GAHC010025162015

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

Case No. : WP(C)/6909/2015

M/S TOPCEM INDIA
HAVING ITS PRINCIPAL PLACE OF BUSINESS AT LOHIA HOUSE M.G. ROAD, FANCY BAZAR, GHY., DIST. KAMRUP, 781001 ASSAM AND HAVING ITS INDUSTRIAL UNIT AT GAURIPUR NEAR AMINGAON, DIST. KAMRUP, ASSAM AND IS REP. BY ITS DULY AUTHORIZED PARTNER SRI AMIT AGARWAL, S/O. RAMAWTAR AGARWALLA, R/O. KUMARPARA, GHY. IN THE DIST. KAMRUP, ASSAM.

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI.

Advocate for the Appellant : Mr. G. N. Sahewalla, Sr. Advocate

Mr. H. K. Sarma, Advocate

Advocate for the respondents : Mr. M. R. Adhikari, CGC
Mr. A. Kalita, SC
Industries & Commerce

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 30.04.2024

Date of Judgment : 19.06.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. G. N. Sahewalla, the learned senior counsel assisted by Mr. H. K. Sarma, the learned counsel for the petitioner. Also heard Mr. M. R. Adhikari, the learned counsel appearing on behalf of the Union of India and Mr. A. Kalita, the learned Standing Counsel appearing on behalf of the Industries Department of the Government of India.

2. The petitioner being aggrieved by the action on the part of the respondent authorities in reducing the entitlement on account of Central Capital Investment Subsidy Scheme, 2007 (for short, 'CCISS, 2007') has preferred the instant writ petition seeking a direction upon the respondents to cancel, recall and/or otherwise forbear from giving effect to the letter No.9(2)/2012-DBA-II/NER dated 25.02.2013 and the revised operation guidelines bearing No.10(3)/2011-DBA-II/NER(PT-II) dated 07.05.2013 to the extent of specifying eligible and non-eligible components for the purpose of CCISS 2007 in respect to the plant and machinery so far claims for Central Capital Investment Subsidy are submitted prior to the issuance of those communications and also seeking a writ in the nature of mandamus directing the respondent authorities to grant the petitioner Central Capital Investment Subsidy at the rate of 30% of the petitioners total investment in plant and machinery in the cement plant as per the guidelines of 2007 etc.

3. The North East Industrial Policy (NEIP), 1997 was announced on 24.12.1997 covering the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura which was valid for a period of 10 years from the date of commercial products by the eligible units. Subsequent thereto, in the year 2007, the Government of India, Ministry of Commerce and Industry in the Department of Industrial Policy and Promotion had approved the package of fiscal incentive and concession for the North Eastern Region, namely, the North East Industrial and Investment Promotion Policy (NEIIPP), 2007 w.e.f. 01.04.2007. For the sake of convenience, the said policy of the year 2007 is hereinafter is referred to as the 'Industrial Policy, 2007'. In terms with the said Industrial Policy, 2007 all new units as well as existing units which go for substantial expansion, unless otherwise specified and which commence commercial production within the 10 years period from the date of the Notification of the Industrial Policy, 2007 would be eligible for incentive for a period of 10 years from the date of

commencement of commercial production.

4. In terms with the said Industrial Policy, 2007, various incentives in the form of exemptions and subsidies were being provided to those eligible units. Amongst the various incentives, one such incentive was the Central Capital Investment Subsidy. In the said Industrial Policy, 2007 itself and more particularly at Clause (VII), it was mentioned that the Capital investment Subsidy would be enhanced from 15% of the investment in **plant and machinery** to 30% and the limit for automatic approval of subsidy at the said rate would be Rs.1.5 crore per unit, as against Rs.30 lakhs as was available under the NEIP, 1997. In the said Industrial Policy, 2007, it was mentioned that such subsidy shall be availabe to units in the private sector, joint sector, cooperative sector as well as the units set up by the State Governments of the North Eastern Region. However, for grant of Capital Investment Subsidy higher than Rs.1.5 crore but upto a maximum of Rs.30 crores, there will be an Empowered Committee under the Chairmanship of the Secretary, Department of Industrial Policy & Promotion with Secretaries of Department of Development of North Eastern Region (DONER), Expenditure, Representative of Planning Commission and Secretary of the concerned Ministries of the Government of India dealing with the subject matter of that industry as its members as also the concerned Chief Secretary/Secretary (Industry) of the North Eastern State where the claiming unit is to be located. However, in respect to proposals which are eligible for subsidy higher than Rs.30 crore, the same would be placed by the Department of Industrial Policy and Promotion before the Union Cabinet for its consideration and approval. In terms with the said Industrial Policy, 2007, the North East Industrial Development Finance Corporation (NEDFi) would continue to act as the nodal agency for disbursal of subsidies under the Industrial Policy, 2007. In Clause (XV) of the Industrial Policy, 2007, the Government reserved the power to modify any part of the policy in public interest. This aspect of the matter is very relevant in as much as the Industrial Policy, 2007 is a result f the consultive decision of the Government and it is only the Government who reserved the power to change/modify the power. It was also mentioned in Clause (XV) that all concerned Ministries/Departments of the Government of India were requested to amend their respective Acts/rules/notifications etc. and issue necessary instructions for giving effect to the said decisions contained in the Industrial Policy document.

5. On the basis of the said Industrial policy, 2007, the Ministry of Commerce & Industry (Department of Industrial Policy & Promotion) published a Notification on 27.07.2007 thereby to give effect to the Scheme of Capital Investment Subsidy for industrial units in the North East Region comprising of the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura with a view to accelerating the industrial development in the North Eastern Region. Clause 5 of the said Notification stipulated the **Extent of Admissible Subsidy**. In terms with the said Clause 5, all eligible industrial units located anywhere in the North Eastern Region would be given capital investment subsidy at the rate of 30% of their investment in Plant and Machinery or additional investment in Plant and Machinery. The remaining portion of the said Clause 5 is pari-materia to Clause (VII) of the Industrial Policy which has been dealt with hereinabove and as such not being repeated again.

