A STATE OF GUJARAT

v.

ARCELOR MITTAL NIPPON STEEL INDIA LIMITED

(Civil Appeal Nos. 7710-7714 of 2021)

B JANUARY 21, 2022

[M. R. SHAH AND SANJIV KHANNA, JJ.]

Gujarat Sales Tax Act, 1969: s. 49(2), 45 – Exemption from payment of sales tax – ESL-assessee dealer, a steel manufacturing unit made investments in the Scheme – ESL granted exemption from payment of purchase tax on raw materials for Naphtha and Natural Gas as per Entry No. 255 of the Notification dated 05.03.1992, subject to fulfilling certain conditions – Amendment to Entry No. 255 vide two notifications – Under the said three Notifications, main requirements was that the eligible unit furnishes to the selling dealer a certificate in Form No. 26 declaring that the goods shall be used by it as raw materials, processing materials or consumable stores in its industrial unit for which it has obtained the eligibility certificate, for the manufacture of goods in its industrial unit as per the conditions provided under the three notifications – Said exemption made available to steel manufacturing units and the units/entities engaged in generating electricity placed in the list of industries "Not Eligible" for this incentive – Natural Gas and Naphtha purchased by the ESL, against declarations in Form No.26 were sold to EPL and EPL utilized the Natural Gas and Naphtha purchased from ESL for the purpose of generating/manufacturing electricity, which came to be sold to the ESL by the EPL – Assessee dealer seeking exemption from payment of the purchase tax as per the original Entry No.255(2) vide notification dated 05.03.1992 – Entitlement to – Held: As per the declaration furnished in Form No.26, the eligible unit-ESL was required to actually use the goods by him within the State of Gujarat as raw materials, for manufacture of goods by him – Power producing companies were specifically put in the list of 'ineligible' industries for any exemption from sale/ purchase tax on procurement of raw materials – Transfer of Naphtha and Natural Gas by the eligible unit ESL to EPL, after availing the exemption from payment of purchase tax and not using the raw

H

material for its own use is in violation of the eligibility criteria/ condition mentioned in the Original Entry No. 255(2) – Basic eligibility condition that the eligible unit "shall actually use the goods" remain the same in amended Entry No.255(2) vide notifications dated 14.11.2002 and 16.01.2002 – Subsequent amended Entry can be said to be clarificatory and expanding the scope of eligibility as it was – It cannot said to be taking away the rights available to the eligible unit under the original Entry No.255(2) dated 05.03.1992, or in anyway in conflict with the first/ parent notification/Entry No.255(2) – Thus, there was breach of the declaration given in Form No.26 (Entry No.255) by the assessee dealer – Demand of the purchase tax on and after 14.11.2000, not hit by the principle of promissory estoppel – ESL not entitled to the exemption from payment of the purchase tax as per the original exemption notice – It was a case of false and wrong claim of exemption, thus, levy of penalty justified – Assessee dealer, liable to pay the penalty not exceeding one and one-half times.

Interpretation of statutes: Exemption notifications under taxing statutes – Construction /Interpretation of – Held: Exemption notification should be strictly construed and given meaning according to legislative intendment – It is not open to the court to ignore the conditions prescribed in industrial policy and the exemption notifications – If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification – Gujarat Sale Tax Act, 1969

Doctrines: Doctrine of promissory estoppel – Applicability of, in taxing statutes – Held: Doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes – There cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties – In taxing matters, the doctrine of promissory estoppel as such is not applicable and the Revenue can take a position different from its earlier stand in a case with established distinguishing features – Rules of promissory estoppel and estoppel by conduct may not be applied to alter or amend the specific terms and against statutory provisions.

A **Allowing the appeals, the Court**

HELD: 1. The respondent-the eligible unit was not entitled to the exemption from payment of purchase tax under the original Entry No.255(2) dated 05.03.1992, firstly, on the ground that it did not fulfill the eligibility criteria/conditions mentioned in the
B **original Entry No.255(2) dated 05.03.1992 and secondly that there was a breach of declaration in Form No.26 furnished by the respondent – eligible unit – ESL. The order passed by the Assessing Officer levying the demand of purchase tax and imposing the penalty is hereby restored. [Para 24][760-D-F]**

C **2.1 The original Entry No.255(2) dated 05.03.1992 does not provide that the eligible unit after purchase of the raw materials instead of using the same by itself or himself can transfer/ sold to another unit and the another unit can use the said raw materials. If it is accepted, in that case, it would be varying the conditions imposed in the original Entry No.255(2) and it shall**
D **tantamount to adding something more than what is not provided in the exemption notification/original entry, which is not permissible. The original notification does not at all permit such transfer and use of the raw materials after availing the exemption for use of another unit, who, as such is otherwise not entitled to**
E **any exemption as per the incentive policy. [Para 11.1][752-F-G]**

2.2 As per the incentive policy, the actual benefit of exemption was available to certain industries as per the list of 'eligible' industries. The power producing companies were specifically put in the list of 'ineligible' industries for any
F **exemption from sale/purchase tax on procurement of raw materials. Thus, the EPL being a power producing company was not eligible at all for any exemption from sale/purchase tax on procurement of raw materials. Therefore, as such, by such transfer and sale of raw materials by ESL to EPL, EPL got the benefit of exemption, which otherwise being a power producing company**
G **was not eligible for such an exemption. [Para 12][752-H; 753-A-B]**

2.3. Transfer of Naphtha and Natural Gas by the eligible unit - ESL to another unit – EPL, after availing the exemption from payment of purchase tax and not using the Naphtha and
H

Natural Gas (raw materials) for its own use for manufacture of the goods so manufactured by it, it can be said to be violating the eligibility criteria/condition mentioned in the original Entry No.255(2) dated 05.03.1992 and it can be said that the respondent -ESL committed a breach of the declaration given in Form No.26. Therefore, the High Court has committed an error in holding that the respondent did not commit any breach of any of the conditions mentioned in the original Entry No.255(2) dated 05.03.1992. [Para 14][753-D-F]

2.4. While the exemption notification should be liberally construed, beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise. 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 industrial policy and the exemption notifications. The Statutory provisions providing for exemption have to be interpreted in the light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions. Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand the scope deviating from the language. There is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification. [Para 14.1-14.3, 14.6][753-G-H; 754-A-B,G]

2.5. In the instant case, the intention of the State to provide the incentive under the incentive policy was to give benefit of exemption from payment of purchase tax was to the specific class of industries and, more particularly, as per the list of 'eligible industries'. Exemption was not available to the industries listed in the 'ineligible' industries. It was never the intension of the State Government while framing the incentive policy to grant the benefit of exemption to 'ineligible industries' like the power producing industries like the EPL, which as such was put in the list of 'ineligible' industries. [Para 14.5][754-D-E]

2.6. Second notification dated 14.11.2000/the amended Entry No.255(2), is clarificatory in nature and there is no change in the basic eligibility criteria/conditions mentioned in the original Entry No.255(2). As per the original Entry No.255(2) dated 05.03.1992 and even as per the Form No.26 appended thereto, the eligible unit was required to actually use the raw materials purchased. In the subsequent notification, it is made explicitly clear that the raw materials so purchased are to be used by the eligible unit in its industrial unit. Therefore, the basic requirement that the eligible unit has to actually use such raw materials purchased by him is in no way modified and/or amended. On the contrary, the subsequent amended Entry No.255(2) dated 14.11.2000 can be said to be expanding the scope of eligibility as it was. Earlier the eligible unit was required to actually use the goods purchased within the State of Gujarat and as per the subsequent amended Entry No.255(2) dated 14.11.2000 even if such goods are used by it outside the State of Gujarat in that case also such eligible unit was held to be eligible for exemption. Even as per the condition No.6 in the amended Entry No.255(2) dated 14.11.2000, it is specifically mentioned that the eligible unit shall actually use the goods purchased, which was the requirement in the first notification also. Therefore, the subsequent amended Entry No.255(2) vide notification dated 14.11.2000 can be said to be clarificatory and/or expanding the scope of eligibility, but in no case, it can be said to be taking away any right under the original Entry No.255(2) dated 05.03.1992. Similarly, even the third amended Entry No.255(2) dated 16.01.2002 also cannot be said to be taking away any right available under the original Entry No.255(2) dated 05.03.1992. [Para 15.1, 16][755-B-G]

2.7. Subsequent amended Entry No.255(2) vide notification dated 16.01.2002 also can be said to be expanding the scope of eligibility and in no way can be said to be taking away the rights available to the eligible unit under the original Entry No.255(2) dated 05.03.1992. The eligibility criteria/condition that the eligible unit "shall actually use the goods" remain the same even in the said amendedEntry No.255(2) dated 16.01.2002. Therefore, the subsequent notifications/amended Entries cannot be said to be in any way in conflict with the first/parent notification/Entry No.255(2). [Para 16.1][755-H; 756-A-B]

2.8. Even under the first/ original Entry No.255(2) dated 05.03.1992 and even as per the declaration furnished in Form No.26, the eligible unit – respondent – ESL was required to actually use the goods by him/within the State of Gujarat as raw materials, for manufacture of goods by him. But by actually not using the raw materials so purchased by which it got the benefit of exemption from payment of purchase tax, sold the said raw materials, which in fact were required to be used by him, to another unit/entity, which another unit used it for manufacture of its goods – generating the electricity and which in turn the EPL sold to the ESL. Thus, the ESL– eligible unit did not comply with and/or fulfilled the eligibility criteria/conditions even as per the original Entry No.255(2) and therefore, was/is not entitled to the exemption from payment of the purchase tax as per the exemption notification dated 05.03.1992 vide original Entry No.255(2). Therefore, even assuming that the subsequent amended Entries vide second and third notifications are not to be made applicable in that case also the respondent -Essar Steel Ltd. being eligible unit was required to comply with and/or fulfill all the eligibility criteria/conditions mentioned in the original Entry No.255(2), by not actually using the raw materials by himself and transferring/ selling the same to the non-eligible unit, the respondent was not entitled to avail the benefit of exemption even under the original Entry No.255(2). [Para 17][756-C-F]

