GAHC010085942019

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Writ Petition(C) No. 2664 of 2019

SHREE BALAJI ENTERPRISE
A PARTNERSHIP FIRM REGD. UNDER THE INDIAN PARTNERSHIP ACT, 1932 AND HAVING ITS REGD. OFFICE AT SHOPPERS POINT, 5TH FLOOR, ROOM NO 526, H.B.ROAD, FANCY BAZAAR, GHY-1 AND ITS FACTORY SITUATED AT INDUSTRIAL GROWTH CENTRE, CHAYGAON, VILL NO. 2, JAMBARI, DIST- KAMRUP, ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS PARTNERS SRI DURGA DUTT AGARWAL

…….Petitioner

VERSUS

1.UNION OF INDIA.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI- 110001

2. SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN

NEW DELHI- 110107

3. JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI- 110107

4. THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI- 110001

5. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GHY-1

6.ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX GHY-II DIVISION
SETHI TRUST BUILDING
4TH FLOOR
G.S.ROAD
BHANGAGARH
GHY-5

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI- 11000

…….Respondents

Writ Petition(C) No.2668 of 2019

NORTH EAST WOOD SUPPLY
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP ACT
1932 AND HAVING ITS REGISTERED OFFICE AT S.J. ROAD
ATHGAON
GUWAHATI0-781001 AND ITS FACTORY SITUATED AT LOKHRA ROAD
SAWKUCHI
GUWAHATI-781018

DIST.-KAMRUP
ASSAM AND IN THE PRESENT PROCEEDINGS REPRESENTED BY ONE OF ITS PARTNERS SRI DINESH AGARWAL.

……Petitioner

VERSUS

1.UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI-110001

2.SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI-110107

3.JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI-110107

4.THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI-110001

5. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI-781001

6. ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICES TAX
GUWAHATI-II DIVISION
SETHI TRUST BUILDING
4TH FLOOR
G.S. ROAD
BHANGAGARH
GUWAHATI-781005

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI-110001

……Respondents

Writ Petition(C) No.2764 of 2019

PRATAAP SNACKS LTD. (UNIT-II)
A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES ACT1956 HAVING ITS REGISTERED OFFICE AT KHASRA NO. 378/2 NEMAWAR ROADINDORE-452020MADHYA PRADESH AND ITS INDUSTRIAL UNIT SITUATED AT PLOT NO. 40-41, BRAHMAPUTRA INDUSTRIAL PARKGAURIPUR AMINGAON, GUWAHATI-781031. THE PETITIONER IN THE PRESENT CASE IS REP. BY ONE OF ITS DIRECTORS SRI ARVIND KUMAR MEHTA.

……..Petitioner

VERSUS

1. UNION OF INDIA
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI- 110001.

2. SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI- 110107.

3. JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI- 110107.

4. THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI- 110001.

5. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GST BHAWAN
KEDAR ROAD, FANCY BAZAR, GUWAHATI- 781001.

6. ASSISTANT COMMISSIONER
GST DIVISION-I, GST BHAWAN, KEDAR ROAD
FANCY BAZAR, GUWAHATI- 781001.

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

…….Respondents

Writ Petition(C) No. 2762 of 2019

PRATAAP SNACKS LTD.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT KHASRA NO. 378/2, NEMAWAR ROAD, INDORE- 452020, MADHYA PRADESH AND ITS INDUSTRIAL UNIT SITUATED AT DAG NO. 98-109, IOC MAIN ROAD, GAURIPUR, NEAR GAURIPUR THANA, AMINGAON, GUWAHATI- 781031. THE PETITION IN THE PRESENT CASE IS REP. BY ONE OF ITS DIRECTORS SRI ARVIND KUMAR MEHTA.

…….Petitioner

VERSUS

1. UNION OF INDIA
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI- 110001.

2.SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI- 110107.

3. JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI- 110107.

4.THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI- 110001.

5. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GST BHAWAN
KEDAR ROAD, FANCY BAZAR, GUWAHATI- 781001.

6. ASSISTANT COMMISSIONER
GST DIVISION-I, GST BHAWAN, KEDAR ROAD
FANCY BAZAR, GUWAHATI- 781001.

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

……Respondents

Writ Petition (C) No. 2715 of 2019

1. SAJJAN KUMAR JALAN (HUF)
REP. BY ITS KARTA SHRI SAJJAN KUMAR JALAN
S/O- LT BALADEO JALAN, AGED ABOUT 62 YEARS
R/O- M.S.ROAD, ALU PATTY, FANCY BAZAAR, GHY-01

2. JALAN AGRO PRODUCTS
A PROPRIETORSHIP CONCERN OF WHICH PETITIONER NO 1 IS THE PROPRIETOR AND HAVING ITS FACTORY SITUATED AT R.G.B.ROAD, OPP. RAJDHANI NURSERY
GHY-06, DIST- KAMRUP, ASSAM

……..Petitioners

VERSUS

1. UNION OF INDIA
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI- 110001

2. SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI- 110107

3. JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI- 110107

4. THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI- 110001

5. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GST BHAWAN
KEDAR ROAD, FANCY BAZAR, GHY-1

6. ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GHY-II DIVISION
SETHI TRUST BUILDING, 4TH FLOOR, G.S.ROAD,
BHANGAGARH, GHY-5

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-
110001

……Respondents

Writ Petition (C) No. 2673 of 2019

M/S. KISHLAY SAVOURY FOODS
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP ACT, 1932 AND HAVING ITS REGISTERED OFFICE AT 5TH FLOOR, ANUPAM BUIDING, A.T. ROAD GUWAHATI-9 AND ITS FACTORY SITUATED AT NH-37 SARUSAJAI, NEAR LOKHRA CHARIALI, GUWAHATI-34 DIST.-KAMRUP, ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS PARTNERS SRI SUMIT KUMAR BAJAJ.

