepreneur who is taking initiative to install a factory in Kerala. Since we have already invested a huge amount for land, building and machinery, we do not have other alternative other than to complete the project and start production at the earliest.
>
> We have informed these facts and figures to the previous Ministry vide our letter dated 22nd February, 1996, addressed to Hon'ble Minister of Electricity. We are sorry to inform you that so far we have not received any favourable decision.
>
> According to our schedule, we are planning to start production in the month of August, 1996. Of the huge investment of Rs.12.5 crore, 75% of the total cost of the project has already been invested and any more delay in power allocation will effect our project very seriously. To avoid unnecessary delay in starting the production, we need the sanction of power allocation urgently.
>
> We understand that our file is pending with the Chief Engineer, World Bank Projects, Vaiduthy Bhavanam, Thiruananthapuram and with the Secretary, Kerala State Electricity Board, Trivandrum vide No. TSI/PA/Victory Paper/95-96/3019 dated 7.8.1995."

[Emphasis supplied] The response of the Board thereto is to be found in the letter dated 11.2.1997, whereby sanction for power allocation was sought for by the Deputy Chief Engineer from the Chief Engineer of the Board. Having regard to the fact that there was no adequate transformer capacity at Kanjiokode Sub Station, the allocation could not be granted, as was informed to the appellant by the Board in terms of its letter dated 21.4.1997. Electrical energy was allocated for six months on trial-run basis on 24.12.1997 and a final sanction was granted on 21.12.1998. Appellant started commercial production on 10.3.1999. It evidently denied the benefit of the said incentive scheme dated 6.2.1992. A writ petition was filed by the appellant, which has been dismissed by reason of the impugned judgment of the High Court, inter alia, stating :

> ".....The only question to be considered is whether the Petitioner had satisfied the various terms and conditions laid down in the order dated 6.2.1992. Facts would eloquently show that Petitioner had not satisfied the various conditions laid down in the order. Petitioner might have submitted an application during the year 1994. Mere submission of application would not be sufficient to hold that Petitioner had complied with all the terms and conditions. Power allocation was issued by the fourth

> Respondent on 24.12.1997 with specific condition that the connection would be effected only after providing a separate 22 KV feeder with outlet from the substation to the factory under OYEC scheme. Respondent could start the work of drawing at 2.8 km of 22 KV line only after the Petitioner remitting the OYEC amount. Even though allocation was given on 24.12.1997 Petitioner took his own time to remit the amount. Petitioner has taken considerable time to complete the work and was not ready for availing power supply. Petitioner has produced energization sanction order under Rule 63 of the Indian Electricity Rules 1956 from the Chief Electrical Inspector only during December 1998 even though power allocation was sanctioned on 24.12.1997. Petitioner had executed the H.T. agreement only on 22.1.1999 and the unit was energised on 10.3.1999, by the time period fixed for concessional tariff was already over. We are of the view, ext. P1 order of the apex court would not apply to the facts of this case where power allocation was made from the year 1991 but the power could not be supplied. Hence commercial production could not be started by 31.12.1996. Hence Petitioner had not complied with the formalities so as to get the benefit of the concession orders. The principle of promissory estoppel in the facts and circumstances of the case cannot be put against the Board. Above being the factual situation, we are of the view Petitioner is not entitled to get concessional tariff."

So far as case of M/s. A.P. Steel Re-Rolling Mill Ltd. is concerned, we need not go into the factual aspect of the matter. Suffice it to notice that its writ petition was permitted to withdrawn by the High Court by an order dated 24th November, 2003. A review application filed by the said appellant was also dismissed by an order dated 25th May, 2004. We may, however, note that an application for grant of electrical connection was filed by it in November, 1995 and actual commercial production started in or about October, 1998.

The principal contentions which have been raised by Mr. Ranjit Kumar and Mr. Venkatararamani, learned Senior counsel appearing on behalf of the appellants, are : -

> i) Appellants having altered their position pursuant to or in furtherance of the representation made by the State of Kerala as also the Board, the doctrine of promissory estoppel would squarely apply in the instant cases;
>
> ii) The High Court committed a manifest error in proceeding on the premise that the appellants were not entitled to grant of such exemption as they had started commercial production after the period envisaged in the said notification;
>
> iii) The Board was statutorily obligated to supply electrical energy to the appellant within a reasonable time.
>
> (iv) Had electrical energy been supplied to the appellants within a reasonable time, they would have been able to obtain the benefit of the said exemption.

