

GAHC010013442013



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/7017/2013**

**STAR CEMENT LIMITED**

A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES ACT, 1956 WHOSE PRINCIPAL PLACE OF LOCATION IS WITHIN THE STATE OF ASSAM AND HAVING ITS MARKETING OFFICE SITUATED AT MAYUR GARDEN, 2ND FLOOR, OPP. RAJIV BHAWAN G.S. ROAD, GHY-5, ASSAM AND HAVING ITS FACTORY SITUATED AT GOPINATH BORDOLOI ROAD, VILL. CHAMTAPATHAR, SONAPUR, DIST- KAMRUP, ASSAM, REPRESENTED BY SRI NIRMAL KUMAR AGARWAL, THE AGM ACCOUNTS AND FINANCE OF THE PETITIONER COMPANY AND R/O TARUN NAGAR, BYE LANE NO.6, GHY-5

**VERSUS**

**THE UNION OF INDIA and 4 ORS**

REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF COMMERCE and INDUSTRY, DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI

**2:THE DY. SECRETARY**

DEPARTMENT OF INDUSTRIES AND COMMERCE  
DISPUR  
GHY-6

**3:THE STATE OF ASSAM**

REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF INDUSTRIES AND COMMERCE  
DISPUR  
GHY-6

**4:THE CHAIRMAN**

NORTH EASTERN DEVELOPMENT FINANCE CORPORATION LTD. NEDFI

HOUSE  
G.S. ROAD  
DISPUR  
GHY-6  
ASSAM

5:GENERAL MANAGER  
DISTRICT INDUSTRIES AND COMMERCE CENTRE  
BAMUNIMAIDAN  
KAMRUP  
GHY. ASSA

**BEFORE**  
**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

For the petitioner : Dr. A. Saraf ...Sr. Advocate  
For the respondents : Mr. R.K.D. Choudhury .... Dy. SGI.  
Date of hearing : 06.06.2024  
Date of Judgment : 28.06.2024

**JUDGMENT AND ORDER (CAV)**

- 1.** Heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. P. K. Bora, learned counsel for the petitioner. Also heard Mr. R.K.D. Choudhury, learned Dy. SGI for the respondents.
  
- 2.** The petitioner is a cement manufacturing company and prays that the petitioner should be given transport subsidy for transportation of Fly Ash under the Transport Subsidy Scheme, 1971 read with North East Industrial and Investment Promotion Policy (NEIIPP), 2007. Further, the Freight Subsidy Scheme, 2013 which was introduced, vide Notification dated 22.01.2013 should

be declared inoperative against the petitioner, as the subsidy given for fly ash was done away with in the Freight Subsidy Scheme, 2013. The petitioner's case is that with a view to promote industries in the North Eastern region of India, unveiled the North East Industrial and Investment Promotion Policy, hereinafter referred to as the NEIIPP, 2007, which was to be effective from 01.04.2007 for 10 years. The Transport Subsidy Scheme, 1971 ended on 22.01.2013, while the petitioner commenced commercial production of cement from 31.01.2013.

**3.** The petitioner's case is that keeping in view the Transport Subsidy Scheme, 1971 and the NEIIPP, 2007, the petitioner established his cement manufacturing company with an eye to avail the benefits of various subsidies, one of them being transport subsidy given for transporting Fly Ash. In terms of Clause (ii) "Duration" of the Office Memorandum No. 10(3)/2007-DBA-II/NER dated 01.04.2007 issued by the Government of India, Ministry of Commerce and Industry Department of Industrial Policy and Promotion, i.e. NEIIPP, 2007, "All new units as well as existing units which go in for substantial expansion, unless otherwise specified and which commence commercial production within the 10 year period from the date of notification of NEIIPP, 2007 will be eligible for incentives for a period of ten years from the date of commencement of commercial production". Clause (xiv) of the OM dated 01.04.2007 pertains to Transport Subsidy Scheme and states that "the Transport Subsidy Scheme would continue beyond 31.03.2007, on the same terms and conditions. However, an early evaluation of the scheme will be carried out with a view to introducing necessary safeguards to prevent possible leakages and misuse".

