**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No. 1667 of 2021**
**Reserved on: 22.4.2025**
**Date of Decision 7 .5.2025**

M/s. Kundlas Loh Udyog

...Petitioner

Versus

State of H.P. & ors.

...Respondents

*Coram*

***Hon'ble Mr Justice Tarlok Singh Chauhan, Judge.***

***Hon'ble Mr Justice Sushil Kukreja, Judge.***

***Whether approved for reporting?[1] Yes***

For the petitioner : Mr. Shrawan Dogra, Senior Advocate with Mr. Manik Sethi, Advocate.

For the Respondents : Mr. Anup Rattan, Advocate General with Mr. Yashwardhan Chauhan, Senior Additional Advocate General, Mr. Ramakant Sharma, Mr. Navlesh Verma, Ms. Sharmila Patial, Additional Advocates General, Ms. Swati Draik and Mr. Shalabh Thakur, Dy. A.G., for the respondents-State.

Ms. Sunita Sharma, Senior Advocate with Mr. Dhananjay Sharma, Advocate, for respondent No.4.

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes

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**Tarlok Singh Chauhan, Judge**

The instant petition has been filed for grant of the following substantive reliefs:-

(i) That the writ in the nature of mandamus or any other appropriate writ directing the Respondent No.2 to issue the enabling notification in terms of Incentives under Clause 16(a) of the Industrial Policy, 2019 w.e.f. the date of commercial production, within stipulated period qua petitioner;

(ii) That the writ in the nature of Mandamus or any other appropriate writ quashing Clause 5B of the Industrial Policy 2019 alongwith Incentive Rule 4B(b) and 4F of the Rules regarding grant of Incentives, Concessions and facilities for investment promotion in Himachal Pradesh 2019 to the extent they are inconsistent with the Industrial Policy, 2019 granting incentives w.r.t. the Electricity from the date of Commercial Production qua petitioner;

(iii) That the writ in the nature of Mandamus or any other appropriate writ declaring the respective tariff orders for the years 2020-2021; 2021-2022 & 2022-2023 for the Large Industrial Power Supply (LIPS) to be read in consonance with the Industrial Policy of the respondent-State in this regard and to declare contrary provisions in such

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tariff orders to be ineffective in the case qua petitioner."

2. During the course of hearing, learned counsel for the petitioner at the outset submitted that he would not be pressing for relief No.3 and confining his claim to reliefs No.1 and 2.

3. It is averred in the petition that it was the State itself, which on 16.8.2019 notified a Policy under the name "The Himachal Pradesh Industrial Investment Policy, 2019" (hereinafter referred to as 'the Industrial Policy'). Under the said Industrial Policy, it was assured to the eligible enterprises that they would be charged 15% less the energy charges in case they do substantial expansion in accordance with the "Rules regarding Grant of Incentives, Concessions and Facilities for Investment Promotion in Himachal Pradesh-2019" (hereinafter referred to as the 'Incentive Rules).

4. After the enactment of the Industrial Policy on 29.6.2019, the tariff order for the year 2019-2020 was passed by the Himachal Pradesh Electricity Regulatory Commission (HPERC) relating to Large Industrial Power Supply. The petitioner thereafter acting on the representation held out by the State Government applied for expansion of the manufacturing unit before respondent No.1 by filing a common application form 16562 dated 1.6.2020.

5. Later on, HPERC on 6.6.2020 issued a tariff order for the year 2020-2021, whereby the tariff fixed was not as per the

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representation held out by respondent No.1 and Industrial Policy 2019. Accordingly, the petitioner, vide its letter dated 11.6.2020 addressed to the Hon'ble Chief Minister of the State, sought redressal of its grievance regarding the non-implementation of the incentives held out in the Industrial Policy, 2019.

6. Respondent No.1 vide its letter dated 3.7.2020 informed the petitioner that the enabling notification relating to tariff incentive is to be notified by the Department of MPP and Power (respondent No.2). In the meanwhile, the expansion of the Unit was carried out by the petitioner and the same was approved by the State Single Window Clearance & Monitoring Authority in its 13th meeting held on 24.7.2020. To this effect, respondent No.2 itself issued a certificate of substantial expansion dated 12.2.2021 and the said expansion was more than the one stipulated in the Industrial Policy.

7. Since the tariff incentives had yet not been announced by the respondents, therefore, the petitioner vide its letter dated 17.2.2021 addressed to respondent No.3 (Chief Secretary, State of Himachal Pradesh) intimated that the petitioner and the similarly situated persons felt cheated by the State, as notification qua incentives relating to electricity was not being issued.

8. Thereafter on 31.5.2021, the tariff order for the year 2021-2022 was passed by the HPERC and later on 29.3.2022, the

tariff order for the year 2022-2023 also came to be issued by the HPERC, wherein the incentives as promised to the petitioner were not granted.

9. It is further averred that the State Government after framing the Industrial Policy, 2019 had assured particular incentives to the eligible industries (new or existing) and in terms thereto, the State through respondent No.2 was therefore, under obligation to show appropriate enabling/follow up notification to effectually convey the incentives relating to the electricity to eligible industrial units.

10. It is also averred that there cannot self-contradictory statements in the Industrial Policy or the Incentives Rules and the State is not only expected but bound to speak in one voice. Since the State has not fulfilled its promise, Hence this petition.

11. Respondent No.1 has filed its reply, wherein it has been averred that the petitioner is estopped from filing instant writ petition on account of its own conduct, deed and acquiesces.

12. It is averred that basic objective of the policy was to attract investment and provide employment to the people of the State. The provision of various incentives such as concessional rate of electricity duty, SGST reimbursement, rebate on stamp duty and registration fee etc. have been made under the above Rules and in order to claim the said incentives, the industrial unit has to fulfill

the eligibility criteria, as laid down in Rule 4 of the said Rules 2019. Further Rule 4-A specifically provides that the incentives provided under the Rules will be admissible from the date of commencement of commercial production/operation or from the date on which the respective administrative department issues enabling notification under the relevant statute/law to operationalise incentives notified under these Rules, whichever is later.

13. It is further averred that Rule 4-F of the Incentives Rules 2019 specifically provides that incentives, concession and facilities under these Rules are provided under the discretionary powers of the State Government and do not create any claim/right against the Government and are not enforceable in any court of law. The Government in its wisdom may decide to amend, alter, delete or revise any or all of the incentives notified under these Rules and no claim on account of such a decision will be entertained. Therefore, the petitioner cannot claim incentive of concessional rate of electricity charges under Rule 16(i)(a) as a matter of right. Therefore, the present petition is not maintainable.

