



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 3012 - 3026 OF 2010

**THE STATE OF MAHARASHTRA
& OTHERS**

... APPELLANTS

VERSUS

**RELIANCE INDUSTRIES LTD.
& OTHERS**

... RESPONDENTS

WITH

CIVIL APPEAL NOS. 3027 - 3029 OF 2010

J U D G M E N T

ALOK ARADHE, J.

1. These appeals by State of Maharashtra question the correctness of judgment and orders dated 05.10.2009 and 07.11.2009 whereby notifications dated 01.04.2000 and 04.04.2001 issued under Section 5A of the Bombay Electricity Duty Act, 1958 (Act), were

struck down. The core issue which arises for consideration in these appeals is whether the State, having once granted exemption from payment of electricity duty to captive power generators was legally precluded from withdrawing or modifying such exemption in the exercise of same statutory power. In order to appreciate the grievance of the appellant, relevant facts need mention.

- 2.** The Act is an act to provide for levy and collection of duty on consumption of electrical energy in the State of Bombay. The Act extends to the whole of the State of Maharashtra. Section 5A empowers the State Government, if it considers it necessary in the public interest so to exempt, by notification in the Official Gazette prospectively or retrospectively, the consumption of energy in the whole or any part

of the State in respect of any class of premises or purposes in respect of energy consumed up to a specified limit from payment of the whole or any part of the electricity duty payable under the Act.

- 3.** In exercise of powers under Section 5A of the Act, the State Government has issued notifications from time to time, granting exemption from payment of electricity duty in respect of electricity consumed by industries through captive power plants. Such exemption was granted by notification dated 01.09.1994.
- 4.** In supersession of aforesaid notification, the State Government issued another notification on 30.10.1996, granting exemption on consumption of energy generated in a generating station by person carrying on an

industry and consumed by himself for such industry, in the whole of the State of Maharashtra from payment of electricity duty payable under Clause (b) of the Part-G of the Schedule appended to the Act.

5. The State Government thereafter on 01.04.2000 issued a notification under Section 5A of the Act, to enable the State to bill electricity duty in whole State of Maharashtra in respect of premises used for consumption of energy for any purpose under Part A, B, C and G of the Schedule to the Act. The State Government by another notification of even date issued under Section 5A of the Act, exempted the payment of electricity duty under Clause (b) of Part-G of the Schedule to the Act, on consumption of energy generated through non-conventional sources by a person carrying on industry in the cooperative

sector and consumed by himself for such industry.

6. The State Government thereafter issued another notification dated 04.04.2001 under Section 5A of the Act, exempting the consumption of energy generated by a person carrying on an industry and consumed by himself for such industry, in whole of Maharashtra, from payment of such part of electricity duty payable under Clause (b) of Part 'G' of the Schedule of the Act, as in excess of fifteen paise per unit of energy so consumed subject to the condition that generating set is installed in pursuance of Government of Maharashtra policy prior to revised policy regarding captive generation declared vide Government Resolution dated 25.04.2000.

7. The validity of the notifications dated 01.04.2000 and 04.04.2001, issued under Section 5A of the Act, was challenged in a batch of the Writ Petitions before the High Court. During the pendency of the Writ Petitions, the State Government once again in exercise of power under Section 5A of the Act, issued a notification dated 16.06.2005, superseding the notification dated 04.04.2001 and exempted the payment of electricity duty on consumption of energy generated in a captive power generation station for the whole State with effect from 01.05.2005. The effect of the aforesaid notification is that the exemption from payment of electricity duty on electricity generated and consumed from captive power plant was once again restored from 01.05.2005. However, for the intervening period between 01.04.2000 and

30.04.2005, the exemption from payment of electricity duty was not restored.

8. The High Court, by an order dated 06.06.2006 *inter alia* held that the respondents had assailed the action of charging them for guaranteed electric supply at an enhanced rate, after having invited them to set up captive power plants for generating electricity for their needs. It was noted that during the pendency of the writ petitions, the concession granted earlier in respect of exemption for payment of electricity duty has been restored and the only grievance which may be made is regarding payment of enhanced rate during the period when the concession stood reduced or withdrawn. It was further held that if such grievance does exist, the writ petitioners who have such grievance may submit a representation to the State

Government as well as to the Electricity Board and if it is so made, the same shall be decided as early as possible, preferably within four weeks. Accordingly, the writ petitions were disposed of.