**4.** The petitioner's cement manufacturing unit located at Chamta Pathar,

Sonapur, Kamrup District, Assam was ready to start production in the 3<sup>rd</sup> quarter of the year 2012, but the commercial production was delayed on account of electricity issues with the Assam Power Distribution Company Limited (APDCL). Though the petitioner had finished the entire infrastructure for the cement manufacturing unit and was ready to start commercial production in the year 2012, commercial production of cement could only commence from 31.01.2013, i.e. 9 days after the validity of the Transport Subsidy Scheme, 1971 expired.

**5.** The Freight Subsidy Scheme, 2013 which replaced the earlier Transport Subsidy Scheme, 1971 came into effect from 22.01.2013 when it was published in the Official Gazette. In the new Freight Subsidy Scheme, 2013, Fly Ash, for which subsidy was earlier payable under the Transport Subsidy Scheme, 1971, was now included in the negative list. Accordingly, no transport subsidy could be given for Fly Ash in terms of the Freight Subsidy Scheme, 2013, which came into effect from 22.01.2013.

**6.** The petitioner's counsel submits that all the resources of the petitioner had been used for establishing the cement manufacturing unit, to avail various Central/State subsidies for establishing industries in the North East Region, with one eye being trained on the transportation subsidy to be given for Fly Ash under the Transport Subsidy Scheme, 1971. He submits that in terms of Clause (ii) of the O.M. dated 01.04.2007, a new unit which commences commercial production within 10 years from the date of Notification of the NEIIPP, 2007 would be eligible for incentives for a period of 10 years from the commencement of commercial production. The petitioner commenced

commercial production of cement from 31.01.2013, i.e., in compliance with Clause (ii) of the O.M. dated 01.04.2007, to avail of the incentives provided under the NEIIPP 2007. However, in view of the Freight Subsidy Scheme, 2013 which was introduced on 22.01.2013, i.e., just 9 days prior to commercial production of cement by the petitioner company, the petitioner has been deprived of the transport subsidy for Fly Ash. The delay in production being due to the fault of the APDCL in not providing the required electricity to commence production, the petitioner should not be deprived of the benefits that were to be given to the petitioner and for which the petitioner had established the cement manufacturing unit.

**7.** The learned Senior Counsel submits that though framing of a scheme is a Policy decision, the change of Policy cannot take away the vested right of the petitioner, that was already there in NEIIPP 2007. The promise made to the petitioner in terms of the Transport Subsidy Scheme, 1971 was also reiterated in the NEIIPP 2007. As such, when the NEIIPP 2007 had provided that the Transport Subsidy Scheme benefits would be available for a period of 10 years from 2007 to 2017, the petitioner could not be deprived of the benefit of the Transport Subsidy Scheme due to the new Freight Subsidy Scheme, 2013. He accordingly submits that the petitioner should be given the benefit of the Transport Subsidy Scheme, 1971 in respect of transportation of Fly Ash.

**8.** Mr. R.K.D. Choudhury, learned Dy. SGI for all the respondents submits that the petitioner does not have any right to be given transportation subsidy on Fly Ash, inasmuch as, the subsidy which was given under the Transport Subsidy Scheme, 1971 had been replaced 32 years later by the Freight Subsidy Scheme,

2013, which came into force on 22.01.2023. He submits that the NEIIPP 2007 was to provide transportation subsidy on fly ash, from the date of commercial production of cement in the manufacturing unit. The benefit of transport subsidy does not come into play prior to the date of manufacturing cement.

**9.** Mr. R.K.D. Choudhury also submits that the petitioner having commenced production of cement only on 31.01.2013, i.e., after the new Freight Subsidy Scheme, 2013 came into force, wherein Fly Ash was not included for the purpose of granting transportation subsidy, the petitioner cannot be given any transportation subsidy in violation of the existing Policy. He also submits that the decision to place Fly Ash in the negative list of the Freight Subsidy Scheme, 2013 had been taken after careful thought and consideration by the Central Government, which is neither arbitrary nor irrational. He submits that the erstwhile Transport Subsidy Scheme, 1971 was last extended beyond 31.03.2007 with the approval of the Cabinet Committee on Economic Affairs (CCEA) and while approving it's extension, CCEA had directed that an early evaluation of the Scheme would be carried out. He submits that that the total amount of transportation cost eligible for transport subsidy for any raw material/ finished product was subject to a maximum of 50% of the value of that particular raw material/ finished product, which was not agreed to by the beneficiary States. So it was proposed to disallow subsidy on transportation of fly ash from outside the North Eastern Region (NER), as this material was of 'low value', but of high volume. Transportation of such huge bulky material from outside NER over long distances needed to be discouraged in order to promote more efficient business models necessary for self-sustenance of the industrial units. He also submits that the Freight Subsidy Scheme, 2013 has been