14. On merits, it has not been denied that the petitioner has carried out substantial expansion and as per approval given by the State Level Single Window Clearance & Monitoring Authority, the proposed increase in investment approved was 932.85 lacs and the

petitioner has carried out additional investment of Rs.870.90 lacs. The additional employment proposed was 20 person and the Unit had provided additional employment to 21 persons, out of which 17 are Himachalis (80%). The total employment provided by the petitioner is 342 persons out of which 275 (80. 40%) are bona fide Himachalis.

15. Respondents No.2 and 3 have filed their joint reply, wherein it has been averred that as per provisions of Clause 16 of the H.P Industrial Investment Policy, 2019, incentives of concessional rate of electricity charges are to be notified in the schedule of tariff for Himachal Pradesh on year to year basis by the H.P State Electricity Board and it would not be binding upon the State Government during the applicability of this Policy. Therefore, the matter relating to grant of incentives were to be considered by the H.P State Electricity Board.

16. The H.P State Electricity Board was subsequently added as a party respondent vide order dated 24.5.2023, which reads as under:-

> "It appears that the Himachal Pradesh State Electricity Board is a necessary party. Accordingly, Himachal Pradesh State Electricity Board through its Executive Director is impleaded as party and shall now reflect as respondent No.4 in these petitions.

Issue notice to the newly added respondent. Mr. Tara Singh Chauhan, Advocate, appears and waives service of notice on behalf of respondent No.4 in these petitions.

As regards CWP No. 1667/2021, let respondent No.4 file an affidavit, within one week, clearly indicating therein as to whether any benefit in the nature of incentives/concessions was extended to the petitioner-unit in terms of H.P. Industrial Investment Policy, 2019 and in case the same has been provided, it be reflected in the tabulated form clearly showing duration and amount of concession separately. It goes without saying that the respondent-Board while filing this affidavit would not confuse the "rebate" as is otherwise admissible to other industries as per the tariff fixed by the H.P. State Regulatory Commission and shall confine only to the incentives/concessions granted, if any, to the petitioner unit under the H.P. Industrial Investment Policy, 2019. List on 31.5.2023.

As regards CWP No. 8523/2022, it be de-tagged. Reply be filed within four weeks. List on 28.6.2023"

17. In compliance to the aforesaid order, respondent No.4 filed its affidavit, wherein it has been averred that the petitioner has been granted the benefit of "*rebate*" on and w.e.f. 1.11.2019 to 1.10.2022 as per the provisions of tariff fixed by the State Commission.

18. We have heard the learned counsel for the parties and have gone through the material placed on records.

19. In order to better appreciate the controversy, one would have to first refer to the Policy, 2019. The objectives of the Policy

are found in the introduction of the policy, relevant portion whereof reads as under:-

"**Himachal Pradesh Industrial Investment Policy, 2019**

**1 Introduction**

Himachal Pradesh consists of diverse terrains and varied climatic zones. Economic strength of Himachal Pradesh primarily lies in activities related to Agriculture, Horticulture, Animal Husbandry, Limestone mines and allied activities in the Primary Sector. Industrialization in the State is a recent phenomenon. It only gained momentum after getting Statehood. Before grant of Statehood in 1971, only a few industrial units namely Nahan Foundry at Nahan, M/s Mohan Meakins Breweries at Kasauli and Solan, Salt Mines at Drang (Mandi), Rosin & Turpentine Factories at Nahan & Bilaspur and four small gun factories at Mandi were the main industrial units functioning in the State. "The State Government recognized the importance of Industrial Policy as an effective instrument to boost the confidence of investors and catalyze industrial development. Incentives to Industries were notified initially during 1971 and were revised in the year 1980, 1984, 1991, 1996, 1999 and 2004, which were amended in the year 2009, 2015 and 2017 in response to the changing scenario.

The severe climatic conditions topographical and geographical severities throw challenges in the process of industrialization. In such a scenario, the benefits made available in the form of incentives and subsidies as well as the creation of appropriate infrastructure become the main instruments to attract industrial investment in the State. With substantial investment in infrastructural facilities, the State has been able to offset the location and geographical disadvantages to a considerable extent. Factors like low cost

quality power, harmonious industrial relations, low cost of land and clean environment, investor friendly administration, attractive incentives and tax concessions, accessibility to Northern markets - all contribute towards creating a healthy investment climate in our State.

During the last few years, industrialization in the State has made significant progress. The Share of industries and Services Sector in the State Domestic Product has increased from 1.1 & 5.9 percent in 1950-51 to 9.4 and 13 percent in 2010-11 and 29.2% and 43.3 % in 2017-18 respectively. The period of Industrial Policy Package of Govt. of India has seen Himachal Pradesh entering the take-off stage with a well-diversified base of industries ranging from rural and traditional Handloom Handicrafts, Cottage, Micro and SSI units to modern Textile, Telecommunication equipment, sophisticated Electronic units, Pharmaceuticals, Engineering, High Quality Precision Tools, Food Processing Page 3 of 60 industries etc. An investment of about Rs. 15000 Crore actually happened during the period of Industrial Package. Up to 31st March, 2019 the State had 49532 Small Scale and 689 Medium & Large Scale industrial units registered with the Industries Department with a total investment of about Rs. 35449 Crore which were providing employment to about 4.17 lakhs persons. This growth in industrial sector could be achieved only because of forward looking Industrial Policies which were in tendum with changing needs and its proper implementation.

In Ease of Doing Business (EODB) ranking, the State has improved its implementation score from 65.48% to 94.13% in 2017-18 and also emerged as the fastest growing State in the EODB. In Start-up ranking 2018, the State has emerged as the leading Hill State and aspiring leader and also recognized as leader for regulatory change. The State

has also recently topped in the ranking done by the NITI Aayog as regards efforts being made to achieve the Sustainable Development Goals.

2 **Vision Statement**

*"To create an enabling ecosystem to enhance the scale of economic development & employment opportunities; ensure sustainable development & balanced growth of industrial & service sectors to make Himachal as one of the preferred destination for investment"*

3 **Objectives**

This policy aims to:-

i) serve as a guideline to create a congenial investment climate for existing industries to grow as well as to attract further investment in the State for creating employment opportunities for local youth and to ensure development of Industrial & Service Sector throughout the State.

ii) specifically address issues impeding industrial growth and ensure simplification of procedures, key physical and social infrastructure, human resource development, access to credit and market.

iii) promote Ease of Doing Business by digitization of all processes and to promote self-certification.

iv) give impetus to food processing industry by establishing effective forward and backward linkages; promoting Agro-Horticulture and rural prosperity.

v) promote MSME sector for uniform sustainable growth of service and industrial sector throughout the State to facilitate generation of employment opportunities for local youth and stakeholders.

vi) promote start-ups and entrepreneurship to create and generate local entrepreneurial base.

vii) recognize and encourage the role of large investment to enhance the scale of economic development, employment

opportunities, ancilliarisation, revenue generation and remunerative prices to local resources.

viii) uplift weaker sections of the society.