……..Petitioner

VERSUS

1. UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001

2. SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI-110107

3. JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI-110107

4.THE UNDER SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001

5. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GST BHAWAN KEDAR ROAD, FANCY BAZAR, GUWAHATI-781001

6. ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICES TAX, GUWAHATI-II DIVISION, SETHI TRUST BUILDING, 4TH FLOOR, G.S. ROAD, BHANGAGARH, GUWAHATI-781005

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001

……Respondents

Writ Petition(C) No. 2703 of 2019

AMIKER ENTERPRISES PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956 AND HAVING ITS, REGISTERED OFFICE AT H.B. ROAD, MACHKOWA, GUWAHATI-781009 AND ITS FACTORY SITUATED AT SILA SEDURI GHOPA, AMINGAON, GUWAHATI-781031 DIST.-KAMRUP(R), ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS DIRECTORS SRI YASH VARDHAN SARAWGI.

……..Petitioner

VERSUS

1. UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI-110001

2. SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI-110107

3. JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI-110107

4. THE UNDER SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001

5. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GST BHAWAN KEDAR ROAD, FANCY BAZAR, GUWAHATI-781001

6. ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICES TAX, GUWAHATI-II DIVISION, SETHI TRUST BUILDING, 4TH FLOOR, G.S. ROAD, BHANGAGARH, GUWAHATI-781005

7. CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001

……Respondents

Writ Petition(C) No. 2660 of 2019

M/S. HOMETEK INDIA SNACKS MANUFACTURING CO.
A PARTNERSHIP FIRM REGD. UNDER THE INDIAN PARTNERSHIP ACT, 1932 AND HAVING ITS REGD. OFFICE AT 1ST FLOOR, DWARKA KUNJ, RANI SATIJI MARG, FANCY BAZAAR, GUWAHATI AND ITS FACTORY SITUATED AT VILL. SILA, CHANGSARI, DIST. KAMRUP (R), ASSAM AND THE PRESENT PROCEEDINGS REP. BY ONE OF ITS PARTENRS SRI PRAMOD KUMAR CHOUDHARY.

……..Petitioner

VERSUS

1. UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE, DEPTT. OF REVENUE NORTH BLOCK, NEW DELHI-110001.

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI-110107.

3 JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI-110107.

4:THE UNDER SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

5:COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GST BHAWAN KEDAR ROAD, FANCY BAZAR, GUWAHATI-781001.

6:ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICES TAX GUWAHATI-II DIVISION, SETHI TRUST BUILDING, 4TH FLOOR, G.S. ROAD, BHANGAGARH, GUWAHATI-781005.

7:CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

……Respondents

Writ Petition(C) No.2662 of 2019

SHREE BALAJI UDYOG
A PARTNERSHIP FIRM REGD. UNDER THE INDIAN PARTNERSHIP ACT, 1932 AND HAVING ITS REGD. OFFICE AT SHOPPERS POINT, 5TH FLOOR, ROOM NO. 526 H.B ROAD, FANCY BAZAAR, GUWAHATI-781001 AND ITS FACTORY SITUATED AT INDUSTRIAL GROWTH CENTRE, CHAYGAON, VILL. NO.-2, JAMBARI, MOUZA-BONGAON, DIST. KAMRUP, ASSAM AND THE PRESENT PROCEEDINGS REP. BY ONE OF ITS PARTENRS SMT. SANTOSHI DEVI AGARWAL.

…….Petitioner

VERSUS

1. UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY, DEPTT. OF INDUSTRY, DEPTT. OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI-110107.

3:JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI-110107.

4:THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

5:COMMISSIONER
CENTRAL GOODS AND SERVICE TAX, GST BHAWAN
KEDAR ROAD, FANCY BAZAR, GUWAHATI-781001.

6:ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICES TAX GUWAHATI-II DIVISION, SETHI TRUST BUILDING, 4TH FLOOR, G.S. ROAD, BHANGAGARH, GUWAHATI-781005.

7:CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

……..Respondents

Writ Petition(C) No. 2659 of 2019

SHREE BALAJI POLYMERS
A PARTNERSHIP FIRM REGD. UNDER THE INDIAN PARTNERSHIP ACT,1932 AND HAVING ITS REGD. OFFICE AT SHOPPERS POINT, 5TH FLOOR, ROOM NO. 526, H.B. ROAD, FANCY BAZAAR, GUWAHATI-781001 AND ITS FACTORY SITUATED AT VILL. KOIRABARI, CHOWKIGATE, CHANGSARI
DIST. KAMRUP, ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS PARTNERS MS. PRACHI AGARWAL.

……Petitioner

VERSUS

1.UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI-110001.