terminated, as it was to automatically terminate after 5 years from the date of its publication in the Official Gazette, in terms of Clause (iv) of the said scheme. He also submits that the OM dated 01.04.2007, pertaining to the NEIIPP, 2007, has to be read as a whole. He submits that the same does not hold out a promise, but provides that subsidy can be availed of, on certain conditions being met. However, the petitioner not having met those conditions, the subsidy on Fly Ash transportation could not be availed of by the petitioner. Further, Paragraph 3 of the OM dated 01.04.2007 provides that the Government reserves the right to modify any part of the NEIIPP, 2007 in public interest. As the Policy regarding grant of subsidy for Fly Ash has been modified, the petitioner has no right to claim as a matter of right the subsidy given earlier and which has been stopped. The learned Dy. SGI submits that the benefits given under the Transport Subsidy Scheme and the NEIIPP, 2007 is only to promote the growth of industries and employment and not meant to provide higher profit. He submits that if this petition is allowed, a flood gate of similar petitions may be filed, where persons might claim that the commencement of commercial production started even 4 to 5 years after the withdrawal of the Transport Subsidy Scheme, 1971.

**10.** Mr. A. Kalita, learned counsel appearing for the State Government submits that the petitioner unit had been registered in the District Industries & Commerce Centre, Kamrup under the Transport Subsidy Scheme and was allotted registration No. DICC/K(III)TS/363/2011-12/6352-53 dated 31.03.2012, which states "proposed" for the first question, i.e. "Date of Commencement of Commercial Production Original as well as after Expansion". This is reflected in the letter dated 31.03.2012 issued by the General Manager, District Industries & Commerce Centre, Kamrup. He also submits that even if the Transport Subsidy

Scheme, 1971 and NEIIPP, 2007 is considered to be a promise, the said promise is subject to fulfillment of certain conditions, i.e., the petitioner should commence commercial production during the validity of the scheme, which has not been met.

**11.** I have heard the learned counsels for the parties.

**12.** The issue to be decided is as to whether the petitioner can avail the benefits provided under the Transport Subsidy Scheme, 1971 for transportation of fly ash when the Transport Subsidy Scheme, 1971 came to an end on 22.01.2013, while the petitioner's manufacturing unit started production of cement from 31.01.2013 only.

**13.** The petitioner had filed the writ petition as "Cement Manufacturing Company Limited" and the name of the petitioner has now changed to "Star Cement Limited", on the basis of the "Certificate of Incorporation Pursuant to Change of Name" in terms of Rule 29 of the Companies (Incorporation) Rules, 2014. The letter No. DICC/K(III)TS/363/2011-12/6352-53 dated 31.03.2012 issued by the General Manager, District Industries & Commerce Centre, Kamrup, Guwahati-21 shows that M/s Cement Manufacturing Company Limited (Guwahati Grinding Unit), Vill- Chamata Pathar, P.O. & P.S. Sonapur had been registered under 50%, 75% and 90% Transport Subsidy Scheme.

**14.** The letter dated 31.03.2012 issued by the General Manager, District Industries & Commerce Centre, Kamrup, Guwahati-21 is reproduced below as

follows:-

“To,

*M/s Cement Manufacturing Company Limited  
(Guwahati Grinding Unit)  
Vill-Chamata Pathar, P.O. & P.S. Sonapur*

*Sub: Registration under 50%, 75% & 90% Transport Subsidy Scheme.*

*Sir,*

*I am to inform you that your unit has been registered in the District Industries & Commerce Centre, Kamrup under the above mentioned scheme and allotted the Registration No. DICC/K-TS/11-12/622 dtd. 31/03/2012.*