2.9. Even as per Form No. 26 (Entry No.255), as per the declaration filed by the respondent, being 'eligible' unit while purchasing goods for use in manufacturing goods, it was declared that the raw materials so purchased will be used by it in the manufacture of goods for sale. Thus, by not using the raw materials so purchased by it, the respondent – eligible unit – ESL has violated the declaration given in Form No.26. Therefore, the respondent was not entitled to the exemption even under the first/parent notification. [Para 18][756-G]

2.10. In the instant case, first of all, the principle of promissory estoppel to the exemption sought ought not to have been applied at all. Each assessment year/period is independent. Even otherwise, in the facts and circumstances of the case, the principle of promissory estoppel shall not be applicable. In the

instant case, the respondent – eligible unit as such was not entitled to the exemption even under the first notification as it violated the declaration given in Form No.26 as well as did not comply with and/or fulfilled the eligibility criteria/conditions required to be fulfilled while availing benefit of exemption. The respondent did not actually use the raw materials purchased by him/it and availed the exemption and after availing the exemption sold the said raw materials to 'ineligible' unit - EPL and the EPL used the same for manufacture of its goods – generating the electricity, which subsequently again sold to the ESL – eligible unit on payment of sale consideration. [Para 19][757-A-C]

2.11. As per the incentive policy declared by the State Government, the power generating company was put in the list of 'ineligible industries' and thus, independently was not entitled to the exemption under the original Entry No.255(2). Thus, by such a transfer/sale from the eligible unit to another unit the benefit of exemption is availed by the 'ineligible' industry, which is wholly impermissible and that cannot be said to be the intention of the Government while providing the incentive in the form of exemption from payment of purchase tax. Such a benefit of exemption was available only to eligible units/industries and the steel industry of which ESL belonged being one of the eligible industries. Therefore, there was no question of applicability of principle of promissory estoppel. [Para 20][757-D-E]

2.12. ESL had furnished wrong and false declarations. In the original notification/entry, it was not provided that even if the raw materials so purchased is not used by itself after availing the exemption, the same can be sold to another entity, which is 'ineligible' industry. It did not provide that in such a situation also and despite the fact that raw material is not actually used by the eligible unit, which was required to be used even as per the declaration in Form No.26, such eligible unit shall be entitled to the exemption. No such promise was given. The wordings and the language used in the exemption notifications are very clear, simple and unambiguous. Therefore, when there was no such promise and/or representation, the demand cannot be said to be hit by the principle of promissory estoppel as observed and held

by the Tribunal as well as the High Court in the impugned judgment and order. [Para 20.1][757-F-H; 758-A]

2.13. The doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes. There cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties. In the present case, the principle of promissory estoppel shall not be applicable. [Para 20.2][758-B-C]

2.14. In taxing matters, the doctrine of promissory estoppel as such is not applicable and the Revenue can take a position different from its earlier stand in a case with established distinguishing features. The rules of promissory estoppel and estoppel by conduct may not be applied to alter or amend the specific terms and against statutory provisions. All the terms and conditions contained in the exemption notification shall prevail and the person claiming the exemption has to fulfil and satisfy all the eligibility criteria/conditions mentioned in the exemption notification. [Para 20.3, 20.4][758-C-E]

2.15. The Scheme of the Statute does not in any manner indicate that the incentive provided has to continue for the consecutive years irrespective of the fulfilling of the eligibility conditions. Applicability of the incentive is directly related to the eligibility and not dehors the same. If it is found that the industrial undertaking does not fulfil the eligibility criteria, it cannot claim the incentive/exemption. The submission that as in the earlier assessment years benefit of exemption was granted to the respondent and, therefore, in the subsequent assessment years also, despite the fact that it is found that the respondent was/is not eligible for the benefit of exemption under the original Notification/Entry No.255(2) cannot be accepted. If such a submission is accepted in that case it will be perpetuating the illegality and granting the benefit of exemption to 'ineligible industry', who did not fulfill and/or comply with the eligibility criteria/conditions mentioned in the exemption notification. The principle of promissory estoppel shall not be applicable contrary

to the Statute. Merely because erroneously and/or on misinterpretation, some benefits in the earlier assessment years were wrongly given, cannot be a ground to continue the wrong and to grant the benefit of exemption though not eligible under the exemption notification. [Para 21.1, 22][758-G-H; 759-A-C]

2.16. The penalty is leviable under Section 45 and such a penalty is leviable under sub-sections (5) and (6) of Section 45 of the Act, 1969 and the penalty is leviable on purchase tax assessed. It provides that if the difference of tax paid and tax leviable/ assessed is more than twenty- five percent, in that case, the dealer shall be deemed to have failed to pay the tax to the extent of the difference between the amount so assessed/re-assessed and the amount paid and, in that case, there shall be levied on such dealer a penalty not extending one and one-half times the difference as per sub-section (5). Therefore, there being difference of more than twenty five percent, penalty to the said extent shall be leviable. This is a clear case of false and wrong claim of exemption, as the exempted goods were transferred to a third person and used in an 'ineligible' industry. This is a case of deliberate violation and evil doing. [Para 23][759-D-E]

2.17. As the difference between total tax paid and the purchase tax is more than twenty-five percent, the respondent is deemed to have failed to pay the tax as per sub-section (5) of Section 45 and, therefore, liable to pay the penalty not exceeding one and one-half times. The words used in sub-section (6) of Section 45 is "there shall be levied on such dealer a penalty not exceeding one and one-half times the difference". In the instant case, the modus operandi which was adopted by the respondent warrants a penalty. Though, the raw material was required to be used by itself for the manufacture of their goods, after availing the exemption as eligible unit and instead of using the same for itself/himself, the ESL sold the raw materials to an 'ineligible' entity – EPL, who used it for manufacture of its own goods – generating the electricity, which again came to be sold to ESL under the power purchase agreement. [Para 23.1][759-F-H; 760-A]

2.18. As such the EPL, under the incentive scheme, was not eligible at all for exemption from payment of purchase tax as

in fact power generating companies were put in the list of 'ineligible industries'. Therefore, by such a modus operandi, the benefit, which was not available to the EPL was made available by such transfer of raw materials by the ESL to EPL. There is a breach of declaration in Form No.26 also. Therefore, in the facts and circumstances of the case, the levy of penalty is justified and warranted. [Para 23.2][760-B-C]

2.19. The impugned common judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside the demand of purchase tax from the respondent are hereby quashed and set aside. [Para 24][760-D]

Commissioner of Central Excise, Bangalore-1 v. Bal Pharma Limited, Bangalore and Ors., **(2011) 2 SCC 620 – relied on.**

Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Others, **(2018) 9 SCC 1 : [2018] 7 SCR 1191;** *Union of India and Anr. Etc. Etc. v. V.V.F. Limited and Another, Etc. Etc.,* **(2020) SCC Online SC 378;** *Bengaluru Development Authority v. Sudhakar Hegde and Ors.,* **(2020) 15 SCC 63;** *Kothari Industrial Corporation Limited v. Tamil Nadu Electricity Board and Anr.,* **(2016) 4 SCC 134 : [2016] 1 SCR 564 ;** *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.,* **(2020) 8 SCC 531 : [2019] 16 SCR 275;** *Assistant Commissioner (CT) LTU and Anr. v. Amara Raja Batteries Limited*, **(2009) 8 SCC 209 : [2009] 11 SCR 953;** *Hindustan Steel Ltd. v. State of Orissa,* **(1969) 2 SCC 627 : [1970] 1 SCR 753;** *Excel Crop Care Limited v. Competition Commission of India and Anr.,* **(2017) 8 SCC 47 : [2017] 5 SCR 901 - referred to.**

Case Law Reference

[2018] 7 SCR 1191	**referred to**	**Para 3.7**
(2020) 15 SCC 63	**referred to**	**Para 3.10**
[2016] 1 SCR 564	**referred to**	**Para 3.12**

A	**[2019] 16 SCR 275**	**referred to**	**Para 4.1**
	[2009] 11 SCR 953	**referred to**	**Para 4.10**
	[1970] 1 SCR 753	**referred to**	**Para 4.29**
	[2017] 5 SCR 901	**referred to**	**Para 4.29**
B	**(2011) 2 SCC 620**	**relied on**	**Para 20.3**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.7710-7714 of 2021.

From the Judgment and Order dated 06.05.2016 of the High Court
C of Gujarat at Ahmedabad in Tax Appeal Nos.136 to 140 of 2016.

Maninder Singh, Sr. Adv., Prabhas Bajaj, Ms. Deepanwita Priyanka, Advs. for the Appellant.

Ritin Rai, Sr. Adv., Vishal Gehrana, Ashutosh P. Shukla, Ms. Kritika, M/s Karanjawala & Co., Advs. for the Respondent.

D The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Gujarat dated 06.05.2016
E passed in Tax Appeal Nos. 136 of 2016 to 140 of 2016 by which the High Court has dismissed the said appeals preferred by the State and has upheld the common order dated 29.01.2015 passed by the Gujarat Value Added Tax Tribunal, Ahmedabad (hereinafter referred to as the "Tribunal") in Second Appeal Nos.420 to 423 of 2013 by which the Tribunal held that the respondent is entitled to the exemption from payment
F of amount of sales tax as per the original Entry No.255(2) vide F.D.'s Notification dated 05.03.1992, which was issued under Section 49(2) of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "Act, 1969"), the State of Gujarat has preferred the present appeals.

