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HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

…

OWP no.638/2018, IA No. 1/2018.
CM No.4549/2021 in OWP no.639/2018,
IA No. 1/2018, CM No.6408/2021

Reserved on: 15.11.2022

Pronounced on: 30 .12.2022

Godrej Consumer Products Limited

…….Petitioner(s)

Through: Mr Pranav Kohli, Sr. Advocate
with Mr Vineet Nagla, Advocate &
Mr Arun Dev Singh, Advocate

Versus

Union of India and others

……Respondent(s)

Through: Mr Jagpaul Singh, Sr. CGSC for
respondents 1,2 & 5 to 8
Ms Pallavi Sharma, Advocate vice Mr
Ravinder Gupta, AAG for respondent no.4
None for respondent no.3

***CORAM*:**

HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT

TASHI RABSTAN-CJ(A)

1. In both the writ petitions, Notification No.F.No.10(1)2017-DBA-II/NER dated 5th October 2017 and Notification/SRO 519 and 521 dated 21st December 2017 read with Circular No.1060/9/2017-CX dated 27th November 2017, are prayed to be declared as violative of Article 14 of the Constitution of India to the extent the definition of 'Eligible unit' prohibits petitioner's unit from availing any benefit under the impugned Notification. By writ of mandamus, petitioner's

units: one situated at Chak Prat Singh, National Highway-1A, Hatli Morh, Kathua (J&K); and another situated at SIDCO Industrial Complex, Lane-3, Phase-II, Bari Brahmana, Samba, are sought to be held and declared eligible for budgetary support as given under the Notification F.No.10(1)2017-DBA-II/NER dated 5th October 2017 and Notification/SRO 519 and 521 dated 21st December 2017. Respondents, by writ of mandamus, are prayed to be directed to formulate an appellate procedure for rejection of funds or against erroneous demands under Notification No.F.No.10(1)2017-DBA-II/NER dated 5th October 2017 and Notification/SRO 519 and 521 dated 21st December 2017. It is also prayed by petitioners to set-aside Order No. C.No.IV(16)GST-1/Regd-ID/Godrej/2017/2989 dated 20th August 2018, passed by respondent no.8 and declare Notification No.21/2017-Central Excise dated 18th July 2017 as illegal, unconstitutional and violative of Articles 265 and 300A of the Constitution of India. Declaring Proviso to Section 174 (2) (C) of the CGST Act, 2017 as being illegal and inconsistent with main provision of Section 174 of the CGST Act to the extent the said Proviso grants powers to issue notifications even after the appointed day and also declaring Proviso to Section 174(2)(c) of CGST Act, 2017, as illegal and inconsistent with main provision of 174 to the extent the said proviso restricts the class of Assessee from availing tax exemption granted as an incentive against investment on or after 1st July 2017 and to the extent it denies tax exemption granted as an incentive

against investment on or after 1st July 2017 against the doctrine of promissory estoppel and legitimate expectation.

2. Briefly put, the case set up by petitioner is that petitioner is a Fast-Moving Consumer Goods (FMCG) company engaged in manufacture of household insecticides, personal care and home products, with its registered office at Godrej One, Pirojshanagar, Vikhroil East, Eastern Express Highway, Mumbai and two manufacturing units: one at Chak Pratap Singh, National Highway-1A, Hatli Morh, Kathua; and another at SIDCO Industrial Complex, Lane-3, Phase-II, Bari Brahmana, Samba. Petitioner-unit is stated to have commenced commercial production out of the Coil-11 unit in the year 2005-06 and was availing the central excise exemption benefits under the Notification no.56/2002-Central Excise dated 14th November 2002 and that the benefit would continue for ten years from the date of publication of the Notification or commencement of the commercial productions in the new units.

2.1 It is also contended by petitioner-unit that pursuant to New Industrial Policy and other concessions for Jammu and Kashmir, which were initially introduced on 14th June 2002, respondent no.2 introduced Notification no.1/2010-Central Excise dated 6th February 2010 (Excise Exemption Notification) to enable manufacturers to set up new units/undertake substantial expansion at a later date from availing the central excise benefit. According to petitioner, there was no sunset clause prescribed under Excise Exemption Notification, giving an

option to existing units to undertake substantial expansion at any date without any limitation.

2.2 It is averred by petitioner unit that in order to avail the continued benefit, petitioner undertook steps for substantial expansion of its unit. As stated by petitioner-company the steps taken and permissions granted thereafter led it to presume that benefit given under the erstwhile Excise Exemption Notification would be grandfathered into the Goods and Services Tax (GST) regime.

2.3 It is stated that petitioner-unit made additional investment with the belief that the same would yield an exemption benefit over a period of time as envisaged in the erstwhile Excise Exemption Notification which now stand rescinded and replaced with the Budgetary Support Scheme announced vide impugned Central Notification. Following the rollout of GST regime on 1st July 2017, respondent no.2 rescinded the Excise Exemption Notification vide Notification no.21/2017 dated 18th July 2017.

