GAHC010025442015

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6977/2015

M/S B N INDUSTR5IES PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF INDIAN COMPANIES ACT AND HAVING THEIR REGISTERED OFFICE AT KAMAKHYA UMANANDA BHAWAN, A.T. ROAD, GUWHAATI - 781001 IN THE DISTRICT OF KAMRUP M, ASSAM, REP. B THROUGH THEIR DIRECTOR SRI BIMAL KUMAR NAHATA, S/O LT. BACHHRAJ NAHATA, RESIDENT OF A.T. ROAD, GUWAHATI- 781001.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM, FINANCE TAXATION DEPARTMENT, DISPUR, GUWAHATI-781006.

2:COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

INDUSTRIES and COMMERCE DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER OF TAXES

KAR BHAWAN
DISPUR
GUWAHATI - 781006.

4:THE ADDL. COMMISSIONER OF TAXES

KAR BHAWAN
DISPUR
GUWAHATI - 781006.

5:THE SUPERINTENDENT OF TAXES

UNIT-C
GUWAHATI KAR BHAWAN
DISPUR
GUWAHATI- 781006.

6:THE DIRECTOR OF INDUSTRIES and COMMERCE

ASSAM
GUWAHATI-21.

7:THE ADDL. DIRECOR OF INDUSTRIES U.S.
DIRECTORATE OF INDUSTRIES
ASSAM
GUWAHATI -21

Linked Case : WP(C)/6978/2015

M/S B.N. INDUSTRIES PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF INDIAN COMPANIES ACT AND HAVING THEIR REGISTERED OFFICE AT KAMAKHYA UMANANDA BHAWAN
A.T. ROAD
GUWHAATI - 781001 IN THE DISTRICT OF KAMRUP M
ASSAM
REP. B THROUGH THEIR DIRECTOR SRI BIMAL KUMAR NAHATA
S/O LT. BACHHRAJ NAHATA
RESIDENT OF A.T. ROAD
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ASSAM
GUWAHATI-21.
7:THE ADDL. DIRECOR OF INDUSTRIES U.S.
DIRECTORATE OF INDUSTRIES
ASSAM
GUWAHATI -21.

Advocate for the Petitioner : Mr. K. N. Choudhury, Sr. Advocate
Mr. D. Saraf, Advocate

Advocate for the respondents: Mr. A. Kalita,
SC, Industries Department, Assam
Mr. B. Choudhury,
SC, Finance & Taxation Deptt.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 05.10.2023

Date of Judgment : 12.01.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. K. N. Choudhury, the learned senior counsel assisted by Mr. D. Saraf, the learned counsel for the petitioner. Also heard Mr. A. Kalita, the learned counsel appearing on behalf of the Industries Department of the Government of Assam and Mr. B. Choudhury, the learned counsel appearing on behalf of the Finance and Taxation Department of the

Government of Assam.

2. Both the writ petitions are taken up together taking into account the similarity of the issues involved. At the outset, it is relevant to take note of WP(C) No.6977/2015 which relates to the assessment year 2005-2006 and WP(C) No.6978/2015 which relates to the assessment years 2006-07; 2007-08; 2008-09; 2009-2010 and 2010-11.

3. The facts as could be discerned from the writ petitions are that the petitioner is a registered dealer under the provisions of the Assam Value Added Tax Act, 2003 (for short, 'the Act of 2003') and the Central Sales Tax Act, 1956 (for short, 'the Act of 1956'). The Government of Assam had formulated an Industrial Policy in the year 1997 with the goal to provide an effective thrust to expeditious promotion and growth of all industries with a view to creating a strong industrial base and employment opportunities in various directions. In the said Industrial Policy of 1997, the State of Assam had formulated a package of incentives for promotion and setting up of industrial units and revitalization of sick industrial units in the State. The period of said new package of incentives was to be with effect from 01.04.1997 and to remain in operation for a period of 5 years or till such time as the Government may think fit and proper. The Government also reserved its right to make any amendment to the said Scheme. In terms with Clause 4.2 of the said Industrial Policy Resolution, 1997, the effective date was 01.04.1997 and from that date the 1991 Incentive Scheme under the Industrial Policy, 1991 ceased to be operative unless otherwise provided. Clause 4.3 (ii) stipulated what is an Eligible Unit. In terms with the said definition, an Eligible Unit means only New Units set up on or after 01.04.1997 and existing units undergoing expansion, modernization, diversification at the same place in the State of Assam on or after 01.04.1997 by making additional investment on fixed capital by not less than 25%. The said Industrial Policy Resolutions further mandated the terms and conditions under which an Eligible Unit would be entitled to the incentives. Clause 4.4 stipulates the Eligibility. Clause 4.5 relates to Eligibility Certificate. This certificate of eligibility is a certificate which is required to be

issued by the Udyog Sahayak of the Directorate of Industries/District Industries Centre for SSI sector and the Assam Industrial Development Corporation Ltd. (AIDC) for the medium and large sector industries. The said certificate is to be issued after ensuring that all the criteria for eligibility have been fulfilled to the full satisfaction of the concerned Udyog Sahayak. In terms with sub-clause (ii) of Clause 4.5, no right or claim for any incentive under the Scheme shall be deemed to have been conferred by the Scheme merely by virtue of the fact that the industrial unit had fulfilled on its part the conditions of the scheme and the incentives/subsidies cannot be claimed as a matter of right. In terms with sub-clause (iii) of Clause 4.5, the incentives under the Scheme cannot be claimed unless the Eligibility Certificate had been issued under the Scheme by the Implementing Agency concerned and the unit had complied with the stipulations/conditions of Eligibility Certificate. As per sub-clause (iv) of Clause 4.5, the decision of the Implementing Agency, subject to such directions as Government may issue from time to time in that regard, shall be final and binding. Clause 4.7 stipulates who would be the Implementing Agency. The Implementing Agency as per the said clause in respect to SSI sector shall be the Director of Industries, District Industries Centres and for the medium and large scale sector, it would be AIDC Ltd.

4. Chapter 5 of the said Industrial Policy Resolutions, 1997 stipulates the package of incentives. Amongst the various incentives granted under the said Industrial Policy of 1997, Sales Tax Exemption was one of it. Clause 5.4 of the said Industrial Policy Resolutions relates to the incentive of stipulates sales tax exemption. The said Clause 5.4 being relevant for the purpose of the instant dispute is reproduced herein under:-

> "***5.4 SALES TAX EXEMPTION***
>
> *All new units and existing units going in for expansion/diversification/modernsation will be granted sales tax exemption for sale of finished products and purchase of raw materials as per following scale :*

Category	***SSI/Tiny/SSSBEs***	***Medium and Large***
New unit	*7 years subject to maximum of 150% of fixed capital 7 years subject to maximum of 100 % of fixed capital investment*	*7 years subject to maximum of 150% of fixed capital 7 years subject to maximum of 100 % of fixed capital investment*
Units undergoing expansion/diversification/modernisation	*7 years subject to maximum of 100% of additional fixed capital investment.*	*7 years subject to maximum of 90 % of additional fixed capital investment*
Sick/Relief Undertaking Units	*3 Years subject to maximum of 100% of additional investment made for Rehabilitation.*	*3 years subject to maximum of 100% of additional investment made for Rehabilitation*

In the case of Electronic industries the tax benefit is up to 250% of fixed capital investment spread over a maximum period of 7 years in view of low fixed capital investment."

At this stage, it is pertinent to mention that the terms 'finished product' and 'raw materials' have been defined in Clause 4.3 ((vi) and 4.3 (xii) of the Industrial Policy of 1997 respectively. It is pertinent to observe that the term 'finished product' was defined as the item manufactured by the eligible unit as considered under the project/scheme approved by the concerned term lending agency and/or by the implementing agency, together with byproduct/scrap, which may get generated as incidental to and during the main production activity.

5. Clause 6 of the said Industrial Policy Resolution stipulates the procedure for implementation and monitoring.

6. Interestingly, the State Government did not issue any notification on the basis of the Industrial Policy Resolution, 1997 but invoked the powers conferred under Sub-Section (4) of Section 9 of the Assam General Sales Tax Act, 1993 (for short, 'the Act of 1993'), whereby the Governor of Assam framed the Assam Industries (Sales Tax Concession) Scheme, 1997 (for short, 'the Scheme of 1997') for grant of relief by way of sales tax exemption to the eligible industrial units in the manner stated therein. It is very pertinent to mention herein that the power reserved by Section 9 (4) of the Act of 1993 permitted granting relief to any class of industries upon producing such goods as may be specified in the Scheme to be formulated on the raw materials or inputs purchased by such industries within the State or on manufactured goods sold by such industries with the State or in course of inter State trade or commerce. Accordingly, the grant of sales tax exemption on sale of finished products in terms with the Industrial Policy, 1997 became grant of sales tax exemption on sale of manufactured goods within the State or in course of inter State trade or commerce. Therefore, the definition contained in Section 2 (22) of the Act of 1993, i.e. the definition of 'manufacture' became very relevant.