6. Clause 6 of the said Notification is of importance taking into account the issue involved. The said Clause 6 deals with plant and machinery (for manufacturing sector). Taking into account its importance, the same is reproduced herein below:-

> "*6. Plant and Machinery (for manufacturing sector)*
>
> *(i) In calculating the value of plant and machinery, the cost of industrial plant and machinery as erected at site will be taken into account which will include the cost of productive equipments, such as tools, jigs, dies & moulds, insurance premium etc.*
>
> *(ii) The amount invested in goods carriers to the extent they are actually utilized for transport of raw materials and marketing of the finished products, will be taken into account.*
>
> *(iii) Working capital including raw materials and other consumables stores, will be excluded for computing the value of plant and machinery."*

7. At this stage, this Court also finds it relevant to take note of Clause 6 (a) of the said Notification in as much as it stipulated that Definition of 'plant and machinery' and

'components' which shall be taken into for the purpose of the Scheme in respect of Service Sector, Bio-technology industry and power generating industries would be separately notified. The importance of this Clause 6 (a) would be seen at a later stage of this judgment.

8. Clause 7 of the said Notification stipulated designated agency for disbursement of subsidy. Clauses 8 & 9 related to the procedure for claiming and the procedure for disbursement of Capital Investment Subsidy respectively. There is a Negative List mentioned in the said Notification which is Annexure-I thereby goods falling under Chapter 24 of the First Schedule; Pan Masala as covered under Chapter 21 of the First Schedule; Plastic carry bags of less than 20 microns as specified by Ministry of Environment and Forests and Goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 were put in the Negative List.

9. Subsequent thereto, on 21st of September, 2007, a Notification was issued thereby notifying the addenda to the Government of India Notification dated 27.07.2007 titled Central Capital Investment Subsidy Scheme, 2007. By the said notification, sub-para (g) and sub-para (h) were inserted to Clause 4 of the Notification dated 27.07.2007. It is however very relevant to mention that vide this notification, the components/items in respect of Service Sector, Bio-Technology Industry and Power Generating Industries were specifically mentioned in Clauses 3 (I), 3(II) & 3(III) respectively. This aspect of notifying by a Notification, Clauses 3 (I), 3(II) & 3(III) are very relevant in as much as in respect to Service Sector, Clause 3 (I) stipulated what would constitute the eligible components of the CCISS, 2007. For Bio-technology Industries, Clause 3 (II) stipulated the eligible components and for power generating industries, Clause 3 (III) stipulated the components. The said aspect is very pertinent in as much as by way of a Notification, the eligible components of plant and machinery in these sectors were brought as an Addenda to the Original Notification dated 27.07.2007.

10. It is further relevant to mention that subsequent to the Notification dated 27.07.2007, the Operational Guidelines of the Industrial Policy, 2007 were notified on 21.08.2008 in respect to various subsidy schemes under the said Industrial Policy, 2007. Clauses (viii), (xiii), (xiv), (xv), (xviii), (xix), (xx) being relevant are reproduced herein under:

(viii) For submission of claims the unit should apply for the Central Capital Investment Subsidy, Central Interest Subsidy or Central Comprehensive Insurance Subsidy (as the case may be) in the prescribed Application Form Nos.1C, 1D and 1E respectively.

(xiii) The quantum of subsidy payable to the unit should be worked out/calculated on the eligible components as laid down in the respective Schemes. In case of any doubt in this regard, the matter may be referred to DIPP for clarification. The decision of DIPP will be final in this regard.

(xiv) All transactions in respect of the cost of plant and machinery/project, as the case may be, must be through cheque or demand draft only.

(xv) All expenses must be certified by the registered Chartered Accountant.

(xvii) All mandatory 'no objection certificates' (e.g. pollution control certificate etc.) must be obtained by the unit from the concerned Department/Authority before setting up a new unit or undertaking substantial expansion.

(xix) After issue of these guidelines, the claims for subsidy under any Scheme will be submitted within one year from the date of commercial production.

(xx) In the case of capital investment subsidy exceeding Rs.1.5 crore, the complete claim file of the unit along with minutes of the SLC must be forwarded to DIPP for its consideration or for the consideration of CCEA.

11. It is relevant to take note of that in respect of claiming Central Capital Investment Subsidy, the relevant Form is Form No.1C. Form 1C(E) is the Form relating to enquiry report to be submitted by the Enquiry Officer which is a part of the said operational guidelines. The certificate to be issued by the Registered Chartered Accountant for new unit as well as for existing unit undergoing expansion is in Form 1 D (A) (i) and Form 1 D(A) (ii) respectively.

12. Before further proceeding on the various other subsequent developments in respect to the CCISS, 2007 which have ensued, this Court now finds it very relevant to take note of that

the petitioner firm in order to take the benefit under the Industrial Policy, 2007 proposed to set up a 2000 tons per day cement manufacturing plant for manufacturing of portland cement, aluminous cement, slag cement and similar hydraulic cement at a proposed cost of Rs.131.64 crore at Aujerigaon, Sonapur. The petitioner claimed that the petitioner made a total capital investment in plant and machinery amounting to Rs.83,39,85,772/-. The said amount consisted of Rs.73,34,51,562/- in plant and machinery and Rs,10,05,34,210/- in electrical installations. Prior to commercial production, the petitioner firm registered itself under the Central Capital Investment Subsidy Scheme/Central Interest Subsidy Scheme/Central Comprehensive Insurance Scheme of the Industrial Policy, 2007 and was allotted a common registration number, i.e. No.DICC/K/NEIIPP/493-A on 27.10.2009. The petitioner claims that it had duly obtained the necessary licenses/permissions/authorizations from the respective authorities and commenced its commercial production w.e.f. 25.11.2011. Thereupon, the petitioner submitted its application for grant of IEM Part-II on 09.01.2012. Further to that, in terms with the mandate of the Operational Guidelines and within 1 year from the date of commencement of commercial production, the petitioner submitted its application on 19.11.2012 along with all requisite documents which were duly received by the concerned respondent authorities. On the basis of the petitioner's investment in the plant and machinery to the tune of Rs.83,39,85,772/-, the petitioner claimed to be entitled to 30 % of the said amount which came to Rs.25,95,761.60. It is the further case of the petitioner that on submission of the said application, the General Manager, District Industries and Commerce Centre, after verifying the claim application forwarded the petitioner's application for the Central Capital Investment Subsidy along with supporting documents to the Commissioner of Industry and Commerce on 09.01.2013 thereby recommending grant of 30% Central Capital Investment Subsidy against the eligible investment on fixed assets. It is however relevant to mention that the General Manager, District Industries and Commerce Centre observed that the eligible investment was Rs.74,93,23,434/- towards plant and machinery including electoral installations and therefore 30% of the said amount came to Rs.22,47,97,030/-.