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI-110107.
3:JOINT SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI-110107.
4:THE UNDER SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI-110001.
5:COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI-781001.
6:ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICES TAX GUWAHATI-II DIVISION
SETHI TRUST BUILDING
4TH FLOOR
G.S. ROAD
BHANGAGARH
GUWAHATI-781005.
7:CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI-110001.

……..Respondents

Writ Petition(C) No. 2661 of 2019

NANO STEEL PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT1956 AND HAVING ITS REGD. OFFICE AT 1ST FLOOR ABOVE VIKASH AGENCIES G.S.ROADBHANGAGARHGHY-5 AND ITS FACTORY SITUATED AT IID CENTREMORANJANARANGIA IN THE DISTRICT OF KAMRUP (R) ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS DIRECTORS SRI VIKASH KHEMKA

……Petitioner

VERSUS

1. **UNION OF INDIA**

REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI- 110001

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI- 110107

3:JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI- 110107

4:THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI- 110001

5:COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN, KEDAR ROAD, FANCY BAZAR
GHY-1

6:ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX GHY-II DIVISION
SETHI TRUST BUILDING, 4TH FLOOR, G.S.ROAD
BHANGAGARH, GHY-5

7:CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-
110001

……Respondents

Writ Petition(C) No. 2677 of 2019

M/S. PITARJI BIOFUELS
A PARTNERSHIP FIRM REGD. UNDER THE INDIAN PARTNERSHIP ACT1932 AND HAVING ITS REGD. OFFICE AT HANUMAN KATA COMPOND NH-37,JAWAHAR NAGAR KHANAPARA, GHY-22 AND ITS FACTORY SITUATED AT OLD HARD BOARD ROAD PANIKHAITI CHARIALI,PANIKHAITI, GHY- 26 IN THE DISTRICT OF KAMRUP,ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS PARTNERS SRI VARUN AGARWAL

…….Petitioner

VERSUS

UNION OF INDIA
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI- 110001

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI- 110107

3:JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI- 110107

4:THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI- 110001

5:COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN, KEDAR ROAD
FANCY BAZAR, GHY-1

6:ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX GHY-II DIVISION
SETHI TRUST BUILDING, 4TH FLOOR, G.S.ROAD,
BHANGAGARH, GHY-5

7:CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-
110001

……..Respondents

Writ Petition(C) No. 1936 of 2019

M/S. RHINO PRINT O PACKS
A PARTNERSHIP FIRM REGD. UNDER THE INDIAN PARTNERSHIP ACT1932 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AT C.I.T.I COMPLEX, KALAPAHAR INDUSTRIAL AREA, BISHNUPUR,GUWAHATI, DIST. KAMRUP, ASSAM AND IN THE PRESENT PORCEEDINGS REP. BY ONE OF ITS PARTNERS SRI VINOD KUMAR LOHIA.

……Petitioner

VERSUS

UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI-110001.

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI-110107.

3:JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI-110001.

4:THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI-110001.

5:COMMISSIONER

CENTRAL GOODS AND SERVICE TAX GST BHAWAN
KEDAR ROAD, FANCY BAZAR, GUWAHATI-781001.

6:ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICES TAX GUWAHATI-II
DIVISION, SETHI TRUST BUILDING, 4TH FLOOR
G.S. ROAD, BHANGAGARH, GUWAHATI-781005.

7:CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

…….Respondents

Writ Petition(C) No. 4375/2020

M/S. KESHARI UDYOG
A PARTNERSHIP FIRM HAVING ITS OFFICE AT EPIP AIDC COMPLEX AMINGAON KAMRUP ASSAM PIN-781031.

……Petitioner

VERSUS

1. UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI-110001.

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY

DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN, NEW DELHI-110107.

3:JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI-110001.

4:THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE, DEPTT. OF REVENUE
NORTH BLOCK, NEW DELHI-110001.

5:COMMISSIONER

CENTRAL GOODS AND SERVICE TAX GST BHAWAN
KEDAR ROAD, FANCY BAZAR, GUWAHATI-781001.

6:ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICES TAX GUWAHATI-II
DIVISION, SETHI TRUST BUILDING, 4TH FLOOR
G.S. ROAD, BHANGAGARH, GUWAHATI-781005.

7:CENTRAL BOARD OF EXCISE AND CUSTOMS
REP. BY ITS CHAIRMAN, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

…….Respondents

:: BEFORE::
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioners :Dr. Ashok Saraf, Sr. counsel assisted by Mr. P. Baruah, Advocate

For the Respondents : Mr. S.C. Keyal, SC, GST

Date of Hearing : **07.09.2023**

Date of Judgment : **22.12.2023**

JUDGMENT & ORDER (CAV)

These bunch of writ petitions have been filed by the petitioners who had setup their factories in various industrial growth centers in State of Assam in pursuance to the incentives offered under the Industrial Policy by the Government of India by Notification dated 24.12.1997. As per the Office Memorandum brought about by the Government of India notifying the New Industrial Policy Resolution, a slew of packages were notified containing various incentives and concessions with the avowed object of development of industries in the Northeastern Region. These industrial zones setup under the Industrial Policy in the State of Assam offered completely tax free zones for the period of ten (10) years. It was announced by the Government of India under the Industrial Policy that all industrial activities for such areas would be free from inter alia payment of Central Excise Duty and would also be offered other tax benefits for a period of 10 years from the date of commencement of productions. The State Governments would also be moved for granting exemptions for sales tax, municipal tax and other local taxes on industrial activities in the said areas. It was further mentioned in the Industrial Policy Resolution that necessary amendments will be made in the existing Rules/Notification for conferring the benefits as notified under the Industrial Policy Resolution.