Mr. Venkataramani added :

(v) A concession made by the Counsel on a question of law being not binding on the client, the High Court should have allowed the application for review of its earlier order permitting to withdraw its writ petition.

Mr. M.T. George, learned Counsel appearing on behalf of the Board, on the other hand, would urge that the appellants themselves were guilty of serious delay and latches on their part in complying with the statutory requirements and thus, it is idle to put the blame on the Board. It was submitted that the language of the notification dated 6.2.1992 being clear and explicit, the same does not envisage grant of any benefit beyond 31.12.1996.

Before adverting to the rival contentions raised on behalf of the parties, we may notice that construction of the notification in question came up for consideration before a Bench of this Court in Hitech Electrothermics & Hydropower Ltd. vs. State of Kerala & Ors. [(2003) 2 SCC 716], wherein this Court opined :

"On a perusal of the industrial policy of the government, unequivocally indicting that concessional tariff rate would be given as well as the order of the Electricity Board adopting the same, it can be safely held that such concession could be availed of by the industrial units for a period of five years from the date, they start such production between 1.1.1992 and 31.12.1996. In this context the stand of the Board as well as the State Government cannot be held to be devoid of any substance when admittedly the commercial production of the appellant's unit did not start till 31.12.1996. But the question for consideration is when the government has itself come forward alluring industrial units to set up their industries and when under the provisions of the Electricity Act, every consumer has the right to get the supply of power and in the case in hand, when power allocation has been made in favour of the appellant as early as in 1995, and yet the same power could not be supplied for such non-supply of power, the commercial production could not start by 31.12.1996, would it at all be equitable to deny the relief to the appellant by giving a literal interpretation to the incentive scheme of the government as adopted by the Board? Our answer to this question must be in the negative. There are several documents on record, which were produced before us to indicate that the appellant has been communicating with the Board, seeking power connection at an early date so that it would be able to start commercial production by 31.12.1996. In making such communication, the appellant has been bringing it to the notice of the Board but for supply, the appellant has made all other arrangements to set the production, but yet there has been inaction on the part of the Board in providing power to the appellant. Mr. Rohatgi, appearing for the Board no doubt brought to our notice a letter from the appellant to the Board and contended that it could not have been possible for the appellant to start production by 31.12.96 but we are unable to accept this submission nor are we making deeper probe into the matter. Suffice it to say that the appellant has been denied power supply by the Board in appropriate time, which has prevented the appellant from starting the commercial production by 31.12.1996. This being the position, and having regard to the gamut of the circumstances, starting from the government policy

> resolution and culminating in setting up of the factory by the appellant in Kerala and commencing the production of ferro alloys, though not by 31.12.1996, we are of the considered opinion that granting the concessional tariff for a period of three years instead of five years, as indicated in the policy resolution would meet the ends of justice and we, accordingly, so direct."

A review application filed by the Kerala State Electricity Board, in the said matter again fell for consideration of this Court in Kerala State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. & Ors. [(2005) 6 SCC 651]. The said review application was dismissed, stating :

> "This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by 31.12.1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court. In a review petition it is not open to this Court to re- appreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

Applicability of doctrine of promissory estoppel in a case where entrepreneur alters his position pursuant to or in furtherance of a promise made by the State to grant exemption from payment of charges on the basis of current tariff is not in dispute. The State made its policy decision. The said policy decision could be made by the State in exercise of its power under Section 78A of the Electricity (Supply) Act, 1948. The Electricity Board framed tariff for supply of electrical energy in terms of Sections 46 and 49 of the 1948 Act. While framing its tariff, the Board could take into consideration the policy decision of the State.

It was, therefore, permissible both for the State to issue a policy decision and for the Board to adopt the same in exercise of their respective statutory powers under the 1948 Act.

When a beneficent scheme is made by the State, the doctrine of promissory estoppel would undoubtedly apply.