2. That the respondent herein – assessee -dealer (earlier known
G as Essar Steel Ltd.) is engaged in the activity of manufacture and sale of Hot Briquetted Iron (HBI)and Hot Rolled Coil (HRC) at its two units located atHazira in Surat, Gujarat. The respondent holds registration certificate under the Gujarat Sales Tax Act, 1969 and also under the Central Sales Tax Act, 1956. The respondent made eligible investment
H in Unit No.1 pursuant to Resolution dated 07.05.1986 issued by the

Industries, Mines and Energy Departmentof the Government of Gujarat. Therefore, the respondent was certified as entitled to avail incentives during the eligible period from 01.08.1990 to 31.07.2004 up to the upper monetary limit of Rs.237.59 crores.

2.1 The Government of Gujarat vide Resolution dated 26.07.1991 announced a scheme known as "The Scheme for SpecialIncentives to Prestigious Units 1990-95 (modified)" for attracting investments in core sector industries. Under the said scheme, a prestigious unit was eligible for incentives up to 90% of the fixed capital investment. That pursuant to the said Scheme, the respondent – Essar Steel Ltd. (hereinafter referred to as "ESL") invested approximately Rs.5000 crores formanufacture of HRC. That the said exemption was provided as per Entry 255 of the notification issued by the Government of Gujarat under Section 49(2) of the Act, 1969. That the Unit No.2 of the ESL was granted Sales Tax exemption in terms of Entry No.255(2) of the Notification dated 05.03.1992 issued under Section 49(2) of the Act, 1969 for the period from 22.02.1993 to 21.02.2007 up to a maximum monetary limit ofRs. 2050 crores.

2.2 At this stage, it is required to be noted that the said exemption as per Entry No.255(2) vide Notification dated 05.03.1992 was subject to fulfilling certain conditions provided in the said original Entry No.255(2), which shall be dealt with hereinafter below.

2.3 That the exemption granted to Unit No.2 of the respondent was an exemption from payment of purchase tax on raw materials for (i) Naphtha; and (ii) Natural Gas. The applicable purchase tax at the relevant time on Naphtha was @16% on the taxable value and for Natural Gas, it was @20% on taxable value. At this stage, it is also required to be noted that this exemption had been made available to steel manufacturing units and the units/entities engaged in generating electricity were specifically excluded from this exemption by placing them in the list of industries "Not Eligible" for this incentive.

2.4 As per the original Entry No.255(2) dated 05.03.1992, the condition No.6 required the eligible units to actually use the goods purchased within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods for sale within the State of Gujarat or outside the State of Gujarat or as packing materials in packing of the goods so manufactured.

A 2.5 That thereafter vide Government Notification dated 14.11.2000, Entry No.255(2) came to be amended w.e.f. 14.11.2000 whereby it was provided that the goods were to be actually used by the eligible units as raw materials, processing materials or consumable stores in its industrial units for which it has obtained the eligibility certificate. That thereafter Entry No.255(2) came to be further amended vide Notification dated 16.01.2002, which provided that the eligible units, who claim exemption from purchase tax on purchase of the goodseven if the goods are used as raw materials, processing materials or consumable stores in its industrial units for which it has obtained the eligibility certificate in the manufacturing of goods for dispatch to its another unit or division situated within the State of Gujarat or outside the State of Gujarat for use in the manufacture of other goods for sale by such other unit.

2.6 At this stage, it is required to be noted that under all the aforesaid three notifications, one of the main requirements was that the eligible unit furnishes to the selling dealer a certificate in Form No. 26 and obtained from the registering authority, declaring inter alia that the goods shall be used by it as raw materials, processing materials or consumable stores in its industrial unit for which it has obtained the eligibility certificate, forthe manufacture of goods in its industrial unitas per the conditions provided under the three notifications.

2.7 On commissioning of the Unit No.2, the Natural Gas and Naphtha purchased by the respondent – ESL, against declarations in Form No.26 were sold to Essar Power Limited (another company) (hereinafter referred to as "EPL") and the EPL utilized the Natural Gas and Naphtha purchased from ESL for the purpose of generating/ manufacturing electricity, which came to be sold to the ESL by the EPL. It is the case on behalf of the respondent – ESL that the said electricity generated by EPL was used by it for the purpose of manufacturing HRC in its industrial unit.

2.8 The Officers of the Sales Tax conducted a surprise visit at the premises of the respondent – ESL in the month of July, 2001. A notice was issued by the Sales Tax Officer calling for certain information including details of branch transfers, deemed exports, transfer of finished goods etc. The Sales Tax Department thereafter raised a dispute inter alia regarding breach of declaration given in Form No.26 while purchasing Naphtha/Natural Gas having been committed by the respondent – ESL on the ground that the goods so purchased were transferred to EPL for

generation of electricity, which was then used in Unit No.2 for the manufacture of HRC. A notice was issued on 30.06.2002 by the Sales Tax Officer calling upon the ESLto give clarification in respect of the purported breach of conditions of exemptions, including the transfer of Naphtha/Natural Gas to EPL for generation of electricity. That the Assessing Officer passed the Assessment Orders in respect of Unit No.2 for Assessment Years 1995-1996 to 1997-1998 and 2000-2001 holding inter alia that no tax was due and payable by the respondent – ESL on account of any purported breach of the conditions of the exemption admissible under Entry 255(2).

2.9 Subsequently, a notice dated 30.05.2005 came to be issued by the Deputy Commissioner of Sales Tax for initiating levy of purchase tax of Rs.480.99 crores and for levying penalty for the period 1995-1996 to 2005-2006 on the ground that the respondent – ESL has contravened the provisions of the Act, more particularly, Entry No.255 and availed the exemption wrongly. The respondent -ESL filed a writ petition before the High Court challenging the notice issued by the Deputy Commissioner. By order dated 28.03.2006, the High Court restrained the departmental authorities fromimplementing or enforcing the assessment orders subject tothecondition that in respect of Unit No.2, the respondent – ESL shoulddeposit 50% of the tax dues within the time stipulated in the order. The assessment orders by the Deputy Commissioner of Sales Tax came to be challenged by way of appeals before the Joint Commissioner. The Joint Commissioner – the first Appellate Authority vide order dated 30.04.2013 imposed purchase tax under Section 50 of the Act for the years 1998-1999 and 1999-2000. However, the first Appellate Authority accepted in the first appeal that till the amendment took place in Entry No.255 on 14.11.2000, even if the purchased goods were used for manufacture at any place in the State of Gujarat, there was no breach of the conditions stipulated in Form No.26 and for the said assessment years, the purchase tax together with interest and penalty imposed came to be set aside. Thus, the Joint Commissioner/first Appellate Authority confirmed the levy of purchase tax in respect of the purchase of goods till 14.11.2000.

2.10 Being aggrieved against the order passed by the Joint Commissioner dated 30.04.2013, both, the respondent -dealer – ESLand the State Government preferred the appeals before the Tribunal. That by order dated 29.01.2015, the Tribunal allowed the second appeals

A preferred by the respondent-ESL holding that the respondent – ESLis not liable to pay any tax, interest or penalty on the disputed transactions and dismissed the cross objections of the State.

2.11 Feeling aggrieved and dissatisfied with the orders passed by the Tribunal allowing the second appeals preferred by the respondent – B dealer - assessee and dismissing the cross objection preferred by the State and holding that the respondent – ESL is not liable to pay any tax, interest or penalty on the disputed transactions, the State preferred the present appeals before the High Court being Tax Appeal Nos. 136 of 2016 to 140 of 2016. By impugned common judgment and order, the High Court has dismissed the said appeals mainly on the ground of C promissory estoppel and also observing that the respondent – ESL has not violated any of the conditions provided under the original Entry No.255(2) dated 05.03.1992.

2.12 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, the State has preferred D the present appeals.

3. Shri Maninder Singh, learned Senior Advocate appearing on behalf of the appellant – State of Gujarat has vehemently submitted that the impugned common judgment and order passed by the High Court is patently erroneous and unsustainable.

E

3.1 It is vehemently submitted by Shri Maninder Singh, learned senior counsel appearing on behalf of the State that in the present case, the Notification dated 05.03.1992 can be said to be a parent notification and all other subsequent Notifications dated 14.11.2000 and 16.01.2002 were either clarificatory in nature and/or expanding the scope of F exemption. It is submitted that in any case, subsequent Notifications dated 14.11.2000 and 16.01.2002 amending the original Entry No.255(2) cannot be said to be taking away any rights, which were conferred under the parent Notification dated 05.03.1992. It is submitted that therefore there is no question of the promissory estoppel as applied by the High G Court and the Tribunal.

3.2 It is submitted by Shri Singh, learned Senior Advocate appearing for the State that as per the original Notification dated 05.03.1992 and as per the original Entry No. 255(2) and the statutory Form No.26, it is abundantly clear that the parent Notification dated 05.03.1992 extends H the exemption only to 'the eligible unit' for utilizing the raw materials for

manufacture of goods in that unit itself. It is submitted that the wordings used in the notification are clear and unambiguous that the exemption shall become available only if the said eligible unit utilizes the raw materials for manufacture of goods in the very same 'eligible unit'. It is submitted that therefore the raw materials – Naphtha and Natural Gas were required to be used by the 'eligible unit – Essar Steel Ltd.' in the very same steel unit and for manufacture of the steel only.

3.3 It is submitted that if the interpretation made by the High Court and the Tribunal is accepted, in that case, even when the eligible unit does not itself utilizes the raw materials, it may, after availing the exemption, simply transmit the raw materials to any other unit or entity, even the said entities are 'not eligible' to the exemption and such entities though are 'not eligible' would then get the benefit of exemption. It is submitted that that could not be the object and purpose of granting exemption to the 'eligible units' only.