7. In terms with the said Scheme of 1997, more particularly Clause 2, the eligibility criteria was defined. A perusal of the said Clause stipulates that the eligible industrial units in Category A industries are new industrial units, Category B are those industries which carry out expansion, modernization and diversification to the minimum extent of 25% increased in fixed assets at the same location or at other place in the State of Assam. Emphasis has been laid that their commercial production had to be after 01.04.1997. Category C are those industries which were declared as relief undertaking by the Government of Assam under the Assam Industrial Relief Undertaking (Special Provisions) Act, 1984 or units declared sick by the State Government/Director of Industries under any Scheme/Act of the Government of Assam. It is also seen from the said Scheme of 1997 that there are certain categories of industries which were not eligible for any benefit under the said Scheme of 1997. From the said list, it appears that

originally there were 27 numbers of industries which were subsequently reduced to 17 vide the notification dated 06.10.1999. Clause 3 of the said Scheme of 1997 stipulated the limits of sales tax exemption to the eligible units. The same is peri-materia to Clause 5.4 of the Industrial Policy Resolutions of 1997 which has already been quoted herein above. It is however pertinent to note that the benefit of sales tax exemption would be on purchase of raw materials and on sales of finished products manufactured by the Industrial Unit. Clause 5 of the Scheme of 1997 stipulates the procedure for applying for the grant of eligibility certificate which is also similar to the terms employed in the Industrial Policy Resolutions, 1997. It is of relevance to note that a conjoint reading of all the Sub-Clauses of Clause 5 would show that the duty of the Authority/Committee to verify was in respect to the investments made, the fulfilling of the required conditions and norms etc. However, there appears to no mention that the Implementing Agency would decide as to whether the finished products would come within the ambit of 'manufacture'. Clause 6 of the Scheme of 1997 stipulates the period of validity of Eligibility Certificate. In terms with Clause 6 (a) (i), the period of validity of an eligibility certificate shall be 7 years from the date of commencement of production of an eligible unit of Category A or 7 years from the date of commencement of production after the expansion/modernisation/ diversification by an eligible industrial unit of Category B. It was also mandated the period of 7 years shall stand reduced upto the date when the unit reaches the maximum permissible limit of exemption as per Clause 3 or up to the date of closure of the eligible industrial unit of the Category A or Category B, if the date of closure, if any, occurs prior to the expiry of the period of 7 years.

8. Clause 7 of the Scheme of 1997 deals with the issuance of certification of Authorization by the Assessing Officer. This particular Clause has a lot of significance for the purpose of the instant dispute. Sub-clauses (a) and (b) of Clause 7.I relates to the manner in which the application for issuance of Authorization certificate is to be filed up and issued. It is relevant to note that issuance of the Eligibility Certificate would not

automatically without any verification lead to the issuance of the Certificate of Authorization. The Certificate of Authorization would be issued only to those industrial units granted the Eligibility Certificate and subject to further verification to be carried out by the Assessing Officer in terms with Sub-Clause (b) of Clause 7.I of the Scheme of 1997.. Sub-clause (c) stipulates that the Assessing Officer shall have the authority to withhold the issuance of the certificate of authorization or refuse to grant it if the application and the documents accompanying therewith are not found to be in order and the conditions laid down for the purpose are not fulfilled or if any information furnished is not correct. Clause 7.III stipulates renewal of Certificate of Authorization. A perusal of the said clause which also has a vital significance for disposal of the instant writ petition shows that the Certificate of Authorization shall remain valid for a year only, i.e. up to the end of financial year and thereafter shall be renewed after examination of annual return for each financial year or for a fraction of the financial year till the eligible industrial unit reaches the maximum permissible limit of sales tax exemption as specified in the Clause 3 of the Part-I of the Scheme of 1997. It also stipulates that the concerned Assessing Officer of the area shall examine the return furnished in Form VIII by the eligible unit and pass necessary orders as and when the unit reaches the maximum limit of sales tax exemption thereby withdrawing the certificate of authorization with intimation to the Authority granting the eligibility certificate besides taking action, for realization of the due taxes and for violation of the provision, if any, under the provisions of the Act of 1993.

9. In the backdrop of the above prelude, let this Court take note of the facts involved in the instant writ petitions. The petitioner herein claiming to be encouraged on the basis of Industrial Policy of the year 1997 as well as the incentives so announced set up its industry and started commercial production on 20.04.2001. The petitioner applied to the Director of Industries, Government of Assam for issuance of eligibility certificate under the said Industrial Policy of 1997 and thereupon an Eligibility Certificate

No.DI(US)102/2001/499-500 dated 11.02.2001 was issued in favour of the petitioner by the Additional Director of Industries(U.S.), Government of Assam. The said Eligibility Certificate is enclosed as Annexure-A to the writ petition in WP(C) No.6977/2015. From a perusal of the said Eligibility Certificate, it reveals that the petitioner commenced commercial production w.e.f. 20.04.2001. The finished products for which the petitioner would be entitled for the benefit under the Industrial Policy of 1997 are in respect to (i) packaged drinking water (ii) pet bottles (iii) pet jars. The incentives have also been mentioned in the Eligibility Certificate to be sales tax exemption on sale of finished products and on purchase of raw materials for a period of 7 years w.e.f. 20.04.2001 to 19.04.2008 subject to a maximum of Rs.125.34 lakhs (150% of the fixed capital investment) whichever is earlier. It is also seen that the Superintendent of Taxes had also issued the Certificate of Authorization on 23.07.2002 wherein the list of finished products mentioned therein were packaged drinking water, pet bottles and pet jars. The period of validity of the said Authorization Certificate was mentioned to remain valid from 20.04.2001 to 19.04.2008. At this stage, this Court again finds it relevant to observe that the said Authorization Certificate on the face of it, was contrary to the Clause 7.III of the Scheme of 1997 in as much as the Certificate of Authorization as per the said clause was to remain valid for 1 year only and was to be renewed after examination of annual return for each financial year.

10. It is also seen from the records that the petitioner started production of soda water w.e.f 04.09.2002 and again applied to the Director of Industries and Commerce, Assam for issuance of additional Eligibility Certificate under the Industrial Policy of 1997 and to specify and control the additional incentive due to them as promised in the said Industrial Policy of 1997. On such request made, an Eligibility Certificate was issued on 30.09.2004 in favour of the petitioner by the Director of Industries and Commerce, Assam for undergoing expansion, modernization or diversification and amongst the finished products which were earlier three, i.e. packaged drinking water, pet jars and pet

bottles; soda water was also brought within the fold of the finished products. A Certificate of Authorization was also issued by the Senior Superintendant of Taxes whereby apart from the three finished products, the soda water was also inserted. It is also relevant to note that the said Certificate of Authorization was stated to be valid from 04.09.2002 to 03.09.2009 which as already observed herein above was contrary to Clause 7.III of the Scheme of 1997. Be that as it may, the petitioner continued to avail the benefits of the Scheme of 1997 without any difficulties in respect of all the finished products till the subsequent developments narrated herein infra.

11. On 01.05.2005, the Act of 2003 was brought into force and the Act of 1993 was repealed under Section 107 (1) of the Act of 2003. It is interesting to note Section 109 of the Act of 2003, which relates to transitional provisions. For the purpose of the instant dispute, Sub-section (4) of Section 109 of the Act of 2003 is of great significance for which the same is quoted herein under:-

> "*(4) In respect of a registered unit which had been enjoying the benefits of Sales Tax concession under the Assam Industries (Sales Tax Concessions) Scheme, 1997 and any other such schemes immediately before the appointed day and it would have continued to be so eligible for any period which is to end after the appointed day had this Act not come into force, the Government may formulate appropriate scheme in conformity with the provisions of this Act to substitute the said Scheme for the period commencing on or after appointed day:*
>
> *Provided further that when exemption is granted in the form of remission, the eligible unit shall be entitled to retain the part or whole of tax collected by way of subsidy from the Government subject to maximum permissible monetary limit and/or time limit and other conditions as may be prescribed in the appropriate scheme."*

It is pertinent to mention that the proviso to the Sub-section (4) of Section 109 of the Act of 2003 was inserted w.e.f. 30.03.2007.

12. From a perusal of the above Sub-Section (4) of Section 109 of the Act of 2003, it transpires that in respect of a registered unit which was already enjoying the benefits of Sales Tax concession under the Scheme of 1997 and any other such Scheme

immediately before 01.05.2005 and it would have continued to be so eligible for any period which is to end after the appointed day, i.e. 01.05.2005 had the Act of 2003 not come into force, the Government was empowered to formulate appropriate Scheme in conformity with the provisions of the Act of 2003 to substitute the said Scheme for the period commencing on or after appointed day. The proviso added to Section 109 (4) of the Act of 2003 stipulates that eligible unit would be entitled to retain the part or the whole of the tax collected by way of subsidy from the Government subject to its entitlement. This proviso was added to bring the sales tax exemption in conformity with the Tax Remission Scheme.