- 9.** The Captive Power Producers Association submitted a representation to the State. The State Government by a communication dated 25.01.2007, rejected the representation seeking exemption from payment of electricity duty. Thereafter, notices were issued on 23.02.2007 to the respondents demanding payment of arrears of electricity duty for the intervening period.
- 10.** The Captive Power Plant Producers, namely the respondents, again approached the High Court and challenged the validity of the notification

dated 04.04.2001 and communication dated 25.01.2007. The High Court by impugned judgment and final order dated 05.10.2009, *inter alia* held that the object of grant of exemption from payment of electricity duty under Section 5A of the Act is to encourage the industry to be on its own, in requirement of power generation. It was further held that the State Government cannot make a distinction between a cooperative sugar factory and a private sugar factory. It was also held that reason of budgetary deficit to withdraw the exemption does not justify the impugned notifications and the State Government has failed to make out any justifiable ground for withdrawal of the exemption. The High Court found the impugned notifications to be discriminatory, arbitrary and suffering from vice

of non-application of mind. It was noted that though the State Government reviewed the decision on the basis of Maharashtra Electricity Regulatory Commission (MERC), yet while withdrawing the exemption it did not consult MERC and rejected the representation of the Captive Power Producers without assigning any reasons. Accordingly, the notifications dated 01.04.2000 and 04.04.2001, were quashed and set aside. In another batch of writ petitions, by judgment and order dated 07.11.2009, similar view was taken. Being aggrieved, the State of Maharashtra has filed these appeals.

11. Learned senior counsel for the appellant while inviting the attention of this Court to the provisions of the Act and the several notifications issued under the Act, submitted that withdrawal of exemption was neither

premature nor was the same withdrawn with retrospective effect. It is urged that the augmentation of revenue is in public interest as budgetary deficit is the valid ground to withdraw the exemption. It is contended that the High Court ought to have appreciated that doctrines of legitimate expectation and promissory estoppel do not apply to the obtaining factual matrix. It is argued that the power to grant exemption is a statutory power and is coupled with power to withdraw the same. It is contended that the Captive Power Producers have no Statutory or Fundamental Right to claim exemption from payment of electricity duty. It is urged that the rejection of representation of the Captive Power Producers cannot be a reason to quash the notifications dated 01.04.2000 and 04.04.2001. In support of

the aforesaid submissions, reliance has been placed on the decisions of this Court¹.

12. On the other hand, learned senior counsel for the respondents submitted that law providing for exemption as well as taxing statutes cannot discriminate between same category of persons, in the absence of any explanation. It is urged that the power to withdraw the exemption has to be reasonable, non-arbitrary, just and fair and has to be in consonance with Article 14 of the Constitution of India. It is contended that acting on the solemn representation of the State Government, the Captive Power Produces have made huge investments and have set up the captive power plants and the State Government is, therefore, bound by the doctrines of

¹ Orient Weaving Mills (P) Ltd., and Another v. Union of India and Others, 1962 SCC OnLine SC 323; Kasinka Trading and Anr. V. Union of India and Anr., (1995) 1 SCC 274; Shrijee Sales Corporation and Anr. v. Union of India, (1997) 3 SCC 398 and Sales Tax Officer & Anr. v. Shree Durga Oil Mills and Anr., (1998) 1 SCC 572 and Kothari Industrial Corporation Limited v. Tamil Nadu Electricity Board and Another, (2016) 4 SCC 134.

promissory estoppel and legitimate expectation.

In support of the aforesaid submissions, a reference has been made to decisions of this Court².

