**Decision Number:** 7943

**Decision Date:** 2065/03/08 B.S. (22/06/2008 A.D.)

**Final Decision:** Supreme Court of Nepal, Joint Bench

**Pre-Decisions:** N/A (Writ Petition filed directly at the Supreme Court)

**Petitioner:** Sudarshan Lal Shrestha (Authorized Director, Time Pharmaceuticals Pvt. Ltd.)

**Respondent:** Inland Revenue Office, Chitwan

**Key Words:** Legitimate Expectation, Value Added Tax (VAT), Tax Refund, Zero-Rated Goods, Certiorari, Mandamus

**Key Points:**

1. When a government body consistently provides a tax refund under a specific law over a long period, the taxpayer is entitled to believe that this practice is lawful and can reasonably expect it to continue. This falls under the Doctrine of Legitimate Expectation.
2. The state cannot interpret the same law differently at different times to suit its interests. It is not permissible to make one decision under a legal provision and later make a contradictory decision under the same unchanged law.
3. Unless a previous decision has been overturned by a competent authority or the underlying law has been amended, a public body is bound by its prior interpretation and practice.
4. It is improper for the state to adopt a double standard by providing a legal benefit for a long time and then suddenly denying it without any change in the law, especially if the new interpretation benefits the state and harms the taxpayer.

**Facts of the Case**

* The petitioner, Time Pharmaceuticals Pvt. Ltd., is a legally established pharmaceutical company registered for Value Added Tax (VAT).
* Under the provisions of the VAT Act, 2052 (Schedule 2, Clause 5) and the Economic Act, 2056, pharmaceuticals were treated as "zero-rated" goods, entitling the company to a refund of the VAT paid on raw materials and other inputs.
* From 2058/08/29 B.S. to 2062/07/28 B.S., the company repeatedly received VAT refunds from the Inland Revenue Office, totaling Rs. 34,53,845.74.
* When the company later applied for a refund of VAT paid on construction materials for a new factory building and on raw materials, the refund was delayed and ultimately denied.
* On 2063/02/01 B.S., the Inland Revenue Office, Chitwan, citing a letter from the Inland Revenue Department dated 2062/09/25 B.S., informed the petitioner that they were not entitled to a refund because they had not received specific approval for the zero-rated facility and had not issued zero-rated invoices.
* The petitioner filed a writ petition at the Supreme Court, arguing that this sudden reversal of a long-standing practice was illegal and violated their constitutional rights to property. They sought an order of Certiorari to quash the decision denying the refund and an order of Mandamus to compel the authorities to refund the outstanding amount of Rs. 29,14,231.

**Petitioner’s Arguments (Time Pharmaceuticals Pvt. Ltd.)**

* The company had been consistently receiving VAT refunds since 2058 B.S. under the same legal provisions, which established a legitimate expectation that this practice would continue.
* The tax authorities cannot suddenly, without any amendment to the law, decide that the company is no longer eligible for a refund they have lawfully provided for years.
* The denial of the refund is an arbitrary action, a violation of the principle of consistency, and infringes upon the company's constitutional right to property.
* The decision by the tax authorities to deny the refund should be quashed, and the outstanding VAT amount should be refunded immediately.

**Respondent’s Arguments (Inland Revenue Department)**

* The decision of the Director-General to deny the refund is akin to a tax assessment order and should have been challenged through an appeal at the Revenue Tribunal, not through a writ petition. The petitioner has bypassed an alternative legal remedy.
* Merely being registered for VAT does not automatically grant the zero-rated facility. A company must specifically request this facility.
* The petitioner never formally applied for or received a decision granting them the "zero-rated facility." Therefore, they cannot claim a right to a refund they were not officially entitled to. The previous refunds were made in error.
* Since the company never formally requested the facility, the petition to demand it is baseless and should be dismissed.

**Legal Issues**

1. Can a government authority, after consistently interpreting a law in a certain way and providing a benefit (tax refund) for several years, unilaterally reverse its position and deny that benefit without any change in the law?
2. Does the petitioner have a "legitimate expectation" to continue receiving the VAT refund based on the past, consistent actions of the tax authorities?
3. Is the decision of the Inland Revenue Department to deny the VAT refund arbitrary and a violation of the principle of legal certainty?

**Judgment**

* The Supreme Court noted that it was undisputed that the petitioner had received substantial VAT refunds on multiple occasions over a period of approximately four years under the same legal framework.
* The Court invoked the Doctrine of Legitimate Expectation, citing a previous case (NKP 2062, Vol. 7, DN 7567, p. 844). It held that when an authority's consistent actions lead an individual to believe a certain state of affairs exists, the authority cannot suddenly act contrary to that belief without due cause.
* The petitioner's belief that the refunds were lawful and their expectation that future refunds would be processed were entirely reasonable given the long-standing practice of the tax authorities.
* The Court stated that the law does not permit a state body to make one decision and then later, under the exact same law, make a completely opposite decision. This "double standard" is improper and undermines legal certainty.
* The state cannot interpret a law to its own advantage and to the detriment of the taxpayer without a formal amendment to the law itself. The sudden denial of a refund that had been consistently given constitutes an arbitrary and unfair action.
* The Court found the decision of the Inland Revenue Department dated 2062/09/21 (and subsequent letters) to be illegal and arbitrary.
* Therefore, the Supreme Court issued an order of **Certiorari**, quashing the decision of the Inland Revenue Department to deny the tax refund.
* Furthermore, the Court issued an order of **Mandamus**, directing the respondents to provide the petitioner with the outstanding VAT refund amount they are legally entitled to.

**Significance**

* This landmark decision solidifies the **Doctrine of Legitimate Expectation** within Nepali administrative law, protecting citizens and entities from arbitrary reversals of long-standing government practices.
* It reinforces the principle that government bodies must act with consistency and cannot apply double standards in their interpretation of the law.
* The ruling holds that state authorities are bound by their own precedents and interpretations, especially when they create rights or benefits for individuals, unless the underlying law is changed or a prior decision is formally overturned by a higher authority.

**Source**

1. Value Added Tax Act, 2052 B.S.
2. NKP, 2065, Time Pharmaceuticals Pvt. Ltd. v. Inland Revenue Office, Chitwan (Decision No. 7943, Decided on 2065/03/08 B.S.); https://nkp.gov.np/full\_detail/2235