13. The State of Assam accordingly, in terms with the Sub-Section (4) of Section 109 of the Act of 2003 formulated the Assam Industries (Tax Remission) Scheme, 2005 thereby substituting the Scheme of 1997. The said Assam Industries (Tax Remission) Scheme, 2005 is hereinafter for the sake of convenience referred to as "the Scheme of 2005". A perusal of the said Scheme of 2005 would reveal that the said Scheme was framed for continuing the conferment of benefits being enjoyed by eligible industrial units under the Scheme of 1997 by way of remission of tax to those units in conformity with the provisions of the Act of 2003 in the manner specified therein. Therefore, it would be seen that the power conferred upon the Government to formulate a Scheme in terms with Section 109 (4) of the Act of 2003 was to be in conformity with the provisions of the Act of 2003 and the Scheme of 2005 was also formulated to grant benefits in conformity with the provisions of the Act of 2003.

14. Clause 2 of the said scheme of 2005 defines the Eligibility. It was specifically mentioned that industrial unit which is or was in commercial production before the commencement of the Act of 2003 and was already found eligible for exemption under the Scheme of 1997 as per the eligibility criteria of the Industrial Policy of Assam, 1997 or the Industrial Policy of Assam, 2003 shall be treated as an eligible industrial unit. Clause 3 of the Scheme of 2005 stipulates the limits on tax remission for an eligible unit.

As per sub-clause (1) of Clause 3, where an eligible unit registered under the Act of 2003 manufactures any goods in Assam, other than those declared in Clause 2 as not eligible, 99% of tax payable of such unit according to its return in respect of such goods manufactured in such unit shall be eligible for remission or continue to be eligible for remission until the amount of such tax payable exceeds the unavailed quantum of monetary ceiling or the extended unexpired period of eligibility whichever is earlier. At this stage, if this Court reflects back upon Clause 3 (3) of the Scheme of 1997, it would show that the entitlement of sales tax exemption was on sales of manufactured finished products and on purchase of raw materials. Similarly, as per Clause 3 (1) of the Scheme of 2005, an eligible unit registered under the Act of 2003, manufacturing any goods in Assam then 99% of the tax payable by such unit according to its return in respect of sale of such goods manufactured in such unit shall be eligible for remission to the extent of the unavailed benefits. This Scheme of 2005 of granting tax remission was subsequently codified in the form of the proviso to Section 109 (4) of the Act of 2003. It is however very significant to mention that the benefits in terms with the Scheme of 2005 can only be availed if the goods are manufactured by the eligible unit within the State of Assam.

15. Clause 4 of the Scheme of 2005 stipulates the issuance of a Certificate of Entitlement by the prescribed authority. In terms with Sub-Clause (1) of Clause 4, the eligible unit holding a Certificate of Authorization issued under the Scheme of 1997 as on the date of commencement of the Act of 2003 has to make an application in the format appended to the Scheme of 2005 to the prescribed authority within one month from the date of commencement of the Act of 2003. However, the delay in submitting the application can be condoned by the prescribed authority for sufficient reason. It further stipulates that upon receipt of the application, the prescribed authority after satisfying himself that the application is correct and complete in all respect shall issue a Certificate of Entitlement in the Format-II appended to the Scheme of 2005 in lieu of the Certificate of Authorization, ordinarily within 30 days. It also stipulates that the said

Certificate of Entitlement shall be issued for a financial year only. Clause 4 (2) of the Scheme of 2005 stipulates that those eligible industrial units which are not holding the Certificate of Authorization in terms with the Scheme of 1997 can also apply so in the same manner as was required to be applied by an eligible industrial unit holding the Certificate of Authorization issued under the Scheme of 1997. In terms of sub-clause (d) of Clause 4 (2) of the Scheme of 2005, the prescribed authority could withhold the issuance of the Certificate of Entitlement or refuse to grant it, if the application and the documents accompanying therewith are not found to be in order and the conditions laid down for the purpose are not fulfilled or if any information furnished is/are not correct. Clause 6 of the Scheme of 2005 stipulates that the Certificate of Entitlement shall be valid for one year only, i.e. upto the end of the financial year and thereafter shall be renewed after examination of the annual return for each financial year or for a fraction of the financial year till the eligible industrial unit reaches the maximum permissible limit of tax remission as specified in Clause 3 of the Scheme of 2005. This Clause 6 of the Scheme of 2005 is peri-materia to Clause 7.III of the Scheme of 1997.

16. In the backdrop of the above and moving forward, it is relevant to mention that the petitioner herein on 21.09.2005 submitted an application for the grant of the Certificate of Entitlement. Admittedly, the said certificate of Entitlement has not issued by the prescribed authority. There is also no challenge to the actions of the Prescribed Authority in not issuing the Certificate of Entitlement.

17. The petitioner submitted the annual return of turnover for the assessment year 2005-2006; 2006-2007; 2007-2008; 2008-2009; 2009-2010 and 2010-2011 claiming tax remission to the extent of 99% of the output tax payable under the Act of 2003 and the Central Sales Tax Act, 1956. The said self assessment returns so submitted stood concluded as the concerned respondent authorities did not initiate any proceedings for audit assessment or best judgment assessment. However, subsequently, the Assessing Officer initiated proceedings for re-assessment of the petitioner under Section 40 of the

Act of 2003 and also under Section 9 (2) of the Act of 1956 in the second half of the calendar year 2013. In respect of the assessment year 2005-06, orders of re-assessment was passed on 31.03.2014. In respect to the assessment years 2006-2007; 2007-2008; 2008-2009; 2009-2010 and 2010-2011, five separate re-assessment orders were passed on 31.05.2014. The re-assessment order dated 31.03.2014 passed by the Assessing Officer pertaining to the assessment year 2005-2006, the Petitioner preferred Appeals before the Deputy Commissioner of Taxes (Appeals) and the re-assessment order dated 31.03.2014 was set aside by two separate orders by the Appellate Authority dated 17.06.2014. Thereupon, the Assessing Officer preferred a revision before the Commissioner of Taxes. Vide the impugned order dated 11.08.2015, the order dated 17.06.2014 passed by the Appellate Authority was set aside by the Additional Commissioner of Taxes in so far as it related to exemption of tax allowed on sale of packaged drinking water. However, relief was granted for tax remission to the petitioner in respect of sale of pet bottles, pet jars and soda water. In respect to the five re-assessment order passed on 31.05.2014 pertaining to the assessment year 2006-2007; 2007-2008; 2008-2009; 2009-2010 and 2010-2011, the petitioner preferred ten revision petitions before the Commissioner of Taxes challenging the said five re-assessment orders dated 31.05.2014. Vide a common order dated 11.08.2015, the Additional Commissioner of Taxes disposed of the said revision petitions thereby denying the claim for tax remission on sale of packaged drinking water. The Additional Commissioner of Taxes, however, granted the relief of tax remission to the petitioner in respect of the sale of pet bottles, pet jars and soda water and also in respect of assessment of the turnover of pet bottles and pet jars sold as independent products separately at applicable rates and also in respect of submission of three forms.

18. Both the writ petitions thereupon were filed challenging the orders dated 11.08.2015 passed by the Additional Commissioner of Taxes in the revision proceedings whereby the petitioner’s claim for tax remission in respect of packaged drinking water

was negated. The instant writ petitions were filed sometime in the first week of November, 2015. The impugned orders dated 11.08.2015 were stayed by this Court vide separate orders dated 26.11.2015 in both the writ petitions.

19. The records reveal that the Commissioner of Taxes had filed an affidavit-in-opposition in WP(C) No.6977/2015 supporting the orders dated 11.08.2015 passed by the Additional Commissioner of Taxes which were impugned in both the writ petitions. It was categorically mentioned that the petitioner filed an application on 13.04.2013 before the Assessing Officer as well as the Commissioner and Secretary to the Government of Assam, Industries and Commerce Department for cancellation of the registration certificate obtained by it under the provision of the Act of 2003 and the Act of 1956 citing the ground of closure of the petitioner's business w.e.f. 01.04.2013. It was mentioned that the closure of the business just after the expiry of the validity period of the eligibility certificates would fairly suggest that the petitioner had no intention of really setting up its permanent industry but only to derive windfall gains posing as an entrepreneur. It was mentioned that for the purpose of entitlement of the sales tax exemption under the Scheme of 1997 or the sales tax remission under the Scheme of 2005, the petitioner had to manufacture finished products and conversion of raw water into packaged drinking water would not come within the ambit of manufacture. It was mentioned that the authority concerned without considering the same had issued the eligibility certificate in respect to the packaged drinking water and for that, the State cannot be deprived of its revenue. Further to that, it was mentioned that the Commissioner of Taxes had issued a clarification on 30.09.2008 that conversion of raw water into packaged drinking water does not amount to manufacture for the purpose of conferment of benefit and this clarification was upheld by this Court in the case of ***NE Packaged Drinking Water Manufacturer's Association and Others*** vs. ***the State of Assam and Another***, reported in ***(2013) 2 GLR 557***. It was therefore stated that there is no infirmity in the impugned order dated 11.08.2015 whereby the benefit of tax remission was denied in

respect to the packaged drinking water was concerned.