4 **Strategy**

The objectives of this policy would be achieved by:-

i) streamlining rules/procedures, introducing self-certification, digitalization of all clearances in a time bound manner to ensure Ease of Doing Business (EODB). ii) creating and up gradation of existing industrial infrastructure and creation of private Land Bank.

iii) ensuring the availability of quality power on competitive rates.

iv) by rationalizing the provisions of incentives, concessions and facilities having a direct impact to sustain and accelerate investment in the State.

v) by providing graded fiscal incentives, facilities and concessions to balance regional economic development. vi) by providing incentives, facilities & concessions with condition of employment to 80% Bonafide Himachlies at all level. Enterprises employing above 80% Bonafide Himachlies on regular basis are being incentivized on additional employment generated over and above of 50 Bonafide Himachlies.

vii) by focusing and providing an ideal eco system to boost startups & entrepreneurship; environment to sustain traditional cottage industries; technology up gradation, ancilliarisation, industrial sickness, R&D and productivity to increase competitiveness.

viii) by recognizing the importance of cottage Handloom & Handicraft industry and other rural economy based critical sectors such as food processing and provision of backward & forward linkages with Agrohorticulture and Tourism.

ix) by discouraging polluting industries to create a responsible eco friendly environment and incentivize adoption of cleaner production technologies.

x) by recognizing the role of specified services activities in employment generation."

20. Eligible enterprises for availing incentives under this Policy are contained in Clause 5, which reads as under:-

**"5 Eligible Enterprises for availing incentives under this Policy**:-

(A) All "New Industrial Enterprises" except Industrial Enterprises engaged in manufacturing activities specified in the "Negative List" annexed with this policy;

And

New Enterprises engaged in "Specified Category of Service Activities" annexed with this policy;

And

All Existing Industrial Enterprises undertaking Substantial Expansion except Industrial activities as specified in the Negative List

And

All Existing Service Enterprises engaged in Specified Category of Service Activities undertaking Substantial Expansion

will be eligible for incentives, concessions and facilities announced under this Policy subject to:-

Ø Fulfillment of the eligibility criteria & conditions as defined under the 'Rules regarding Grant of Incentives, Concessions & Facilities to Industrial & Service Enterprises in Himachal Pradesh-2019'.

Ø Employment of minimum 80% Bonafide Himachalies, at all levels, directly on regular, contractual, daily basis etc.

or through contractor or outsourcing agencies at the time of commencement of commercial production/operation as well as for the time period it remains in commercial production/operation in the State by the New Enterprise set up under this Policy. In case of Existing Enterprises undertaking substantial expansion, out of additional employment generated due to Substantial Expansion employment to atleast 80% of Bonafide Himachalies.

B) Incentives provided under this policy will be admissible from the date of commencement of commercial production/operation or from the date on which respective administrative department issues enabling notification under the relevant statute/law to operationalize incentives notified under this policy, whichever is later."

21. Since the petitioner is an existing enterprise, it comes under third para of Clause 5(a), which states as follows:-

"All Existing Industrial Enterprises undertaking substantial expansion except industrial activities as specified in the negative list."

22. Clause 16 relates to concessional rate of electricity charges, which reads as under:-

"16 **Concessional rate of electricity charges:** (excluding any surcharge, peak load exemption charge, winter charge, fuel adjustment charge, service charge, GST or any other charge under any name in the Tariff Schedule):

a) Eligible enterprises would be charged energy charges 15% lower than the approved energy charges for the respective category for a period of 03 years.

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b) Existing industrial consumers, a rebate of 15% on energy charges shall be applicable for additional power consumption beyond the level of preceding financial year.

Incentives of concessional rate of electricity charges would be notified in the Schedule of Tariff for Himachal Pradesh on year to year basis by the H.P. State Electricity Board and it would not be binding upon the State Government during the applicability of this Policy."

23. Some of the Rules relating to the Grant of Incentives, Concessions and Facilities for Investment Promotion in Himachal Pradesh, 2019, which are relevant for the adjudication of this case, are reproduced as under:-

"2 **Definitions**:-

VIII "Commencement of commercial production/ operation" means the date on which the Industrial or Specified Category of Service Enterprise actually commences commercial production or operations, as the case may be and taken on record by the Director/ Joint /Deputy Director of Industries/ General Manager, District Industries Centre/ Member Secretary, Single Window Clearance Agency or any other officer authorized by the Director to do so.

IX "Department" means Department of Industries, Government of Himachal Pradesh.

X "Director" means Director of Industries, Government of Himachal Pradesh and will also include Commissioner of Industries, Government of Himachal Pradesh, as the case may be.

XII. "Eligible Enterprise" means an enterprise fulfilling the eligibility criteria as per the provisions made under para 5 of these Rules.

XIII. "Existing Industrial Enterprise" means an Industrial Enterprise engaged in manufacturing of goods and registered/acknowledged/taken on record by the Department and has commenced commercial production before the Appointed Date.

XXXIX "Substantial Expansion" means an increase by not less than 25% in the value of Plant and Machinery by Existing and new Enterprise for the purpose of expansion of capacity or modernization or diversification and taken on record by the department.

4. **Eligibility:-**

B) All Existing Industrial Enterprises undertaking substantial Expansion (except Industrial activities specified in the Negative List) and Existing Service Enterprises undertaking substantial Expansion will be eligible for incentives, concessions and facilities under these Rules, subject to:

a) fulfilment of such requirements as specified under clause 4A (a to f).

b) condition that incentive provided under these Rules will be admissible from the date of undertaking Substantial Expansion taken on record by the Department or from the date on which respective administrative department issues enabling notification(s) under the relevant statute/law to operationalize incentives announced under these Rules, whichever is later. In case existing enterprise undertakes subsequent expansion(s) after first Substantial Expansion, same would be taken on record for the purpose of incentives, concession & facilities provided under these Rules for additional investment.

c) Condition that in case employment is generated due to Substantial Expansion, it will employ 80% Bonafide

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Himachali directly or regular contractual, daily basis etc. or through contractor or outsourcing agencies.