In Union of India & Ors. vs. M/s. Indo-Afgan Agencies Ltd. [(1968) 2 SCR 366], this Court opined :

> "We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation "

In M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh & Ors. [(1979) 2 SCC 409], this Court rejected the plea of the State to the effect that in the absence of any notification issued under Section 4-A of the U.P. Sales Tax Act, the State was entitled to enforce the liability to sales tax imposed on the petitioners thereof under the provisions of the Sales Tax Act and there could be no promissory estoppel against the State so as to inhibit it from formulating and implementing its policy in public interest.

The question came up for consideration before this Court also in Pournami Oil Mills & Ors. vs. State of Kerala & Anr. [1986 (Supp) SCC 728], wherein it was held:

> "Under the order dated April 11, 1979, new small scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five-year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of M.P. Sugar Mills. On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in Bakul Cashew Co. v. STO. In Bakul Cashew Co. case this Court found that there was no clear material to show any definite or certain promise had been made by the Minister to the concerned persons and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in M.P. Sugar Mills' case. In our view, to the facts of the present case, the ratio of M.P. Sugar Mills' case directly applies and the plea of estoppel is unanswerable."

Yet again in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar & Ors. vs. Dharmendra Trading Company & Ors. [(1988) 3 SCC 570], this Court, on the factual matrix obtaining therein, rejected the contention of the State that any misuse of the concessions granted was committed by the respondent therein and thus the State cannot go back on its promise.

It was further observed:

> "The next submission of learned counsel for the appellants was that the concessions granted by the said order dated 30-6-1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of 30-6-1969 was ultra vires and bad in law. We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either. Moreover, if the said argument of learned counsel is correct, the result would be that even the second order of 12-1-1977 would be equally invalid as it also grants concessions by way of refunds, although in a more limited manner and that is not even the case of the appellants."

Mangalore Chemicals and Fertilisers Limited vs. Deputy Commissioner of Commercial Taxes & Ors. [1992 Supp (1) SCC 21] is a case where this Court had the occasion to consider as to whether subsequent change in the eligibility criteria can undo the eligibility for the condition stipulated in the earlier notification and answered the same in the negative.

This Court reaffirmed the legal position in Pawan Alloys & Casting Pvt. Ltd., Meerut vs. U.P. State Electricity Board & Ors. [(1997) 7 SCC 251], holding:

> "As a result of the aforesaid discussion on these points the conclusion becomes inevitable that the appellants are entitled to succeed. It must be held that the impugned notification of 31-7-1986 will have no adverse effect on the right of the appellant-new industries to get the development rebate of 10% for the unexpired period of three years from the respective dates of commencement of electricity supply at their units from the Board with effect from 1-8-1986 onwards till the entire three years' period for each of them got exhausted. This result logically follows for the appellants who have admittedly entered into supply agreements with the Board as new industries prior to 1-8-1986."

The question yet again came up for consideration before this Court recently in State of Punjab vs. Nestle India Ltd. & Anr. [(2004) 6 SCC 465], wherein this Court surveyed the growth of the said doctrine and held the doctrine to be applicable to legislative action also.

In Jai Narain Parasurampuria (Dead) & Ors vs. Pushpa Devi Saraf & Ors. [(2006) 7 SCC 756], this Court held :

> "The doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged "

In Shrijee Sales Corporation & Anr. vs. Union of India [(1997) 3 SCC 398], this Court referring to Motilal Padampat (supra), it was stated :

> "Two propositions follow from the above analysis:
>
> (1) The determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or "public interest".

(2) It is the Court which has to determine whether the Government should be held exempt from the liability of the "promise" or "representation".

In the present case, the first Notification exempting the customs duty on PVC itself recites "....Central Government being satisfied that it is necessary in public interest to do so...". In the Notification issued later which gave rise to the present cause of action, the same recitation is present."

An exemption notification, however, can be withdrawn only if it is permissible to do so in public interest.