20. The records also reveal that the Industries Department of the Government of Assam had also filed an affidavit-in-opposition wherein a similar stand has been taken to what was taken by the Commissioner of Taxes in it affidavit-in-opposition. It was categorically stated that the Certificate of Eligibility, in so far as packaged drinking water was concerned was granted erroneously without taking into consideration that conversion of raw water into packed drinking water would not come within the ambit of manufacture.

21. The record further reveals a common affidavit-in-reply was filed by the petitioner to the affidavit-in-opposition of both the Commissioner of Taxes as well as the Industries Department reiterating its stand taken in the writ petitions. In the affidavit-in-reply, the petitioner's stand was that the respondent authorities and more particularly the Industries Department had with open eyes granted exemption on the finished products which included packaged drinking water and the Sales Tax Department cannot sit over the said decision and refuse to grant exemption to the petitioner in respect to packaged drinking water.

22. In the backdrop of the above pleadings and discussion on the relevant provisions narrated supra, let this Court record the respective submission of the learned counsels for the parties.

23. Mr. K. N. Choudhury, the learned senior counsel appearing on behalf of the petitioner submitted that by virtue of Section 109(4) of the Act of 2003, the petitioner herein who was enjoying the benefit under the Scheme of 1997 would be entitled without any further verification to the Scheme as formulated in terms with Section 109 (4) of the Act of 2003. The learned senior counsel submitted that when the petitioner has already been issued an Eligibility Certificate under the Industrial Policy of 1997 by the Industries Department, coupled with the Certificate of Authorization issued under the Scheme of 1997, the petitioner would be entitled to the benefit under the Scheme of

2005. Non-granting the benefit under the Scheme of 2005 was contrary to the Industrial Policy Resolutions of 1997; Section 109 (4) of the Act of 2003 as well as the Scheme of 2005. He submitted that this aspect of the matter was not taken into consideration in the proper perspective by the Additional Commissioner of Taxes in passing the impugned order dated 11.08.2015. The learned Senior Counsel relying on the judgment of the Supreme Court in the case of ***Vadilal Chemicals Ltd. vs. the State of Andhra Pradesh and Others***, reported in ***(2005) 6 SCC 392*** submitted that when an Eligibility Certificate had been issued by the Department of Industries and Commerce after due verification, the Taxation Department of the Government of Assam could not go beyond the same and was bound to issue the Certificate of Entitlement in terms with the Scheme of 2005 or for that matter grant the benefits under the Scheme of 2005. He submitted that the Appellate Authority had duly taken note of the same in its detailed and reasoned order dated 17.06.2014 and had directed issuance of the Certificate of Entitlement to the petitioner. The learned Senior Counsel further submitted that the petitioner had duly applied for the grant of the Certificate of Entitlement which for unlawful reasons was withheld by the respondent authorities. Be that as it may, it was also submitted that granting of the tax remission by the Respondent Authorities in terms with the impugned order dated 11.08.2015 in respect to soda water, pet bottles and pet jars would also clearly show that non-granting of the Certificate of Entitlement was not the issue. The dispute herein is not granting of tax remission on sale of packaged drinking water. The learned senior counsel, therefore, placed reliance upon Paragraph Nos.22 & 23 of the judgment in the case of ***Vadilal Chemicals Ltd.*** (supra).

24. The learned Senior Counsel further submitted that both the Respondent Authorities, i.e. the Industries Department as well as the Taxation Department of the Government of Assam after due application of mind had held that the conversion of raw water into packaged drinking water would come within the ambit of manufacture and on the basis thereof, had issued the Certificate of Eligibility and the Authorization

Certificate. The application filed by the petitioner on 21.09.2005 for grant of the Certificate of Entitlement was never refused. On the basis of the circular issued by the Commissioner of Taxes on 30.09.2018 holding that the conversion of raw water to packaged drinking water would not come within the ambit of 'manufacture' which have been upheld by this Court in the case of ***NE Packaged Drinking Water Manufacturer's Association and Others*** (supra), the respondent authorities have now changed their opinion as regard the entitlement of the petitioner. This change of opinion was never there during the period when the petitioner was actually entitled for the tax remission. It was only after the circular issued on 30.09.2008 was issued and the judgment pronounced on 09.01.2013. Therefore, this change of opinion cannot deprive the petitioner of the benefit of tax remission in respect to sale of packaged drinking water. In that regard, the learned senior counsel referred to the judgment of the learned Division Bench of this Court in the cases of ***Sunil Kr. Taparia vs. the State of Assam***, reported in ***(2013) 1 GLR 14*** and ***Shree Industrial Enterprise vs. the State of Assam and Others***, reported in ***(2014) 2 GLR 591***.

25. The learned Senior Counsel further submitted that the petitioner herein on the basis of the Industrial Policy Resolutions had changed and altered its position and therefore on the basis of the principle of promissory estoppel, the respondent cannot be allowed to deprive the petitioner of the benefits of the Industrial Policy Resolutions, 1997 and the Schemes therefore have to read in terms with the Industrial Policy Resolution, 1997. In that regard the learned senior counsel for the petitioner referred to the judgment of the Supreme Court in the case of ***Shrijee Corporation and Another vs. Union of India***, reported in ***(1997) 3 SCC 398*** as well as the judgment rendered in the case of the ***State of Punjab vs. M/s Nestle India Ltd. and Another***, reported in ***(2004) 6 SCC 465***.

26. Per contra, Mr. A. Kalita, the learned Standing Counsel appearing on behalf of the Industries Department, Government of Assam submitted that conversion of raw water into packaged drinking water under no circumstances can be said to be manufacture of finished products. Referring to Clause 3 (3) of the Scheme of 1997, the learned Standing

Counsel submitted that for the purpose of calculation of tax exemption under the said Clause, sales tax exemption would be given on purchase of raw materials and sale of finished products manufactured by the unit. The learned Standing Counsel, therefore, submitted that there has to be manufacture of finished goods for the purpose of granting the benefit of the exemption. The learned Standing Counsel submitted that there is nothing new which had come into existence on the basis of packaging the raw water after purification and as such the same would not come within the ambit of manufacture of finished products. The learned Standing Counsel further submitted that the word 'manufacture' appearing in Section 2 (22) of the Act of 1993 though is of wide amplitude but, then also for the purpose of coming within the ambit of the term 'manufacture', it has to bring into existence a new product by way of a process. The learned Standing Counsel referred to the judgment of the Division Bench of this Court in the case of ***Deepak Kumar Poddar vs. the State of Assam and Others***, reported in ***(2010) 6 GLR 835*** wherein Section 2 (22) of the Act of 1993 was taken into consideration and observed that filtration of raw mustard oil into mustard oil cannot be understood to come within the ambit of 'manufacture' in terms of Section 2 (22) of the Act of 1993. The learned Standing Counsel appearing on behalf of the Industries Department, Government of Assam therefore submitted that in the instant case mere filtration of the water cannot be said to be a manufacture even in terms with the wide definition of 'manufacture' employed in Section 2 (22) of the Act of 1993. The learned Standing Counsel submitted that on a wrong notion, the authorities had granted the Eligibility Certificate which ought not to have been granted but for the fault of certain officials, the State cannot be deprived of its revenue.

27. The learned Standing Counsel further submitted that the term 'manufacture' in Section 2 (30) of the Act of 2003 categorically mandates that any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance

having a distinct name, character, use, but does not include such activity of manufacture as may be prescribed. The learned Standing Counsel, therefore submitted that the definition of 'manufacture' in terms of Section 2 (30) of the Act of 2003 is narrower and under such circumstances, even assuming that filtration of raw water into packed drinking water could have been brought within the ambit of 'manufacture' in terms with Section 2(22) of the Act of 1993, the same would not be 'manufacture' in terms with Section 2 (30) of the Act of 2003. He submitted that in the year 2008, the Commissioner of Taxes had issued a circular stating that conversion of raw water into packed drinking water would not come within the ambit of 'manufacture'. The representative union of which the petitioner was one of the members had approached this Court and challenged the said circular. This Court vide a judgment dated 09.01.2013 in the case of ***NE Packaged Drinking Water Manufacturer's Association and Others*** (supra) had observed that the processing of raw water into drinking water would not come within the ambit of manufacture. He further submitted that the issue so raised as regards the Eligibility Certificate having been issued, was also duly dealt with by the Division Bench in the said judgment and the same was negated. He submitted that as the petitioner herein was one of the members of the said Association, the said judgment had concluded all the contentions raised in the present proceedings and the same applies as a res-judicata not to speak of being binding as a precedent upon this Court. The learned Standing Counsel, therefore, referred again to the judgment of the Division Bench of this Court in the case of ***NE Packaged Drinking Water Manufacturer's Association and Others*** (supra).

28. The learned Standing Counsel further submitted that this is not a case of a change of opinion as has been submitted by the learned senior counsel for the petitioner. The present case pertains to some actions on the part of some authorities who had committed a mistake in issuing the Eligibility Certificate in respect to packaged drinking water as a finished product which ought not to have been done as the same did not amount to 'manufacture'. The issuance of the Eligibility Certificate in so far as the packaged

drinking water was contrary to Clause 3 (3) of the Scheme of 1997 as well as also the Industrial Policy Resolutions of 1997 wherein it is only for the purpose of manufacturing and commencement of commercial production, the incentive under the Industrial Policy Resolutions, 1997 could have been granted.