13. It was the petitioner's case that there was nothing mentioned to the petitioner as to why the concerned respondent authority had reduced the eligible investment subsidy from Rs.83,39,85,772/- to Rs.74,93,23,434/. Be that as it may, to the utter surprise of the

petitioner, on 15.05.2015, the Deputy Manager, NEDFi issued a letter being No.NEDFi/CS/Assam/1373 dated 15.05.2015 enclosing a cheque of an amount of Rs.14,87,68,200/-.

14. The petitioner received the said amount under protest and thereupon made enquiry why the entitlement of the petitioner was drastically reduced. On enquiry, the petitioner came to learn that on account of a letter bearing No.9(2)/2012-DBA-II-NER dated 25.02.2013 as well as the Operational Guidelines bearing No.10(2)/2011-DBA-II-NER(PT-II) dated 07.05.2013, the petitioner's entitlement was drastically reduced. It is under such circumstances, the instant writ petition was filed challenging the action of the respondent authorities in applying the letter dated 25.02.2013 and Operational Guidelines dated 07.05.2023 thereby reducing the entitlement of the petitioner and also for appropriate direction that the petitioner be paid as per the Notification dated 27.07.2007.

15. Pursuant to the filing of the instant writ petition, this Court vide the order dated 18.11.2015, issued notice making it returnable by 6 weeks. The record further reveals that pursuant to various orders passed by this Court, the respondent Nos.1 & 2 filed an affidavit-in-opposition challenging the maintainability of the writ petition on various grounds. On merits, it was stated in affidavit-in-opposition that the State Governments and the NEDFi had requested the Government of India to list the items for inclusion in the definition of 'plant and machinery' by technical agency and relied upon by the Empowered Committee for deciding the value of the plant and machinery in order to bring uniformity in the assessment of plant and machinery by various agencies. In view of such requests, a decision was taken of introducing a comprehensive list of components of plant and machinery to be considered eligible and ineligible for subsidy by the respondent authorities so that by specifying the eligible components, the Government could mitigate the risk of misuse or abuse of the subsidy schemes. It was further mentioned that the clarity as regards the eligible components was essential to maintain a smooth subsidy application and approval process. It is under such circumstances, the Ministry of Commerce and Industry, Government of India had issued a communication dated 25.02.2013 which categorically specified the eligible components of plant and machinery for subsidy under the CCISS, 2007 of the Industrial Policy, 2007 which

was duly informed to the respective Principal Secretary, Industries of the Government of Assam. The Operational Guidelines which were issued earlier on 21.08.2008 were also modified by issuing a fresh operational guideline on 07.05.2013. It was further mentioned that the said clarity which has been into effect by the letter dated 25.02.2013, the Operational Guidelines dated 07.05.2013 were necessary for the purpose of granting the actual benefit in terms with the Industrial Policy, 2007. It was further stated that the State Level Committee had diligently reviewed the petitioner's claim on the basis of field visit team report thereby endorsing the eligible investment at Rs.49,58,94,000/- and accordingly recommending Rs.14,87,68,200/- as Central Capital Investment Subsidy at the rate of 30%. It was further mentioned that in the Industrial Policy, 2007 categorically stipulated that the Government reserved the right to modify any part of the policy in public interest and the introduction of the clarification to the Notification was done in pursuance to the powers conferred under para (XV) 3 of the Industrial Policy, 2007 on the basis of the review exercise conducted by the Department.

16. An affidavit-in-reply was filed by the petitioner thereby reiterating its stand taken in the writ petition and denying the contents of the affidavit-in-opposition filed by the respondent Nos.1 & 2.

17. Subsequent thereto, an additional affidavit was filed by the respondent Nos.1 & 2 on 06.03.2024 stating inter-alia that the said communication dated 25.02.2013 and the Operational Guidelines dated 07.05.2013 were retrospective in operation. In addition to the above, it is also seen that the respondent Nos.3 to 6 had filed an affidavit-in-opposition thereby enclosing the enquiry report of the Functional Manager, DICC, Kamrup (M) at Guwahati dated 30.11.2012 wherein it has been mentioned that the applications so submitted by the petitioner were duly considered in terms with the Operational Guidelines issued on 21.08.2008 as well as the communication dated 25.02.2013 and Operational Guidelines dated 07.05.2013.

18. It is also essential to take note of the affidavit-in-reply filed by the petitioner to the additional affidavit filed by the respondent Nos.1 & 2 whereby a process flow chart of the petitioner's cement factory showing the different components/parts of the cement

manufacturing plant and the components which have been rejected for consideration of the eligible investment have been duly shown as components which are part and parcel of the plant and machinery for the purpose of carrying out the cement manufacturing unit. In addition to that, the petitioner had also filed an affidavit-in-reply to the affidavit filed by the respondent Nos.3 to 6 thereby stating that the respondent authorities have illegally deducted various components from the purview of eligible components.