F) Incentives, concession & facilities under these Rules are provided under the discretionary powers of the State Government; do not create any claim /right against the Government and are not enforceable in any court of law. The Government in its wisdom may decide to amend, alter, delete or revise any or all of the incentives notified under these rules and no claim on account of such a decision will be entertained.

16. **Power Incentives: Concessional Rate of Electricity Duty:**

(i) **Concessional rate of electricity charges:** (excluding any surcharge, peak load exemption charge, winter charge, fuel adjustment charge, service charge, GST or any other charge under any name in the Tariff Schedule):-

a) Eligible enterprises would be charged energy charges 15% lower than the approved energy charges for the respective category for a period of 03 years.

b) Existing industrial consumers, a rebate of 15% on energy charges shall be applicable for additional power consumption beyond the level of preceding financial year.

Incentives of concessional rate of electricity charges would be notified in the Schedule of Tariff for Himachal Pradesh on year to year basis by the H.P. State Electricity Board and it would not be binding upon the State Government during the applicability of this Policy..

27. Incentives, concessions & facilities provided under these Rules will be sanctioned and disbursed by the Director or any officer authorized by him on the recommendation of the committee(s) to be notified by the Government. For the

operationlizing and implementation of these Rules, the forms, procedure etc. will be prescribed by the Director on online platform."

24. It is not in dispute that the petitioner acted as per the policy and did substantial expansion to the tune of 88.69% in the plant and machinery and the eligibility though was only 25% increase. It is also not in dispute that when the petitioner addressed a communication dated 11.6.2020 inviting attention of the Chief Minister to the huge investment made by the investors on the basis of the Industrial Policy and requested the electricity tariff to be fixed as per the industrial policy, it was the State Government itself which vide letter dated 3.7.2020, who had re-assured the petitioner that notification qua the Industrial Policy is in the progressive stage and respondent No.2 would notify the same. It shall be apt to reproduce the letter in its entirety, which reads as under:-

"No. Ind-A(F)2-2/2019-1
Government of Himachal Pradesh
Department of Industries
(investment Cell)

From

Addl. Chief Secretary (inds), to the
Government of Himachal Pradesh

To

Kundlas Loh Udyog,
village Balyana, P.O. Barotiwala,
Tehsil Baddi, District Solan, H.P.
Dated Shimla-2 the 03rd July 2020

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Subject: Electricity Tariff for 2020-21 & Industrial Policy, 2019.

Sir,

I am directed to refer to your letter dated 11th June 2020 on the subject captioned above and to inform you that the H.P. Industrial Investment Policy 2019 was notified on 16th August 2019, whereas corresponding provisions of the policy pertaining to various departments were to be notified by the concerned Department. Relevant provisions of Electricity Duty and Electricity Tariff are to be notified by the MPP & Power Department and is in a progressive stage.

Yours faithfully,
Sd/-
(Abid Hussain Sadiq)
Special Secretary (Inds.) to the
Government of Himachal Pradesh
Ph No. 0177-2621902"

25. It is further not in dispute that the petitioner was given the in-principle approval by respondent No.1 towards expansion as is evident from the letter dated 24.7.2020 issued by the Single Window Clearance System.

26. It is yet again not in dispute that it was respondent No.1 itself, who had issued the certificate of commercial production in favour of the petitioner dated 12.2.2021, wherein it is certified that the petitioner had invested in the plant and machinery and substantial investment in plant and machinery by Rs.807.8 lacs and made a total expansion of Rs.1718.62 lacs, which was to the tune of 88.69% in the plain and machinery though the required eligibility was only 25%.

27 Thus, what would be clear from the aforesaid is that clause 16 of the Policy and Rule 16(i) of the Rules are *pari*

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*materia* and deal with the benefit of the "Electricity Charges" and the same provide for two types of benefits:-

(A) To eligible enterprises, 15% lower energy charges.

(B) To existing enterprises (without thereby being any condition of doing substantial expansion), 15 % rebate upon additional power consumption.

28 The petitioner is agitating the benefit under clause A and not under clause B. The petitioner is an eligible enterprises in terms of clause 5 of the Policy being "existing enterprise" at the time of policy. Therefore, by virtue of being an existing enterprise, the benefit of clause B (rebate) has already been given to it and as noted above, the petitioner is not agitating the same in the instant petition. However, claim of the petitioner is qua clause A, where the petitioner has admittedly carried out substantial expansion of its industrial unit, which is evident from the substantial certificate available on record and thus, once the petitioner becomes "Eligible Enterprise", it is entitled to 15% lower energy charges under clause 16 (A) of the Policy.

29 It needs to be clarified that under Clause 5 (B) of the Policy, the incentives under the policy are admissible from the **date of commencement of commercial production or from the date the administrative department issues enabling notification, whichever is later**. The petitioner's date of commencement of

commercial production after substantial expansion is 12.02.2021 but the administrative department did not issue the "enabling notification" despite positive assurance, this has compelled the petitioner to file the instant petition challenging the action of the State in not issuing enabling notification and also clause 5 (B) to the extent of "whichever is later".

30 No doubt, the State would place reliance on amendment dated 29.04.2022, whereby the Policy and the Rules came to be amended, however, Clause 4 of the Notification specifically states that these amendments are prospective, meaning thereby, the petitioner's admissibility or entitlement for the benefit under erstwhile clause 16 (A) stands crystallized on 12.02.2021 when the commencement of commercial production certificate was issued in its favour in terms of clause 5 (B) of the Policy.

31 Since the 2022 amendment (Annexure P-4) is prospective by virtue of clause 4 of the amendment, it would not affect or curtail the entitlement of the petitioner in terms of erstwhile clause 16 (A) for a period of three years from the date of commencement of commercial production i.e. 12.02.2021.

32 As observed above, it was the respondents themselves, which after consideration with all the stakeholders, had issued the H.P. Industrial Investment Policy 2019 and notified the same

alongwith the Rules regarding Grant of Incentives, Concessions and Facilities for Investment Promotion in Himachal Pradesh. Therefore, the respondents are bound by the promise so held out on the doctrine of "promissory estoppel".

33 The petitioner admittedly did substantial expansion in terms of the Policy, but the State has failed to issue the enabling notification despite having promised to do so by virtue of words "whichever is later" in clause 5 (B) of the Policy and till the department is "not issuing" the enabling notification, the rights of the petitioner under erstwhile clause 16 (A) is being withheld from the petitioner, even though no reasons for the same are forthcoming in the reply, which would only show bureaucratic lethargy. Assurance has been given by the Department of Industries being nodal agency for implementing the Policy in terms of Rule 27.