2.4 It is averred that petitioner, however, pre-empting the roll out of a similarly scheme as was in existence prior, went ahead and commenced commercial production from the Coil 11 unit on 27th September 2017 and subsequently, respondent no.1 issued impugned Central Notification for budgetary support, which grants an amount equivalent to 58% of the Central Goods and Services Tax (CGST) paid by petitioner after utilization of the input tax credit.

2.5 It is also stated that primary condition for availing budgetary support under impugned Central Notification was that subject unit should

qualify as an Eligible Unit as defined under Para 4.1 thereof, whereby only such units that were availing the benefit under erstwhile Excise Exemption Notification for the period immediately preceding 1st July 2017 by commencing production before such date are eligible to avail budgetary support under the impugned Central Notification, but the same according to petitioner is contradictory to the introductory paragraph of the subject notification which provides that government has introduced budgetary support scheme for the units which were eligible for drawing benefits under the earlier excise duty exemption scheme.

2.6 It is also contended that GST Council in its meeting held on 30th September 2016 left it to the discretion of Central Government and State Government to notify schemes of Budgetary Support to units where the erstwhile schemes were in operation and accordingly the Central Government provided Budgetary Support to eligible units for the residual period by way of part reimbursement of goods and service tax paid by the unit, limited to Central Government's share of CGST and IGST retained after devolution of part of these taxes of the States.

2.7 It is also averred that apportionment of the tax between Central and States has also undergone complete reorganization and clause (1) of Article 269 of the Constitution of India provides that GST on supplies in course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and States in the manner as may be

provided by the Parliament by law on recommendations of GST Council and the same has been operationalized by the levy of tax under IGST Act.

3. Objections have been filed by respondents. It is their contention that petitioner-unit was registered under erstwhile Central Excise under R.C.no.AABCG 3365 JEM 018 and was availing Central Excise Exemption benefit under erstwhile Notification no.56/2002-CX dated 14th November 2002 and that commencement of commercial production from expanded capacity was 10th February 2007, which was valid for ten years only, that is, up to 9th February 2017 and therefore, after 9th February 2017, petitioner-unit was neither eligible to avail the benefit of notification nor working under said notification and no application of petitioner-unit for further expansion of the unit is pending with the department.

3.1 It is further contention of respondents that notification no.56/2002-CX dated 14th November 2002 ceased to apply with effect from 1st July 2017 and stands rescinded on 18th July 20177 vide notification no.21/2017 dated 18th July 2017.

3.2 It is also contended by respondents that petitioner-unit was not availing the benefit of any exemption notifications issued by the Government of India in exercise of powers conferred under Section 5-A of the Central Excise Act in the erstwhile State of Jammu and Kashmir, by way of availing funds.

3.3 It is insisted by respondents that Article 279A of the Constitution provides that GST Council shall make recommendations to the Union

and States, *inter alia*, on issues relating to special provision with respect to the States of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand. In its meeting held on 30th September 2016, the GST Council left it to the discretion of Central and State Governments to notify schemes of Budgetary Supports to units where the erstwhile schemes were in operation on 18th July 2017 and accordingly, the Central Government provided the Budgetary Support to eligible units for residual period by way of part reimbursement of goods and service tax paid by the unit, limited to Central Government's share of CGST and IGST retained after devolution of part of these taxes to the States.

3.4 Respondents have also averred that apportionment of the tax between Central and States has also undergone complete reorganization. Clause (1) of Article 269A of the Constitution of India provides that the Goods and Services Tax on supplies in course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and States in the manner as may be provided by the Parliament by law on recommendations of GST Council. This has been operationalized by the levy of tax under IGST Act. The Finance Commissions Reports, which are recommendations in terms of Article 280 (3) (u) of the Constitution, ate recommendations of the Finance Commission regarding, *inter alia*, the sharing of the Union Tax Revenue. The said 14th Finance Commissions Report is valid.The units, eligible under

the erstwhile Schemes and in operation through exemption notifications issued by the Department of Revenue in the Ministry of Finance, would be considered eligible under the said scheme. The scheme is limited to the tax which accrues to the Central Government under Central Goods and Service Act, 2017 and Integrated Goods and Services Act, 2017, after devolution of the Central tax or the Integrated tax to the States, in terms of Article 270 of the Constitution.

4. We have heard learned counsel for parties and considered the matter.

5. Learned senior counsel appearing for petitioners has stated that petitioner-unit at Chak Pratap Singh, National Highway-1A, Hatli Morh, Kathua, J&K, was availing the area-based exemption under erstwhile Notification no.56/2002-Central Excise dated 14th November 2002 and in the wake of option given under Notification no.1/2010-Central Excise dated 3rd February 2010, petitioner undertook substantial expansion for the said unit and due to such expansion, petitioner's unit would have received refund of central excise duty for a further period of ten years from the date of commencement of commercial production.