19. In the backdrop of the above pleadings, let this Court take note of the respective submissions made on behalf of the parties. Mr. G. N. Sahewalla, the learned senior counsel appearing on behalf of the petitioner submitted that a reading of Clause 6 of the Notification dated 27.07.2007 makes it clear that for manufacturing unit, details were duly given as to what would constitute 'plant and machinery'. The learned senior counsel further submitted that in respect of those industries in the Service Sector, Biotechnology Industry and the Power Generation Industry, the respondents have duly mentioned as to what would also constitute the components of the plant and machinery by issuing a Notification thereby stating it to be an Addenda to the Notification dated 27.07.2007. Drawing the attention to the Operational Guidelines of 21.08.2008, the learned senior counsel submitted that from the said Operational Guidelines and the details which have been asked for would categorically show that various components which have been now presently taken out from the purview of eligible components were duly included. The learned senior counsel submitted that components like hopper, conveyor, silo, millhouse, DG sets are essential parts of cement manufacturing plant and a cement plant cannot proceed without those essential components. Drawing reference to the process flow-chart enclosed to the affidavit-in-reply to the respondent Nos.1 & 2 dated 14.03.2004, the learned senior counsel submitted that various essential components have been denied to the petitioner thereby the eligible investments have been reduced. Referring to Clause 6 (i) of the Notification dated 27.07.2007, the learned senior counsel submitted that it was categorically mentioned that in calculating the value of plant and machinery, the cost of the industrial plant and machinery as erected at the site would be taken into account which would include the cost of productive equipments, such as tools, jigs, dies & moulds, insurance premium etc. The learned senior counsel further submitted that the amount invested in the goods carrier to the extent they are actually utilized for transport of raw materials and

marketing of the finished products will also be taken into account. The learned senior counsel submitted that in Clause 6 (iii) of the Notification dated 27.07.2007, only working capital including raw materials and other consumable stores were excluded for computing the value of plant and machineries. The learned senior counsel further submitted that on the basis of the Industrial Policy, 2007, the Notification dated 27.07.2007 as well as the Operational Guidelines which were issued on 21.08.2008, the petitioner had invested huge amounts of money and as such the petitioner was entitled to the Central Capital Investment Subsidy to the tune of 30% of the investment so made. The said entitlements of the petitioner were based upon the notifications which were issued and these benefits were sought to be curtailed on the basis of certain intra-departmental communication dated 25.02.2013 and Operational Guidelines dated 07.05.2013. The learned senior counsel submitted that the Notification dated 27.07.2007 could not have been amended or modified by way of inter or intra-departmental communications. He further submitted that the petitioner having invested huge amount of money on the basis of the said Industrial Policy, 2007 as well as the Notification dated 27.07.2007 and the Operational Guidelines dated 21.08.2008, the respondent authorities could not have retrospectively applied inter or intra-departmental communications to divest the petitioner of its right to claim the benefit in terms with the Notification dated 27.07.2007 to the extent permissible as per Clause 6 of the said notification. The learned senior counsel for the petitioner submitted that by virtue of the principles of promissory estoppels, the respondent authorities are estopped from depriving the petitioner of its entitlement. The learned senior counsel for the petitioner relied upon the following judgments:-

(i) (2018) 4 GLT 194 PDP Steels Ltd. vs. Union India Pr.23-27

(ii) (2006) 8 SCC 702 MRF Ltd. vs. Assistant Commissioner Pr.27

(iii) (2008) 13 SCC 213 Kusumem Hotels P. Ltd. vs. Kerala SEB Pr.21, 36

(iv) (2016) 6 SCC 766 Manuelsons Hotels P. Ltd. vs. State of Kerala & Others

Pr. 12, 13, 19, 20, 33

(v) (1994) 1 SCC 437 Govind Prasad vs. R. G. Prasad Pr. 11, 12

(vi) (2020) 20 SCC 320 State of U.P. vs. Birla Corpn. Ltd. Pr.34

(vii) (2007) 10 SCC 627 Sonia vs. Oriental Insurance Co. Pr.11

(viii) (2023) 10 SCC 634 State of Jharkhand & Others vs. Brahmputra Metallics Ltd. Ranchi.

20. On the other hand, Mr. M. R. Adhikari, the learned counsel appearing on behalf of the respondent Nos.1 & 2 submitted that the communication dated 25.02.2013 and the subsequent Operational Guidelines issued on 07.05.2013 are a result of certain confusion arising on account of the various nodal agencies applying different yardsticks in assessing the eligible components of plants and machineries for calculating the eligible investment. The learned counsel for the respondents submitted that in order to streamline the same, the communication dated 25.02.2013 was issued so that there is a uniformity in the treatment to be meted in terms with Notification dated 27.07.2007. He further submitted that as per the Industrial Policy, 2007, the Government had the power to modify the Industrial Policy, and as such, in exercise of the said power, the Government had issued a communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013. The learned counsel for the respondents submitted that when those Operational Guidelines dated 07.05.2013 as well as the communication dated 25.02.2013 clarity was brought to Clause 6 of the Notification dated 27.07.2007 and as such, the respondent authorities were therefore justified in arriving at the eligible investment on the basis of the communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013.

21. Mr. A. Kalita, the learned Standing Counsel for the Industries and Commerce Department of the Government of Assam submitted that an affidavit-in-opposition has been filed duly stating that the petitioner's claim has been duly taken into consideration in terms with the Operational Guidelines dated 21.08.2008, the communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013. He therefore submitted that on the basis

thereof, the details have been mentioned in the enclosures to the said affidavit which would show that various deductions have been made on basis thereof.

22. I have heard the learned counsel appearing on behalf of the parties and also perused the materials on record. From the perusal of the materials on record, two points for determination arises for consideration:-

(i) Whether the petitioner herein can be deprived of his claim so made on the basis of the communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013? If not

(ii) What relief or reliefs, the petitioner herein would be entitled to?