13. We have considered the rival submissions and have perused the record. Before proceeding further, it is apposite to take note of few well settled legal propositions. An exemption is by definition a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption granted under a statutory provision in a fiscal statute has been held to be a concession granted by the State

² P.J. Irani v. State of Madras & Anr., (1962) 2 SCR 169; Shri Rama Sugar Industries Ltd. v. State of A.P. & Ors. (1974) 1 SCC 534; Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India & Ors., (1985) 1 SCC 641, R.K. Khandelwal v. State of U.P. & Ors., (1981) 3 SCC 592, Jain Exports (P) Ltd. v. Union of India, AIR 1991 SC 1721, Dai-Ichi Karkaria Ltd. v. Union of India & Ors., (2000) 4 SCC 57, State of Punjab v. Nestle India Ltd. & Anr., (2004) 6 SCC 465, Shree Sidhali Steels Ltd. & Ors. v. State of Uttar Pradesh & Ors., (2011) 3 SCC 193, P. Suseela & Ors. v. University Grants Commission & Ors., (2015) 8 SCC 129, Union of India & Ors. v. N.S. Rathnam and Sons, (2015) 10 SCC 681, State of Jharkhand & Ors. v. Brahmaputra Metallics Ltd. Ranchi & Anr., (2023) 10 SCC 634.

Government so that the beneficiaries of such concession are not required to pay the tax or duty, they are otherwise liable to pay under such statute. The recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one. in the sense, that it may be taken away in exercise of the very power under which the exemption was granted³. However, it is equally a well-settled legal proposition that justiciability of a notification can be tested on the touchstone of Article 14 of the Constitution of India⁴.

³ *Shri Bakul Oil Industries & Anr. v. State of Gujarat & Anr.*, (1987) 1 SCC 31; *Kasinka Trading and Anr. v. Union of India and Anr.*, (supra) ; *Shrijee Sales Corporation and Anr. v. Union of India*, (supra) ; *State of Rajasthan & Another v. J K Udaipur Udyog Ltd. & Another* (2004) 7 SCC 673 and *Shree Sidhbali Steels Ltd. & Ors. v. State of U.P. & Ors.* (supra).

⁴ *Chhotabhai Jethabhai Patel & Co. v. Union of India & Anr.*, AIR 1962 SC 1006; *Aashirwad Films v. UOI* (2007) 6 SCC 624 and *Union of India & Ors. v. N.S. Rathnam and Sons* (supra).

14. The doctrine of promissory estoppel is applicable against the State Government but, in case there is a supervening public equity, the Government must be allowed to change its stand, it would then be able to withdraw the representation made by it which induced person to take certain steps which may have gone adverse to the interest of the such person on account of such withdrawal. If a party claiming application of the doctrine acted on the basis of a notification, it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest. However, the Court must satisfy itself that such a public interest exists⁵.

⁵ *Shrijee Sales Corporation and Anr. v. Union of India (supra) and Bannari Amman Sugars Ltd. v. CTO and Ors. (2005) 1 SCC 625.*

15. The legitimate expectation can be inferred against a statute, provided that such a claim of legitimate expectation is in public interest, and for a statute to claim a bar against legitimate expectation, it must be demonstrated that the shift in policy is for the advancement of public interest⁶.

16. Bearing the aforesaid well settled legal propositions in mind, we may now examine the facts of the present cases. The exemption from payment of electricity duty in favour of captive power generators was granted by the State Government in exercise of statutory power under Section 5A of the Act. The exemption was introduced as a policy measure to encourage the industries to generate electricity for their own consumption and thereby reduce pressure

⁶ KB Tea Product Pvt. Ltd. & Anr. v. CTO, Siliguri & Ors. ; 2023 SCC OnLine SC 615.

on the public electricity supply system. The exemption was, therefore, clearly in the nature of a concession designed to promote industrial self-sufficiency in power generation. The exemption from payment of electricity duty flowed from the exercise of statutory power and therefore there could be no assurance that the exemption from payment of electricity duty which was in the nature of concession would continue for all time to come. The very nature of exemption implies that it may be modified or withdrawn if the Government considers such course of action necessary in public interest.

17. The Captive Power Generators therefore do not possess any legally enforceable right to insist upon continuation of exemption indefinitely. Their right was limited to enjoy the benefit of exemption during the period for which it

remained in force. The exemption from payment of electricity duty was neither prematurely withdrawn nor the same was withdrawn with retrospective effect. The right to enjoy the exemption from payment of tax is a defeasible right, as the same can be taken away in exercise of power under which it was granted.