5.1 Learned senior counsel's further submission is that after rollout of GST, respondents rescinded erstwhile Central Excise Notification nos. 56/2002 and 02/2010 in terms of Notification no.21/2017 dated 18th July 2017, introducing a Central Scheme for budgetary support vide Notification no.F.No.10(1)2017-DBA-II/NER dated 5th October 2017. He also avers that rescinding notification has come to be issued

on 18th July 2017 in exercise of powers under Section 5A(1) of the Central Excise Act when the said provision was not even in existence as Section 174 of the Central Goods and Service Tax Act repealed the Central Excise Act with effect from 1st July 2017 and it is, thus, evident that rescinding notification has been issued without any legal backing and has no legal to stand on and as a corollary thereof, rescinding notification is violative of Articles 265 and 300A of the Constitution of India. Petitioner, according to learned senior counsel, made an application on 28th February 2018, for registration of eligible unit and issuance of UID number for budgetary support, which is primary condition to avail benefits under the budgetary support and that respondent no.8 vide order impugned dated 20th August 2018 in a summary manner and without appreciation of admitted facts and in perverse manner rejected the petitioner's application, wrongly applying the eligibility criteria laid out under Para 4.1 of the Budgetary Support Notification dated 5th October 2017.

5.2 According to learned senior counsel, petitioner was eligible to avail the benefits under Notification no.01/2010 as the necessary permission for substantial expansion was granted by DIC vide letter dated 13th October 2016 qua its Kathua Unit and all substantial steps were taken by petitioner qua its new Unit in Bari Brahmana and that petitioner-unit was availing benefit under 56/2002 till 9th February 2017 qua substantially expanded Kathua Unit and thereafter crystalised its eligibility under 01/2010 and that similarly for new unit

at Bari Brahmana, all substantial steps and necessary approvals were granted pre rollout of GST, i.e. 1st July 2017.

5.3 As has been insisted by learned senior counsel that concerning fulfilling the condition determining eligible unit, the expression "was availing the said exemption immediately before 1st day of July 2017" as mentioned in Para 4.1 of the Budgetary Support Scheme, the same has to be read harmoniously with the intention of not rendering the Industrial Policy, erstwhile Central Excise Notifications and decisions taken by the Cabinet Committee nugatory and otiose. While expatiating his already advanced arguments, learned senior counsel for petitioner would contend that interpretation given by respondents in terms of impugned orders denying the petitioner-unit the benefit under the Budgetary Support Schemes, creates discrimination amongst similarly circumstanced units and, therefore, violative of Article 14 and 19 (1)(g) of the Constitution of India.

5.4 His further contention is that the unit, availing benefit on 30th June 2017, has been given entitlement to the benefit whilst another unit, like petitioner, which did substantial expansion and had no opportunity to avail benefit under erstwhile Central Excise Notification no.01/2010, but were entitled to avail the benefit, is deprived of the benefit under Budgetary Support Scheme without there being intelligible criteria with the object sought to be achieved.

5.5 Learned senior counsel for petitioner, in order to bolster his submissions and contentions, has placed reliance on ***Geldhof Auto and Gas Industries Ltd v. Union of India, 2010 SCC Online Bom***

2124; State of Bihar and others v. Suprabhat Steel Limited and others, (1999) 1 SCC 31; Lloyds Electric and Engineering Limited v. State of Himachal Pradesh and others, (2016) 1 SCC 560; State of Jharkhand v. Tata Cummins Ltd and another, (2006) 4 SCC 57; Bajaj Tempo Ltd v. Commissioner of Income Tax, (1993) 3 SCC 78; Vadilal Chemicals Ltd v. State of A.P. and others, (2005) 6 SCC 292.

6. *Per contra*, learned counsel for respondents has stated that in terms of Notification no.56/2002, exemption was applicable only to new industrial units which commenced their commercial production on or after 14th June 2002 and to those industrial units existing before 14th June 2002 but which undertook substantial expansion by way of increase in installed capacity by not less than 25% on or after 14th June 2002. The said exemption would apply to the units for a period not exceeding ten years from the date of publication of notification in official gazette or from the date of commencement of commercial production whichever is later.

6.1 Learned counsel for respondents has also insisted that vide notification dated 5th October 2017, a scheme was floated to provide budgetary support under GST regime to existing eligible manufacturing units operating in J&K and others, which were eligible for drawing benefits under the earlier excise duty exemption/ refund schemes viz. notification no.56/2002-CE and 57/2002-CE both dated 14th November 2002 and notification no.01/2010-CE dated 6th February 2010, but has no relation to erstwhile schemes. After

introducing GST regime, as per DIPP notification, all these notifications have ceased to apply with effect from 1st July 2017 and rescinded on 18th July 2017 vide notification no.21/2017 dated 18th July 2018. The said notification shall come into operation with effect from 1st July 2017 for an eligible unit as defined in Para 4.1 and shall remain in operation for residual period as defined in Para 4.2 and the overall scheme shall be valid up to 30th June 2027. His further contention is that on the basis of DIPP Notification dated 5th October 2017, a circular no.1060/9/2017-CX dated 27th November 2017 was issued laying down the procedure for manual disbursal of budgetary support under GST regime to the units located in J&K and others.

6.2 According to learned counsel for respondents, petitioner-unit was earlier working under notification no.56/2002-CE with commencement of commercial production with effect from 10th February 2007 and, accordingly, they were entitled for benefits under the said notification for next ten years, i.e., up to 9th February 2017.