23. In the foregoing paragraphs of the instant judgment, this Court has duly dealt with the Industrial Policy, 2007; the CCISS, 2007; the Notification dated 21.09.2007; the Operational Guidelines dated 21.08.2008 as well as the communication dated 25.02.2013 and the Operational Guidelines issued on the basis thereof on 07.05.2013.

24. From a perusal of the Industrial Policy, 2007, it stipulates at Clause (VII) that the Capital Investment Subsidy to the tune of 30% would be granted on "plant and machinery". The Industrial Policy, 2007 do not define what would mean by "plant and machinery". Clause XV (3) stipulates that the Government reserves the right to modify any part of the policy in Public interest. In pursuant to the Industrial Policy, 2007, a Notification was issued on 27.07.2007 whereby Clause 6 (i), (ii) & (iii) deal with what would be meant by "plant and machinery" for manufacturing sector. Sub-Clause (i) of Clause 6 of the Notification dated 27.07.2007 categorically mentions that in calculating the value of plant and machinery, the cost of industrial plant and machinery as erected at site will be taken into account which would include the cost of productive equipments such as tools, jigs, dies & moulds, insurance premium etc. The use of the words "the cost of industrial plant and machinery as erected at the site" in the opinion of this Court would include all such industrial plants and machineries at the site which would be required for the purpose of setting up of the industry taking into account that the Industrial Policy, 2007 as well as the CCISS, 2007 aims at giving an impetus for setting up of an industry in the North Eastern Region. In other words, in view of the language used in Sub-Clause (i) of Clause 6, plant and machinery would mean such plant and

machinery that are peculiar to and directly related to the manufacture of the manufacturing industry and in the instant case, for manufacture of various grades of cement which the petitioner Company has set up his industry. Sub-Clause (ii) of Clause 6 stipulates that the amount invested in goods carriers to the extent they are actually utilized for transport of raw materials and marketing of the finished products, would be taken into account. What has been excluded is stipulated in Sub-Clause (iii) of Clause 6 which mandates that working capital including raw materials and other consumables stores, would be excluded for computing the value of plant and machinery.

25. This Court further in the previous segments of the instant judgment has also taken into account Clause 6 (a) of the Notification dated 27.07.2007. In terms with Clause 6 (a), the definition of 'plant and machinery' and 'components' which should be taken into account for the purpose of the Scheme in respect of Service Sector, Bio-technology industry & Power Generating industries referred to in para 3 (I), (II) & (III) have been stated that they would be notified separately. In accordance therewith, by the Notification dated 21.09.2007, the 'plant and machinery' including its 'components' have been specifically notified by a Notification in the form of an Addenda in respect of Service Sector, Bio-technology industry & Power Generating industries. This aspect of the matter is important taking into account that if there is any change to be made or anything to be amended, altered or modified to a Notification issued by the Government, the same can only be done by way of a notification. In the instant case, it would be seen that the respondent authorities in the Ministry of Commerce & Industry had issued a communication dated 25.02.2013 whereby the components of plant and machinery for a typical cement plant has been stated. In doing so, various components have been mentioned which would be included and there has been various exclusions. It is the specific case of the petitioner that by these exclusions, various components which are integral components for the purpose of setting up of a cement manufacturing unit had been excluded in as much as it is the case of the petitioner that without the silos, hopper, conveyors, millhouses, DG sets, a cement manufacturing plant cannot function, and as such, it amounted to withdrawal of benefits by way of inter Departmental communication to the benefits granted in respect to the manufacturing sector like the petitioner by Clause 6 of the CCISS, 2007.

26. At the outset, this Court finds it relevant to observe that this Court does not have the expertise to decide as to whether the exclusions like hopper, conveyor, silo, millhouse, DG sets etc. are integral part(s) of a cement manufacturing unit for which it would not be proper to observe and opine that these components as stated by the petitioner are part and parcel of a cement manufacturing unit. The expert in the field, in the opinion of this Court, would be in a better position to adjudge the same. Be that as it may, the question however arises that in the circumstance these components which have been excluded are integral part of a cement manufacturing plant could the respondent authorities deprive the petitioner of the benefits to get the Capital Investment Subsidy in respect to the cost incurred in respect to those components.

27. The fact that the petitioner is entitled to the benefit of the CCISS, 2007 or the incentive announced in the Industrial Policy, 2007 is not in dispute taking into account that the respondent authorities have duly granted benefits to the petitioner on account of CCISS, 2007 of an amount of Rs.14,87,68,200/-.

28. The learned senior counsel for the petitioner submitted that the respondent authorities could not have disentitled the petitioner to the benefits under the CCISS, 2007 to the tune so claimed by the petitioner on the ground of promissory estoppels, legitimate expectation as well as also on the ground of jurisdiction. Let this Court therefore analyze the said grounds on the basis of the settled principle of law and as to whether the same are applicable.

PROMISSORY ESTOPPEL

(29) The origin of the doctrine of promissory estoppel can be seen from the opinion of the Court of Appeal in the case of ***Crabb vs. Arun District Council***, reported in ***(1976) 3 WLR 847 (CA)*** wherein Lord Denning speaking for the Court of Appeal traced out the genesis of promissory estoppels in equity. Lord Denning observed that the basis of this proprietary estoppel - as indeed of promissory estoppels - is the interposition of equity. He observed that equity comes in, true to form, to mitigate the rigours of strict law. He observed that the early cases did not speak of it as 'estoppel' and they spoke of it as 'raising an equity'. Referring to the judgment of the House of Lords in the case of ***Hughes v***

Metropolitan Railway Co, reported in ***(1887) LR2 AC 439 (HL)*** wherein Lord Cairns NC stated "It is the first principle upon which all Courts of Equity proceed that it will prevent a person from insisting on his strict legal rights - whether arising under a contract, or on his title deeds, or by statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties".

30. Be that as it may, it is also very pertinent to observe that under the English Law, the doctrine of promissory estoppel have been regarded as a shield and not a sword or in other words, the doctrine of promissory estoppels may be part of a cause of action but not a cause of action in itself. However, by contrast the law in United States and Australia is less restrictive in this regard.