3.4 It is submitted that while introducing the incentive scheme, the Department issued the list of industries of 'eligible units' and 'non eligible units' for any exemption from sale/purchase tax on procurement of raw materials. It is submitted that in the present case the power generating companies were specifically put in the 'non eligible units' category. It is submitted that in the present case despite being fully aware of the clear and unambiguous terms and conditions of the notifications wherein the power producing companies were specifically made 'ineligible' for availing the exemptions and though ESLwas required to use the raw materials - Naphtha and Natural Gas in their own unit, after availing the exemption from payment of purchase tax, the ESL did not use the said raw materials in its unit but sold the said rawmaterials to another company – EPL,and EPL used the said raw materials – Naphtha and Natural Gas for generating the electricity, which came to be subsequently sold to the ESL.It is submitted that, thus, through such circuitous method, the ESL passed on the benefit of exemption to EPL, which otherwise the EPL was not eligible and/or entitled to.

3.5 It is submitted that, thus, the interpretation advanced by the assessee – ESLaccepted by the High Court and the Tribunal would completely defeat the purpose of exemption notifications and would be giving premium to such dishonest assessee/dealer, who after availing the exemption would sell the raw materials to another industry/entity, who as such are not entitled to and/or eligible for such an exemption. It

A is submitted that if the interpretation advanced by the assessee is accepted, in that case, it would permit industries, which are eligible for exemption to simply purchase the raw materials; not use them for any manufacturing in their own units, and then simply transmit them for use and manufacture by other units, even though such units are not eligible for exemption under the notification/policy.

B

3.6 It is further submitted by Shri Maninder Singh, learned Senior Advocate appearing on behalf of the State that in the present case, the wordings used in the parent exemption notification and Entry No.255(2) dated 05.03.1992 are very much clear and unambiguous. It specifically provides the conditions for availing the exemption and the eligible units have to fulfill all the conditions stipulated in the parent Entry No.255(2) dated 05.03.1992.

C

3.7 It is submitted that as per the law laid down by this Court in catena of decisions, the provisions of an exemption notification are to be construed strictly. It is submitted that even in the case of any perceived ambiguity, the provision has to be construed in favour of the Revenue. Reliance is placed on the decision of the Constitution Bench of this Court in the case of **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and Others,(2018) 9 SCC 1**(para 66) as well as another decision of this Court in the case of **Union of India and Anr. Etc. Etc. Vs. V.V.F. Limited and Another, Etc. Etc., (2020) SCC Online SC 378**(paras 53-55).

D

E

3.8 It is further submitted by Shri Maninder Singh, learned Senior Advocate appearing on behalf of the State that what is weighed with High Court that levy of the purchase tax is hit by the principle of promissory estoppel by observing that by the subsequent Notifications dated 14.11.2000 and 16.01.2002, the State could not have taken the rights which are available under the parent Notification dated 05.03.1992.

F

3.9 It is submitted that as such the subsequent Notification dated 14.11.2000 can be said to be clarificatory in nature and therefore, conditions provided in the parent Entry No. 255(2) dated 05.03.1992 cannot be said to have been affected by subsequent notifications. It is submitted that as such by the subsequent Notification dated 14.11.2000, the conditions in the original Entry No. 255(2) dated 05.03.1992 have been explicitly made clear and as such there is no basic modification of the conditions imposed in the parent Entry No.255(2) dated 05.03.1992. It is submitted that both the Notifications dated 05.03.1992 and 14.11.2000

G

H

provided the basic condition that the eligible unit shall have to furnish to the selling dealer a certificate in Form No.26 that the raw materials purchased shall be used as input in its industrial unit only. It is therefore submitted that as such the subsequent Notification dated 14.11.2000 by no stretch of imagination can be said to be modifying the basic conditions of availing the exemption provided in the parent Entry No.255(2) dated 05.03.1992.

3.10 It is submitted that as such the clarificatory notification dated 14.11.2000 had made it abundantly clear and beyond any pale of doubt that any such exemption on purchase of raw materials, shall be available only to the unit when it is consuming the raw materials for manufacture of goods in the very same unit. It is submitted that it is a settled position of law that any such amendment being only clarificatory in nature, applies to all entities uniformly and from the date of original notification granting the exemption itself. Reliance is placed on the decision of this Court in the cases of**Union of India and Anr. Etc. Etc. Vs. V.V.F. Limited and Another, Etc. Etc. (supra)** and **Bengaluru Development Authority Vs. Sudhakar Hegde and Ors., (2020) 15 SCC 63** (paras 32 to 35). It is submitted that therefore the view taken by the High Court in the impugned judgment that the Notification dated 14.11.2000 would apply only to such units, which get established after 14.11.2000 is unsustainable and deserves to be reversed by this Court.

3.11 It is further submitted that even the further amended Entry No.255(2) dated 16.01.2002 can be said to be expanding the scope of eligibility for availing the exemption. It is submitted that the subsequent Entry No.255(2) dated 16.01.2002 cannot be said to be taking away something what was provided in the parent Entry No.255(2) dated 05.03.1992. it is submitted that therefore the High Court has erred in applying the principle of promissory estoppel to hold that by subsequent notifications the benefit of exemption under Entry No.255(2) dated 05.03.1992 cannot be taken away.

3.12 It is further submitted by Shri Maninder Singh, learned Senior Advocate appearing on behalf of the State that even the High Court has erred in observing that denying the benefit of exemption under 1992 notification would result in denying the respondent – ESL facility of using the electricity generated by EPL. It is submitted that the said finding of the High Court is patently erroneous and unsustainable. It is submitted that as per the settled proposition of law, any tax exemption granted

A under a statutory provision by the Government is a concession, which does not create any legally enforceable right against the Government and the Government is always empowered to vary or withdraw the said exemption and that the principle of promissory estoppel shall have no applicability in this behalf. Heavy reliance is placed on the decision of this Court in the case of **Union of India and Anr. Etc. Etc. Vs. V.V.F. Limited and Another, Etc. Etc. (supra)**(paras 40 to 45) and another decision of this Court in the case of **Kothari Industrial Corporation Limited Vs. Tamil Nadu Electricity Board and Anr., (2016) 4 SCC 134** (paras 10 to 14). It is further submitted that the aforesaid findings that to deny the exemption to the respondent – ESL under the parent Entry No.255(2) dated 05.03.1992 would be denying the respondent – ESL the facility of using the electricity generated by EPL is absolutely erroneous and is unsustainable. It is submitted that the arrangement between the respondent –assessee – ESL and EPL as such has no bearing on the liability of the respondent – assessee to fulfill its tax obligation. It is submitted that even otherwise in the present case, the raw materials – Naphtha and Natural Gas purchased by the eligible unit – ESL though was required to be used by Essar Steel in its own units, the ESL sold the same to the EPL and EPL used the said raw materials for generation of electricity, which came to be sold to the ESL under the power purchase agreement. It is submitted that as submitted hereinabove, the electricity generation companies were as such put in the 'not eligible' list and, therefore, as such the EPL was not eligible for exemption under parent Entry No.255(2) dated 05.03.1992 and, thus, through the circuitous methodology or modus operandi, the EPL got the benefit of exemption though 'not eligible'.

3.13 In the alternatively, it is submitted by Shri Maninder Singh, learned Senior Advocate appearing on behalf of the State that even assuming that the subsequent amended Entry No. 255(2) issued vide Notifications dated 14.11.2000 and 16.01.2002 are not to be made applicable, which according to the High Court was hit by principle of promissory estoppel,in that case also, the respondent – assessee – ESL was required to satisfy all the conditions, which are provided in the parent Entry No.255(2) dated 05.03.1992, which the ESL failed to fulfill/satisfy.

3.14 It is further submitted that in the field of taxation, every assessment year is an independent year and merely because in the earlier assessment years, some benefit, though was not available, was wrongly

H

given, the same can be corrected in the subsequent assessment years and the tax is to be permitted to be levied as per the law. It is submitted that in the present case, it can be said that though right from the very beginning, the ESL did not comply with the requisite conditions provided in the parent Entry No.255(2) dated 05.03.1992, still they got the exemption benefit for the period prior to 2000 erroneously. It is submitted that that does not take away the right of the State to levy the tax, which otherwise is permissible under thelaw and which is levied in accordance with law.

3.15 It is further submitted that in the present case, considering the modus operandi adopted by the ESL and the EPL and despite being fully aware of the clear and unambiguous terms of the exemption notification and despite the power producing companies were specifically made 'ineligible' for availing the exemption and despite the fact that as per the conditions provided in the parent Entry, the raw materials – Naphtha and Natural Gas were required to be used by the assessee – ESL in its own unit, the raw materials came to be sold to an 'ineligible' entity – EPL and the 'ineligible unit' indirectly/directly got the benefit of exemption though not entitled to and/or eligible and used the said raw materials in their own unit for generation of electricity, the respondent – assessee is liable to pay the penalty in terms of Section 45(5). It is submitted that therefore the orders passed by the Joint Commissioner setting aside the penalty confirmed by the Tribunal and the High Court also deserve to be quashed and set aside.

3.16 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

4. Present appeals are vehemently opposed by Shri Ritin Rai, learned Senior Advocate appearing on behalf of the respondent – assessee.