34 The doctrine of "promissory estoppel" consists of ingredients of promise and estoppel like equity. The doctrine has been introduced to reduce the rigor of the common law as well as the statutory law. Equitable estoppel yields a remedy in order to prevent unconscionable conduct on the part of the party who, having made a promise to another acts on it to his detriment, seeks to resile from the promise.

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35 The doctrine of promissory estoppel is firmly part of the jurisprudence in this country. The judgment of Hon'ble Supreme Court in ***Manuelsons Hotels Private Limited vs State of Kerala (2016) 6 SCC 766***, is a treaty on the subject, where there has been comprehensive review and survey made by the Hon'ble Supreme Court on promissory estoppel and, in that context and in the context of administrative law, the scope of and grounds for judicial review.

36 Facts in Manuelsons' case were that on 11.7.1986, the State Government, by a Government Order (G.O.), accepted the recommendations of the Government of India suggesting that tourism be declared an "industry". The fallout of this G.O. was that this would enable those engaged in tourism promotional activities to become automatically eligible for concessions/incentives as applicable to the industrial sector from time to time. Apart from various other concessions that were granted, exemption from Building Tax levied by the Revenue Department was one such concessions. It was stated in the said G.O. that action to amend the Kerala Building Tax Act, 1975 will be taken separately. The G.O. went on to state that persons eligible for such concessions will, among others, be classified hotels i.e. from 1 to 5 stars. A Committee was set up consisting of three government officers to oversee the aforesaid scheme. Vide a letter dated 25.3.1987, the

Government of India approved the hotel project of the appellants therein, being a 55 double room 3 star hotel project to be set up in the city of Calicut.

36(i) Pursuant to the aforesaid G.O. dated 11.7.1986 and the aforesaid approval, the appellants began constructing the hotel building, which was completed in the year 1991. Notice for filing returns under the Kerala Buildings Tax Act was issued to the appellants on 5.9.1988. The appellants replied that they relied upon the G.O. dated 11.7.1986 and stated that they were under no obligation to furnish any return under the said Act as they were exempt from payment of building tax.

36(ii) However, the State insisted upon the tax constraining the appellants therein to challenge the notice dated 5.9.1988 before the Kerala High Court. This resulted in a judgment dated 30.8.1995 by which the appellants were relegated to the Committee set up under the 1986 G.O. to pursue their claim. Till final orders were passed by the Committee, the judgment stated that the respondents would not take any coercive steps to recover any building tax assessed on the building constructed by the appellants.

36(iii) Vide letter dated 6.2.1997, the exemption so promised by the G.O. of 1986 was denied to the appellants stating that as Section 3A had been omitted w.e.f. 1.3.1993, the power to grant

exemption had itself gone and, therefore, no such exemption could be given to the appellants.

36(iv) Pursuant to the aforesaid letter dated 6.2.1997, a notice dated 28.4.1997 was issued by the authorities asking the appellants to submit the necessary statutory return under the Kerala Buildings Tax Act. This notice was, in turn, challenged before the Kerala High Court and the writ petition was allowed by the High Court directing the Committee to consider the matter afresh in the light of the judgment of the Supreme Court in M/S Motilal Padampat Sugar Mills v. State Of Uttar Pradesh & Ors., (1979) 2 SCR 641 and Shrijee Sales Corporation & Anr. v. Union of India, (1997) 3 SCC 398.

36(v) Vide an order dated 4.2.1999, the authorities once again rejected the appellant's application for exemption from property tax. This order was challenged by way of writ petition before the Kerala High Court. The High Court essentially rejected the aforesaid Writ Petition on two grounds. Firstly, it was stated that as no exemption notification had, in fact, been issued under Section 3A when it was in existence in the statute book, no claim for exemption from payment of building tax would be allowed. Secondly, it was held that mere promise to amend the law does not hold out a promise of exemption from payment of building tax. Finally, the High Court held that the question of now exempting the

appellants from building tax would not arise as Section 3A itself had been omitted w.e.f. 1.3.1993.

36(vi) The discussion covers all the relevant case law on promissory estoppel, Wednesbury unreasonableness and judicial review including the celebrated cases of ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation, (1948) 1 KB 223***; ***Union of India vs Anglo-Afghar Agencies AIR 1968 SC 718*** ; ***Turner Morrisni & Co. Ltd. vs Hungerford Investment Trust Ltd (1972) 1 SCC 857*** ; and ***Motilal Padampat Sugar Mills Co Ltd vs State of UP (1979) 2 SCC 409***.

36(vii) The principle is enunciated in the context in that case, a question of taxation. The Hon'ble Supreme Court held that where a Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee acting in reliance on it, alters his position, the Government would be bound by the promise. That promise is then enforceable against the Government at the instance of the promisee and this is so even if there is no consideration for the promise and even if that promise is not formally recorded in a contract. The Hon'ble Supreme Court placed this on a fundamental principle that in a republic governed by the rule of law no one is above the law. The Government is no exception to the application of the rule of law. The principle does not demand that the petitioner must show that it has suffered any

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detriment. It is enough for the invocation of the principle to show that the petitioner relied on the promise or the representation that was held out by the Government and altered its position relying on this assurance.

36(viii) The Hon'ble Supreme Court held that issuing of enabling notification is a ministerial act, which would not come in the way of the petitioner therein for its entitlement. It shall be apt to reproduce paras 14, 16 and 18 of the judgment, which reads as under:-

> *14. It is important to notice that the necessary exemption Notification in Motilal Padampat's case had not been issued under Section 4 of the U.P. Sales Tax Act, 1948. Yet, this Court held that sales tax for the period in question could not be recovered. This was done presumably because promissory estoppel is itself an equitable doctrine. One of the maxims of equity is that one must regard as done that which ought to be done. In this view of the matter, it is obvious that the High Court judgment is incorrect when it holds that as no exemption Notification was, in fact, issued by the Government under Section 3A, the petitioner would have to be denied relief. This judgment has been followed repeatedly and has been applied to give the benefit of sales tax exemption in similar circumstances in Pournami Oil Mills & Ors. v. State of Kerala & Anr., (1986) Supp. SCC 728 at Paras 7 and 8.*
>
> *16. In this background, the High Court held that the State Government was bound by its promise and representation to abolish purchase tax. According to the High Court, the absence of a financial notification was no more than a ministerial act which remained to be performed. As the*