31. This Court finds it very pertinent at this stage to refer to a judgment of the Australian High Court in the case of ***Commonwealth of Australia vs. Verwayen***, reported in ***(1990) 170 CLR 394 (Aust)*** wherein Deane J. explained the entire basis of the doctrine of promissory estoppel in the following words:-

> *1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.*
>
> *2. The central principle of the doctrine is that the law will not permit an unconscionable - or, more accurately, unconscientious - departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.*
>
> *3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant*

belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:

> *(a) has induced the assumption by express or implied representation;*
>
> *(b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;*
>
> *(c) has exercised against the other party rights which would exist only if the assumption were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so. Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.*

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

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

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

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed."

(emphasis supplied on the underlined portions)

32. In India, the doctrine of promissory estoppel has been given an expansive interpretation which would be seen from the words of His Lordship P. N. Bhagawati, J. (as His Lordship then was) in the case of ***Motilal Padmapat Sugar Mills Co. Ltd. Vs. State of U.P.,*** reported in ***(1979) 2 SCC 409*** wherein in paragraph No.12, His Lordship speaking for the Court observed that there was no valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so. In paragraph No.24 of the said judgment, His Lordship explained the concept of the

doctrine of promissory estoppels which is reproduced herein below:-

> *"24…The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the Anglo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and*

the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability 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, that overriding 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 Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be 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 and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile 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 status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable."

33. In the case ***Manuelsons Hotels P. Ltd. vs. State of Kerala & Others*** reported in of ***(2016) 6 SCC 766***, the Supreme Court while approving the statement of law declared by Deane J. in the case of ***Verwayen*** (supra) observed that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. The Supreme Court further observed that the relief to be given in cases involving the doctrine of promissory estoppel contains a degree of flexibility which would ultimately render justice to the aggrieved party. Paragraph No.20 of the said judgment is reproduced herein under:-

"*20. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference – under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The*

importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel – one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party."

34. From the above law, which stands settled it would be seen that if a party has acted upon the representation made, it would afford the party a cause of action and law would not permit any unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to.

35. In the instant case, Clause 6 (i) & (ii) of the Notification dated 27.07.2007 categorically mentioned what would constitute plant and machinery. From a reading of the Industrial Policy, 2007 as well as the Notification dated 27.07.2007, it would be seen that that the benefit of Central Capital Investment Subsidy would be given in respect to the plant and machineries which are necessary in respect to the cost of industrial plant and machineries as erected at the site for the purpose of setting up the industry. In the opinion of this Court, if it is on the basis of the promise and the representation which are made in the Industrial Policy, 2007 and the Notification dated 27.07.2007 including the Operational Guidelines dated 21.08.2008, the petitioner had altered its position, the respondent authorities, more particularly the Union of India would not be in a position to rescile from its promise and representation thereby to limit the benefits/entitlement to which the petitioner would otherwise be entitled to in terms with Clause 6 (i) and 6 (ii) of the Notification dated 27.07.2007. The communication dated 25.02.2013 as well as the Operational Guidelines dated

07.05.2013 cannot come in the way to deprive the petitioner of the benefits which the petitioner is otherwise entitled under Clause 6 (i) & 6 (ii) of the CCISS, 2007.

LEGITIMATE EXPECTATION

36. As already stated herein above, under the English Law, the doctrine of promissory estoppel is treated as a shield and not a sword for which the doctrine of legitimate expectation also developed parallelly with the doctrine of promissory estoppels. The doctrine of legitimate expectation is founded on the principle of fairness in Government dealings. It comes into play when a public body leads an individual to believe that they will be a recipients of a substantive benefit. In the case of ***R vs. North & East Devon Health Authority, ex p Coughlan***, reported in ***(2001) QB 213***, the doctrine of substantive legitimate expectation was explained as follows:-

> "56…. But what was their legitimate expectation?" Where there is a dispute as to this, the dispute has to be determined by the court, as happened in Findlay In re. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.
>
> 57….*Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power.* Here, once the legitimacy of the expectation is established the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy."
>
> (emphasis supplied)

37. Recently, a Constitution Bench of the Supreme Court in the case of ***Sivanandan CT & Others vs. High Court of Kerala & Others***, reported in ***(2024) 3 SCC 799*** explained the concept of legitimate expectation under Indian law. His Lordship Dr. Justice D. Y.

Chandrachud, CJ explained that there are two components of the doctrine of legitimate expectation. One is the doctrine of procedural legitimate expectation and the other is the doctrine of substantive legitimate expectation. His Lordship speaking for the Court observed that the claim based on doctrine of procedural legitimate expectation arises when a claimant expect a public authority to follow a particular procedure before taking a decision. This however is in contradistinction with the doctrine of substantive legitimate expectation where a claimant expects conferral of substantive benefit based on the existing promise or practice of the public authority. It was observed that the doctrine of substantive legitimate expectation has now been accepted an integral part of both common law as well as Indian Jurisprudence. Paragraph Nos.27, 38, 40, 45, 46 being relevant is quoted herein under:-

> "***27.*** *A claim based on the doctrine of procedural legitimate expectation arises where a claimant expects the public authority to follow a particular procedure before taking a decision. This is in contradistinction to the doctrine of substantive legitimate expectation where a claimant expects conferral of a substantive benefit based on the existing promise or practice of the public authority. The doctrine of substantive legitimate expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence.*
>
> ***38.*** *The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of*

burden and standard of proof required to dislodge the claim of legitimate expectation.

40. *The principle of fairness in action requires that public authorities be held accountable for their representations, since the State has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honour the promises made or practices established unless there is a good reason not to do so. In Nadarajah [R. (Nadarajah) v. Secy. of State for the Home Deptt., 2005 EWCA Civ 1363] , Laws, L.J. held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.*

45. *The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.*

46. *From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of substantive legitimate expectation can be successfully*

invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognised in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499; Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625; Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1; Union of India v. P.K. Choudhary, (2016) 4 SCC 236 : (2016) 1 SCC (L&S) 640; State of Jharkhand v. Brahmputra Metallics Ltd., (2023) 10 SCC 634.] It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish : (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14."