18. Now, we may examine whether exercise of such power is arbitrary or unreasonable so as to offend the mandate contained in Article 14 of the Constitution of India. The record indicates that the concerned industries enjoyed exemption from payment of electricity duty from 1994 until the year 2000. The State Government thereafter reconsidered the fiscal implications of continuing such exemption and arrived at the conclusion that exemption required modification in order to augment the

public revenue and address budgetary constraints. The withdrawal and modification of exemption was thus a policy decision taken in the realm of fiscal administration.

19. It cannot be overlooked that electricity duty constitutes an important source of revenue for the State. The decision relating to levy or exemption of electricity duty necessarily involves balancing the need to encourage industrial growth against the requirement of maintaining fiscal stability. The Government being accountable for management of public finances, must retain the flexibility to recalibrate such policy when circumstances so demand. In the present cases, the respondents have not been able to demonstrate that the decision taken by the State Government was based on any irrelevant consideration or that it

was manifestly arbitrary. The justification advanced by the State namely, augmentation of public revenue and addressing the fiscal constraints cannot be regarded as extraneous or unreasonable.

20. It is a well settled legal proposition that the court must defer to legislative judgment in matters relating to social and economic policies and must not interfere unless the exercise of executive power appears to be palpably arbitrary⁷. The judicial review in such a policy matter is confined to examining whether decision is manifestly arbitrary, discriminatory or actuated by extraneous consideration. The courts do not undertake a detailed evaluation of the wisdom, sufficiency or effectiveness of an economic policy, for such assessment properly

⁷ Vivek Narayan Sharma & Ors. (Demonetisation Case-5) v. Union of India, (2023) 3 SCC 1

belongs to the domain of the Government and the experts advising it. The decision to withdraw and modify the exemption has been taken in public interest and therefore doctrines of legitimate expectation and promissory estoppel have no application to the facts and circumstances of the case. Therefore, the decision to withdraw and modify the exemption can neither be termed as arbitrary nor unreasonable.

21. However, the matter requires consideration from another perspective. While the State, undoubtedly possesses the power to withdraw or modify a concession granted under a statutory provision, the manner in which such statutory power to withdraw exemption is exercised, must also satisfy the requirements of reasonableness and fairness. The principles of

fair play demand that such withdrawal should not operate in a manner that causes undue hardship to those who have structured their affairs on the basis of concession earlier extended to them. This Court⁸ recognized the principle that Government may withdraw or modify a concession in exercise of statutory power. At the same time, it was held that Government ought to resile from its stand by giving reasonable notice so as to afford the beneficiary a reasonable opportunity to reorganise their affairs provided such a course is feasible. The rationale behind the principle is that the persons who have structured their commercial or industrial activities on the basis of a concession should not be subjected to abrupt policy reversals which leave them

⁸ Shrijee Sales Corporation and Anr. (supra)

without reasonable time to adjust to the altered regulatory framework.

22. In the present cases, captive power generators had been enjoying exemption from electricity duty for a considerable period from 1994. The industrial units would naturally have organised their financial and operational arrangements on the basis of the concession extended to them. The sudden withdrawal of the exemption without providing a reasonable transitional period to the industries had the effect of placing the captive power generators in a position to immediately bear an additional fiscal burden. The legitimate object of withdrawal of exemption is not such an urgent or time sensitive measure as to preclude the grant of a reasonable notice period to the affected industries.

23. In the facts and circumstances of the present cases, in our view, interest of justice would be adequately served by treating the impugned notifications, as taking effect only after the expiry of a reasonable notice period. Having regard to object of grant of exemption from payment of electricity duty, the investments made by the captive power generators and the fiscal implications involved, we are of the view that a period of one year would constitute a reasonable notice, enabling the captive power generators to adjust their operations and financial planning.

24. For the foregoing reasons, judgment and orders dated 05.10.2009 and 07.11.2009 are quashed and set aside. We uphold the power of the State Government to withdraw or modify the exemption granted under Section 5A of the Act

and hold that the notifications dated 01.04.2000 and 04.04.2001 would operate only after the expiry of a period of one year from their respective dates.

25. In the result, the appeals are allowed in the aforesaid terms. However, there shall be no order as to costs.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[ALOK ARADHE]

NEW DELHI;
MARCH 25, 2026.