*respondents had acted on the representation made, they could not be asked to pay purchase tax for the year 1996-1997. The Writ Petition was allowed and the demand notice of tax for the aforesaid year was struck down.*

*18. A perusal of this judgment would also show that relief was not denied on the ground that no exemption notification was, in fact, issued under Section 30 of the Punjab General Sales Tax Act, 1948. In fact, this Court emphasized the discretionary nature of the power to grant exemption. This Court held that the State Government's refusal to exercise its discretion to issue the necessary notification abolishing or exempting tax on milk was not reasonably exercised inasmuch as it was bound by the doctrine of promissory estoppel to do so. And the finding of the High Court that such Notification would only be a ministerial act which had to be performed was, therefore, upheld by this Court. This judgment has been recently applied and followed in Devi Multiplex & Ors. v. State of Gujarat & Ors., (2015) 9 SCC 132 at Para 20.*

36(ix) The Hon'ble Supreme Court after applying the doctrine of promissory estoppel against State of Kerala held that notification under Section 3 (a) would be deemed to have been issued. It shall be apt to reproduce para 36 of the judgment which reads as under:-

*36. In the present case, it is clear that no Writ of Mandamus is being issued to the executive to frame a body of rules or regulations which would be subordinate legislation in the nature of primary legislation (being general rules of conduct which would apply to those bound by them). On the facts of the present case, a discretionary power has to be exercised on facts under Section 3A of the Kerala Buildings Tax Act, 1975. The non- exercise of such discretionary power is clearly*

*vitiated on account of the application of the doctrine of promissory estoppel in terms of this Court's judgments in Motilal Padampat and Nestle (supra). This is for the reason that non-exercise of such power is itself an arbitrary act which is vitiated by non-application of mind to relevant facts, namely, the fact that a G.O. dated 11.7.1986 specifically provided for exemption from building tax if hotels were to be set up in the State of Kerala pursuant to the representation made in the said G.O. True, no mandamus could issue to the legislature to amend the Kerala Buildings Tax Act, 1975, for that would necessarily involve the judiciary in transgressing into a forbidden field under the constitutional scheme of separation of powers. However, on facts, we find that Section 3A was, in fact, enacted by the Kerala legislature by suitably amending the Kerala Buildings Tax Act, 1975 on 6.9.1990 in order to give effect to the representation made by the G.O. dated 11.7.1986. We find that the said provision continued on the statute book and was deleted only with effect from 1.3.1993. This would make it clear that from 6.9.1990 to 1.3.1993, the power to grant exemption from building tax was statutorily conferred by Section 3A on the Government. And we have seen that the statement of objects and reasons for introducing Section 3A expressly states that the said Section was introduced in order to fulfill one of the promises contained in the G.O. dated 11.7.1986. We find that, the appellants, having relied on the said G.O. dated 11.7.1986, had, in fact, constructed a hotel building by 1991. It is clear, therefore, that the non-issuance of a notification under Section 3A was an arbitrary act of the Government which must be remedied by application of the doctrine of promissory estoppel, as has been held by us hereinabove. The ministerial act of non issue of the notification cannot possibly stand in the way of the appellants getting relief under the said doctrine for it would be*

*unconscionable on the part of Government to get away without fulfilling its promise. It is also an admitted fact that no other consideration of overwhelming public interest exists in order that the Government be justified in resiling from its promise. The relief that must therefore be moulded on the facts of the present case is that for the period that Section 3A was in force, no building tax is payable by the appellants. However, for the period post 1.3.1993, no statutory provision for the grant of exemption being available, it is clear that no relief can be given to the appellants as the doctrine of promissory estoppel must yield when it is found that it would be contrary to statute to grant such relief. To the extent indicated above, therefore, we are of the view that no building tax can be levied or collected from the appellants in the facts of the present case. Consequently, we allow the appeal to the extent indicated above and set aside the judgment of the High Court.*

36(x) The doctrine of promissory estoppel, of necessity, is an evaluation of the more common place rule of estoppel. No party may resile from a commitment once made nor may that party approbate and reprobate. The law will not allow an unconscionable departure by one party from the subject matter of even an assumption, whether that assumption is of fact or of law, is of the present or of the future, if that assumption is the basis on which the other party conducted itself. The relief to be fashioned in such cases is necessarily flexible to ensure that justice is done to the party aggrieved. The courts will not permit an unconscionable

departure from a promise solemnly made and which the other party adopted, accepted, and acted on.

36(xi) The origins of the doctrine can probably be traced to the legendary dictum of Lord Denning in ***Central London Property Trust Ltd vs High Trees House Ltd, (1947) 1 KB 130***, where a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact so acted on, estoppel would apply. Many advances have been made in that jurisprudence since then.

37 As observed above, estoppel is both a rule in equity and a rule in evidence. Because it is foundationally in equity, it is necessarily flexible. In India, our jurisprudence recognizes promissory estoppel as a valid basis of an independent cause of action and merely cannot only be used as shield but can also be used as a sword. In pursuing such a cause of action, the petitioner need not show actual prejudice or detriment. It is enough for the party to show two things: (i) that a representation was made; and (ii) that the party acted on that representation and altered its position. Where there is a failure to abide by the representation that is made, a writ court will necessarily step in and a mandamus will necessarily be issued to compel the promisor Government to fulfill its commitments and to perform what it said it would perform

and on the basis of which assurance the other party altered its position.

38 Learned Advocate General would however argue that since there is no enabling notification issued by the Government, therefore, the petitioner has no cause of action. However, we find no merit in this contention for the simple reason that enabling notification is merely a ministerial act and what is enforceable and otherwise entitlement of the petitioner is the promise set out in clause 16 (A) of the Policy and Rule 16 of the Rules and in such circumstances, as held by the Hon'ble Supreme Court in ***Manuelsons' case*** (supra), notification would be deemed to have been issued.

39 Even otherwise, the act of the State in not issuing the enabling notification within reasonable time is arbitrary and in coming to such conclusion we are duly supported by the judgment of the Hon'ble Supreme Court in ***State of Bihar vs. Kalyan Cement Limited, (2010) 3 SCC 274***.