*This registration no. may please be quoted in all correspondence in connection with your claim under the scheme 50%, 75% & 90% Transport Subsidy.*

*The following particulars may be noted for your future guidance.*

*1. Date of Commencement of Commercial*

*Production Original as well as after*

*Expansion :Proposed*

*2. Item of Product :(1)Cement(OPC, PPC, PSC)*

*3. Capacity :16,00,000 MT (As per IEM)*

*4. Fixed Investment*

*a. Land : Rs.2490.00 Lacs*

*b. Building : Rs.6268.00 Lacs*

*c. Plant & Machinery : Rs.15,718.00 Lacs*

5. IEM No. : 949/SIA/IMO/2008  
Dt. 31/03/2008

6. Employment Position : Proposed

Sd/-"

**15.** In the case of ***Express Newspaper Private Limited vs. Union of India***, reported in **(1986) 1 SCC 133**, the Supreme Court has held in para 183, that the principle of estoppel does not operate on the level of Government policy. Para 183 of the said judgment is reproduced below as follows:-

*“183. It is not necessary for purposes of this judgment to resolve the apparent conflict between the decision of Bhagwati, J. in Motilal Padampat Sugar Mills case [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] as to the applicability of the doctrine of estoppel for preventing the Government from discharging its functions under the law. In public law, the most obvious limitation and doctrine of estoppel is that it cannot be evoked so as to give an overriding power which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. Another limitation is that the principle of estoppel does not operate at the level of Government policy. Estoppels have however been allowed to operate against public authority in minor matters of formality where no question of ultra vires arises: Wade: Administrative Law, fifth edition, pp. 233-34.”*

**16.** In the case of ***Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P.***, reported in **(1979) 2 SCC 409**, the Supreme Court has held that if on

the basis of a promise made by a Government, an entity changes its legal position to its detriment, the State cannot be permitted to rescind from the said promise. The Supreme Court further held that whether a Government makes a promise knowing or intending that it would be acted upon by the promisee and the promisee alters his position by acting upon the promise, the Government will be bound by the promise. The promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required under Article 299 of the Constitution. However, as the doctrine of promissory estoppel is an equitable doctrine, it must yield when equity so requires. If it can be shown by the Government that it would be inequitable to hold the Government to the promise made by it, the Court will not raise an equity in favour of the promisee and enforce the promise against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability. The Government would have to show what precisely is the changed policy and also its reason and justification, so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, the over-riding public interest requires that the Government should not be held bound by the promise, but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The burden would lie upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise.

**17.** In the case of ***Hero Motocorp Limited vs. Union of India and Others***, reported in **(2023) 1 SCC 386**, the Supreme Court has held that when an exemption granted earlier is withdrawn by a subsequent notification based on a change in policy, even in such cases, the doctrine of promissory estoppel cannot be invoked. Where the change of policy is in the public interest, the State cannot be prevented from withdrawing an incentive which it had granted through an earlier notification. Paragraph 70 to 72 of the said judgment is as follows :

*“70. It is further to be noted that this Court has also consistently held that when an exemption granted earlier is withdrawn by a subsequent notification based on a change in policy, even in such cases, the doctrine of promissory estoppel could not be invoked. It has been consistently held that where the change of policy is in the larger public interest, the State cannot be prevented from withdrawing an incentive which it had granted through an earlier notification. Reliance in this respect could be placed on the judgments of this Court in the cases of Kasinka Trading and another vs. Union of India and Another, Shrijee Sales Corpn. vs. Union of India, State of Rajasthan vs. Mahaveer Oil Industries, Shree Sidhbali Steels Ltd. vs. State of U.P., and Director General of Foreign Trade vs. Kanak Exports.*

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

*“26. It could thus be seen that, it is more than well settled that the*

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

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

**18.** In the case of ***Union of India & Others vs. Unicorn Industries*** reported in **(2019) 10 SCC 575**, the Supreme Court has held at paragraph-15 as follows :

*"15. It could thus be seen that, this Court has clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to see all aspects including the objective to be achieved and the public good at large. It has been held that while considering the*