4.1 It is submitted that the respondent was previously named as Essar Steel Ltd., which was then changed to Essar Steel India Limited (ESIL). It is submitted that Essar Steel India Limited was admitted into insolvency under the Insolvency and Bankruptcy Code, 2016 ("IBC") on 02.08.2017 and the Corporate Insolvency Resolution Process has been concluded in the approval of a Resolution Plan for ESIL submitted by Arcelor Mittal India Private Limited, which has been upheld by this Court vide its judgment and order in **Committee of Creditors of Essar**

Steel India Limited Vs. Satish Kumar Gupta & Ors., (2020) 8 SCC 531). It is submitted that pursuant to the same, the 100% shareholding of the respondent- Essar Steel India Limited now vests with the Arcelor Mittal India Private Limited. It is submitted that even subsequently, the name of ESIL has been changed to Arcelor Mittal Nippon Steel India Limited.

4.2 It is submitted by Shri Rai, learned Senior Advocate appearing on behalf of the respondent that in the present case there are concurrent findings in favour of the original writ petitioner - respondent herein by both, the Tribunal as well as the High Court, whereby it is held that the Essar Steel Ltd. is eligible for exemption under the parent Entry No.255(2) vide F.D.'s Notification dated 05.03.1992. It is submitted that there are concurrent findings by the Tribunal as well as the High Court that the subsequent amended Entry No.255(2) issued vide Government Notifications dated 14.11.2000 and 16.01.2002 are not applicable to the respondent and accordingly the question of imposition of penalty would not arise. It is submitted that even otherwise in absence of any mala fides proved on the part of the respondent,there shall not be any levy of penalty.

4.3 It is submitted that the respondent made eligible investment in its first unit (Unit No. 1) pursuant to the Resolution dated 07.05.1986 issued by the Industries, Mines and Energy Department of the Government of Gujarat, and, therefore, was certified as entitled to avail incentives during the eligible period from 01.08.1990 to 31.07.2004 up to upper monetary limit of Rs.237.59 crores. It is submitted that, thus, the investment made in Unit No. 1, started manufacturing HBI for which sales tax exemption incentives were admissible under Entry 118 of the notification issued by the Government of Gujarat under Section 49(2) ofthe Gujarat Sales Tax Act, 1969.

4.4 It is submitted that on 26.07.1991, the State of Gujarat by way of a resolution announced a Scheme known as "The Scheme for Special Incentives to Prestigious Units, 1990-95 (Modified)" for attracting investment in core sector industries. Pursuant to the aforesaid scheme, the respondent undertook investment of approximately Rs.5,000 crores for the manufacture of HRC in its second unit (Unit No. 2) and it was entitled to incentives during the eligible period from 22.02.1993 to 21.02.2007 up to the monetary limit of Rs. 2050 crores. It is submitted that for Unit No. 2 as an eligible unit, the respondent was entitled to

exemption under Entry 255 of the Notification issued by the Government of Gujarat under Section 49(2) of the Act, 1969.

4.5 It is further submitted that the respondent, in accordance with the eligibility certificate and the exemption granted as aforesaid, availed exemption from payment of purchase tax and sales-tax. It is submitted that as such the respondent had always intended to install a captive power plant up to 200 MW, but due to the requirement of the appellant-State, a separate power plant was commissioned by Essar Power Limited, a group company of erstwhile Essar Steel India Limited. It is submitted that on commissioning of Unit No. 2, Natural Gas and Naphtha purchased by the respondent – Essar Steel Ltd. against declarations in Form No.26 were converted into electricity through Essar Power Limited and utilized as an input for the purpose of manufacturing HRC in the industrial unit of the respondent – ESL. It is submitted that this was done by nature of a job-work arrangement and after complying with all the necessary statutory formalities from 1994-95.

4.6 It is submitted that the respondent was/is duly eligible under the parent Entry No.255(2)/parent Notification dated 05.03.1992to seek exemption from payment of the purchase tax. It is submitted that even the Commissioner of Sales Tax in its earlier order dated 16.8.2002 and thereafter by the Assessing Officer in the assessment orders for the Assessment Years 1995-1996 to 1997-1998 and 2000-2001 also allowed and/or permitted the respondent-Essar Steel Ltd. to avail the exemption under parent Entry No.255(2) dated 05.03.1992. It is submitted that in the present case, even for the subsequent Assessment Years also the Tribunal as well as the High Court have also held that the respondent-Essar Steel Ltd. was/is entitled to the exemption from payment of purchase tax as per parent Entry No.255(2) dated 05.03.1992.

4.7 It is submitted that as such and even as observed and held by the High Court, the respondent – ESL met with the conditions prescribed under original parent Entry No.255(2) dated 05.03.1992 and so at the relevant time, it was granted the benefit of the Scheme. It is submitted that as such the respondent –ESL was granted the exemption under parent Entry No.255(2) dated 05.03.1992 for the Assessment Years prior to 14.11.2000.

4.8 It is submitted that as such the respondent – ESL fulfilled/complied with all the eligibility criteria/conditions required to avail the exemption under the first/parent Entry No.255(2) dated 05.03.1992. It is

A submitted that eligibility criteria to avail the exemption under the first/ parent notification was that the goods so purchased must be used in the unit and anywhere within the State of Gujarat. It is submitted that the conditions mentioned in the first/parent notification does not restrict the use of goods in the eligible unit, but on the contrary, it provides for use anywhere within the State of Gujarat. It is submitted that even as per the condition No.6, the eligible unit was permitted to actually use the goods purchased within the State of Gujarat as raw materials.

4.9 It is therefore submitted that when the goods were transferred to Essar Power Limited, which is situated within the State of Gujarat for conversion to electricity, on job-work basis and the power so generated was used in the manufacturing of goods by the respondent –Essar Steel, the conditions set out in the first/parent notification stood fully satisfied. It is submitted that the Scheme under the first/parent notification never envisaged or provided for use of goods in the same form in which they were purchased. It is submitted that in the present case, Naphtha and Natural Gas purchased, were used in the form of power in Unit No. 2 and, therefore, there was no breach of declarations given in Form No.26 for purchase of these goods.

4.10 It is submitted that as per the settled law, while deciding whether an entity is entitled to incentives, a strict interpretation of the provisions should be made. However, after accepting that an entity is entitled to the incentives, when determining any questions arising qua the scope of the incentives, a liberal approach should be adopted. Reliance is placed on the decision of this Court in the case of **Assistant Commissioner (CT) LTU and Anr. Vs. Amara Raja Batteries Limited, (2009) 8 SCC 209.**

4.11 It is submitted that admittedly,the respondent's Unit No.2 was eligible to get the exemption prior to the second notification. The appellant - State did not raise any objection, nor did they levy any tax liability prior to the second notification. It is submitted that rather vide letter dated 16.08.2002 issued by the Commissioner of Sales Tax, the appellant – State confirmed that there has been no breach by the respondent. It is submitted that therefore, once the Unit No.2 was found to be eligible under the parent notification, unless it changed its modus operandi, it ought to have been given the exemption under the first/parent notification.

4.12 It is further submitted that it was never the case on behalf of the State that the respondent was in breach of the first/parent notification. It merely alleged that the conditions as substituted under second notification have been violated. It is submitted that therefore it is imperative to assess if the second and third notifications were at all applicable to the respondent – Essar Steel Ltd.

4.13 It is submitted that in any event the first/parent notification also stated that "if the eligible unit fulfills the conditions specified hereunder and further conditions as may be laid down from time to time". It is submitted that while the appellant State may further add to the conditions provided under the first/parent notification, such further additional condition could not be in effect to alter/amend the original condition, i.e., the goods are to be used within the State of Gujarat.

4.14 It is submitted that by the second notification, the original eligibility condition was amended and the requirement of use within the State of Gujarat was changed to within the industrial unit for which the eligibility certificate was obtained. It is submitted that this change in the original condition was not permitted since the first/parent notification only stipulated imposition of additional conditions and did not envisage an amendment of the original condition.

4.15 It is further submitted that the second notification would be applicable only for the industries that were setup after 14.11.2000. It is submitted that the first notification was issued pursuant to the incentive Scheme. It is submitted that in terms of the said Scheme, the respondent was entitled to incentives during the eligible period from 22.02.1993 to 21.02.2007 up to the monetary limit of Rs. 2050 crores if the conditions prevalent at the time of grant of the incentives were met.

4.16 It is submitted that a conjoint reading of the Scheme along with the first notification would indicate that the State invited industries to invest in its State by offering incentives, which once granted would be valid for a fixed period i.e., till 21.02.2007 in case of the respondent, subject to the eligibility conditions being met. It is submitted that the first notification only stipulated imposition of additional conditions which had to be complied with by the eligible entities.

4.17 It is further submitted that the third notification by which the parent Entry No.255(2) dated 05.03.1992came to be amended, further provided that eligible unit could claim exemption from purchase tax on

purchases of goods even if the goods are used as raw materials, packing materials, consumable stores in its industrial unit for which it had obtained the eligibility certificate for the manufacture of goods for dispatch to its another unit or division situated within the State of Gujarat for use in the manufacture of another goods for sale by such another unit or division or to such another unit or division situated outside the State for use in the manufacture of other goods for sale by such other unit.

4.18 It is submitted that the Scheme and the first notification as initially enacted permitted the use of Natural Gas and Naphtha for generation of electricity outside the unit when the electricity was used in the eligible unit as was accepted in the assessment orders for the preceding years. Similarly, the amendments made vide third notification permit the use of purchased goods in the manufacture of goods in the unit, for transfer to other unit as well, within or even outside the State of Gujarat for use in the manufacture of other goods. It is submitted that, thus, pursuant to the amendment, use of the goods even in other unit within or outside the State of Gujarat has been permissible.

4.19 It is submitted that therefore when the notification initially enacted on 05.03.1992 and amended vide third notification w.e.f. 16.01.2002 permitted the use of goods outside the unit, it cannot be said that only for a short intervening period between 14.11.2000 to 15.01.2002, the Government had different intentions to restrict the use entirely in the eligible unit only and that the conditions under the Scheme which granted incentives for a tenure of 14 years would be changed on yearly basis.