40 The facts there were that M/s Kalyanpur Cement Ltd., which was a public sector company incorporated, was engaged in the business of cement manufacturing and marketing operations since 1946. It had commenced production with a capacity of 46000 metric tonnes. It underwent a series of expansion in 1958, 1968 and 1980 and at the relevant time, the Company was operating

one-million- tonne cement plant. In view of the changes in the technology worldwide, it had set up a brand new state-of-art `dry process' plant in 1994 at a capital cost of Rs. 250- 260 crores, for which it took financial assistance from the World Bank and certain other financial institutions. The Company claimed to be one of the very few large scale surviving industrial units in the State of Bihar and claimed that due to circumstances beyond its control such as recession in the cement industry as well as Government related problems; delayed decision in granting Sales Tax Deferment benefit the Company began to suffer heavy losses. This was accentuated by the non- availability of the sanctioned working capital from the financial institutions in the absence of the sale tax exemption under the Industrial Policy, 1995. There was continuous loss in production for a number of years, which resulted in erosion of Net-Worth of the Company, as the total Net-Worth of the Company was less than its accumulated losses in December, 2002, it has registered with Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR') as a sick unit and was actually declared a sick Company by BIFR on 28.05.2002. The Company in order to rehabilitate itself sought the assistance from financial institutions for restructuring package. The Company's proposal for financial assistance and restructuring was approved by various financial institutions. However, the same was made conditional on

certain preconditions being met. One of such conditions imposed by the financial institutions was that the restructuring package would be made available only on the Company obtaining a Sales Tax exemption for a period of 5 years from the State Government, in terms of Industrial Policy, 1995. Accordingly, Company submitted an application to the State Government on 21.11.1997 for grant of Sales Tax exemption under the Industrial Policy, 1995 for a period of 5 years w.e.f. 01.01.1998. Thereafter, the matter remained pending for consideration by the State Government and the financial institutions. There were a series of joint meetings of the Government, Financial Institutions and the Company, over the next three years. In all these meetings, as well as correspondence categoric assurances were given that the necessary Sales Tax exemption notification would be issued shortly. However, no such notification was issued causing great hardship to the Company. It was, therefore, constrained to file the writ petition in the High Court at Patna.

40(i) In this writ petition, the prayer was for issuance of the writ in the nature of mandamus directing the State of Bihar to issue necessary Notification under Clause 24 of the 1995 Policy. The claim of the Company was that Notification under Clause 24 of the Industrial Policy, 1995 ought to have been issued within one month of the release/publication of the Policy in September, 1995.

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Voluminous record was produced before the High Court in support of the submission that the Company is entitled to exemption under the 1995 Policy.

40(ii) The State of Bihar contested the writ petition by filing a counter affidavit. Supplementary counter affidavit was filed on behalf of the Government on 05.12.2000. In paragraph 5 of the aforesaid affidavit it was stated as under:-

> *"5. That the Hon'ble Minister, Department of Commercial Taxes has approved the proposal along with draft notification regarding extension of Sales Tax related incentives to sick industrial units."*

40(iii) In paragraph 8 of the affidavit, it was averred as under:-

> *"That the deponent states that it shall be possible to issue necessary notification after approval of the proposal of the relevant notification by the Hon'ble Chief (Finance) Minister of the Cabinet."*

40(iv) It was also stated in the affidavit -

> *That the deponent has further requested the Secretary-cum-Commissioner, Department of Finance, vide letter dated 28.11.2000 to take necessary approval earliest as the same has to inform to the Hon'ble Court."*

40(v) Thereafter, yet another supplementary counter affidavit dated 09.01.2001 was filed by the Assistant Commissioner, Commercial Taxes, Bihar, wherein it was contended that the State Government in a meeting under the Chairmanship of the Chief Minister held on 06.01.2001 had decided upon due deliberation not to grant any Sales Tax incentives to sick industrial units. Therefore,

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the claim of the Company was rejected. The four stated reasons justifying the aforesaid decision were as under:-

> *"(1) The period of Industrial Policy 1995 was from 1.9.1995 to 31.8.2000. Therefore, this policy is not effective to date.*
>
> *(2) The question to provide facility to those sick units are mentioned in clause 22 of the above policy. No notification has been issued by the Government to provide facility of Sales Tax till now, on whose basis, there could be right of any specialized person/unit to get the facility.*
>
> *(3) So far as the question of applicants' Unit in petition No. CWJC No.6838/2000 is concerned, his matter has not yet been approved by the High Level Empowered Committee under the Chairmanship of Chief Secretary under Clause 22(1) of Industrial Policy, 1995. It is worth mentioning here that in absence of above mentioned, even approval cannot be provided.*
>
> *(4) Tax reforms at All India Level, which has been continuing last one year it has been decided at the conference of Chief Ministers that except States of Special Category Sales Tax facility must be ended by rest all other States. The States would not do this, there could be possibility of cut down the payable Central Assistance to those States."*

40(vi) The Company accordingly amended the writ petition and challenged the decision dated 06.01.2001 of the State Government. The High Court allowed the writ petition and quashed the decision dated 6.1.2001 and 5.3.2001 and further directions were issued to the State Government, which are as under:-

> *"The departments and organizations concerned are hereby directed to issue follow up notification to give effect to the provisions of the policy within one month from today. After the*

*notification is issued a Committee headed by the Industrial Development Commissioner would be constituted to evolve suitable measures for potentially viable non BIFR sick industrial unit (the present petitioner) and the said Committee would submit its recommendations before the State Level Empowered Committee which in its turn shall place the said recommendations before the Government. After receiving the said recommendations from the State Level Empowered Committee, the Government shall take final decision in the matter. The petition is thus allowed."*

40(vii) The aforesaid decision was challenged by the State of Bihar before the Hon'ble Supreme Court, which on 18.11.2002 passed the following orders:-

*10. At this stage it would be appropriate to notice the orders passed by this Court during the proceedings. On 18.11.2002, following directions were issued:-*

*"Heard the learned counsel for the parties.*
*As an interim arrangement during the pendency of this appeal, with a view to protect the interests of either side, we direct the respondent to deposit an amount equivalent to the sale tax payable by it as and when it becomes due in an interest bearing account in a nationalized bank. This amount and the amount accrued during the pendency of the appeal, shall not be withdrawn by either side.*
*The amount so kept in deposit shall become payable to the party which ultimately succeeds in this appeal.*
*The appellants are directed to issue the exemption orders and on receipt of such order, the above said amount shall be deposited. The issuance of the exemption orders is without prejudice to the case of the parties in this appeal.*
*The IA is thus disposed of."*

40(viii) Thereafter IA No.3 of 2006 was filed by the appellant seeking stay of the judgment of the High Court wherein it was averred that the application was necessitated because of the intervening circumstances and the conduct of the Company. It was

further stated that pursuant to the direction issued by the Court on 18.11.2002, the appellant issued Notification No.SO-174 dated 18.10.2004 granting exemption to the Company. The Notification was to have effect for five years from the date of publication in the Official Gazette or till the disposal of the Special Leave Petition. The aforesaid Notification was issued on the following terms:-

> *"2. Terms and conditions-*
> *(a) Tax payable by M/s Kalyanpur Cement Ltd. shall be deposited per month in an interest-bearing account in a nationalized bank.*
> *(b) M/s Kalyanpur Cement Ltd. shall provide information of such bank account to the circle where he is registered.*
> *(c) M/s Kalyanpur Cement Ltd. shall submit the details regarding amount of payment in the bank account as mentioned in para (a) above along with brief abstract each month.*

40(ix) Thereafter the appellant requested the company to comply with the directions of the court. The Company, however, informed the appellant that it was unable to comply with the directions because of its `sickness'.