*applicability of the doctrine, the courts have to do equity and the fundamental principle of equity must forever be present in the mind of the Court while considering the applicability of the doctrine. It has been held that the doctrine of promissory estoppel must yield when the equity so demands and when it can be shown having regard to the facts and circumstances of the case, that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. After considering the earlier judgments on the issue, which have been heavily relied upon by the assesses, this Court has observed thus:*

*"21. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an*

*exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner." (emphasis supplied)*

**19.** In the case of ***State of Jharkhand vs. TATA Cummin Ltd.***, reported in **(2006) 4 SCC 57**, the Supreme Court has held that when an assessee is promised with a tax exemption for setting up an industry in a backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the Industrial Policy. In such a case, the exemption notification has to be read liberally keeping in mind the objects envisaged by the Industrial Policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute.

**20.** In the case of ***State of Bihar vs. Suprabhatt Steel Ltd.***, reported in **(1999) 1 SCC 31**, the Supreme Court has held that issuance of notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. Thus, any notification issued by the Government, if found to be repugnant to the Industrial Policy, then the said notification might be held to be bad to that extent.

**21.** In the case of ***State of Jharkhand vs. Brahmaputra Metallic Ltd.***, reported in **(2003) 6 SCC 634**, the Supreme Court has held that under Indian Law, there is often a conflation between the doctrines of promissory estoppel

and legitimate expectation.

**22.** In the case of ***Monnet Ispat & Energy Ltd. Vs. Union of India, (2012) 11 SCC 1***, the Supreme Court highlighted the different consideration that underlined the doctrine of promissory estoppel and legitimate expectation. It was held that for the application of doctrine of promissory estoppel, there has to be a promise, based on which the promisee has acted to its prejudice. In contrast while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the state action.

**23.** In the case of ***Union of India vs. P. K. Choudhary, (2016) 4 SCC 236***, the Supreme Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

**24.** In the case of ***Union of India and others vs. Unicorn Industries***, reported in **(2019) 10 SCC 575**, the Supreme Court held that the doctrine of promissory estoppel must yield when the equity so demands and when it can be shown, having regard to the fact and circumstances of the case, that it would be inequitable to hold a Government or the public authority to its promise, assurance or representation. It further held that withdrawal of exemption in public interest is a matter of policy and the Courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the public interest. It further held that where the Government acts in public interest and neither any fraud or lack of bona-fides is alleged much less established, it

would not be appropriate for the Court to interfere with the same. It thus held that the public interest must override any consideration of private loss or gain when the withdrawal of exemption is in public interest. It held in para 26 as follows:-

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

**25.** In the case of ***Shrijee Sales Corporation vs. Union of India***, reported in **(1997) 3 SCC 399**, the Supreme Court was to decide whether an exemption could be withdrawn prior to the valid period of the notification. In this regard, the Supreme Court held that it could be done, once the public interest is accepted as the superior equity. It held in para 7 as follows:-

*“The next question is whether the fact that the Notification No.66 mentioned the period during which it was to remain in force, would make any difference to the situation. In other words, could it be said that an exemption notified without specifying the period within which the exemption would remain in force, would be withdrawn in public interest*

*but not the one in which a period has been so specified? Once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been indicated. The Government is competent to rescile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation which cannot be rectified. To adopt the line of reasoning in Emmanuel Ayodeji Ajayi v. Briscoe (1964) 3 All.E.R, 556 quoted in M.P. Sugar Mills (supra) even where there is no such overriding public interest, it may still be within the competence of the Government to rescile from the promise on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position provided, of course, it is possible for the promisee to restore the status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable."*

However, in the present case, the period of validity of the Transport Subsidy Scheme, 1971 has not been specified. Though Clause 1(xiv) of the O.M. dated 01.04.2007 provides that the Transport Subsidy Scheme would continue beyond 31.03.2007 and that an early evaluation of the scheme would be carried out with a view to introducing necessary safeguards to prevent possible leakages and misuse, Clause 3 of the said O.M. states that the government reserves the right to modify any part of the policy in public interest, i.e., the NEIIPP, 2007.

**26.** In the case of ***Sidhbali Steels Limited vs. State of U.P.***, reported in

**(2011) 3 SCC 193**, the Supreme Court held that where public interest warrants, the principles of promissory estoppel cannot be involved. The Government can change the policy in public interest.