29. The learned counsel also placed before this Court the judgment of the Supreme Court in the case of ***Dr. Ashok Kumar Maheswari vs. State of U.P. and Another***, reported in ***(1998) 2 SCC 502*** to make the point that the principle of promissory estoppel cannot be invoked to enforce a promise contrary to law. The learned counsel submitted that even assuming for argument sake there was a promise made on the basis of the Industrial Policy Resolution, 1997 then also granting of exemption post 01.05.2005 would be contrary to law in as much as the definition of 'manufacture' as contained in Section 2 (30) of the Act of 2003 categorically mandates that there is a requirement that the article(s) had/have to result in transformation into a new and different articles so understood in common parlance. The learned counsel therefore referred to paragraph No.22 of the said judgment in the case of ***Dr. Ashok Kumar Maheswari*** (supra).

30. The learned counsel for the Industries Department also placed reliance upon the judgment of the Supreme Court in the case of ***State of U. P. and Others vs. Harish Chandra and Others***, reported in ***(1996) 9 SCC 309*** and submitted that a writ of mandamus cannot be issued either to refrain from enforcing the law or to act contrary to the law. Referring to the said judgment, the learned counsel submitted that w.e.f. 01.02.2005, the petitioner Company cannot be said to have manufactured packaged drinking water from raw water in view of the definition contained in Section 2 (30) of the Act of 2003 and if any direction is issued to grant benefit to the petitioner for the period post 01.05.2005, it would be contrary to law, and as such, no writ in the nature of mandamus ought to be issued in the facts of the instant case.

31. I have also heard Mr. B. Choudhury, the learned counsel appearing on behalf of the Finance and Taxation Department of the State of Assam who submitted that the

petitioner as of now does not have a certificate of entitlement and without a certificate of entitlement, the assessing Authority cannot grant the tax remission as sought for. Mr. B. Choudhury, the learned counsel further submitted that a perusal of Section 109 (4) of the Act of 2003 would categorically show that the Scheme to be formulated in terms with the Section 109(4) of the Act of 2003 has to be in conformity with the provisions of the Act of 2003. Mr. B. Choudhury, the learned counsel, therefore, submitted that for the Scheme to come within the ambit of the Act of 2003, it has to also be in conformity with Section 2 (30) of the Act of 2003 which categorically mandates that the manufacture would be an activity which results in transformation into a new and different article so understood in commercial parlance having a distinct name/character and use. He further submitted from the very pleadings in the writ petitions, the petitioner duly admits that the industrial activity of conversion of raw water into drinking water would not come within the ambit of Section 2 (30), and therefore, the petitioner herein cannot claim the benefit under the Scheme of 2005.

32. Mr. B. Choudhury, the learned counsel further referring to the Scheme of 2005 and submitted that it is categorically mandated in its preamble itself that the entitlement to remission of tax is only to those units in conformity with the provision of the Act of 2003 meaning thereby it has to confirm Section 2 (30) of the Act of 2003. Further referring to Clause 3 (1) of the Scheme of 2005, Mr. B. Choudhury, the learned counsel submitted that for the purpose of entitlement under the Scheme of 2005, the eligible unit registered under the Act of 2003 would be entitled to tax remission on those goods which are manufactured in Assam, i.e. 'manufacture' within the ambit of Section 2 (30) of the Act of 2003. He, therefore, submitted that the question of the petitioner being entitled to tax remission in respect of packaged drinking water do not arise.

33. Mr. B. Choudhury, the learned counsel further distinguished the judgment in the case of ***Vadilal Chemicals Ltd.*** (supra) and submitted that the said judgment cannot be made applicable to the facts of the instant case taking into account that in the said

judgment, the Supreme Court was not taking into consideration the change of law as has been in the instant case in as much w.e.f. 01.05.2005, the Act of 2003 has come into operation and the definition of 'manufacture' had also changed. Further, the learned counsel referred to the judgment of the Supreme Court in the case of ***Hero Motorcorp Limited vs. Union of India and Others***, reported in ***(2023) 1 SCC 386*** and submitted that the question of promissory estoppels cannot be made applicable to the facts of the instant case taking into account that there cannot be any estoppel against the statute. In the instant case, in view of the change in the definition of 'manufacture' which the petitioner also admit would not encompass the conversion of raw water into packaged drinking water within the ambit of Section 2 (30) of the Act of 2003, the petitioner herein therefore would not be entitled to the benefit of tax remission by application of the doctrine of promissory estoppel.

34. Upon hearing the learned counsel for the parties and after perusal of the materials on record, this Court is of the opinion that the following point for determination arises for consideration:

> Whether the petitioner's industrial unit who was availing tax exemption on packed drinking water on the basis of the Industrial Policy Resolutions, 1997 and being holder of the Eligibility Certificate would be entitled to enjoy tax remission for the unexpired period of eligibility and unutilized amount under Section 109 (4) of the Act of 2003 read with the Scheme of 2005 even though the industrial activity of packed drinking water does not amount to manufacture in terms with Section 2 (30) of the Act of 2003?

35. This Court had in the foregoing paragraph of the instant judgment duly dealt with the Industrial Policy Resolutions, 1997 under the Assam Industries (Sales Tax Concessions) Scheme, 1997 (Scheme of 1997), Section 109 (4) of the Act of 2003 as well as the Assam Industries (Tax Remission) Scheme, 2005 (Scheme of 2005). This Court has also duly taken note of Section 2 (22) of the Act of 1993 vis-à-vis Section 2

(30) of the Act of 2003 which defines the term 'manufacture'.

36. The learned Division Bench of this Court in the case of ***Deepak Kumar Poddar*** (supra) had the occasion to deal with Section 2 (22) of the Act of 1993 and observed that the word 'manufacture' which has been defined in Section 2 (22) of the Act of 1993 was in very wide terms. It was observed that the said definition read in juxtaposition with the dictionary meaning of the word 'manufacture' would indicate that what is beyond the normally understood meaning of 'manufacture' has been included in the definition contained in Section 2(22) of the Act of 1993. It was observed that the definition of 'manufacture' under Section 2 (22) of the Act of 1993 comprehends within its sweep an article which could be a result of production process or the making, extracting, altering, ornamenting, blending, finishing, processing, treating or adapting of goods. It was observed that the deployment of any of the means included in the definition may give rise to a new commodity distinguishable from the input used. In paragraph No.16 of the said judgment, the Division Bench had opined that the true purport and meaning of the wide definition of 'manufacture' as contained in the Act of 1993 would require the final product to be noticeably different from the basic input though both, i.e., the input and the final product may have some similar features. It was further opined that the production of a new commodity or a distinctly different commodity having a separate identity is the requirement of the dictionary meaning of the word 'manufacture' which can have no application in the teeth of the legislative exercise resulting in the enactment of Section 2(22) of the Act of 1993. It was observed that the word 'production' has not been defined in the Act of 1993 for which the Court would have to understand the meaning of the said word by reference to its everyday/common use and by its dictionary meaning. It is very significant to note that the learned Division Bench of this Court came to a finding that filtration of raw mustard oil into mustard oil would not come within the definition of 'manufacture' in terms with Section 2 (22) of the Act of 1993. This Court finds it relevant to quote paragraph Nos.15 & 16 of the judgment in the case of ***Deepak***

Kumar Poddar (supra) herein under:-

"*15. There can be no manner of doubt that the word "manufacture" has been defined in Section 2(22) of the Act in very wide terms. The said definition read in juxtaposition with the dictionary meaning of the word would indicate that what is beyond the normally understood meaning of "manufacture" has been included in the definition contained in Section 2(22) of the Act. Ordinarily and according to the dictionary meaning, a raw material or an input on which further human effort is expended will give rise to a process of manufacture if by that process a distinct or different commodity comes into existence. However, it is always open to the Legislature to prefer to ignore the literal/dictionary meaning of the word and introduce a deeming provision by which the word can have a wider meaning. The definition of "manufacture" in Section 2(22) of the Act comprehends within its sweep an article which could be the result of a production process or the making, extracting, altering, ornamenting, blending, finishing, processing, treating or adapting of goods. The deployment of any of the means included in the definition may give rise to a new commodity distinguishable from the input used. It may also bring about another article which, though not an entirely different commodity, may have some new features but at the same time retaining some features of the original input. The decisions of the apex court relied upon by the learned Counsel for the parties to which a detailed reference has been made earlier indicate that while interpreting the pari materia definition of the word "manufacture" as contained in the Assam Act, the unanimity of the views seems to be that though no new article need to come into existence to attract the wider definition of "manufacture", some changes in the end-product in comparison to the basic input must emerge. The extent of such change may vary from case to case. The decision of the apex court in Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others, and Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, in the ultimate analysis, does not lay down any proposition of law fundamentally different from what has been laid down in State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc., and M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others, , inasmuch as, the end-product considered in Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others, and Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, had undergone some changes compared to the basic material from which the end-product had emerged. The decision in State of Maharashtra Vs. Mahalaxmi Stores, which insists on emergence of a new commercial commodity so as to attract the same definition as contained in the Assam Act (the apex court was considering the*

definition of "manufacture" in the Bombay Sales Tax Act, 1959 which is same as in the Assam Act) though, can be understood as striking a somewhat discordant note, can be explained as a decision earlier in point of time to the one rendered in Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, and also of a Bench numerically smaller than the one which had rendered the decision in State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc., and M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others, The decision of the apex court in Punjab Aromatics Vs. State of Kerala, may not strictly apply to the present case as in the said case u/s 5A of the Kerala General Sales Tax Act, 1963 which was under consideration, the liability to tax was contingent on consumption of the inputs in the manufacture of other goods for sale or otherwise. It is in the above context that the test of "irreversibility" of the end-product was applied by the apex court.