2. Encouraged by incentives offered under the Industrial Policy, these petitioners had set up their industries in the various industrial parks, estates, zones set up for the purposes of giving effect to the industrial policy of the Government of India. In order to confer benefits to the various industries like the petitioners' industries, set up in pursuance to the industrial policy decision of the Government of India, various notifications were issued from time to time by the Government of India for conferring the benefits as envisaged under the Industrial Policy Resolution. In so far as exemption of Central Excise Duty is concerned, Notifications were issued by the concerned departments in the Government of India by Notifications No. 32/99-CE and 33/99-CE dated 08.07.1999 granting exemption in respect of all excisable goods which are cleared from a unit located in the growth or integrated infrastructure development centre or export promotion industrial park or industrial estate or industrial area as the case may be from the payment of excess or such additional duty of Excise leviable thereof as is equivalent to the amount of duty paid by the manufacturer of these goods from the account current maintained under Rule 9 read with Rule 173(G) of the Rules. The exemptions in the said Notification were made applicable only to new industrial units which commenced production on or after 24th day of December, 1997 or to

industrial units existing before 24.12.1997 but which undertook substantial expansion by increase in the installed capacity by not less than 25% on or after 24.12.1997. These exemptions were made available to the industrial units for a period of 10 years from the date of publication of the official gazette. The Government of India thereafter in its continued efforts to encourage development of industries in the Northeastern Region announced a new package of fiscal incentives and other concessions for the Northeastern Region to continue the exemptions and benefits as was promised. This new package was known as North East Industrial Investment Promotion Policy, 2007 (NEIIPP). This policy was came effect from 01.04.2007. The said incentives were available to new industrial units or existing industrial units undergoing substantial expansion on or after 01.04.2007. Amongst the various incentives announced, there was Central Excise duty exemption to the extent of 100% which was to be continued on finished products made in the Northeastern Region which was earlier available under the North East Industrial Policy, 1997. The petitioners set up new industrial units pursuant to the NEIIPP, 2007 in the various industrial growth centres and certificates of registrations were issued to these petitioners by the Directorate of Industries under NEIIPP 2007. After setting up their industries, they applied for registration and were granted

certificate of issuance by the General Manager, DICC. Along with the NEIIPP, 2007 announced by the Government of India, the Government of Assam had also announced a new industrial policy, namely, the industrial policy of Assam, 2008 granting exemption from payment of VAT under Assam VAT Act, 2003 to the new industrial units as well as to the existing industrial units undertaking exemption, modernization and diversification. In order to give effect to the industrial policy of Assam 2008, the Government of Assam framed a scheme namely, the Assam Industries (Tax Exemption) Scheme, 2009. The petitioners being eligible for availing the benefits under the Industrial Policy of Assam, 2008 and the Assam Industrial (Tax Exemption) Scheme, 2009 applied for availing the benefits before the Department and were issued the eligibility certificate dated 13.08.2014 for availing VAT exemption for a period of seven years from 10.11.2012 to 09.11.2019. The petitioners were also issued entitlement certificate by the Commissioner of Taxes, Assam by the Certificate dated 14.10.2015 for availing the benefits of VAT exemption. The particulars of the various petitioners are extracted below:

Sl.	Particulars of the Writ Petitions	Certificate Of Registration	Issuance of Registration	Item(s) manufactured

1	W.P(C) No. 2664/2019 (Shree Balaji Enterprise Vs. Union of India and Ors)	DICC/KAMRUP/EM(pt-2)/01714/2013	12.04.2013	Hinges
2	W.P(C) No. 1936/2019 (M/S Rhino Print O Packs Vs. Union of India and Ors.)	DICC/KAMRUP/EM(PT-2)/01830/2013	17.10.2013	Mono Cartons/Boxes(Paper,Carry Bags, Offset Printing, Magazine/Journal and Exercise Books
3	W.P(C) No. 2659/2019 (Shree Balaji Polymers Vs. Union of India & Ors.)	DICC/KAMRUP/(RURAL)EM(PT-2)/01589/2017	16.02.2017	Cistern and WC Covers
4	W.P(C) No. 2662/2019 (Shree Balaji Udyog Vs. Union of India & Ors.)	DICC/KAMRUP/(RURAL)/EM(PT-2)/01577/2017	24.01.2017	Pre Laminated Particle Board
5	W.P(C) No. 2668/2019 (North East Wood Suppy Vs. Union of India and Ors.)	DICC/DAMRUP(EM(PT-2)/02766/2017	12.09.2017	Flash Door, Based Door, Membrane Door, Kitchen Door etc and other Plywood Lamination
6	W.P(C) No. 2715/2019 (Sajjan Kr. Jalan & Ors. Vs. Union of India and Ors.)	DICC/KAMRUP/EM(PT-2)/01432/2012	02.06.2012	Shovels, Hooks etc
7	W.P(C) No. 2677/2019 (M/S Pitaraji Biofules Vs. Union of India and Ors.)	DICC/KAMRUP/EM(PT-2)02685/2017	25.01.2017	Biocoal/Briquette
8	W.P(C) No. 2660/2019 (M/S Hometek India Snacks Manufacturing Co Vs. Union of India and Ors.)	DICC KAMRUP/EIIPP 2007/01790/NU/2013	24.06.2013	Namkeen/Fried Grams, Snacks and Confectionery (Soan Papdi)
9	W.P(C) No. 2661/2019 (Nano Steel Pvt. Ltd. Vs. Union of India and Ors.)	DICC/KAMRUP/EM(PT-2)/01103/2011	16.06.2011	Bamboo Ply & Board
10	W.P(C) No. 2673/2019 (M/S Kishlay Savoury Foods Vs Union of India and Ors.)	DICC/AKMRUP9EM(PT-2)/02662/2016	03.12.2016	Extruded Namkeens and Popcorn
11	W.P(C) No. 2703/2019 (Amiker Enterprise Pvt. Ltd. Vs. Union of India & Ors.)	DICC/KAMRUP/NEIIPP2007/01175/EU/2013	25.12.2013	
12	W.P(C) No. 2762/2019 (Prataap Snacks Ltd. Vs Union of India and Ors.)	DICC/KAMRUP/NEIPP2007/01912/NU/2014	17.02.2014	Extruded Snack
13	W.P(C) No. 2764/2019	DICC/KAMRUP/NEIPP2007/0	13.01.2016	Common Salt, Sugar et