6.3 Learned counsel for respondents has urged that petitioner in its application for issuance of unique ID has mentioned the date of commencement of commercial production as 25th September 2017, for production of their product. Since petitioner was not availing any of exemption notification as specified in DIPP notification dated 5th October 2017 immediately before 1st day of July 2017, and have shown their date of commencement of commercial production as 25th September 2017, which is not squarely covered under the said notification and therefore petitioner-unit is not eligible to budgetary

support schemes. His further exhortation is that withdrawal of exemption is in public interest and therefore, a matter of policy and the courts would 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 public interest. To buttress his arguments learned counsel has placed reliance on a judgement passed by the Supreme Court in a case titled as ***Union of India v. V. V. F. Industries and others***, reported in ***(2020) 20 SCC 57***.

7. As is noticeable from perusal of Notification bearing F.No.10(1)/2017-DBA-II/NER, impugned herein, it has been in pursuance of the decision of the Government of India that Budgetary Support came to be notified to be provided to eligible manufacturing units operating in Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim under different Industrial Promotion Schemes of the Government of India, for a residual period for which each of the units is eligible, a new scheme has been introduced. The said scheme is being called as Scheme of Budgetary Support under Goods and Services Tax (GST) Regime to the Units in the aforesaid States/Territories.

7.1 The new scheme is offered, as a measure of goodwill, only to the units which were eligible for drawing benefits under the earlier excise duty exemption/refund schemes but have otherwise no relation to the erstwhile schemes.

7.2 All the earlier notifications have been rescinded and ceased to apply with effect from 1st July 2017, which includes Notification

no.56/2002- CE dated 14th November 2002, no.57/2002- CE dated 14th November 2002 and no.01/2010-CE dated 6th February 2010 as amended from time to time.

7.3 The Scheme came into being with effect from 1st July 2017 for an eligible unit as is defined in Para 4.1 of the Notification and shall remain in operation for residual period as is defined in Para 4.3 of the Notification for each of the eligible unit in respect of specified goods. The overall scheme shall be valid up to 30th June 2027.

7.4 The GST Council in its meeting held on 30th September 2016 noted that exemption from payment of indirect tax under any existing tax incentive scheme of Central or State Governments would not continue under GST regime and concerned units would be required to pay tax in the GST regime.

7.5 The Council left it to the discretion of Central and State Governments to notify schemes of budgetary support to such units. The Government in recognition of the hardships arising due to withdrawal of above exemption notifications decided that it would provide budgetary support to the eligible units for the residual period by way of part reimbursement of the Goods and Services Tax, paid by the unit limited to the Central Government's share of CGST and/or IGST retained after devolution of a part of these taxes to the States.

7.6 It can also be seen from perusal of the Notification that 'Eligible Unit' means a unit which was eligible before 1st July 2017 to avail the benefit of *abinitio* exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may

be, issued in this regard, listed in para 2 of the Notification and was availing the said exemption immediately before 1st July 2017. The eligibility of the unit shall be on the basis of application filed for budgetary support under the scheme with reference to: (a) Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST; or (b) GST registration for the premises as a place of business, where manufacturing activity under exemption Notification no. 49/2003- CE dated 10th June 2003 and no.50/2003- CE dated 10th June 2003 were being carried prior to 1st July 2017 and the unit was not registered under Central Excise.

7.7 Para 4.2 of the Notification provides that 'Specified goods' means the goods specified under exemption notifications, listed in paragraph 2, which were eligible for exemption under the said notifications, and which were being manufactured and cleared by the eligible unit by availing the benefit of excise duty exemption, from: (a) The premises under Central Excise with a registration number, as it existed prior to migration to GST; or (b) The manufacturing premises registered in GST as a place of business from where the said goods under exemption Notification Nos.49/2003- CE and 50/2003- CE both dated 10th June 2003 were being cleared.

7.8 'Residual period', as is given in Para 4.3 of the Notification, means the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production, as specified under the relevant notification listed in paragraph 2, during

which the eligible unit would have been eligible to avail exemption for the specified goods. The documentary evidence regarding date of commercial production shall be submitted in terms of para 5.7 of the Notification.

7.9 The amount of budgetary support under the scheme for specified goods manufactured by the eligible unit shall be sum total of: 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of Subsection(1) of Section 49 the Central Goods and Services Act, 2017, after utilizing the Input tax credit of the Central Tax and Integrated Tax; and 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of Section 20 of the Integrated Goods and Services Act, 2017, after utilizing the Input tax credit Tax of the Central Tax and Integrated Tax.

7.10 However, where inputs are procured from a registered person operating under the Composition Scheme under Section 10 of the Central Goods and Services Act, 2017 the amount, i.e., sum total of 58% and 29% above, shall be reduced by the same percentage as is the percentage value of inputs procured under Composition scheme out of total value of inputs procured.