**27.** In the case of **DGFT vs. Kanak Exports** reported in **(2016) 2 SCC 226**, the Supreme Court, while considering the challenge for withdrawal of incentives to the exporters of some specified items, held that the incentives scheme in question was in the nature of concession or incentive which was a privilege of the Central Government. It was for the Government to take a decision to grant such a privilege or not. Grant of exemption concession or incentive and modification thereof are the matters in the domain of policy decisions of the Government. It further reiterated that when the withdrawal of such incentives was shown to have been done in public interest, the Courts would not tinker with the policy decisions. Para 105 and 109 of the judgment is reproduced hereinbelow as follows:-

*“105. We may state, at the outset, that the incentive scheme in question, as promulgated by the Government, is in the nature of concession or incentive which is a privilege of the Central Government. It is for the Government to take the decision to grant such a privilege or not. It is also trite law that such exemptions, concessions or incentives can be withdrawn any time. All these are matters which are in the domain of policy decisions of the Government. When there is withdrawal of such incentive and it is also shown that the same was done in public interest, the Court would not tinker with these policy decisions. This is so laid down in a catena of judgments of this Court and is now treated as established and well-grounded principle of law. In such circumstances, even the doctrine of promissory estoppel cannot be ignored.*

**109.** Therefore, it cannot be denied that the Government has a right to

*amend, modify or even rescind a particular scheme. It is well settled that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call trial and error method and therefore, its validity cannot be tested on any rigid prior considerations or on the application of any straitjacket formula. In Balco Employees' Union v. Union of India [Balco Employees' Union v. Union of India, (2002) 2 SCC 333] , the Supreme Court held that laws, including executive action relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrine or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems greater latitude require to be allowed to the legislature. The question, however, is as to whether it can be done retrospectively, thereby taking away some right that had accrued in favour of another person?"*

**28.** The Transport Subsidy Scheme, 1971 came into effect from 15.07.1971 to grant subsidy on transport of raw materials and finished goods to and from certain selected areas with a view to promote growth of industries. Clause 3 of the Transport Subsidy Scheme, 1971 provides that the said scheme shall be for a period of 5 years from the date of commencement of commercial production.

**29.** The NEIIPP, 2007 is with regard to the Government of India, Ministry of Commerce and Industries Department approving a package of fiscal incentives and other concessions for the North East region, namely the NEIIPP, 2007 w.e.f. 01.04.2007. The O.M. dated 01.04.2007 (NEIIPP, 2007) states that the duration of the policy will be for 10 years and all new units as well as existing units which are going for substantial expansion, unless otherwise specified and which commenced commercial production within 10 years period from the date of the

notification of NEIIPP, 2007 will be eligible for incentives for a period of 10 years from the date of commencement of commercial production.

**30.** Clause 1(xiv) of the O.M. dated 01.04.2007 states that the Transport Subsidy Scheme would continue beyond 31.03.2007, on the same terms and conditions. However, an early evaluation of the scheme will be carried out with a view to introducing necessary safeguards to prevent possible leakages and misuse. Clause 3 of the O.M. dated 01.04.2007 (NEIIPP, 2007) provides that the government reserves the right to modify any part of the policy in public interest.

**31.** The Transport Subsidy Scheme, 1971 was last extended beyond 31.03.2007 with the approval of the Cabinet Committee on Economic Affairs (CCEA) and while approving it's extension, the CCEA had directed that an early evaluation of the scheme would be carried out. After evaluation of the scheme, the Transport Subsidy Scheme, 1971 was replaced by the Freight Subsidy Scheme, 2013 w.e.f. 22.01.2013. As per the Freight Subsidy Scheme, fly ash was placed in the negative list. However, the petitioner was still eligible for transport subsidy like clinker and allied materials.