	(Prataap Snacks Ltv Vs. Union of India and Ors.)	2071/NU/2016		
14	W.P(C) No.4375/2020 (M/S Keshari Udyog Vs. Union of India and Ors.)	-	-	Manufacturers, Processors, Exporter, Importer, Dealers, Contractors, Agents, Suppliers, Stockiest, Representatives, Engineers, Designers, Consultations etc.

3. The petitioners are industries whose turnover was less than 1.5 Cr. which is below the threshold limits. As per the option available in the Notification No. 8 of 2003-CE dated 01.03.2003, the petitioners did not opt to get itself registered with the Central Excise Department in view of its turnover falling below the threshold limit. Accordingly, the petitioners were not required to pay Central Excise duty at all as its turnover was below the threshold limits prescribed and consequently, there is no need to opt for availing the exemption under Central Excise duty.

4. In the year 2017, the Government of India Act abolished the earlier tax regime and replaced it by the Goods and Service Tax regime. The items dealt in by the petitioners were shown to be taxable under GST Act of 2017 and therefore, the petitioners got itself registered under the GST Act and started collecting GST and made payments thereof. In view of the repeal of the earlier tax enactments, there was no need to pay Central Excise Duty and consequently there arose a confusion on the incentives offered under the Industrial Policy more particularly with regard to the payment of

Central Excise Duty and exemption thereof as was prescribed under the Industrial Policy. In order to continue the benefits as envisaged under the NEEIPP, 2007, the Government of India announced a scheme called the "Budgetary Scheme" to provide budgetary support to all the existing eligible manufacturing units operating in the States of Jammu Kashmir, Uttarakhand, Himachal Pradesh and Northeast including Sikkim who were eligible for the benefits of tax incentives under different industrial Policies/Schemes of the Government of India, for the residual period for which each of these industries were eligible. This new scheme was offered as a means to support the industrial units who were eligible for availing benefits under the earlier Excise Duty Exemptions/Refunds Schemes. The petitioners like other similarly situated units approached the authority by registering their claims for being considered for grant of budgetary support. The department however declined to consider these units like the petitioners for the budgetary scheme on the ground of such benefits would not be available to units who were either under the threshold exemption limit or were manufacturing exempted goods but are required to now pay GST under the GST regime. The claims of the petitioners were thus negated on the basis of a circular issued dated 10.01.2019 under which the claims for budgetary support raised by the petitioner were rejected on the

ground that such units were not registered under the Central Excise Act prior to introduction of the GST Act and were not availing any benefits under Notification No. 20/2007. It is this claim of the petitioners which have been rejected which is assailed in these bunches of writ petitions. The petitioners have prayed for Writ of Mandamus to direct the authorities to consider their cases like other similarly situated units and industries and extend the benefit of budgetary support as have been done in cases of other industries who were eligible and availing benefits under the Industrial Policies.

5. Dr. A. Saraf, learned Sr. Counsel assisted by Mr. P. Baruah, learned counsel for the petitioner submits the aforesaid writ petitions have been filed challenging the Notification dated 05.10.2017 issued by the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) framing a Scheme of budgetary support under the GST Regime to the units located in States of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim as well as the consequential circulars dated 27.11.2017, 30.11.2017 and 10.01.2019 issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue whereby it was clarified that the benefit of the budgetary scheme shall not be available to the industrial units which were under the threshold

exemption and/ or manufacturing exempted goods but are required to pay GST under the GST regime. The petitioners are challenging the Scheme of budgetary support in so far as the budgetary support has not been extended to the petitioners because its industrial unit was not registered under the Central Excise Act, 1944 prior to introduction of the GST regime as the turnover of the industrial unit was below the threshold limit and/or the goods manufactured by the industrial unit were exempted from payment of excise duty. In WP(C) No. 2664/2019, 1936/2019, 2659/2019, 2662/2019, 2668/2019 and 2715/2019, the petitioners were not liable to pay any excise duty on the ground that their turnover was below the threshold limit and as such they were not registered under the Central Excise Act, 1944. In WP(C) No. 2660/2019, 2661/2019, 2673/2019, 2677/2019, 2703/2019, 2762/2019, 2764/2019, 2582/2020 & 2558/2020, the petitioners were not liable to pay any excise duty on the ground that they were manufacturing exempted goods and as such they were not liable to be registered under the Central Excise Act, 1944. Although the facts are identical in all the cases but for the purpose of this present written submission, the facts in WP(C) No. 2664/2019 have been taken into consideration.