7.11 To avail benefit of the scheme, eligible unit is to first utilize input tax credit of Central tax and Integrated tax and balance of liability, if any, shall be paid in cash and where this condition is not fulfilled, the reimbursement sanctioning officer shall reduce the amount of budgetary support payable to the extent credit of Central tax and

integrated tax, is not utilized for payment of tax. 58% has been fixed taking into consideration that at present Central Government devolves 42% of the taxes on goods and services to the States as per the recommendation of the 14th Finance Commission.

7.12 Notwithstanding, the rescinding of the exemption notifications listed under para 2 of the Notification, the limitations, conditions and prohibitions under the respective notifications issued by Department of Revenue as they existed prior to1st July 2017 would continue to be applicable in terms of the scheme as provided in impugned Notification. However, the provisions relating to facility of determination of special rate under the respective exemption notifications would not apply under the scheme.

7.13 Budgetary support under the scheme is to be worked out on quarterly basis for which claims are to be filed on a quarterly basis namely for January to March, April to June, July to September & October to December.

7.14 It is also provided in the Notification that if any unit is found on investigation to overstate its production or make any misdeclaration to claim budgetary support such a unit would be made ineligible for residual period and would be liable for recovery of excess budgetary support paid. The activity as to concealment of input tax credit, purchase of inputs from unregistered suppliers, unless specifically exempt from GST registration or routing of third-party production or other activities aimed at enhancing the amount of budgetary support by misdeclaration would be treated as fraudulent activity and, without

prejudice to any other action under law may invite denial of benefit under the scheme *abinitio*. The units will have to declare total procurement of inputs from unregistered suppliers and from suppliers working under Composition Scheme under CGST Act, 2017.

7.15 It is also made clear in the Notification that grant of budgetary support under the scheme shall be subject to compliance of provisions relating to any other law in force.

7.16 The manufacturer, applying for benefit under the scheme for the first time, is required to file the documents, like, copy of option filed by manufacturer with jurisdictional Deputy Commissioner/ Assistant Commissioner of Central Excise officer at relevant point of time, for availing exemption notification issued by Department of Revenue; as also document issued by concerned Director of Industries evidencing commencement of commercial production and copy of last monthly/quarterly return for production and removal of goods under exemption notification of Department of Revenue.

7.17 The eligible units are required to obtain onetime registration on ACES-GST portal and obtain a unique ID, which is to be used for all processing of claims under the scheme. The application by eligible unit for reimbursement of budgetary support shall be filed on ACES-GST portal with reference to unique ID obtained and shall be processed by the Deputy Commissioner or Assistant Commissioner of the Central Tax for sanction of the admissible amount of budgetary support. The application for imbursement of budgetary support shall be made by eligible unit after payment of CGST/IGST has been made

for the quarter to which the claim relates, in cash in respect of specified goods after utilization of Input Tax credit, if any.

7.18 The sanctioning authority (AC/DC) with the approval of the Commissioner may call for additional information, inclusive but not limited to past data on trends of production and removal of goods, to verify the correctness of various factors of production such as consumption of principal inputs, consumption of electricity and decide on the basis of the same, if the quantum of supply have been correctly declared.

7.19 Para 9.1 of the Notification provides that the budgetary support allowed is subject to the conditions specified under the scheme and in case of contravention of any provision of the scheme/notification, the budgetary support shall be deemed to have never been allowed and any inadmissible budgetary support reimbursed including budgetary support paid for the past period under this scheme shall be recovered along with an interest @ 15% per annum thereon. In case of recovery or voluntary adjustment of excess payment, repayment, recovery or return, interest shall also be paid by unit at the rate of fifteen per cent per annum calculated from the date of payment of refund till the date of repayment, recovery or return.

7.20 When any amount under the scheme is availed by wrong declaration of particulars regarding meeting the eligibility conditions in this scheme or as specified under respective exemption notification issued by the Department of Revenue, necessary action would be initiated and concluded in the individual case by the Office of concerned

Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be.

7.21 The procedure for recovery as provided in the scheme/Notification is that where any amount is recoverable from a unit, the Assistant Commissioner or Deputy Commissioner of Central Tax, as the case may be, shall issue a demand note to the unit (i) intimating the amount recoverable from the unit and the date from which interest thereon is due and (ii) directing the manufacturer to deposit the full sum within 30 days of the issue of the demand note in the account head of DIPP and submit proof of deposit to him/her. Where the amount is not paid by the beneficiary within the time specified as above, action for recovery shall be taken in terms of the affidavit –cum- indemnity bond submitted by the applicant at the time of submission of the application, in addition to other modes of recovery. Where any amount of budgetary support and/or interest remains due from the unit, based on the report sent by the Assistant Commissioner or Deputy Commissioner of Central Tax as the case may be, the authorized officer of DIPP shall, after the lapse of 60 days from the date of issue of the said demand note take required legal action and send a certificate specifying the amount due from the unit to the concerned District Magistrate/Deputy Commissioner of the district to recover that amount, as if it were arrears of land revenue. Residual issues related to the Scheme arising subsequently shall be considered by DIPP, Ministry of Commerce & Industry whose decision shall be final and binding.