(emphasis supplied on the underlined portions)

38. In the backdrop of the above law, let this Court consider as to whether the petitioner has a legitimacy of expectation and as to whether the denial of the legitimate expectation has led to the violation of Article 14 of the Constitution.

39. From the facts already delineated herein above, it would be clear that the petitioner herein was entitled to the benefit of the CCISS, 2007. In terms with the Notification dated 27.07.2007, the petitioner was entitled to the cost of the industrial plant and machinery as erected at the site which would include the cost of productive equipments such as tools, jigs, dies & moulds, insurance premium etc. The petitioner was also entitled to the amount invested in the goods carriers to the extent that they were actually utilized for the transport

of raw materials and marketing of finished products. The only exclusion was working capital including raw materials and other consumable stores. The exclusion being limited to working capital, raw materials and other consumable stores also gives a clear indication that whatever plant and machinery erected which are integral to the running of the cement manufacturing plant sans the exclusion would be covered. Taking into account that the petitioner had on the basis of the representation/promise made in the Industrial Policy, 2007 as well as the Notification dated 27.07.2007 including the Operational Guidelines dated 21.08.2008 had invested huge amount of money and filed his application in terms of the Operational Guidelines much prior to issuance of the communications dated 25.02.2013 and the Operational Guidelines 07.05.2013, the petitioner had a procedural legitimate expectancy that if any action would have been taken by the respondent authorities in deciding its entitlement thereby reducing to the prejudice of the petitioner it would have been given an opportunity to be heard before doing so. This admittedly was not done as would appear from the facts stated therein above.

40. In addition to that, the petitioner herein also had a substantive legitimate expectation in as much as on the basis of Sub-Clause (i) & (ii) of the Clause 6 of the Notification dated 27.07.2007 and the Industrial Policy, the petitioner had a legitimate expectation that he would be entitled to the conferral of substantive benefit on the basis of the promise/representation set out more particularly in Clause 6 (i) & 6 (ii) of CCISS, 2007. The non-granting of such benefits inspite of the promise that too on the basis of the communication dated 25.02.2013 and the Operational Guidelines dated 07.05.2013 which came into existence much later than the petitioner setting up its industry, starting commercial production and filing its application results in unfairness and violates the principles of promissory estoppel and infringes the mandate of Article 14 of the Constitution. The cause shown in the affidavit by the respondents could have been applied prospectively and not retrospectively to effect the pending claims like that of the petitioner for which appropriate directions are required to be passed on the basis of the principles of legitimate expectation read with violation of the principles of promissory estoppel.

JURISDICTION

41. The Industrial Policy, 2007 was issued by the Government of India after such a policy was approved by the Cabinet itself. On the basis thereof, a Notification was issued on 27.07.2007 which stipulated the benefits of Central Capital Investment Subsidy. Clause 6 specifically dealt with plant and machinery for manufacturing sector. Clause 6 (a) dealt with plant and machinery and its components pertaining to Service Sector, Bio-technology industry and Power Generating industries. In order to bring the components of plant and machinery in respect to Service Sector, Bio-technology industry and Power Generating industries, a separate Notification was issued by the Ministry of Commerce & Industry dated 21.09.2007 and thereby making this Notification dated 21.09.2007 as an Addenda to the Notification dated 27.07.2007. The question arises as to whether by way of an inter-Departmental communication dated 25.02.2013 and the Operational Guidelines dated 07.05.2013, there can be any modification to the Clause 6 of the Notification dated 27.07.2007. In the opinion of this Court, the same cannot be overridden by way of an inter-Departmental communication or Operational Guidelines in as much as the Notification dated 27.07.2007 had been issued in accordance with Articles 77 (1) and (2) of the Constitution of India. In order to modify or amend or alter the said Notification dated 27.07.2007, there is a requirement of issuance of Notification and as stated the inter-Departmental communication or Operational Guidelines cannot limit the same {see ***Shanti Sports Club vs. Union of India***, reported in ***(2009) 15 SCC 705*** , paragraph Nos.43 & 52}. Moreso, when the Notification dated 27.07.2007 is silent to that effect.

42. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court to which the learned counsel appearing on behalf of the respondents has relied upon, i.e. in the case of ***Union of India & Others vs. Unicorn Industries***, reported in ***(2019) 10 SCC 575***. In the said case, it would be seen that in order to prevent fraud or manifest injustice, there was a modification made to the Notification. This modification was made by way of a subsequent Notification and not by way of an intra-Departmental circular or by the Operational Guidelines. Under such circumstances, the said judgment of the Supreme Court in the case of ***Unicorn Industries*** (supra) cannot be made application in the instant case.

43. This Court finds it relevant to refer to a judgment of the Coordinate Bench of this Court in the case of ***PDP Steels Ltd. vs. Union of India & Others***, reported in ***2018 (4) GLT 194***. The said case was also in respect to the Industrial Policy, 2007. However, the scheme was in respect to the Capital Interest Subsidy. The Issue involved therein was that the Notification issued for the benefits under the Capital Investment Subsidy stipulated that all eligible industrial units established newly and existing industrial units located anywhere in the North Eastern Region would be given interest subsidy to the extent of 3% of the working capital advance to them by the Scheduled banks of Central/State financial institutions for a maximum period of 10 years from the date of commencement of commercial production. This benefit was sought to be curtailed by issuance of a Circular dated 18.06.2014 which stipulates that the quantum of interest subsidy admissible in the case of existing industrial units which had undergone substantial expansion under NEIP, 1997/NEIIPP, 2007 would be 3% of the increase in working capital loan actually drawn after undergoing substantial expansion over and above the average of the working capital loan availed by the industrial units in two financial years just preceding the date of commencement of commercial operation after undergoing substantial expansion. This communication dated 18.06.2014 was put to challenge before this Court on various grounds including the ground of jurisdiction. The Coordinate Bench of this Court had interfered with the said letter/circular dated 18.06.2014 on the ground that it was contrary to the policy approved by the Cabinet and accordingly set aside the same. Paragraph Nos.23 to 26 of the said judgment is reproduced herein under:-