6. The learned Senior Counsel for the petitioner submits that for the tardy industrial progress of the North Eastern Region and for attracting attention of different investors and with a view to foster industrial growth activity in the North East, the then Hon'ble Prime Minister made a statement that new incentives would be announced for the industrial development of the North Eastern Region. Experts group/committees were constituted by the Ministry of Industry and Planning Commission to concretize the initiatives. Thereafter, to give effect to the statements and promises made by the Hon'ble prime Minister of India, the Government of India by a notification dated 24th December, 1997 was pleased to announce a new Industrial Policy Resolution containing a package of incentives and concessions for the entire North Eastern Region. The said Policy Resolution amongst others declared all industrial activity in growth centers, integrate infrastructural development centers, export promotion and industrial parks, export processing zone, industrial estates and industrial areas as completely tax free zones for a period of 10 years. It was announced and promised by the Government of India that all industrial activities for such areas would be free from inter alia income tax, central excise for a period of 10 years from the date of commencement of production and also that the State Government would be moved for

exemptions of sales tax, municipal tax and other such local taxes on industrial activity in the said areas. It was further stated in the aforesaid office memorandum dated 24th December, 1997 that the Ministry of Finance, Government of India, would be moved to amend the existing rules/notifications for giving effect to the decisions embodied in the Industrial Policy Resolution. Apart from exemption from inter alia, income tax and central excise duty, the Industrial Policy Resolution envisaged other different incentives and concessions like capital investment subsidy assistance in obtaining term loan and working capital and interest subsidy.

7. It is submitted that in terms of the promise made by the Government of India in the North East Industrial Policy Resolution contained in the office memorandum dated 24.12.1997, various notifications conferring benefits in terms with the promise as visualized in the Industrial Policy Resolution were issued by various authorities of the Central Government. In so far as the exemption of Central Excise was concerned, the respondent no.3 issued notifications no. 32/99-CE and 33/99-CE dated 08.07.1999 granting exemption in respect of all excisable goods cleared from a unit located in the Growth or Integrated Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estates or Industrial Area or Commercial Estate, as the case may be, specified in the

Annexure appended to the said notifications from such excise or additional duty of excise leviable thereon as is equivalent to the amount of duty paid by the manufacturer of goods from the account current maintained under Rule 9 read with Rule 173 G of the Rules. The exemption contained in the said notification was made applicable only to new industrial units which commenced commercial production on or after the 24th day of December, 1997 and to the Industrial Units existing before 24.12.1997 but undertook substantial expansion by way of increase in the installed capacity by not less than 25% on or after 24.12.1997. The exemption contained in the said notifications in terms of para 4 was made applicable to any of the above stated industrial units for a period not exceeding 10 years from the date of publication of the Notification in the official Gazette or from the date of commencement of commercial production, whichever was later.

8. The learned Senior Counsel for the petitioners strenuously urges that the Government of India, in order to continue the exemption and benefits as promised by the Hon'ble Prime Minister, announced a new package of fiscal incentives and other concessions for the 'North East Region' namely, the North East Industrial and Investment Promotion Policy (NEIIPP), 2007 w.e.f. 01.04.2007. In the said policy, various incentives were announced and promised for the new industrial units as well as existing industrial units

undergoing substantial expansion on or after 01.04.2007. In the said policy, amongst others, it was also announced that amongst others 100% excise duty exemption will be continued, on finished products made in the North Eastern Region, as was available in the NEIP, 1997.

9. It is submitted that being inspired and encouraged by the North East Industrial and Investment Promotion Policy (NEIIPP), 2007, the petitioner set up a new industrial unit at Industrial Growth Centre, Chaygaon, Vill. No-2, Jambari in the District of Kamrup, Assam for manufacturing of nails, nut bolts, hinges and other hardware goods. The petitioner thereafter applied for registration under the NEIIPP, 2007 for availing the benefits of the different incentive schemes announced in the NEIIPP, 2007 and the General Manager, DICC, Kamrup accordingly vide certificate dated 01.02.2011 granted Certificate of Registration to the petitioner under the NEIIPP, 2007 bearing the registration number DICC/KAMRUP/ NEIIPP2007/01180/NU/2011 dated 01.02.2011. After the establishment of new industrial unit, the petitioner firm applied for registration under the District Industries & Commerce Centre, Kamrup and was accordingly granted certificate of issuance dated 12.04.2013 by the General Manager, DICC, Kamrup.