8. It needs a mention at the cost of reiteration that Para 4.1 of impugned Notification dated 5th October 2017, as discussed herein above, provides that a unit applying for the benefit as springing from the said Notification should have been availing the benefit immediately before 1st July 2017; besides such a unit is required to file an application with reference to Central Excise registration number for the premises of the eligible manufacturing unit as it existed prior to migration to GST or GST registration for the premises as a place of business where manufacturing activity under exemption notifications dated 10th June 2003 were being carried prior to 1st July 2017 and the unit was not registered under Central Excise

9. In December 2017, the Government of Jammu and Kashmir through Finance Department, issued a Notification vide SRO 521 dated 21st December 2017, impugned herein, coming up with a scheme, namely, Jammu and Kashmir Reimbursement of Central Taxes for Promotion of Industries in the State of Jammu and Kashmir. The said scheme came into operation with effect from 8th July 2017 for eligible unit and is to remain in force till the scheme issued by the Government of India, named as Budgetary Support under Goods and Services Tax regime to the Industrial Units located in States of J&K, Uttarakhand, H.P. and North East dated 5th October 2017, is in operation.

9.1 Para 2.1 of the Notification dated 21st December 2017, provides that Eligible Manufacturing unit means a unit which avails the benefit of 58% reimbursement under Central Scheme and specified goods under Para 2.2. means the goods manufactured by Industrial Units as have

been allowed by the Department of Industries/ Handloom/ Handicrafts/J&K Khadi and Village Industries Board/ SICOP/ SIDCO.

9.2 For availing the benefit of the scheme, an eligible unit is to first utilize input tax credit of Central Tax and Integrated Tax and balance of liability, if any, would be paid in cash and where this condition is not fulfilled, reimbursement sanctioning officer would reduce the amount of reimbursement payable to the extent credit of central tax and integrated tax, is not utilised for payment of tax.

9.3 If any unit is found to have overstated its production or made any misdeclaration to claim reimbursement would be made ineligible for the scheme and would be liable for recovery of excess reimbursement paid to the industrial unit and that activity relating

10. Application for registration and issuance of UID number for budgetary support in favour of petitioner-unit was filed by petitioner-unit. The said application has been rejected vide impugned communication dated 20th August 2018. Given the pleadings of parties, it would be apropos to reproduce the aforesaid impugned communication hereunder:

"OFFICE OF THE ASSISSTANT COMMISISONER
CENTRAL GST DIVISION, SAMBA

C.No.V(16)Samba Div./Tech/Unique-ID/78/2017-18 Dated:20/8/18

To

M/s Godrej Consumer Products Ltd.,
Chak Pratap Singh, NH 1A,
HatliMorh, Kathua

Sir,

Subject:: Application for Registration of eligible unit and issue of UID number for budgetary support in the case of M/s

Godrej Consumer Products Ltd., Chak Pratap Singh, NH 1A, Hatli Morh, Kathua -regarding.

***

1 Please refer to your application dated 28.02.18 on the above cited subject and 10.08.18 forwarding thereunder copy of Hon'ble High Court of J&K order dated 27.07.18 in OWP No.639/2017 & IA No.01/2018

2 Your aforesaid application for issue of UID number has been examined in view of Central Excise Notfns. No.56/2002-CE dated 14.11.02, Notfn. No.21/2017 dt. 18.07.17, Circular No.1060/9/2017-CX dt. 27.11.17 and DIPP (Department of Industrial Policy and Promotion) notification dated 05.10.17.

3 Before proceeding to decide your application for issue of Unique ID for claiming budgetary support under Circular No.1060/9/2017-CX dt. 27.11.17, I would like to throw some light on the Notfn. No.56/2002-CE dt.17.11.2002, which is as under:

> *"As per Para No.3 of the Notfn. No.56/2002-CE, the exemption contained in this Notfn. shall apply only to the following kind of units namely*
>
> *(a) New industrial units which have commenced their commercial production on or after 14.06.02*
>
> *(b) Industrial units existing before 14.06.02, but which have undertaken substantial expansion by way of increase in installed capacity by not less than 25% on or after 14.06.02.*
>
> *Para No.4 of this notfn. states that exemption contained in this notfn. shall apply to any of the said units for a period not exceeding ten years from the date of publication of this notfn. in official gazette or from the date of commencement of commercial production whichever is later".*

4 Further, as a measure of goodwill, DIPP vide their Notfn. dated 05.210.17 have floated a scheme to provide budgetary support under GST regime to the existing eligible manufacturing units operating in the States of J&K ad others, which were eligible for drawing benefits under the earlier excise duty exemption/ refund schemes viz. Notfn. No.56/2002-CE & 57/2002-CE both dt. 14.11.02 and Notfn. No.01/2010-CE dt. 06.02.2010 issued by Govt. of India, Ministry of Finance, Deptt. Of Revenue, but has otherwise no relation to the erstwhile schemes. After the introduction of GST regime, as per DIPP Notf. all these notfns. have ceased to apply w.e.f. 01.07.2017 and stand rescinded on 18.07.17 vide Notfn.No.21/2017 dt.18.07.18. As per Para No.3.1 of this scheme, the said scheme shall come into operation w.e.f. 01.07.17 for an eligible unit (as defined in Para 4.1) and shall remain in operation for residual period (as defined in Para 4.3) for each of the eligible unit in respect of specified goods (as defined in Para 4.2) and the overall scheme shall be valid upto 30.06.2027. The definition of 'Eligible Unit' has been specified in Para No.4.1 which states as under

"Eligible unit means a unit which was eligible before 1st day of July, 2017 to avail the benefit of ab-initio exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may be, issued in this regard, listed in para 2 above and was availing the said exemption immediately before 1st day of July, 2017."