**32.** As can be seen from the various judgments of the Supreme Court, a promise would be enforceable against the government at the instance of the promisee, if an entity changes it's legal position to it's detriment. In that case, the government cannot be permitted to resile from it's promise. However, as held by the Supreme Court in ***Express Newspaper Private Limited (supra)***, the principle of estoppel does not operate at the level of government policy. In

**Unicorn Industries (supra)** the Supreme Court had further held that withdrawal of an exemption in public interest was a matter of policy and the Courts could not bind the government to its policy decision for all times to come, irrespective of the satisfaction of the government that a change in policy was necessary in the public interest. In the present case, the Transport Subsidy Scheme had been withdrawn after having a relook at the same by the government and in terms of Clause 3 of the O.M. dated 01.04.2007, the government had reserved the right to modify the NEIIPP, 2007 in public interest. As can be seen from the judgments of the Supreme Court in **Shrijee Sales Corporation (supra)** and **Kanak Exports (supra)**, an exemption or incentives given by the government can be withdrawn, as it is a privilege of the government. Further, the principle of promissory estoppel cannot be invoked as the withdrawal of the Subsidy on fly ash has been done in public interest, which is a matter of policy. In the present case, the promise of Transport Subsidy in respect of fly ash was to be given only on the condition that commercial production of the cement commenced during the validity of the Transport Subsidy Scheme. It is not a case of all subsidies being withdrawn by the Government, as it is only the subsidy given on fly ash being withdrawn, in terms of the Freight Subsidy Scheme, 2013.

**33.** In the present case, the petitioner had registered itself for grant of subsidy of fly ash under the Transport Subsidy Scheme on 31.03.2012., i.e., one month prior to the commencement of cement production and 22 days prior to the coming of the new Freight Subsidy Scheme, 2013, which replaced the Transport Subsidy Scheme, 1971. The benefits given under the policy for establishment of industries under the North East was to continue for 10 years in terms of the

O.M. dated 01.04.2007 (NEIIPP, 2007). The O.M. dated 01.04.2007 provides that the NEIIPP, 2007 would be valid for 10 years and Clause 1(iv) of the O.M. dated 01.04.2007 provided that the Transport Subsidy Scheme would continue beyond 31.07.2007, with an early evaluation of the same to introduce necessary safeguards against possible leakages and misuse. The O.M. also provided that the government had reserved the right to modify any part of the policy in public interest. Clause 3 of the Transport Subsidy Scheme, 1971 and the Duration Clause (ii) of the O.M. dated 01.04.2007 provided that the Transport Subsidy on fly ash could only be made applicable from the date of "commencement of commercial production".

**34.** As stated earlier, the Transport Subsidy Scheme, 1971 was replaced by the Freight Subsidy Scheme, 2013, wherein fly ash was put in the negative list. Though the petitioner had apparently registered for transport subsidy prior to the withdrawal of the subsidy given to fly ash, the same did not give any right to the petitioner to avail of the subsidy, as he did not commence commercial production of cement during the validity of the Transport Subsidy Scheme, 1971. Further, the petitioner was aware that the benefit of subsidy would be available only after commercial production of cement commenced. It may also be reiterated that in terms of Clause 3 of the O.M. dated 01.04.2007, the government had reserved the right to modify the NEIIPP, 2007. As such, this Court is of the view that the doctrine of promissory estoppel does not get attracted to this case.

**35.** The close proximity between the date of production of cement and the closure of the Transport Subsidy Scheme, 1971, read with the registration of the

petitioner with the authorities for availing the Transport Subsidy Scheme gives rise to an assumption that the petitioner cannot be left high and dry when a promise of giving subsidy had been made by the respondents. However, the promise was to take effect from the date of commercial production of cement. Though the petitioner may have acted on the promise held out by the respondents that subsidy would be given on transportation of fly ash, the fact remains that the promise was conditional, i.e., from the date of the commercial production of cement started. Allowing the writ petition on the ground that registration for a subsidy attracts the doctrine of promissory estoppel, notwithstanding the government reservation of it's right to change a Policy at any time, may also give rise to a piquant situation, in the event of someone claiming a subsidy on the ground that commercial production started 3 or 4 years after the subsidy is withdrawn.

**36.** In view of the reasons stated above and as the date of commencement of commercial production of cement by the petitioner was subsequent to the date of withdrawal of the Transport Subsidy Scheme, 1971, this Court does not find any ground to exercise it's discretion in this case.

**37.** The writ petition is accordingly dismissed.

**JUDGE**

Comparing Assistant