10. It is submitted on behalf of the petitioner that after the announcement of the NEIIPP, 2007, the Government of Assam also announced a new Industrial Policy, viz. the Industrial Policy of Assam, 2008 granting exemption from payment of VAT under the Assam VAT Act, 2003 to the new industrial units as well as existing industrial units undertaking expansion, modernization or diversification. To give effect to the Industrial Policy of Assam, 2008, Government of Assam framed a scheme, namely, Assam Industries (Tax Exemption) Scheme, 2009. Since the petitioner established new industrial unit in pursuance to the NEIIPP, 2007 as well as the Assam Industries (Tax Exemption) Scheme, 2009, the petitioner firm became entitled to the benefits of VAT exemption under the NEIIPP, 2007 as well as the Industrial Policy of Assam, 2008 and the Assam Industries (Tax Exemption) Scheme, 2009 and accordingly the petitioner was issued with eligibility certificate dated 13.08.2014 for availing VAT exemption for a period of 7 years from 10.11.2012 (i.e. from the date of commencement of commercial production) to 09.11.2019. The petitioner was also issued with an entitlement certificate by the Commissioner of Taxes, Assam, Guwahati.

11. It is submitted that the petitioner industrial units although got itself registered under NEIIPP, 2007, but it did not opt to get itself registered with the Central Excise Department as the turnover of the petitioner was

less than 1.5 crores which was below the threshold limit and the same was an option under the Central Excise laws under the Notification No. 8/2003-CE dated 01.03.2003. After enactment of the Goods and Service Tax Act, 2017, the items dealt in by the petitioner became taxable under the GST Act and thereby the petitioner got itself registered under the GST Act and started collecting tax and making payment of the same. Similar is the case in respect of the petitioners in WP(C) No. 2664/2019, 1936/2019, 2659/2019, 2662/2019, 2668/2019 and 2715/2019. In respect of the petitioners in WP(C) No. 2660/2019, 2661/2019, 2673/2019, 2677/2019, 2703/2019, 2762/2019, 2764/2019, 2582/2020 & 2558/2020 since prior to the introduction of the GST Act, 2017 w.e.f 01.07.2017 they were manufacturing goods which were exempted under the Central Excise Act, 1944, they were not registered under the Central Excise Act. However, after enactment of the Goods and Service Tax Act, 2017, the items dealt in by the petitioners became taxable under the GST Act and thereby the petitioners got itself registered under the GST Act and started collecting tax and making payment of the same.

12. The Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) thereafter vide Notification dated 05.10.2017 framed a Scheme of budgetary support under the GST Regime to the units located

in States of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim. The said Scheme was in pursuance to the decision of the Government of India to provide budgetary support to the existing eligible manufacturing units operating in the States of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim under different Industrial Promotion Schemes of the Government of India, for a residual period for which each of the units were eligible. The new Scheme was offered, as a measure of goodwill, only to the units which were eligible for drawing benefits under the earlier excise duty exemption/refund schemes. In the said Scheme, it was provided that units which were eligible under the erstwhile Schemes and were in operation through exemption notifications issued by the Department of Revenue in the Ministry of Finance, as listed under Para 2 would be considered eligible under the said Scheme. The said Scheme was made limited to the tax which accrues to the Central Government under Central Goods and Service Tax Act, 2017 and Integrated Goods and Service Tax Act, 2017 after devolution of the Central tax or the Integrated tax to the States, in terms of Article 270 of the Constitution of India. The objective of the said budgetary Scheme, as stated in the said notification, is as under:

"The GST Council in its meeting held on 30.09.2016 had noted that exemption from payment of indirect tax under any existing tax incentive scheme of Central or State Governments shall not continue under the GST regime and the concerned units shall be required to pay tax in the GST regime. The Council left it to the discretion of Central and State Governments to notify schemes of budgetary support to such units. Accordingly, the Central Government in recognition of the hardships arising due to withdrawal of above exemption notifications has decided that it would provide budgetary support to the eligible units for the residual period by way of part reimbursement of the Goods and Services Tax, paid by the unit limited to the Central Government's share of CGST and/or IGST retained after devolution of a part of these taxes to the States."

13. An eligible unit has been defined in Clause 4.1 of the said Scheme as under:

" '**Eligible unit'** means a unit which was eligible before 1st day of July, 2017 to avail the benefit of ab-initio exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may be, issued in this

regard, listed in para 2 above and was availing the said exemption immediately before 1st day of July, 2017. The eligibility of the unit shall be on the basis of application filed for budgetary support under this scheme with reference to:

(a) Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST; or

(b) GST registration for the premises as a place of business, where manufacturing activity under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 3 10.06.2003 were being carried prior to 01.07.2017 and the unit was not registered under Central Excise."

14. The determination of the amount of budgetary support was laid down in Clause 5 of the said Scheme. It was provided in the said Scheme that sum total of (i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section(1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax. (ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after

utilization of the Input tax credit Tax of the Central Tax and Integrated Tax shall be the amount of budgetary support under the scheme for specified goods manufactured by the eligible unit. The manner of budgetary support is laid down in Clause 7 which is as under:

> "**7. MANNER OF BUDGETARY SUPPORT**
>
> **7.1** The manufacturer shall file an application for payment of budgetary support for the Tax paid in cash, other than the amount of Tax paid by utilization of Input Tax credit under the Input Tax Credit Rules, 2017, to the Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be, by the 15th day of the succeeding month after end of quarter after payment of tax relating to the quarter to which the claim relates.
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> **7.2** The Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be, after such examination of the application as may be necessary, shall sanction reimbursement of the budgetary support. The sanctioned amount shall be conveyed to the applicant electronically. The PAO, CBEC will sanction and disburse the recommended reimbursement of budgetary support."