16. From the above discussions it would be clear that the true purport and meaning of the wide definition of "manufacture" as contained in the Assam Act is that the expression "manufacture" with all its connotations under the definition would require the final product to be noticeably different from the basic input though both, i.e., the input and the final product may have some similar features. Production of a new commodity or a distinctly different commodity having a separate identity is the requirement of the dictionary meaning of the word "manufacture" which can have no application in the teeth of the exercise of legislative exercise resulting in the enactment of Section 2(22) of the Act. The aforesaid ratio of the law, if applied to the facts of the present case, cannot bring the activity carried out in the petitioner's unit within the meaning of the definition of "manufacture" contained in Section 2(22) of the Act. The end-product "mustard oil", is fundamentally the same as the raw material/input used, i.e., raw mustard oil, inasmuch as, it is only the impurities in the raw mustard oil which is removed by a process of filtration."

37. It is further relevant to take note of that the learned Division Bench of this Court in ***Deepak Kumar Poddar*** (supra) had also dealt with Section 9 (4) of the Act of 1993 on the basis of which the Scheme of 1997 was framed. It was observed that Section 9 (4) of the Act of 1993 was in two parts. The first part indentifies the industries entitled to grant of relief by way of exemption and the second part deals with the goods in respect of which the benefit of exemption would be applicable. While identifying the industries in the first part it was mandated that those industries which are producing goods to be entitled

to grant of relief under Section 9(4) of the Act of 1993, whereas the second part states that exemption will be both on raw materials and manufactured goods. It was observed that emphasis in Section 9(4), therefore, is on production of goods in an industry. The Division Bench further observed that the work 'production' has not been defined in the Act of 1993 for which it would be required for the Court to understand the meaning of the said word 'production' by reference to its everyday/common use and by its dictionary meaning. It was categorically observed that while manufacture can be characterized as production, every production need not amount to manufacture. As per the learned Division Bench of this Court, the word, 'production' or 'produce' when used in juxtaposition with the word 'manufacture', it takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the byproducts, intermediate products and the residues which emerge in the course of manufacture of goods. Paragraphs No.17 and 18 of the said judgment in ***Deepak Kumar Poddar*** (supra) being relevant are quoted herein under:-

> "*17. The above discussion will, however, not conclude the matter.* ***Section 9(4) of the Assam Act*** *contemplates "grant of relief to any class of industries……producing such goods as may be specified therein……by way of full or partial exemption of any tax on the raw materials or other inputs……or on the manufactured goods sold……"*
>
> *A careful scrutiny of the* ***provisions of Section 9(4) of the Assam Act*** *would indicate that the said section is in two parts. By the first part the identity of the industries entitled to grant of relief by way of exemption is contemplated and the second part deals with the goods in respect of which the benefit of exemption will be applicable. The first part clearly identifies industries "producing goods" to be entitled to grant of relief under section 9(4) of the Act whereas the second part states that exemption will be both on raw materials and manufactured goods. The emphasis in section 9(4), therefore, is on production of goods in an industry. The above view also would be consistent with the purpose for which exemptions from payment of revenue are normally granted, i.e, to encourage industries with a view to greater productivity and employment. If section 9(4) of the Act is understood in the above manner, it would appear*

that only one specie of manufactured goods, i.e, those "produced" has been contemplated for grant of exemption under section 9(4). The learned Single Judge, therefore, was right in laying emphasis on the words "producing such goods", as appearing in section 9(4) of the Act and in examining the claim of the appellant/writ petitioner from the said perspective.

18. The word "production" has not been defined in the Assam Act. The court will, therefore, have to understand the meaning of the said word by reference to its everyday/common use and by its dictionary meaning. There can be no dispute that production denotes bringing something into life or existence by human effort. Such human effort, naturally, has to be on something already existing, though it is not impossible to visualize production of goods also from non-existent goods, i.e, mining of minerals. If something already exists what would come to life or existence, therefore, logically, has to be something different, i.e, something new. The position has been succinctly explained by the Apex Court in CIT v. N.C Budharaja and Co., (1993) 204 ITR 412 by observing that "The word 'production' has a wider connotation than the word 'manufacture'. While every manufacture can be characterized as production, every production need not amount to manufacture. The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the byproducts, intermediate products and reside rodeos which emerge in the course of manufacture of goods." Filtration of raw mustard oil into mustard oil undertaken by the petitioner, therefore, cannot be understood to amount to production of goods in view of the above."

38. This Court at the cost of repetition would again observe that the learned Division Bench of this Court in the case of ***Deepak Kumar Poddar*** (supra) had observed that filtration of raw mustard oil by removing the impurities would not come within the ambit of manufacture. This aspect assumes importance taking into account that this Court is dealing with filtration of the underground raw water into packaged drinking water.

39. The records of the instant proceedings reveals that the Eligibility Certificate was issued by the Industries Department of the Government of Assam treating packaged drinking water as a finished product and a Certificate of Authorization was also given by the authorities under the Scheme of 1997 showing amongst others packaged drinking

water as a finished product. It is relevant at this stage to take note of the submission of Mr. A. Kalita, the learned counsel appearing on behalf of the Industries Department who submitted that a mistake was committed by the authorities by including the packaged drinking water as a finished product in the Eligibility Certificate. The said submission in the opinion of this Court seems to be tenable taking into account the judgment of the Division Bench of this Court in the case of ***Deepak Kumar Poddar*** (supra). Be that as it may, a question do arise as to whether the Industries Department of the Government of Assam and more particularly the Implementing Agency could have decided what goods/articles would come within the ambit of 'manufacture' in as much as the term 'manufacture, is not defined in the Industrial Policy Resolution, 1997. More so, when Clause 5.4 of the Industrial Policy, 1997 only stipulates granting sales tax exemption on sale of finished products and purchase of raw materials and interestingly, the Scheme of 1997 and the Scheme of 2005 are Schemes framed under Section 9 (4) of the Act of 1993 and Section 109 (4) of the Act of 2003 which specifically mention granting exemption about manufactured finished products within the State of Assam. The definition of 'manufacture' is found only in the Act of 1993 or the Act of 2003. This aspect of the matter would be dealt with a little later while dealing with the judgment of the Supreme Court in the case of ***Vadilal Chemicals Ltd.*** (supra).

40. Section 109 (4) of the Act of 2003 has already been quoted herein above and a reading of the said provision makes it clear that in respect to registered units who have been enjoying benefits of sales tax concession under the Scheme of 1997 and other such Schemes immediately prior to 01.05.2005 and would have continued to be eligible for any period which is to end after 01.05.2005, if the Act of 2003 would not have come into force, a power was conferred upon the Government to formulate an appropriate Scheme in conformity with the provisions of the Act of 2003 to substitute the said Scheme of 1997 or any other scheme for the period commencing on or after 01.05.2005. The words "***inconformity with the provisions of this Act***" have vital significance in as much as the

Scheme which is to be formulated has to be in accordance with the Act of 2003. At this stage, it is reiterated that Clause 3 (1) of the Scheme of 2005 only grants the benefit of tax remission on goods manufactures by an eligible unit. Therefore, the same has to be decided taking into account the definition of Section 2 (30) of the Act of 2003 which defines 'manufacture'. For the purpose of convenience, this Court finds it relevant to quote Section 2 (30) of the Act of 2003 as herein under:-

> *(30) "manufacture" means any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformations into a new and different article so understood in commercial parlance having a distinct name, character use, but does not include such activity of manufacture as may be prescribed;"*

41. From a perusal of the above quoted Section, the term 'manufacture' means any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformation into a new and different article so understood in common parlance having a distinct name, character use, but does not include such activity of manufacture as may be prescribed. The learned Division Bench of this Court in the case of ***NE Packaged Drinking Water Manufacturer's Association and Others*** (supra) has specifically dealt with this particular issue as to whether processing of raw water into drinking water amounts to manufacture within the meaning of Section 2 (30) of the Act of 2003. It was observed that though raw water is subjected to a process of purification, it continues to be water and its character and use remains the same though the quality has improved. It was therefore held that there was no new and distinct commercial commodity that has emerged on account of the process undertaken. The learned Division Bench of this Court further in the said case, i.e. ***NE Packaged Drinking Water Manufacturer's Association and Others*** (supra) agreed with the similar findings arrived at by the Kerala High Court in the case of ***Tejan Deverses vs. State of Kerala***, reported in ***2003 (1) 131 STC 538*** wherein also it was held that the activity of treatment of ground water as raw material and the resultant product of mineral water/packaged drinking water would not come within the ambit of manufacture. Paragraph Nos.10, 11, 15 & 16

of the judgment of the Division Bench in the case of ***NE Packaged Drinking Water Manufacturer's Association and Others*** (supra) are quoted herein under:-