40(x) Since the Company failed to comply with the aforesaid order, a prayer was made for recalling the same. The Company in its reply elaborately explained the efforts being made by the financial institutions to ensure the survival of the Company. It was reiterated that the Company had acted honestly and in good faith on assurances/approval given by the appellant at various stages. The Company continued with its operation in anticipation of receiving the appellant's approval at some point of time. Had the appellant not given the assurances, the Company could have

suspended its operation. The Government gave assurances and granted approval on 07.01.1998, 23.01.1998, 12.03.1998, 21.01.1999, 12.07.1999, 29.10.1999, 02.12.1999, 17.12.1999, 25.01.2000, 31.03.2000, 29.05.2000 and 30.06.2000. It was also pointed out that even the officers of the Commercial Taxes Department including Commissioner, Commercial Taxes to the effect that the Notification was in the process of being issued. It was also pointed out that even after the VAT regime being introduced, Sales Tax related incentives to industries are being given to industries by various States. In fact under the Industrial Policy 2003 as well as the Industrial Policy, 2006, Sales Tax incentives in some form or the other had been retained/provided.

40(xi) It was further pointed out that the Notification dated 18.10.2004 was issued after expiry of two years from the date of the order passed by the Court. The delayed action of the appellant practically crippled the Company financially and jeopardized efforts for revival as the Sales Tax benefit was crucial for the Company's revival and continued operations. It was further reiterated that the Company was entitled to get the benefit under the Industrial Policy, 1995. With regard to the non-deposit of the "amount equivalent to the Sales Tax payable by it as and when it becomes due", it was stated that the Company had bona fide opened the Bank account with a Nationalized Bank but could not deposit the amount

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equivalent to the Sales Tax due because of circumstances beyond its control.

40(xii) During the pendency of the Interim Application, proposal for the approval of the reconstruction package of the Company was under the active consideration of the State. Therefore, the proceedings were adjourned from time to time. During this period an application was also filed by the Assets Reconstruction Company (I) Ltd. for being impleaded as a party. The aforesaid application was allowed by the Court on 04.09.2006 and the applicant was impleaded as respondent No.2.

40(xiii) The Hon'ble Supreme Court after invoking doctrine of promissory estoppel held the action of the State of Bihar in not issuing enabling notification granting an exemption to be arbitrary as would be evident from para 85 of the judgment, which reads as under:-

> *85. Even if we are to accept the submissions of Dr. Dhawan and Mr. Dwivedi that the provisions contained in Clause 24 was mandatory the time of one month for issuing the notification could only have been extended for a reasonable period. It is inconceivable that it could have taken the Government 3 years to issue the follow up notification. We are of the considered opinion that failure of the appellants to issue the necessary notification within a reasonable period of the enforcement of the Industrial Policy, 1995 has rendered the decisions dated 06.01.2001 and 05.03.2001 wholly arbitrary. The appellant cannot be permitted to rely on its own lapses in*

*implementing its policy to defeat the just and valid claim of the Company.*

*72. For the same reason we are unable to accept the submissions of the learned senior counsel for the appellant that no relief can be granted to the Company as the Policy has lapsed on 31.08.2000. Accepting such a submission would be to put a premium and accord a justification to the wholly arbitrary action of the appellant, in not issuing the notification in accordance with the provisions contained in Clause 24 of the Industrial Policy, 1995.*

41 Lastly and more importantly, the State Government cannot speak in two voices. Once the Government has taken a policy decision to extend certain benefits to the petitioner, the same cannot be withheld simply for want of notification.

42 In coming to such conclusion, we are duly supported by the judgment of the Hon'ble Supreme Court in ***Lloyd Electric & Engineering Ltd. vs. State of H.P. (2016) 1 SCC 560***, wherein it has been held as under:-

*14. The State Government cannot speak in two voice. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31.03.2009, upto 31.03.2013, and the Notification dated 29.05.2009, accordingly, having been issued by the Department concerned, viz., Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the Government policy and not their own policy. Once the Council of Ministers has taken a decision to extend*

*the 2004 Industrial Policy and extend tax concession beyond 31.03.2009, merely because the Excise and Taxation Department took some time to issue the notification, it cannot be held that the eligible units are not entitled to the concession till the Department issued the notification.*

43 In view of the aforesaid discussions and for the reasons stated above, we find merit in this petition. Accordingly, respondent No.2 is directed to issue the enabling notification in terms of the incentive under clause 16 (A) of the Industrial Policy 2019 w.e.f. the date of commercial production qua the petitioner within a period of four weeks from today.

44 As regards the prayer made in the writ petition for quashing clause 5 B of the Industrial Policy, 2019 along with Rule 4B(b) and 4 F of the Rules regarding grant of incentives, concessions and facilities for investment promotion in Himachal Pradesh 2019, to the extent they are inconsistent with the Industrial Policy 2019, it needs to be noticed that it was the respondents themselves who had categorically held out in their letter dated 03.07.2020 that the enabling notification relating to tariff and incentive would be notified by respondent No.2 and the petitioner in terms of the policy, rules and the promise held out to it had done substantial expansion. Therefore, in such circumstances, clause 5B of the Industrial Policy, 2019 along with Rule 4B(b) and 4F of the Rules regarding grant of incentives,

concessions and facilities for investment promotion to the extent they are inconsistent with the Industrial Policy, 2019, is set-aside.

45 The petition is allowed in the aforesaid terms. Pending application(s), if any, also stands disposed of.

**(Tarlok Singh Chauhan)**
**Judge**

**(Sushil Kukreja)**
**Judge**

**7.05. 2025**
(mamta/pankaj)