4.20 It is submitted that the scheme never envisaged or provided for use of goods in the same form in which they were purchased, and Naphtha and Natural Gas purchased by the respondent were used in the form of power in Unit No. 2 and, therefore, there was no breach of declarations given in Form No. 26 for purchase of these goods.

4.21 It is further submitted that even otherwise any amendment made to the original eligibility condition, would be prospective in nature and applicable only to fresh industrial units/entities which would become eligible after 14.11.2000. The amended notification would not be applicable on industries that were setup pursuant to, and eligible under the first notification and whose rights had crystallised for 14 years under the first notification.

4.22 It is submitted that as such the respondent – Essar Steel has not committed any breach of declarations given in Form No. 26. Merely

because Natural Gas and Naphtha were used for generation of electricity through EPL, which was ultimately used in the eligible unit, the respondent – ESL cannot be said to have breached the given conditions.

4.23 It is submitted that even assuming that the second and the third notificationswere applicable to the respondent – ESL, the amended condition does not require "direct" use of purchased goods in the unit and therefore even when Natural Gas/Naphtha after conversion into electricity is used in the unit, the condition is satisfied. It is submitted that there are concurrent findings of fact both, by the High Court and the Tribunal that there is no diversion of the fuel purchased by the respondent-ESLat a concessional rate, and the same was given to EPL only for a limited purpose for conversion to electricity and was thereafter used by the respondent – Essar Steelin its manufacturing process.

4.24 It is further submitted by Shri Rai, learned Senior Advocate appearing on behalf of the respondent – ESL that even otherwise the demand of the purchase tax was barred by the Rule of promissory estoppel and legitimate expectation as observed and held by the Tribunal as well as by the Hon'ble High Court.

4.25 It is submitted that the respondent invested a sum of Rs.5000 crores for the manufacture of HRC in its Unit No. 2 by relying upon the incentives provided by the appellant-State. The said incentive provided in the Scheme and the first notification imposes a condition that the goods purchased by the eligible entity would be used by it within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods to be sold by the eligible entity. It is submitted that therefore thereafter the State is estopped from amending the conditions required to be met for obtaining the incentives, since the respondent acted upon the assurance of the State that as long as it met the conditions, it would be eligible for receiving exemptions for a fixed amount of time as contemplated under the Scheme.

4.26 It is submitted that based on the assurance of the State, the respondent had changed its position irretrievably by making huge investments in Unit No. 2 and by entering into various agreements including the one with Essar Power Limited for supply of electricity. It is submitted that therefore the Hon'ble High Court and the Tribunal were correct in invoking the principle of promissory estoppel as a rule of evidence to recognize the crystallised rights of the respondent.

A 4.27 It is further submitted that even otherwise in any case the imposition of penalty by the State upon the respondent is illegal and without any basis in law. It is submitted that (a) the respondent has not breached the conditions as stipulated in the first notification; (b)the second and the third notifications are not applicable to the respondent and; (c) even assuming that the second and third notifications are applicable to the respondent, the conditions therein have not been breached by the respondent, the question of imposition of penalty would not arise.

4.28 It is further submitted that even otherwise, the State has mechanically imposed the penalty, at the maximum rate of 150%, without any application of mind or adjudication. It is submitted that therefore, the imposition of penalty without appreciating the factual circumstances surrounding the dispute is arbitrary, unjust, and illegal, and therefore the Tribunal as well as the Hon'ble High Court has rightly set aside the imposition of penalty.

4.29 It is further submitted that as held by this Court in several judgments the imposition of penalty is the result of a quasi-criminal adjudication. Reliance is placed upon the decision of this Court in **Hindustan Steel Ltd. Vs. State of Orissa, (1969) 2 SCC 627**and **Excel Crop Care Limited Vs. Competition Commission of India and Anr., (2017) 8 SCC 47**.

4.30 It is submitted that in the facts of the present case the respondent had been under a genuine bona fide belief that it was eligible to claim exemption under the first notification based on the declaration made in Form No. 26 and that the amended notifications would not govern the respondent since the incentives had been assured under the Scheme for a fixed period of time and such belief of the incentive was also upheld by the letter dated 16.08.2002 issued by the Commissioner of Sales Tax, which confirmed that there has been no breach by the respondent and that the State has not made out a case of mala fide intention or willful and deliberate contravention of the statutory provisions by the respondent, there is no justification at all for levy of the penalty.

4.31 Making above submissions, it prayed to dismiss the present appeal.

5. Heard the learned counsel appearing for the respective parties at length.

6. The questions which are posed for consideration of this Court in the present appeals are:

(i) Whether the respondent -dealer-assessee – Essar Steel Ltd. (erstwhile) was/is entitled to the exemption from payment of the purchase tax as per the original Entry No.255(2) vide F.D.'s notification dated 05.03.1992?

(ii) Whether subsequent amended Entry No.255(2) issued vide Notifications dated 14.11.2000 and 16.01.2002 in any way alters or amends the basic requirements/conditions stipulated as per the first notification dated 05.03.1992?

(iii) Whether the subsequent amended Entry vide Government Notifications dated 14.11.2000 and 16.01.2002 in any way takes away the right of the respondent to avail the exemption under the first/parent Entry No.255(2) issued vide Notification dated 05.03.1992?

(iv) Whether there was any breach of the declaration filed by the respondent as per Form No.26?

(v) Whether in the facts and circumstances of the case, the demand of the purchase tax on and after 14.11.2000 was hit by the principle of promissory estoppel?

7. While answering the aforesaid questions, the original Entry No.255(2) vide Notification dated 05.03.1992 and the subsequent amended Entry No.255(2) amended by Notifications dated 14.11.2000 and 16.01.2002 and the conditions/eligibility criteria mentioned in the said notifications are required to be referred to, which read as under:-

1. <u>Original Entry No.255 (2) vide F.D's Notification dated 05.03.1992.</u>

Entry No.	Class of Sales of Purchases	Conditions
255 (2)	Sale or raw materials, processing materials, consumable stores or packing materials by a registered dealer to an eligible unit.	(1) If the eligible unit furnishes to the selling dealer a certificate in Form 26 appended hereto declaring inter alia that the goods are required for use by him within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods for sale within the State of Gujarat or as packing materials in packing of the goods so manufactured. (2) If the eligible unit fulfils the conditions specified hereunder and further conditions as may be laid down from time to time.

Conditions:-

6. The eligible unit shall actually use the goods purchased within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods for sale within the State of Gujarat or outside the State of Gujarat or as packing materials in the packing of the goods so manufactured.

2. Amendments in Entry No.255(2) vide Government Notification dated 14.11.2000

Entry No.	Class of Sales of Purchases	Conditions
255 (2)	Sale or raw materials, processing materials, consumable stores or packing materials by a registered dealer to an eligible unit.	(1) If the eligible unit furnishes to the selling dealer a certificate in Form 26 appended hereto and obtained from the registering authority, declaring inter alia that the goods shall be used by it as raw materials, processing materials or consumable stores in its industrial unit for which it has obtained the eligibility certificate in the manufacture of goods for sale within the State of Gujarat or outside the State of Gujarat or as packing materials in the packing of goods so manufactured.

Conditions:

6. The eligible unit shall actually use the goods purchased as raw materials, processing materials or consumable stores in its industrial unit for which it has obtained the eligibility certificate in the manufacture of goods for sale within the State of Gujarat or outside the State of Gujarat, or as packing materials in the packing of goods so manufactured.

(c) In Form 26, for the words "within the State of Gujarat" the words "in the industrial unit for which the eligibility certificate has been obtained" have been substituted.

3. Amendment in Entry No.255(2) vide Government Notification dated 16.01.2002.

Entry No.	Class of Sales of Purchases	Conditions
255 (2)	Sale or raw materials, processing materials, consumable stores or packing materials by a registered dealer to an eligible unit.	(1) Insertion of condition (IA) after condition (I) or (IA) If the eligible unit furnishes to the selling dealer a certificate in Form 26 appended hereto and obtained from the registering authority, declaring inter alia that the goods shall be used by it as raw materials, processing materials or consumable stores in its industrial unit for which it has obtained the eligibility certificate, in the manufacture of goods for dispatch to its another unit or division situated within the State for use in the manufacture of another goods for sale by such another unit or division or to its another unit or division situated outside the State for use in the manufacture of other goods.

(b) Insertion of condition 6(A) after condition 6

(6A) The eligible unit shall actually use the goods so purchased as raw material, processing material or consumable stores in its industrial unit for which it has obtained the eligibility certificate, in the manufacture of goods, which are dispatched to its another unit or division situated within the State for use in the manufacture of other goods for sale by such another unit or division or to its another unit or division situated outside the State for use in the manufacture of other goods.

8. Form No.26 applicable in 1992 reads as under:-

"FORM-26 [Entry 255]

Certificate by an eligible unit purchasing, goods for use in manufacturing goods.

[See Entry at serial No.255 inserted by Government Notification, Finance Department No. (GHN-8) GST-1092/(S.49)-(249)-TH dated the 5th March, 1992 issued under section 49(2) of the Gujarat Sales Tax Act,1969]

I, _____ of M/s. _____Address _____ certify the I/the said _____ as/is a registered dealer holding a certificate of registration No._____ dated _____ and also holding

A a certificate No. _____ dated _____ granted by the Commissioner of Sales Tax, Gujarat State under Government Notification No. (GHN-8) GST-1092 (S.49)-(249) TH, dated the 5th March, 1992 and that the goods being raw materials, processing materials mentioned in bills/cash memo/invoice No. _____ dated

B _____ of M/s _____ will be used by me/the said _____ in the manufacture of goods for sale or being the packing materials mentioned in bill/cash memo/invoice No._____ dated _____ of M/s. _____ will be used in the packing of the goods so manufactured, namely _____

C

I further certify that the aforesaid certificate was in force on the date of the aforesaid purchase of goods.