Para 4.4 of DIPP also defines Residual period as under:

"Residual period means the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production, as specified under the relevant notification listed in para 2, during which the eligible unit would have been eligible to avail exemption

for the specified goods. The documentary evidence regarding date of commercial production shall be submitted in terms of Para 5.7"

5 On the basis of DIPP Notfn. Dt.05.10.17, the Govt. of India, Ministry of Finance, Deptt. Of Revenue has also issued circular No.1060/9/2017-CX dt. 27.11.17 which further lays down the procedure for manual disbursal of budgetary support under GST regime to the units located in the states of J & K and others.

6 I have gone through the Notfn. No.56/2002-CE dt. 14.11.02, DIPP Notfn. dated 05.10.17 and Circular No.1060/9/2017-CX dt. 27.11.17 which are relevant for issue of unique ID to the party in the subject case and on the basis of which eligibility of a unit for budgetary support is determined and subsequently unique ID is issued, if the is found eligible. I have observed that in this case, the party was earlier working under Notfn. No.56/2002-CE with the commencement of commercial production w.e.f. 10.02.2007 and accordingly they were entitled for benefits under the said notfn. for next ten years i.e. upto 09.02.2017. The party at Sr. No.10 of their application for issue of unique ID has mentioned the date of commencement of commercial production as 25.09.2017 for production of their product mosquito repellent. Since the party was not availing any of the exemption notification as specified in DIPP Notfn dt. 05.10.07 immediately before 1st day of July, 2017 and have shown their date of commencement of commercial production as 25.09.17, which is not squarely covered under the said notfn., therefore, I have observed that as per para No.4.1 of DIPP notfn., the party was not availing the benefit of said notfn. immediately before 1st day of July 2017, as such as per definition of eligible unit under DIPP, the party is not eligible unit under DIPP Notfn. dt.05.10.17, therefore, unique ID number is not required to be issued to them for availment of budgetary support under the said scheme. I have further observed that the party has misdirected at Sr.12 of their application for unique ID that they were availing erstwhile Central Excise Notfn. No.01/2010 dated 06.02.2010 upto 30.06.2017, whereas the fact is that they were working under Notfn. No.56/2002-CE dated 14.11.2002 and that was also valid upto 09.02.2017 only. After 09.02.2017 and before 1st July 2017 they were not working under Notfn. NO.01/2010-CE dated 06.02.2010 and not availing any exemption during the said period.

7 In view of the aforesaid discussions, I hereby reject the application dated 28.02.18 of the party for issue of unique ID.

Yours sincerely,
Sd/
Assistant Commissioner"

10.1. From perusal of impugned Order dated 28th August 2018, it is vivid that petitioner-unit is not 'Eligible Unit', to be given the benefit that it exhorts to be bestowed under the auspices of the Scheme of 2017. It is clearly mentioned in the impugned order dated 28th August 2018 that petitioner-unit, working under and in terms of Notification of 2002, being Notification no.56/2002, was entitled to the benefits percolating in terms thereof, however, till 9th February 2017.

And insofar as benefits as available under and in terms of Notification/Scheme of 2017 are concerned, petitioner-unit is not entitled to any benefit thereunder as petitioner-unit was not availing any benefit immediately before and/or on 1st day of July 2017. Not only this, petitioner-unit has been unambiguously shown to have commenced its commercial production as on 25th September 2017 and,as such, petitioner-unit is not squarely qualified and covered to have had the benefits as are emanating from the Notification/Scheme of 2017.

In short, impugned order dated 28th August 2018 is self-explanatory.

10.2. The imperative figures and facets of the matter as adumbrated in impugned order dated 28th August 2018, questioned by petitioner-unit on the assertion of being wrong and incorrect, brought to surface by respondents cannot be disputed or alleged as fudged on the plea of petitioner, more particularly when in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to the case in hand and the purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity which is not found in the present case.

10.3. In the present case, impugned Notifications are lucid and eloquent and need not be interpreted or construed in the way and manner the

petitioner intends and chooses to and as a result whereof, writ petition qua impugned Notifications is liable to be dismissed.

10.4. Insofar as judgements, relied upon by learned senior counsel for petitioner, are concerned; those would not render any aid and/or assistance to the case of petitioner as those said judgement/citations are far more distinct to the facts and circumstances of the present case and therefore, are not pertinent and applicable to the present case.