> "*23. In the instance case, Subsidy Scheme came to be issued to take care of the aspect relating to grant of interest subsidy in terms of NEIIPP, 2007. The extent of admissible subsidy in Clause 5 of Subsidy Scheme, in the understanding of the Court, is clear and unambiguous and not confusing and lacking in clarity as is sought to be projected in the affidavit. It is categorically stated therein that the industrial units will be given the interest subsidy to the extent of 3% on the working capital advanced to them without any restriction or limitation for the same. The expression "3% of the increase in working capital loan actually drawn after undergoing substantial expansion over and above the average of the working Page No.# 15/17 capital loan availed by the*

industrial unit during two financial years just preceding the date of commencement of commercial operation after undergoing substantial expansion" in the Letter/Circular dated 18.6.2014 brings in entirely different parameters for grant of interest subsidy and it is evident from the said Letter/Circular itself that the subsidy payment is sought to be restricted though such restriction was not contemplated in Subsidy Scheme, which in turn was based on NEIIPP. 2007. Subsidy Scheme many not have the approval of the Cabinet but it cannot be lost sight of the fact that Subsidy Scheme was issued to implement the policy decision taken pursuant to the Cabinet approval given and formulated vide Office Memorandum dated 1.4.2007.

24. This Court is also of the opinion that Clause 5 of Subsidy Scheme is in consonance with Clause viii of NEIIPP, 2007. Therefore, I have no hesitation to hold that the Letter/Circular dated 18.6.2014 cannot be construed to be in the nature of clarification but the same, in fact, restricts and limits entitlement of interest subsidy envisaged under NEIIPP, 2007 and Subsidy Scheme.

25. The Supreme Court in State of Bihar (supra), at paragraph 7 stated as follows:

> "*Coming to the second question, namely the issuance of Notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the Incentive Policy itself. The Industrial Incentive policy is issued by the State Government after such Policy is approved by the Cabinet itself. The issuance of the Notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which Notification is issued to carry out the objectives and the policy*

decisions taken in the Industrial Policy itself. In this view of the matter, any Notification issued by the Government Order in exercise of power under Section 7 of the Bihar Finance Act, if is found to be repugnant to the Industrial Policy declared in a government resolution, then the said Notification must be held to be bad to that extent. In the case in hand, the Notification issued by the State Government on 4th of April, 1994 has been examined by the High Court and has been found, rightly, to be contrary to the Industrial Incentive Policy, more particularly the Policy engrafted in Clause 10.4(i)(b). Consequently, the High Court was fully justified in striking down that part of the Notification which is repugnant to sub-clause (b) of Clause 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a Notification in exercise of power under Section 7 of the Bihar Finance Act, which may over-ride the incentive policy itself. In our considered opinion the expression "such conditions and restrictions as it may impose" in sub-section (3) of Section 7 of the Bihar Finance Act will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general Policy Resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the Notification dated 4.4.1994."

26. From the above, it is manifest that the policy adopted with the approval of the Cabinet cannot be whittled down or abrogated or modified in any manner by a department of the Government."

44. It is also very pertinent to take note of that the said judgment passed by the Coordinate Bench has also attained finality taking into account that an SLP being Special Leave Petition (Civil) Diary No.9785/2019was preferred against the said judgment which was

dismissed by Supreme Court on 12.04.2019.

45. In view of the similarity of the facts involved in the instant case with the judgment so delivered in the case of ***PDP Steels Ltd.*** (supra), this Court is also of the view that the impugned communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013 cannot be applied in the case of the petitioner in as much as the petitioner herein had acted on the basis of the Notification dated 27.07.2007. This Court however is not inclined to set aside the intra-Departmental communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013 and only holds that the inter-Departmental communication dated 25.02.2013 and the Operational Guidelines dated 07.05.2013 cannot be made applicable to the case of the petitioner for the reasons aforementioned.

46. Under such circumstances, let this Court now take up the next point for determination as to what relief or reliefs the petitioner herein would be entitled to.

47. It is the opinion of this Court that the intra-Departmental communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013 cannot limit the petitioner's entitlement in terms with Sub-Clause (i) & (ii) of Clause 6 of the Notification dated 27.07.2007. Be that as it may, as this Court does not have the expertise to decide as to whether the various components which the petitioner alleges that the same ought to be included in its entitlement as they are a part of the industrial plant and machinery as erected at the site, this Court directs the respondent authorities, more particularly the respondent Nos.3, 4 & 5 to make assessment of the petitioner's entitlement purely on the basis of Clause 6 of the Notification dated 27.07.2007 and without being influenced by the communication dated 25.02.2013 as well as the Operational Guidelines dated 07.05.2013. The said assessment be carried out by the respondent Nos.3 to 5 within a period of 3 (three) months from the date a certified copy of the instant judgment is submitted to the respondent No.5 and thereupon, the respondent Nos.3 to 5 shall do the needful for the purpose of providing the additional benefits to the petitioner if so entitled after making such assessment as directed herein above. The respondent No.2 is also further directed to take appropriate steps upon assessment made by the respondent Nos.3 to 5 so that the petitioner is conferred the benefits if so entitled after the assessment made. The entire exercise be completed within 5

(five) months from the date the certified copy of the instant judgment is served on the respondent No.5.

48. The petitioner is given the liberty to produce the necessary documents/materials to show that the components excluded from its claim were integral components of the cement manufacturing plant. The said materials/documents be placed before the respondent No.5 along with the certified copy of the instant judgment.

49. The instant writ petition therefore stands disposed of in terms with the directions and observations made herein above.

JUDGE

Comparing Assistant