Place: Signature :

D

Date: Status :"

9. Form-26(Entry No.255) as applicable in years 2000/2002 after the amended Entry No.255(2) vide Notifications dated 14.11.2000 and 16.01.2002 reads as under:-

E "FORM-26 [Entry 255]

Certificate by an eligible unit purchasing, goods for use in manufacturing goods.

[See Entry at serial No.255 inserted by Government Notification, Finance Department No. (GHN-8) GST-1092/(S.49)-(249)-TH dated the 5th March, 1992 issued under section 49(2) of the Gujarat Sales Tax Act,1969]

F

I, _____ of M/s._____ Address _____

G certify the I/the said _____ as/is a registered dealer holding a certificate of registration No._____ dated _____ and also holding a certificate No. _____ dated _____ granted by the Commissioner of Sales Tax, Gujarat State under Government Notification No. (GHN-8) GST-1092 (S.49)-(249) TH, dated the 5th March, 1992 and that the goods being raw materials, processing

H

materials mentioned in bills/cash memo/invoice No. _____ dated _____ of M/s _____ will be used by me/the said _____ (1) [in the industrial unit for which the eligibility certificate has been obtained] in the manufacture of goods for sale (2) [within the State or outside the State of Gujarat or for dispatch either to its another unit or division situated within the State for use in the manufacture of other goods for sale by such another unit or division, or to its another unit or division situated outside the State for use in the manufacture of other goods] or being the packing materials mentioned in bill/cash memo/invoice No._____ dated _____ of M/s. _____ will be used in the packing of the goods so manufactured, namely _____

I further certify that the aforesaid certificate was in force on the date of the aforesaid purchase of goods.

Place: Signature :
Date: Status :

(1) These words were substituted for "within the state of Gujarat" by s-49 (332) dt. 14-11-2000.

(2) These words were inserted by s-49 (357) dt. 16-01-2002."

10. Thus, as per the original Entry No.255(2) issued by Notification dated 05.03.1992 while claiming the exemption from payment of purchase tax of raw materials, processing materials or consumable stores, the following conditions were required to be fulfilled/complied with:-

(i) That the eligible unit was required to furnish to the selling dealer a certificate in Form No.26 declaring inter alia that the goods are required for use by **him/it** within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods for sale within the State of Gujarat or as packing materials in packing of goods so manufactured; and

(ii) That the eligible unit shall actually use the goods purchased within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods

A for sale within the State of Gujarat or outside the State of Gujarat as packing materials for the packing of the goods so manufactured.

10.1 Therefore, only in a case where the raw materials, processing materials or consumable stores are used by the eligible unit and the B eligible unit actually uses the goods purchased within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods, there shall be exemption from payment of purchase tax/sales tax to the extent provided in the said Entry.

11. In the present case, it is an admitted position that after furnishing C a declaration in Form No.26, the goods-raw materials, processing materials or consumable stores so purchased were to be used by ESL, but the respondent -ESL after purchase of raw materials – Naphtha and Natural Gas and after availing the benefit of exemption from the payment of purchase tax did not himself/itself used the same, but, instead, sold the same to another entity – EPL and the said another entity – EPL used D the said raw materials for generating the electricity, which thereafter came to be sold to the respondent -ESL pursuant to the power purchase agreement. The submission on behalf of the respondent that as Naphtha and Natural Gas were transferred to EPL for generating the electricity, which in turn came to be used by the respondent – ESLfor manufacture E of HRC, and it cannot be said that there is a breach of conditions of original Entry No.255(2) dated 05.03.1992, cannot be accepted.

11.1 The original Entry No.255(2) dated 05.03.1992 does not provide that the eligible unit after purchase of the raw materials instead of using the same by itself or himself can transfer/sold to another unit F and the another unit can use the said raw materials. If the submission on behalf of the respondent is accepted, in that case, it will be varying the conditions imposed in the original Entry No.255(2) dated 05.03.1992 and it shall tantamount to adding something more than what is not provided in the exemption notification/original entry, which is not permissible. The original notification does not at all permit such transfer and use of the G raw materials after availing the exemption for use of another unit, who, as such is otherwise not entitled to any exemption as per the incentive policy.

12. At this stage, it is required to be noted that as per the incentive policy, the actual benefit of exemption was available to certain industries H as per the list of 'eligible' industries. The power producing companies

were specifically put in the list of 'ineligible' industries for any exemption from sale/purchase tax on procurement of raw materials. Thus, the Essar Power Limited being a power producing company was not eligible at all for any exemption from sale/purchase tax on procurement of raw materials. Therefore, as such, by such transfer and sale of raw materials by ESL to EPL, EPL got the benefit of exemption, which otherwise being a power producing company was not eligible for such an exemption.

13. Learned counsel appearing on behalf of the State is right in submitting that if such an interpretation put forward by the respondent is accepted, in that case, it would completely defeat the purpose of the exemption and it would permit industries, which are eligible for exemption to simply purchase the raw materials; not use them for manufacturing in their own units, and simply transmit them for use and manufacture to other units, even though such units are not eligible for exemption under the notification.

14. Thus, by transfer of Naphtha and Natural Gas by the eligible unit – ESL to another unit – EPL, after availing the exemption from payment of purchase tax and not using the Naphtha and Natural Gas (raw materials) for its own use for manufacture of the goods so manufactured by it, it can be said to be violating the eligibility criteria/ condition mentioned in the original Entry No.255(2) dated 05.03.1992 and it can be said that the respondent -Essar Steel Ltd. Committed a breach of the declaration given in Form No.26. Therefore, the High Court has committed an error in holding that the respondent did not commit any breach of any of the conditions mentioned in the original Entry No.255(2) dated 05.03.1992 and that the respondent fulfilled all the conditions provided in the said Entry and that there was no breach of any of the conditions provided in the original Entry No.255(2) dated 05.03.1992.

14.1 While the exemption notification should be liberally construed, beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise.

14.2 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

A strictly and it is not open to the court to ignore the conditions prescribed in industrial policy and the exemption notifications.

14.3 The exemption notification should be strictly construed and given meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in the light of
B the words employed in them and there cannot be any addition or subtraction from the statutory provisions.

14.4 As per the law laid down by this Court in catena of decisions, in the taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining
C defined meaning.Strict interpretation to the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it alleges to absurd results, which is so not found in the present case.

14.5 In the present case, the intention of the State to provide the
D incentive under the incentive policy was to give benefit of exemption from payment of purchase tax was to the specific class of industries and, more particularly, as per the list of 'eligible industries'. Exemption was not available to the industries listed in the 'ineligible' industries. It was never the intension of the State Government while framing the incentive policy to grant the benefit of exemption to 'ineligible industries'
E like the power producing industries like the EPL, which as such was put in the list of 'ineligible' industries.

14.6 Now, so far as the submission on behalf of the respondent that in the event of obscure in a provision in a fiscal statute, construction favourable to the assessee should be adopted is concerned, the said
F principle shall not be applicable to construction of an exemption notification, as it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification.Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand
G the scope deviating from the language. There is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification.

15. Now, the next question, which is posed for the consideration of this Court is whether the subsequent amended Entries vide notifications dated 14.11.2000 and 16.01.2002 can be said to be clarificatory and/or
H

take away any of the rights under the original Entry No.255(2) dated 05.03.1992 and/or the subsequent notifications modifies/amends the basic conditions for availing the exemption under the original Entry No.255(2) dated 05.03.1992?

15.1 Having gone through the second notification dated 14.11.2000/ the amended Entry No.255(2), it can be seen that the same is clarificatory in nature and there is no change in the basic eligibility criteria/conditions mentioned in the original Entry No.255(2). In the subsequent notification, instead of the word "him", the word used is "it" and it is specifically made clear that the raw materials so purchased shall be used in its industrial unit for which it has obtained the eligibility certificate for the manufacture of goods for sale within the State or outside the State of Gujarat or as packing materials in the packing of goods so manufactured. Even as per the original Entry No.255(2) dated 05.03.1992 and even as per the Form No.26 appended thereto, the eligible unit was required to actually use the raw materials purchased. In the subsequent notification, it is made explicitly clear that the raw materials so purchased are to be used by the eligible unit in its industrial unit. Therefore, the basic requirement that the eligible unit has to actually use such raw materials purchased by him is in no way modified and/or amended. On the contrary, the subsequent amended Entry No.255(2) dated 14.11.2000 can be said to be expanding the scope of eligibility as it was. Earlier the eligible unit was required to actually use the goods purchased within the State of Gujarat and as per the subsequent amended Entry No.255(2) dated 14.11.2000 even if such goods are used by it outside the State of Gujarat in that case also such eligible unit was held to be eligible for exemption. Even as per the condition No.6 in the amended Entry No.255(2) dated 14.11.2000, it is specifically mentioned that the eligible unit shall actually use the goods purchased, which was the requirement in the first notification also. Therefore, the subsequent amended Entry No.255(2) vide notification dated 14.11.2000 can be said to be clarificatory and/or expanding the scope of eligibility, but in no case, it can be said to be taking away any right under the original Entry No.255(2) dated 05.03.1992.

16. Similarly, even the third amended Entry No.255(2) dated 16.01.2002 also cannot be said to be taking away any right available under the original Entry No.255(2) dated 05.03.1992.