Yet again, in Dr. Ashok Kumar Maheshwari vs. State of U.P. & Anr. [(1998) 2 SCC 502], it was held :

> "There are many aspects of "Promissory Estoppel", but in the instant case we are concerned only with one aspect which is to the effect that if any "promise" has been made contrary to law, can it still be enforced by invoking this rule.
>
> The basic principle is that the plea of estoppel cannot be raised to defeat the provisions of a Statute. (See: G.H.C. Ariff v. Jadunath Majumdar Bahadur; Mathra Parshad & Sons v. State of Punjab and Ors.; Rishabh Kumar & Sons v. State of U.P.) This principle was reiterated in Union of India v. R.C. D'Souza, where a retired army officer was recruited as Assistant Commandant on temporary basis and was called upon to exercise his option for regularisation contrary to the statutory rules. It was held that it would not amount to estoppel against the Department.
>
> Whether a Promissory Estoppel, which is based on a 'promise' contrary to law can be invoked has already been considered by this Court in Kasinka Trading and Anr. v.

> Union of India and Ors., as also in Shabi Construction Co. Ltd v. City & Industrial Development Corporation and Anr. wherein it is laid down that the Rule of "Promissory Estoppel" cannot be invoked for the enforcement of a "promise" or a "declaration" which is contrary to law or outside the authority or power of the Government or the person making that promise."

{See also M/s. Ashoka Smokeless Coal Ind. P. Ltd. & Ors. vs. Union of India & Ors. [Civil Appeal No.5302 of 2006 @ SLP(C)No.20471 of 2005 and batch, disposed of on 1st December, 2006].} We may notice that a somewhat different view viz. strict construction of such notification was advocated in the case of State Level Committee & Anr. vs. Morgardshammar India Ltd. [(1996) 1 SCC 108], wherein, B.P. Jeevan Reddy, J., referring to CCE vs. Parle Exports (P) Ltd. [(1989) 1 SCC 345], opined :

> "We agree with the above statement of law except insofar as it states that where two views of the exemption notification are possible, it should be construed in favour of the subject since it is contrary to the decisions afore- mentioned including the three-Judge Bench decision in Novopan India Ltd. It may be noted that this decision was referred to in Mangalore Chemicals and Fertilizers and yet a slightly different principle enunciated. So far as decision in Hindustan Aluminium Corporation (referred to in Parle Export), rendered by a Bench comprising Tulzapurkar and R.S. Pathak, JJ., is concerned, it only holds that the expression "metal" occurring in a notification issued under U.P. Sales Tax Act should be understood in its primary sense, i.e., in the form in which it is marketable as a primary commodity. The learned Judges held that the subsequent forms evolved from the primary form constituted distinct commodities marketable as such and must be regarded as new commercial commodities and not included within the four corners of the notification. This decision cannot therefor be understood as supporting the proposition enunciated in Parle Exports with which we have disagreed. Be that as it may, the occasion for applying the said proposition arises only where there is "real difficulty, in ascertaining the meaning of a particular enactment" (statement in Parle Exports). In the case before us, there is neither any ambiguity in the language nor does the clause in question present a real difficulty in ascertaining its meaning."

We may, however, also notice that in Southern Ispat Ltd. vs. State of Kerala & Ors. [(2004) 4 SCC 68], this Court took somewhat different view then Hitech Electrothermics & Hydropower Ltd. vs. State of Kerala & Ors. [(2003) 2 SCC 716], stating :

> "As the Division Bench rightly pointed out, the question to be decided in this case is essentially a question of fact, namely, whether the appellant had started 'commercial production' between 1.1.1992 and 31.12.1996 so as to be entitled to power supply at concessional tariff rates. As a rule, it is not the practice of this Court to interfere with factual findings which have been concurrently recorded by two courts below. Both the learned single Judge and Division Bench have concurrently answered all factual findings against the appellant. On that ground itself the appellant must fail.

> Nonetheless, as the appeal was argued with some seriousness, we propose to deal with the facts and examine the factual findings only from the point of view of interference under our special jurisdiction under Article 136.
>
> The Division Bench of the High Court rightly pointed out that though the policy of granting concessional tariff was announced by the State Government on 6.2.1992; followed by the KSEB order dated 27.3.1992, the appellant did nothing till or about June 1995. It is only in June 1995 that the appellant company was incorporated and an application for power allocation was made on 17.7.1995. The appellant's factory had yet to be constructed and machinery to be transported and installed after the construction of the factory building. Undoubtedly, the application was moved on 17.7.1995 in anticipation. The material on record suggests that there was acute shortage of electricity as a result of which even domestic power connections were being refused. The high tension power supply required by the appellant had to be specially arranged by drawing the electrical lines on OYEC basis by construction of PSC polls along the line at the Appellant's cost. This amount was deposited on 11.12.1996, only a few days before the concession was about to lapse. Having examined the correspondence on record, we are not in a position to accept the contention of the appellant that the respondents had acted with undue tardiness or lethargy. Further, the remittances of Rs.8,54,700/- and Rs.3,45,200/- made by way of security deposit for executing the power supply agreement were actually made on 1.2.1997 and 4.2.1997, after the expiry of the period of concession."