10.5. It is worthwhile to mention here that exemption notification should not be read liberally construed and beneficiary must fall within the ambit of exemption and fulfil the conditions thereof and if the conditions are not fulfilled, the issue of application of notification does not arise at all by implication. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard. The exemption notification should be strictly construed and given a meaning according to legislative intendment. The statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions. It is also well settled eligibility clause in relation to exemption notification must be given effect to as per the language and not to expand its scope deviating from its language and

therefore, there is a vast difference and distinction between a charging provision in a fiscal status and an exemption notification. [Vide: ***Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar v. Commissioner of Central Excise and Service Tax, Alwar*, (2022) 5 SCC 62; Commissioner of Customs, Bangalore v. GE B Ltd and another, (2016) 15 SCC 733; Commissioner of Customs (Preventive) Mumbai v. M. Ambalal and Company, (2011) 2 SCC 74**]

11. In Circular no.1060/9/2017-CX dated 27th November 2017, impugned herein, it is elucidated that in terms of the Central Excise regime as it existed prior to 1st July 2017, the units located in Jammu & Kashmir and other States were eligible to avail exemption from payment of Central Excise duty in terms of area-based exemption notifications and that while exemption was available to the units located in Jammu and Kashmir were required to pay Central Excise duty and avail exemption by way of refund of cash component of such duty paid, but under GST regime there is no such exemption and the existing units availing exemption from payment of Central Excise duty prior to 1st July 2017 are required to pay CGST and SGST/IGST like a normal unit and thus no exemption is available to these units by way of either ab-initio exemption or by way of refund.

11.1 The aforesaid circular, impugned herein, is elucidation of main Notification and does not give fresh and/or new terms and conditions for granting budgetary support as available under the Notification/Scheme of 2017. Thus, again need not be interfered with.

12. As is coming to fore from above discourse that withdrawal of exemption in public interest is a matter of policy and the courts would not bind the Government to its policy decision for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in public interest. The courts do not interfere with the fiscal policy where the Government acts in public interest and neither any fraud or lack of *bona fides* is alleged muchless established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification.

12.1. The assertion qua promissory estoppel exhorted by learned senior counsel cannot as well come to rescue of petitioner as the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including objective to be achieve and the public good at large.

12.2. While considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present to the mind of the court, while considering the applicability of the doctrine. Doctrine of promissory estoppel must yield when the equity so demands if 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.

12.3. 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.

12.4. In ***Kasinka Trading v. Union of India (1995) 1 SCC 274***, the Supreme Court has held that the appellants in the said case appear to be under the impression that even if, in the altered market conditions the continuance of exemption may not have been justified, yet, the government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had been issued. The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decision for all times.

12.5. As has been held by the Supreme Court in ***Union of India v. V.V.F. Ltd, (2020) 20 SCC 57***, that under the General Clauses Act an authority which has power to issue a notification has undoubted power to rescind or modify the notification in a like manner. It has been observed 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" and that it would be inequitable to hold the Government to the promise made by it and the court would not raise any equity in favour of promisee and enforce the promise against the government. Where public interest warrants, the principles of promissory estoppel cannot be invoked inasmuch as the government can change the policy

in public interest. And it is also well settled that taking cue from the doctrine of promissory estoppel, the authority cannot be compelled to do something which is not allowed by law or prohibited by law when there is no promissory estoppel against the settled proposition of law. That apart, promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute and, therefore, the government or public authority cannot be compelled to make a provision which is contrary to law. [See: ***Shree Sidhbali Steels Ltd v. State of U.P. (2011) 3 SCC 193***]

12.6. Again, as having been held in R. K. Garg v. Union of India, (1981) 4 SCC 675, that the Courts must always remember that legislation is directed to practical problems as economic mechanism is highly sensitive and complex, and many problems are singular and contingent and the laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry and exact wisdom and nice adaption of remedy are not always possible and that judgment is largely a prophecy based on meagre and uninterrupted experience. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account, it cannot be struck down as invalid. The courts cannot be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of

abuse, but that too cannot of itself be a ground for invalidating the legislation because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subjects to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Courts must, therefore, adjudge constitutionality of such legislation by the generality of its provisions and not by its crudities and inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues. As has also been held by the Supreme Court in ***Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1***, that every taxing statute including charging, computation and exemption clauses, should be interpreted strictly. Though in case of ambiguity in charging provisions, the benefit necessarily goes in favour of Assessee, yet for an exemption notification or exemption clause the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State. Thus, a person claiming exemption has to establish that his case squarely falls within the exemption notification and while doing so, a notification should be construed against the Assessee in case of ambiguity.

13. When the case in hand is looked into and examined in the backdrop of above well settled legal position of law, there is no naysaying that petitioner has failed to establish that its case squarely falls within the impugned notifications and exemptions provided thereunder. As a corollary thereof, both the writ petitions are devoid of any merit and are, thus, dismissed. Interim directions(s) are also vacated.

14. Dismissed.

(Mohan Lal)
Judge

(Tashi Rabstan)
Judge

JAMMU
30.12.2022
Madan Verma- PS

Whether the judgment is reportable ? : Yes.
Whether the order is speaking ? : Yes.

Pronounced today at Jammu in terms of Rules 138(4) of the Jammu & Kashmir High Court Rules, 1999.

(Tashi Rabstan)
Judge

Jammu
30.12.2022