Dimensions – 29th Edition

Rulings / Judgments under pre-GST era:

1. M/s K. M. Refineries and Infraspace Pvt. Ltd. v. The State of Maharashtra and 3 others[1]	
Issues for Consideration	• Whether the Commissioner of Sales Tax is authorised to modify, enlarge or curtail the validity period under the New Packaged Scheme of Incentives, 1993? • Whether reduction of incentives on account of new tax structure violates the principle of promissory estoppel?
Discussion & Judgment	**Discussion:** • K. M. Refineries and Infraspace Pvt. Ltd. ('the Petitioner' or 'the Company') are engaged in the manufacture of vegetable oil and allied oil products. They set up a factory at Dabha village, Amravati district with the intention of availing the incentives offered under the New Package Scheme of Incentives, 1993 ('Incentive Scheme' or 'the Scheme'). The Company could use the monetary and other incentives under the Scheme, in the nature of tax subsidies or exemptions, to offset the increased cost of production and to compete with similar industries in marketing products at affordable prices. • The Company obtained the eligibility certificate issued by the Implementing Agency on March 20, 2017 which was valid for nine years. Thereafter, the Scheme required the Commissioner of Sales Tax to notify the effective date for availing the incentives. While fixing the effective date, the Commissioner curtailed the validity of the incentives by three years vide an order dated August 10, 2017. Aggrieved by this decision, the Company filed a Writ Petition challenging the curtailment of incentives under the Scheme. • The Petitioner made the following submissions: - Curtailment of the validity period is not permissible under the Scheme;

[1] TS-627-HC-2019(BOM)-VAT – The High Court of Judicature at Bombay, Nagpur Bench

- Further, the introduction of new tax structure shall not have any adverse impact on the monetary incentives provided under the Scheme by virtue of applying the doctrine of *promissory estoppel;*
- In support of their submissions, the Petitioner relied on the decisions in the cases of *Motiram Padampat Sugar Mills Company Limited* v. *State of Uttar Pradesh and others* [(1979) 2 Supreme Court Cases 409] and *Gujarat State Financial Corporation* v. *Lotus Hotels Pvt. Ltd.* [(1983) 3 Supreme Court Cases 379].

- The Authorities argued that the Petitioner would not be entitled to original tax benefits on account of a change in tax structure and that benefits under the Scheme shall only be made available in accordance with Government Resolution ('GR') dated June 12, 2018. Further, the new tax structure does not contain provisions for tax exemption and thus, a taxpayer must first pay its tax liability before refunds are granted to eligible units.
- The Hon'ble High Court observed the following:
  - The Incentive Scheme was originally introduced in the year 1964 and has been amended from time to time. Further, the Scheme has not been superseded by any other scheme or policy. The object of the scheme was to ensure an even distribution of industrial units across the State of Maharashtra so that employment could be provided to larger sections of the society, leading to a more equal distribution of wealth. The scheme was modified from time to time for the purpose of providing promotional and financial incentives.
  - Clause 3.1 of the Incentive Scheme clearly establishes that the Commissioner of Sales Tax can only specify the effective date of the Eligibility Certificate and shall not modify enlarge or curtail the validity period decided by the Implementing Agency.
  - On the issue of violating the doctrine of *promissory estoppel*, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Motiram Padampat Sugar Mills Company Limited* (supra) in order to establish two propositions of the law as follows:
    - The promise is solemnly given by the State with the intention that, when acted upon, a legal relationship is created. Further, after acting on the said promise, if the promisee has changed position/ incurred liabilities, the State must be held as bound by the promise, except in certain situations;
    - The doctrine is equitable in nature, and therefore, it must yield when the equity so requires.
  - It was observed that the State promised various incentives if industries set-up units in rural and remote areas. The incentives were meant for offsetting the additional investment and increase in cost of production to gain competitiveness and avoid losses. Relying on said promise, the Petitioner opened its industrial unit at Dabha village and has forged a legal relation with the State.
  - The Hon'ble High Court observed that the doctrine of promissory estoppel is clearly applicable in this case and would prohibit the Government from taking any decision involving either incomplete or reduced implementation of the incentives under the

	Scheme. It was also observed that the Government cannot simply change its stance due to *ipse dixit;* - Only justifiable facts and circumstances can be used as a means to change the decision, otherwise the State must give full effect to the decision which is to be found under the Incentive Scheme. This is the essence of the rule of law. - It was also noted that if midway through the operation of the Incentive Scheme incentives are taken away or reduced, it would not only impact the industrial units but also hinder the objective of achieving the directive of Article 39(c) of the Constitution of India, i.e. the operation of an economic system should not result in the concentration of wealth and means of production to common detriment; - Reduction of benefits under the Incentive Scheme resulting from the introduction of a new tax policy is clearly not permissible and the Incentive Scheme that was in operation on the date of the Eligibility Certificate being issued would have to be enforced. - The only liberty that could be granted to the State would be modifying the Incentive Scheme so that it is consistent with the new tax structure, whilst at the same time not resulting in reducing/ restricting the benefits conferred upon under the Incentive Scheme. **Judgment:** • The Hon'ble High Court quashed and set aside the impugned order passed by the Commissioner directing to specify the effective date without curtailing the validity period in terms of the provisions under the Incentive Scheme. • The Hon'ble High Court also directed to implement the Incentive Scheme, amended up to date along with discretion to modify in order to bring it in line with the new tax structure without reducing or restricting the benefits conferred upon the Petitioner.
Dhruva Comments / Observations	• The doctrine of *promissory estoppel* prevents the promisor from withdrawing a promise to the promisee if the latter has reasonably relied upon the same. In the instant case, the Petitioner set up an industrial unit based on the incentive schemes announced by the State and thus, the said doctrine is clearly applicable to this case. • It is also relevant to note that the Incentive Scheme has undergone substantial changes post introduction of GST. The judgment directs the State Government to undertake required modifications under the scheme in line with the GST law without reducing/ restricting the benefits conferred upon the Petitioner. Thus, it would be interesting to see further amendments in light of the instant decision so as to restore the benefits awarded under the Incentive Scheme.

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