16.1 Even the subsequent amended Entry No.255(2) vide notification dated 16.01.2002 also can be said to be expanding the scope

of eligibility and in no way can be said to be taking away the rights available to the eligible unit under the original Entry No.255(2) dated 05.03.1992. The eligibility criteria/condition that the eligible unit "shall actually use the goods" remain the same even in the said amended Entry No.255(2) dated 16.01.2002. Therefore, the subsequent notifications/ amended Entries cannot be said to be in any way in conflict with the first/parent notification/Entry No.255(2).

17. As observed hereinabove, even under the first/original Entry No.255(2) dated 05.03.1992 and even as per the declaration furnished in Form No.26, the eligible unit – respondent – ESLwas required to actually use the goods by him/within the State of Gujarat as raw materials, for manufacture of goods by him. But by actually not using the raw materials so purchased by which it got the benefit of exemption from payment of purchase tax, sold the said raw materials, which in fact were required to be used by him, to another unit/entity, which another unit used it for manufacture of its goods – generating the electricity and which in turn the EPL sold to the ESL. Thus, the ESL– eligible unit did not comply with and/or fulfilled the eligibility criteria/conditions even as per the original Entry No.255(2) and therefore, was/is not entitled to the exemption from payment of the purchase tax as per the exemption notification dated 05.03.1992 vide original Entry No.255(2). Therefore, even assuming that the subsequent amended Entries vide second and third notifications are not to be made applicable in that case also the respondent -Essar Steel Ltd. being eligible unit was required to comply with and/or fulfill all the eligibility criteria/conditions mentioned in the original Entry No.255(2), which as observed hereinabove, by not actually using the raw materials by himself and transferring/selling the same to the non-eligible unit, the respondent was not entitled to avail the benefit of exemption even under the original Entry No.255(2).

18. Even as per Form No. 26 (Entry No.255), as per the declaration filed by the respondent, being 'eligible' unit while purchasing goods for use in manufacturing goods, it was declared that the raw materials so purchased will be used by it in the manufacture of goods for sale. Thus, by not using the raw materials so purchased by it, the respondent – eligible unit – ESL has violated the declaration given in Form No.26. Therefore, the respondent was not entitled to the exemption even under the first/parent notification.

19. Even the reasoning given by the Tribunal and the High Court that the demand of purchase tax is hit by the principle of promissory

estoppel also cannot be accepted. In the present case, first of all, the principle of promissory estoppel to the exemption sought ought not to have been applied at all. Each assessment year/period is independent. Even otherwise, in the facts and circumstances of the case, the principle of promissory estoppel shall not be applicable. In the present case, as observed hereinabove, the respondent – eligible unit as such was not entitled to the exemption even under the first notification as it violated the declaration given in Form No.26 as well as did not comply with and/or fulfilled the eligibility criteria/conditions required to be fulfilled while availing benefit of exemption. As observed hereinabove, the respondent did not actually use the raw materials purchased by him/it and availed the exemption and after availing the exemption sold the said raw materials to 'ineligible' unit -EPL and the EPL used the same for manufacture of its goods – generating the electricity, which subsequently again sold to the ESL– eligible unit on payment of sale consideration.

20. At the cost of repetition, it is observed that as per the incentive policy declared by the State Government, the power generating company was put in the list of 'ineligible industries' and thus, independently was not entitled to the exemption under the original Entry No.255(2). Thus, by such a transfer/sale from the eligible unit to another unit the benefit of exemption is availed by the 'ineligible' industry, which is wholly impermissible and that cannot be said to be the intention of the Government while providing the incentive in the form of exemption from payment of purchase tax. Such a benefit of exemption was available only to eligible units/industries and the steel industry of which Essar Steel Ltd. belongedbeing one of the eligible industries. Therefore, there was no question of applicability of principle of promissory estoppel.

20.1 Even otherwise in the facts and circumstances of the case narrated hereinabove, the principle of promissory estoppel shall not be applicable. ESL had furnished wrong and false declarations. In the original notification/entry, it was not provided that even if the raw materials so purchased is not used by itself after availing the exemption, the same can be sold to another entity, which is 'ineligible' industry. It did not provide that in such a situation also and despite the fact that raw material is not actually used by the eligible unit, which was required to be used even as per the declaration in Form No.26, such eligible unit shall be entitled to the exemption. No such promise was given. The wordings and the language used in the exemption notifications are very clear, simple

A and unambiguous. Therefore, when there was no such promise and/or representation, the demand cannot be said to be hit by the principle of promissory estoppel as observed and held by the Tribunal as well as the High Court in the impugned judgment and order.

20.2 The doctrine of promissory estoppel is an equitable remedy B and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes. In other words, there cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties. In the present case, the principle of promissory estoppel shall not be applicable.

C

20.3 In taxing matters, the doctrine of promissory estoppel as such is not applicable and the Revenue can take a position different from its earlier stand in a case with established distinguishing features. [See **Commissioner of Central Excise, Bangalore – 1 Vs. Bal Pharma Limited, Bangalore and Ors., (2011) 2 SSC 620**].

D

20.4 The rules of promissory estoppel and estoppel by conduct may not be applied to alter or amend the specific terms and against statutory provisions. All the terms and conditions contained in the exemption notification shall prevail and the person claiming the exemption has to fulfil and satisfy all the eligibility criteria/conditions mentioned in E the exemption notification.

21. Now, so far as the submission on behalf of the respondent that prior to 14.11.2000, there was no demand of the purchase tax and/or the exemption from payment of purchase tax was made available in the earlier assessment years and, therefore, in the subsequent assessment F years also, the respondent – assessee shall be entitled to the exemption is concerned, the aforesaid has no substance. In the taxation matters, every assessment year/period is a different year/period.

21.1 The Scheme of the Statute does not in any manner indicate that the incentive provided has to continue for the consecutive years G irrespective of the fulfilling of the eligibility conditions. Applicability of the incentive is directly related to the eligibility and not dehors the same. If it is found that the industrial undertaking does not fulfil the eligibility criteria, it cannot claim the incentive/exemption.

22. Therefore, the submission on behalf of the respondent – H assessee that as in the earlier assessment years benefit of exemption

was granted to the respondent and, therefore, in the subsequent assessment years also, despite the fact that it is found that the respondent was/is not eligible for the benefit of exemption under the original Notification/Entry No.255(2) cannot be accepted. If such a submission is accepted in that case it will be perpetuating the illegality and granting the benefit of exemption to 'ineligible industry', who did not fulfill and/or comply with the eligibility criteria/conditions mentioned in the exemption notification. The principle of promissory estoppel shall not be applicable contrary to the Statute. Merely because erroneously and/or on misinterpretation, some benefits in the earlier assessment years were wrongly given, cannot be a ground to continue the wrong and to grant the benefit of exemption though not eligible under the exemption notification.

23. Now, so far as the levy of penalty is concerned, it is to be noted that the penalty is leviable under Section 45 and such a penalty is leviable under sub-sections (5) and(6) of Section 45 of the Act, 1969 and the penalty is leviable on purchase tax assessed. It provides that if the difference of tax paid and tax leviable/assessed is more than twenty-five percent,in that case, the dealer shall be deemed to have failed to pay the tax to the extent of the difference between the amount so assessed/re-assessed and the amount paid and, in that case, there shall be levied on such dealer a penalty not extending one and one-half times the difference as per sub-section (5). Therefore, there being difference of more than twenty five percent, penalty to the aforesaid extent shall be leviable. This is a clear case of false and wrong claim of exemption, as the exempted goods were transferred to a third person and used in an 'ineligible' industry. This is a case of deliberate violation and evil doing.

23.1 In the present case, as the difference between total tax paid and the purchase tax is more than twenty-five percent, the respondent is deemed to have failed to pay the tax as per sub-section(5) of Section 45 and, therefore, liable to pay the penalty not exceeding one and one-half times. The words used in sub-section (6) of Section 45 is "there shall be levied on such dealer a penalty not exceeding one and one-half times the difference". As noted above, in the present case, the modus operandi which was adopted by the respondent – Essar Steel warrants a penalty. Though, the raw material was required to be used by itself for the manufacture of their goods, after availing the exemption as eligible unit and instead of using the same for itself/himself, the ESL sold the raw

materials to an'ineligible' entity – EPL, who used it for manufacture of its own goods – generating the electricity, which again came to be sold to ESL under the power purchase agreement.

23.2 As observed hereinabove, as such the EPL, under the incentive scheme, was not eligible at all for exemption from payment of purchase tax as in fact power generating companies were put in the list of 'ineligible industries'. Therefore, by such a modus operandi, the benefit, which was not available to the EPL was made available by such transfer of raw materials by the Essar Steel Ltd. to Essar Power Limited. As observed hereinabove, there is a breach of declaration in Form No.26 also. Therefore, in the facts and circumstances of the case, the levy of penalty is justified and warranted. The Joint Commissioner, the Tribunal as well as the High Court have committed a grave error in quashing and setting aside the penalty imposed by the Assessing Officer.

24. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside the demand of purchase tax from the respondent are hereby quashed and set aside. It is held that the respondent -Essar Steel Ltd. – the eligible unit was not entitled to the exemption from payment of purchase tax under the original Entry No.255(2) dated 05.03.1992, firstly, on the ground that it did not fulfill the eligibility criteria/conditions mentioned in the original Entry No.255(2) dated 05.03.1992 and secondly that there was a breach of declaration in Form No.26 furnished by the respondent – eligible unit – Essar Steel Ltd. The orders setting aside the penalty imposed by the Assessing Officer are also hereby quashed and set aside. The order passed by the Assessing Officer levying the demand of purchase tax and imposing the penalty ishereby restored.

25. Present appeals are accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

Nidhi Jain Appeals allowed.
(Assisted by : Preetam Bharti, LCRA)