> "*10. Coming to the present case, it is seen that though the raw water is subjected to the process of purification, it continues to be water. Its character and use remains the same though quality has been improved. It cannot, thus, be held that a new and distinct commercial commodity has emerged on account of the process undertaken.*
>
> *11. The matter was considered by the Kerala High Court in the light of judgment of the Hon'ble Supreme Court in Tungabhandra Industries Ltd.'s case, (1960) 11 STC 827 as follows :*
>
> > "*…….Ground water which is taken and used by the appellants as raw material for heir finished product, viz. mineral water/packaged drinking water can be used for all purposes for which the so called mineral water is used. Similarly the so called mineral water can be used for all the purposes for which the ground water can be used. What is done by the appellants is to employ various processes described by them to bring the commodity more acceptable to a section of people for drinking purposes. According to us, notwithstanding the various processes employed by the appellants in converting the ground water it continues its identity as water, its character and use also remain the same though the quality of the said water has been raised to a certain level which is more acceptable to a section of people. Applying the principles laid down by the Supreme Court in the various decisions discussed above, and in the light of the definition of the word manufacture used in the notification mineral water/packaged drinking water produced by the appellants in their units has to be treated as substantially the same as ground water. In other words it cannot be said that a new and distinct commercial commodity has emerged by the employment of various processes described by them on the ground water. In these circumstances, going by the meaning of the word manufacture as noted in the various decisions of the Supreme Court and other courts and by the definition of the same used in the notification the raw material, viz., the ground water even after the various processes undertaken by them ha s continued to be water with the same characteristic or use. The decision of the Constitution Bench of the Supreme Court in Tungabhandra Industries Ltd.'s case (1960) 11 STC 827 and the decision of the Bombay High Court in Oil Processors Private Limited case, (1998) 108*

STC 44 mentioned above squarely apply.

We are in respectful agreement with the above observations.

15. As regards judgments relied upon on behalf of the petitioner, it is not disputed that the parameters for determining which process amounts to manufacture are well-known, namely, when change or series of changes brought about by application of various processes take the commodity to the point where commercially it can no longer be known as original but instead known as distinct and new article. Application of this principle to individual fact situations may vary having regard to the nature of goods and the processes involved. The judgments relied upon on behalf of the petitioner are not in relation to the process of purifying raw water into drinking water. The same are on different fact situations. Every process which may bring about some change cannot be treated to be manufacturing. The identity of the original commodity must be lost and instead a new identity must merge. This distinguished the judgments relied upon by the petitioner. Moreover, judgments relied upon by the Revenue are directly and close to the issue in the context of goods involved. We, thus, upheld the stand of the Revenue.

16. As regards the submission that eligibility certificate once granted cannot be cancelled on a mere change of opinion, the applicability of such principle has yet to be gone into. Whether it is a case of mere change of opinion on a debatable issue or a case of mis-statement or error of application of binding law has to be gone into by the concerned authority. If it is held that it was not a case of mere change of opinion on a debatable issue but the case of wrong grant of eligibility certificate either on account of mis-statement or on account of ignoring the settled law, the appropriate authority may take a decision accordingly in accordance with law."

42. Therefore, from the above it is well settled that the industrial activity of purification of raw water into packaged drinking water would not come within the ambit of manufacture as defined under Section 2 (30) of the Act of 2003. Under such circumstances and in the light of the above declaration by the Division Bench of this Court, the question therefore arises as to whether the petitioner would be entitled to enjoy the benefit of the Scheme of 2005, that too when the activity would not come within the ambit of 'manufacture'. In the foregoing paragraphs of the instant judgment, this Court had duly taken note of the said Scheme of 2005. The Preamble to the said Scheme categorically mentions that the said Scheme has been framed for continuing the

conferment of benefits enjoyed by eligible industrial units under the Scheme of 1997 by way of remission of tax to those units "***in conformity with the provision of the Act***" meaning thereby the enjoyment by way of remission of tax would be available if it is in conformity with the Act of 2003. Clause 3 of the Scheme of 2005 stipulates when an eligible industrial unit would be entitled to tax remission. Clause 3 (1) of the Scheme of 2005 categorically mandates that benefit of tax remission would be granted to an eligible unit which is registered under the Act of 2003 who ***manufactures*** any goods in Assam and in that circumstances 99% tax payable of such unit according to its return in respect of such goods ***manufactured*** in such unit shall be eligible for remission or continue to be eligible for remission until the amount of such tax payable exceeds the unavailed quantum of monetary ceiling or the extended unexpired period of eligibility whichever is earlier. Therefore, the emphasis for the purpose of enjoyment of the benefit of tax remission would be those eligible units manufacturing any goods in the State of Assam and this manufacturing has to read in terms with Section 2 (30) of the Act of 2003. It is being well settled now that the activity of purification of raw water into packaged drinking water would not come within the ambit of the term 'manufacture' in terms with Section 2 (30) of the Act of 2003, it is the opinion of this Court, the petitioner herein would not be entitled to the benefit of the Scheme of 2005 in respect to the activity of conversion of raw water into packaged drinking water. It is also relevant herein to mention that the Scheme of 2005 or for that matter Clause 3 (1) of the said Scheme has not put to challenge. Therefore, unless there is a challenge to the Clause 3(1) of the Scheme of 2005 which grants tax remission only on goods manufactured by the industrial eligible unit, the question of the petitioner Company being entitled to the benefit of the tax remission for the period w.e.f. 01.05.2005 does not arise.

43. The learned senior counsel for the petitioner submitted on the application of the principles of promissory estoppel. In the opinion of this Court, the said principles cannot be applied till Clause 3 (1) of the Scheme of 2005 stands in as much as already held

hereinabove, Clause 3 (1) of the Scheme of 2005 has to be read along with Section 2 (30) of the Act of 2003 and if so read, then any application of the principles of promissory estoppel would amount to applying the said principle against the Statute or the legislative mandate which is clearly not permissible in view of the well settled principles. At this stage, this Court also finds it relevant to take note of paragraph No.22 of the judgment of the Supreme Court in the case of ***Dr. Ashok Kumar Maheswari*** (supra) which is quoted herein under:-

> "*22. Whether a promissory estoppel, which is based on a "promise" contrary to law can be invoked has already been considered by this Court as also in Shabi Construction Co. vs. City & Industrial Development Corpn wherein it is laid down that the Rule of "promissory estoppel" cannot be invoked for the enforcement of a "promise" or a "declaration" which is contrary to law or outside the authority or power of the Government or the person making that promise."*

From the above proposition of law and applying the same to the present case, it would transpire that even if there is any promise made on the basis of the Industrial Policy Resolution, 1997, the said promise has to be in conformity with law and in the present case, the Act of 2003.

44. In the background of the above analysis, let this Court take note of the submission of the learned senior counsel for the petitioner on the basis of the judgment in the case of ***Vadilal Chemicals Ltd.*** (supra), and more particularly to the paragraph Nos.22 & 23 of the said judgment. The said paragraphs are quoted herein under:-

> "*22. Furthermore, under the incentive scheme in question, there was only one method of verifying the eligibility for the various incentives granted including sales tax exemption. The procedure was for the matter to be scrutinized and recommended by the State Level Committee and District Level Committee and the certification by the Department of Industries & Commerce by issuing an Eligibility Certificate. There was no other method prescribed under the scheme for determining an industrial unit's eligibility for the benefits granted. The Department of Industries & Commerce having exercised its mind, and having granted the final eligibility certificate (which was valid at all material times), the Commercial Taxes Department*

could not go beyond the same. More so when the Commissioner, Sales Tax had accepted the Eligibility Certificate issued to the appellant and had separately notified the appellants eligibility for exemption under the 1993 G.O. In these circumstances the DCCT certainly could not assume that the exemption was wrongly granted nor did he have the jurisdiction under Section 20 of the State Act to go behind the eligibility certificate and embark upon a fresh enquiry with regard to the appellant's eligibility for the grant of the benefits. The counter affidavit filed by the respondents-sales tax authorities is telling. It is said that the Sales Tax Department had decided to cancel the eligibility certificates for sales tax incentives. As we have said the eligibility certificates were issued by the Department of Industries and Commerce and could not be cancelled by the Sales Tax Authorities.

23. There is another reason why the action of the DCCT cannot be upheld. The primary facts relating to the processes undertaken by the appellant at its unit were known to the Department of Industries and Commerce and the DCCT. The only question was what was the proper conclusion to be drawn from these. The Department of Industries and Commerce which was responsible for the issuance of the 1993 G.O. accepted the appellant as an eligible industry for the benefits. Apart from the fact that it can be assumed that the Department of Industries was in the best position to construe its own order, we can also assume that in framing the scheme and granting eligibility to the appellant all the departments of the State Government involved in the process had been duly consulted. The State, which is represented by the Departments, can only speak with one voice. Having regard to the language of the 1993 G.O. it was the view expressed by the Department of Industries which must be taken to be that voice."

