



Notification issued cannot contradict the principles of promissory estoppel

Atibir Industries Company Ltd. v. The State Tax Jharkhand & Ors.¹

The Jharkhand High Court ('the High Court') in a judgement concerning the Jharkhand States's industrial policy affirmed the doctrine of promissory estoppel and held that any subsequent changes to policy, destroying the vested rights of the beneficiaries is unreasonable and also violative of Article 14 of the Constitution of India.

Facts of the case:

- The State of Jharkhand introduced the Jharkhand Industrial Investment and Promotion Policy, 2016 ('the policy') on February 16, 2016, offering subsidy on Value Added Tax ('VAT') in the form of reimbursement of 75% of the "Net VAT" paid per annum, for 7 years for large new projects.
- Accordingly, the petitioner applied for reimbursement of tax under the policy. However, the same was not disbursed due to an explanation. The subject Explanation was added to the policy by Notification, dated March 7, 2019 ('the notification'), i.e., after the policy was in force, which stated that incentives under the policy will be restricted if tax credit ('ITC') on supplies are claimed by the buyer. In the petitioner's case, its buyers were availing ITC.

- Aggrieved by this denial of reimbursement, the petitioner preferred a writ petition before the High Court contending that insertion of an additional condition retrospectively by way of 'End User Restriction' into the policy curtails the benefits offered by the policy and is without jurisdiction. Respondent being bound by the doctrine of promissory estoppel and legitimate expectation, cannot amend the policy.
- On the other hand, the respondent contended that Clause 10.10 of the policy gives power to the State Government to amend or withdraw any of the provisions and/or under the policy.

High Court's findings:

- Any notification issued by the State Government, if found to be repugnant to the policy, declared in a Government resolution, the said notification must be held bad to that extent. Reliance was placed on the judgement in **State of Bihar & Ors. v. Suprabhat Steel Ltd.**²
- Placing the reliance on the Apex Court's decision in the case of **State of Orissa & Ors. v. Tata Sponge**

¹ 2023 (9) TMI 1355

² 1998 (11) TMI 530



*Iron Ltd.*³, the High Court discussed that an additional condition introduced and laid down in the operational guidelines is ultra vires the policy in the absence of public interest

- Overriding public interest would prevail over a plea based on promissory estoppel, but in the present case, the respondent could not prove any overriding public interest or equity.
- When a right has already accrued and the conditions for availing the benefits have been fulfilled then the withdrawal of exemption cannot affect the already accrued rights and for this, reliance was placed on the decision of the Supreme Court in the case of *MRF Ltd. v. Assistant Commissioner (Assessment), Sales Tax & Ors.*⁴
- It was observed that the State and its instrumentalities can be made subject to the equitable doctrine of promissory estoppel where the party claiming estoppel has changed its position.

The ruling:

- The High Court held that the amendment carried out vide the notification, is not legally sustainable and directed the Respondents to release the amount towards reimbursement of SGST subsidy to the Petitioner.

Dhruva Comments

This is a settled issue, and the decision of this Court is in consonance with the catena of rulings of the Supreme Court.

Needless to add that in the absence of supervening public interest, the set policy cannot be amended to the detriment of the claimant beneficiaries.

³ 2007 (9) TMI 389

⁴ 2006 (9) TMI 278



ADDRESSES

Mumbai

1101, One IndiaBulls Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Pralhadnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway,
Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Abu Dhabi

Dhruva Consultants
1905 Addax Tower, City of Lights,
Al Reem Island,
Abu Dhabi, UAE
Tel: +971 26780054

Dubai

Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
Dubai, UAE
Tel: +971 4 240 8477

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

Kulraj Ashpni

kulraj.ashpni@dhruvaadvisors.com

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