The general principles with regard to construction of exemption notification are not of much dispute. Generally, an exemption notification is to be construed strictly, but once it is found that the entrepreneur fulfils the conditions laid down therein, liberal construction would be made.

In M/s. O.N.G.C. Ltd. vs. Commnr. Of Customs, Mumbai [(2006) 8 SCALE 551], this Court held :

> "This Court, times without number, has construed such exemption notifications in liberal manner. [See Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd., (2005) 13 SCC 789, [See Tata Iron & Steel Co. Ltd. v. State of Jharkhand and Others, (2005) 4 SCC 272, Government of India and Ors. v.

Indian Tobacco Association, (2005) 7 SCC 396, Commnr. Of Central Excise, Raipur v. Hira Cement, JT 2006 (2) SC 369. and P.R. Prabhakar v. Commnr. Of Income Tax, Coimbatore, 2006 (7) SCALE 191]. If, thus, the Appellant was entitled to the same, it should not be denied the benefits thereof. It is directed accordingly."

A question as to whether, in a given situation, an entrepreneur was entitled to the benefit under an exemption notification or not, thus, would depend upon the fact of each case. A bare perusal of the notification dated 6.2.1992 issued by the 1st respondent would show that the purport and object thereof was to grant benefit of a concessional power tariff which came into force on and from 1.1.1992. The phraseology used in the said notification postulates that the benefit was to be granted

in regard to the 'enhanced power tariff'. Thus, where the new units had started production between 1.1.1992 and 31.12.1992, such exemption was available to the entrepreneurs.

Evidently, except in a situation as might have been existing in Hitech Electrothermics (supra) that any application filed by the entrepreneur had not been processed within a reasonable time, in which case benefit might not be denied on equitable ground; in cases where there has been a substantial failure on the part of the industrial unit to obtain such benefit owing to acts of omission and commission on its part, in our opinion, no such benefit can be given.

The High Court has arrived at a finding of fact that the appellant herein had failed and/or neglected to comply with the terms and conditions of the scheme or contributed to a large extent in not being able to obtain such sanction within a reasonable time.

The appellant applied for grant of electrical connection on 9.11.1994. It, however, on its own showing did not receive any sanction till 17.11.1995. But even on that date the project was not complete. It was only at an advanced stage.

From the appellant's letter dated 24th June, 1996, as noticed supra, it would appear that it merely had been complaining of about non-grant of sanction, but then, evidently, it was not ready for commencing commercial production. Machineries were obtained by it only on 4.6.1996. How much time was taken for installation of machinery and completion of the project, is not known.

Sanction, evidently, had been allocated on 24.2.1997. It accepted the same without any demur. It had been making payments in terms of the new tariff. It filed the writ petition only in the year 2003, i.e., only after this Court rendered its decision in Hitech Electrothermics (supra) on 17th December, 2002.

The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this Court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief. {See Chairman, U.P. Jal Nigam & Anr. vs. Jaswant Singh & Anr. [2006 (12) SCALE 347].} We are, thus, of the opinion that the principle of promissory estoppel will apply where an entrepreneur has altered its position pursuant to a promise made by the State, but the application thereof would depend upon the facts and circumstances of each case. Having regard to the findings of fact arrived at by the High Court, we are of the opinion that it cannot be said to have committed any illegality in passing the impugned judgment.

So far as the case of M/s. A.P. Steel Re-Rolling Mill Ltd. is concerned, evidently the question involved therein was a disputed question of fact. Although, the High Court could have entertained a writ petition, as has been done in the case of M/s. Victory Papers and Boards India Ltd., but as M/s. A.P. Steel Re-Rolling Mill Ltd. withdrew its writ application, in our our opinion, no case has been made out for interference with the impugned judgment. As the appellant has still its remedies open,

it may avail the same.

For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.