45. From a perusal of the above quoted paragraphs, it would reveal that the Supreme Court had opinioned that under the incentive scheme in question, there was only one method of verifying the eligibility for the various incentives granted including sales tax exemption. It was opined that the procedure was for the matter to be scrutinized and recommended by the State Level Committee and District Level Committee and the certification by the Department of Industries & Commerce by issuing an Eligibility Certificate and there was no other method prescribed under the scheme for determining an industrial unit's eligibility for the benefits granted. It was opined that the Department of Industries & Commerce having exercised its mind and having granted the final

eligibility certificate (which was valid at all material times), the Commercial Taxes Department could not go beyond the same. It was held by the Supreme Court that when the Commissioner, Sales Tax had accepted the Eligibility Certificate issued to the Appellant therein and had separately notified the Appellant's eligibility for exemption under the 1993 Government Order, the DCCT certainly could not assume that the exemption was wrongly granted nor did he have the jurisdiction under Section 20 of the State Act to go behind the eligibility certificate and embark upon a fresh enquiry with regard to the Appellant's eligibility for the grant of the benefits. It was further observed that the State which is represented by the Departments, can only speak with one voice.

46. The said judgment rendered by the Supreme Court in the case of ***Vadilal Chemicals Ltd.*** (supra) in the opinion of this Court is clearly distinguishable from the facts of the instant case taking into account that in the State Sales Tax Act which was dealt with by the Supreme Court, there was no provision relating to 'manufacture'. The concept of 'manufacture' only found place in the 1993 Government Order issued by the Department of Commerce and Industries. This aspect of the matter can be seen from paragraph No.20 of the said judgment in the case of ***Vadilal Chemicals Ltd.*** (supra) and the same is quoted herein below:-

> "*20. In this case the State Sales Tax Act contains no provision relating to 'manufacture'. The concept only finds place in the 1993 G.O. issued by the Department of Commerce and Industries. It appears from the context of the other provisions of the 1993 G.O. that the word 'manufacture' had been used to exclude dealers who merely purchased the goods and resold the same on retail price. What the State Government wanted was investment and industrial activity. It is in this background that the 1993 G.O. must be interpreted. [See: Commissioner of Sales Tax. Vs. Industrial Coal Enterprises (1992) 2 SCC 607). The Department of Commerce and Industries had by its letters dated 3rd June 1995 and 20th August 1996 clarified the issue. The exemption was granted in terms of the 1993 G.O. the thrust of which was to increase the industrial development in the State. The Commissioner, Commercial Tax had also in no uncertain terms accepted the interpretation put by the Industries Department on the 1993 G.O. and written to the DCCT to permit sales tax exemption to the appellant in accordance with the*

1993 G.O. for a period of five years upto a limit of Rs.35 lakhs."

47. The facts in the case of ***Vadilal Chemicals Ltd.*** (supra) would show that the Government of Andhra Pradesh, in its Industries and Commerce Department to effectuate the liberalized State Inventive Scheme for setting up new industries as introduced in the year 1989 issued a Government Order in the year 1993 (1993 GO). In the said 1993 GO, apart from investment subsidy, rebate on electricity charges, there was deferment/tax holiday on sales tax for specified periods on products manufactures in the new industrial units. Medium and large scale industries were granted tax deferment whereas tiny and small scale industries were granted tax holiday. The Appellant in that case before the Supreme Court was a small scale industry and as per 1993 GO, similar industries were granted 5 years sales tax holiday subject to a ceiling of 100% fixed capital costs or Rs.35 lakhs whichever was less during the entire holiday period. The procedure for availing the benefits under the 1993 GO envisaged setting up of State Level and District Level Committees. In the District Level Committees, it included the Deputy Commissioner of Commercial Taxes. It is further seen from the said judgment that the Appellant therein duly applied for the Eligibility Certificate from the Industries Department which was rejected initially but subsequently the conditional and the final Eligibility Certificate was granted. The final Eligibility Certificate upon being granted was forwarded to the Commissioner of Commercial Taxes who in turn wrote to the Deputy Commissioner, Commercial Taxes, Hyderabad requesting him to permit sales tax exemption in terms with the 1993 GO for a period of 5 years from 1994 to 1999 upto a limit of Rs.35 lakhs.

48. It is also seen from the said judgment that there was no other notification issued by the Sales Tax Department. Be that as it may, revision proceedings were initiated on the ground that as there was no manufacture, the Appellant was not entitled to the benefit of tax holiday. It was under such circumstances, the initiation of the revision proceedings by issuance of the show cause notice was put to challenge by way of a writ proceedings.

During the writ proceedings, the revision proceedings was decided against the Appellant and there was issuance of Demand Notice. The writ petition was dismissed which led to the filing of the proceedings under Article 136 of the Constitution of India before the Supreme Court. Paragraph Nos.20, 22 & 23 quoted herein above, were the observations and opinion rendered by the Supreme Court on the basis of the above factual matrix.

49. The facts in the instant case is however completely different. At the cost of prolixity, this Court reiterates that though the Industrial Policy of 1997 was declared by the State of Assam thereby declaring various incentives including sales tax exemption on purchase of raw materials and sale of finished products but the Industries Department of the Government of Assam did not issue any notification granting the said incentives. The State of Assam exercised powers under Section 9 (4) of the Act of 1993 and formulated the Scheme of 1997. It is pertinent to mention that Section 9 (4) of the Act of 1993, as already observed in the preceding segments of the instant judgment categorically mandates conferring power on the State Government to grant exemption to those industries upon production of such goods to the extent of purchase of raw materials or other inputs within the State or on sale of manufactured goods sold by such industrial unit within the State or in course of inter State trade or commerce. It is also pertinent to mention that Clause 3 (3) of the Scheme of 1997 clearly mandated sales tax exemption on purchase of raw materials and sales of finished goods manufactured by the unit. Further to that, it is also seen from the Scheme of 1997, that merely upon issuance of the Eligibility Certificate, an industrial unit would not be entitled to the benefit of the sales tax exemption. There is a requirement of issuance of a Certificate of Authorization in terms with Clause 7 of the Scheme of 1997 and the Certificate of Authorization is to be issued by the Assessing Officer which has to be renewed every financial year. The above aspects also shows that in view of the State of Assam issuing the Scheme of 1997 under the provision of the Act of 1993 and the use of the words ‘manufactured goods” in Section 9 (4) of the Act of 1993 and ‘finished goods manufactured’ in Clause 3 (3) of the

Scheme of 1997, the terms 'manufacture' in terms with Section 2 (22) of the Act of 1993 has therefore to be applied. These clearly distinguish the present facts with the facts in the judgment in the case of ***Vadilal Chemicals Ltd.*** (supra), more so when in ***Vadilal Chemicals Ltd.*** (supra), the final Eligibility Certificate was to be issued by the Authority prescribed in 1993 GO and there was no further necessity for the Sales Tax Department to do anything except to grant the exemption unlike in the present case. Further to that, in the instant case, the Scheme of 2005 was formulated on the basis of Section 109 (4) of the Act of 2003 and in the said Scheme of 2005, it was clearly mentioned that only eligible units manufacturing goods, which would be manufacturing in terms of Section 2 (30) of the Act of 2003, would be entitled to tax remission. Therefore, merely because an Eligible Certificate was issued to the petitioner, it would not entitle the petitioner to the sales tax exemption or sales tax remission on the basis of the Scheme of 1997 or the Scheme of 2005 unless and until the finished goods were manufactured within the meaning of 'manufacture' employed in the Act of 1993 or the Act of 2003 as the case may be. This Court further finds it very pertinent to take note of the judgment of the Constitution Bench of the Supreme Court in the case of ***Commissioner of Customs vs. Dilip Kumar and Co. and Others***, reported in ***(2018) 6 GSTR-OL 46*** wherein at paragraph No.52, the Supreme Court observed how an exemption notification is required to be interpreted. Paragraph No.52 of the said judgment is quoted herein below:-

> "*52. To sum up, we answer the reference holding as under:*
>
> *(1) Exemption notifications should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
>
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.*
>
> *(3) The ratio in Sun Export's case is not correct and all the decisions which took similar view as in Sun Export's case stand overruled."*

50. In view of the above observations and findings, this Court is therefore of the opinion that the Additional Commissioner of Taxes was justified in passing the order dated 11.08.2015 for the assessment year 2005-06 by setting aside the Appellate order dated 17.06.2014 passed by the respondent No.5 for which no question of interference arises.

51. This Court further is of the opinion that the common order passed by the Additional Commissioner of Taxes dated 11.08.2015 in respect to the assessment years 2006-07; 2007-08; 2008-09; 2009-2010 and 2010-2011 is in accordance with law for which no interference is called for.

52. Accordingly, this Court therefore having found no merit in both the writ petition, dismisses the same.

53. Interim order(s), if any, stands vacated.

54. Pending Application, stands disposed in terms with the instant judgment.

JUDGE

Comparing Assistant