

## Plea of promissory estoppel would not be available against the exercise of the legislative functions of the State

Prior to the advent of GST, Central Government had sanctioned area-based exemptions, such as a 100% duty exemption to the industrial units from payment of excise duty for ten years from the date on which such industrial units commenced their commercial production. This benefit has been partially withdrawn post-GST. In this regard, the Supreme Court of India asserted<sup>1</sup> that, when an exemption granted earlier is withdrawn due to a change in policy, the doctrine of promissory estoppel cannot be invoked against the Union of India.

### Facts of the case

- The Government of India issued an Office Memorandum dated 7 January 2003 (O.M. of 2003). This O.M. provided for various incentives, including the exemption of 100% from excise duty for ten years to new and existing industrial units for their substantial expansion in the States of Uttaranchal and Himachal Pradesh.
- In pursuance of the O.M. and corresponding notifications, the Appellant set up a new industrial unit and availed the exemption.
- Post implementation of GST and as a result of Notification No. 21/2017-CE dated 18 July 2017, the tax exemption granted by said O.M. of 2003 ceased to continue with effect from 1 July 2017.
- On the recommendation of the GST Council, the Central Government notified the Scheme of Budgetary Support<sup>2</sup> to eligible units located in specified states for the residual period. The share of the Central Government was restricted to 58% of CGST and 29% of IGST.

- Aggrieved by the restriction, the Appellant filed a writ before the High Court, which was dismissed.
- Being aggrieved by the dismissal of the writ petition, the Appellant approached the Supreme Court.

### Appellant's contentions

The Appellant prayed that the appeal deserves to be allowed and a direction should be issued to the Central Government to provide 100% reimbursement of CGST for the balance period. In its support, the significant contentions of the Appellant were as follows:

- The refund amount, to the extent of 58%, is arrived arbitrarily and in an irrational manner.
- Under the pre-GST regime, though the Central Government was sharing with the States a certain percentage of entire taxes collected by it, still, 100% exemption from the payment of duty was being granted to the entities like the Appellant.
- Under section 11 of the CGST Act, the Government has the power to grant exemption from tax, and there is no reason as to why the Union Government should not have exercised such a power in the peculiar facts and circumstances of the case.

### Revenue's contentions

Revenue submitted that the writ petition was not tenable as the Central Government was not bound to continue granting any relief. However, as a good gesture, it has decided to reimburse 58% of CGST paid by such eligible units. In its support, the significant submissions of the Revenue were as follows:

- Promissory estoppel cannot be applied to the representation made by the Union of India if there is a material change in the circumstances.

<sup>1</sup> Hero Motocorp Ltd Vs Union Of India & Ors. [2022-VIL-82-SC]

<sup>2</sup> Notification F. No. 10(1)/2017-DBA-II/NER dated 5 October 2017, Ministry of Commerce & Industry

- In view of the proviso to clause (c) of sub-section (2) of Section 174 of the CGST Act<sup>3</sup>, the exemptions stood automatically rescinded.
- The figure of 58% is based on the recommendations of the Finance Commission, which has earmarked the share of the Union at 58% and of the States at 42%.
- Writ petitions have been erroneously filed seeking relief against the Union Government. If the Appellant has any claim, that should be against the State Governments where the industries are situated.

### Supreme Court's decision

Supreme Court dismissed the appeal of the Appellant. It analysed several judgements on whether the doctrine of promissory estoppel could operate against a statute. It concluded that a common thread in all these judgments is that they consistently hold that there can be no estoppel against the legislature in the exercise of its legislative functions. Other prominent inferences pronounced by the Court are as follows:

**a. Proviso to clause (c) of sub-section (2) of Section 174 of the CGST Act:**

This proviso is clear and specific. Accordingly, the benefit granted earlier stands rescinded in view of this proviso.

**b. Change of policy:**

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.

**c. Reimbursement of 100% instead of 58%:**

Unless the Appellants show any statutory duty cast upon the Union of India to grant them a 100% refund, a writ of mandamus as sought cannot be issued.

**d. Section 11 of the CGST Act:**

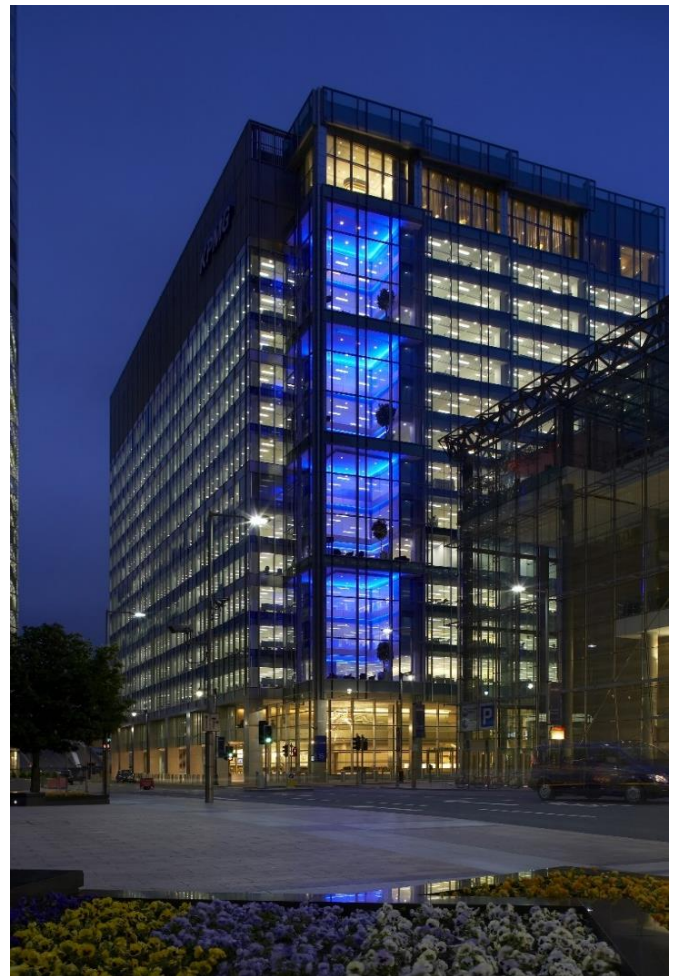
It is more than settled that the Court cannot interfere in policy matters of the Government unless the policy is found to be palpably arbitrary and irrational.

**e. Representations by Appellant:**

Appellant can make representation to respective State Governments as well as to the GST Council, who should consider such representations in an expeditious manner.

### Our comments

This judgement could end the litigations surrounding area-based exemptions sanctioned before the advent of GST. It has also recognised that there is a substance in the claim of the Appellant and thereby allowed making representations to respective State Governments and GST Council.



<sup>3</sup> Extract of proviso - "Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day;"

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