15. After framing of the aforesaid budgetary support Scheme, the Government of India vide Circular dated 27.11.2017 provided for that under the central Excise regime as it existed prior to 01.07.2017, the units located in the states of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim were eligible to avail exemption from payment of Central Excise duty in terms of area based exemption notifications. However, under the GST regime there was no such exemption and the existing units which were availing exemptions from payment of Central Excise duty prior to 01.07.2017 were required to pay CGST and SGST/ IGST like a normal unit and as such presently no exemption was available to these units by way of either exemption or by way of refund. It was further stated in the said Circular that to obviate the hardship faced by such units, the Central Government has decided to provide budgetary support to the eligible units which were operating under erstwhile Area Based Exemption Schemes, for the residual period for which the units would have operated under the schemes, by way of refund of the Goods and Service Tax, limited to its share of CGST and/ or IGST retained after devolution of taxes to the states. The procedure for claims relating to the first quarter ending on September, 2017 was also laid down in the said Circular dated 27.11.2017. The Government of India, Ministry of Finance,

Department of Revenue, Central Board of Excise and Customs vide Circular dated 30.11.2017 substituted sub-para (vi) of para 8 of the Circular dated 27.11.2017 relating to registration of eligible units. The said Circular dated 30.11.2017 also laid down the manner of transfer of the budget by DIPP to DDOs and the manner of sanction and payment. Since there was some difference of opinion as regards the eligibility of units under the Scheme of budgetary support which were under threshold exemption or manufacturing exempted goods but were required to pay GST under the GST regime, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Custom vide Circular dated 10.01.2019 confirmed that the Scheme of Scheme seeks to provide benefits to the eligible units for the residual period which were availing exemption under erstwhile exemption notifications issued under Central Excise regime and as such the benefit would not be available to units which were under threshold exemption or manufacturing exempted goods but are required to pay GST under the GST regime.

16. Before coming into force of the GST regime, the petitioners due to having turnover of less than 1.5 crores, which was the threshold limit, were not registered under the central excise law as was provided vide Notification No. 8/2003 dated 01.03.2003 and as such the petitioners were

not collecting and paying taxes under the central excise law. The manufacturing units whose turnover was above the threshold limit were registered under the central excise law and were paying taxes and became eligible for refund under the NEIIPP, 2007 read with the Notification issued under Central Excise Act. However, after the introduction of GST, the units which were not required to pay excise duty because their turnover was below the threshold limit have become liable to pay GST. Similarly, there are units which were not required to pay excise duty because they were manufacturing goods which were exempted under the Central Excise Act, have now become liable to pay GST after its introduction with effect from 01.07.2017. However, such units have all been denied the budgetary support on the ground that such units were not registered under the Central Excise Act prior to introduction of the GST Act and were not availing any benefits under Notification No. 20/2007. It is submitted that the aforesaid action of the respondent authorities is absolutely illegal inasmuch as the petitioner industrial units were otherwise eligible units for availing various benefits as per Notification No. 20/2007 but only because their turnover had not exceeded the threshold limit, the petitioners were not required to pay central excise duty. If the turnover had exceeded the threshold limit the petitioners would have been liable to make payments of

the central excise duty and claim refunds. As such, the petitioners cannot be denied the benefits of the Scheme of Budgetary support provided by Government of India. Similarly in case of the petitioners who were manufacturing items which were exempted under the Central Excise Act, thereby were not liable to be registered under the Central Excise Act. If the said items would have been taxed under the Central Excise Act prior to 01.07.2017, these petitioners would have paid central excise duty and would have claimed refund as per NEIIPP, 2007 and Notification No. 20/2007.

17. It is submitted that the bigger industries having turnover of more than 1.5 crores automatically became liable for registration under the central excise law and now, after the issuance of the budgetary support scheme, are eligible for the benefits thereunder. On the other hand the small industries having turnover of less than 1.5 crores were not required to be registered under the central excise law and after the issuance of the budgetary support scheme in the GST regime have become ineligible for benefits for the reason that the same were not registered under the erstwhile central excise law. Similarly industries who were manufacturing goods that were exempted under the Central Excise Act were not required to be registered under the central excise law and after the issuance of the

budgetary support scheme in the GST regime have become ineligible for benefits for the reason that the same were not registered under the erstwhile central excise law. If the same is allowed, small industries like that of the petitioner's will become uncompetitive in the market, which was neither the object nor the scheme of the NEIIPP, 2007.

18. In support of his contentions, the learned Sr. Counsel for the petitioners relied upon the following Judgments:

Reasonable Classification-Article 14

(i) Budhan Choudhury Vs. State of Bihar, reported in AIR 1955 SC 191

(ii) Ram Krishna Dalmia Vs. S.R. Tendolkar, reported in AIR 1958 SC 538

(iii) Nagpur Improvement Trust Vs. Vithal Rao, reported in (1973) 1 SCC 500

(iv) E.P. Royappa Vs. State of Tamil Nadu, reported in (1974) 4 SCC 3

(v) Ameerunnissa Begum Vs Mahboob Begum, reported in (1953) SCR 404

(vi) Ramprasad Narain Sahi Vs. State of Bihar, reported in (1953) SCR 1129

(vii) State of U.P. Vs. Deepak Fertilizers & Petrochemical Corp Ltd., reported in (2007) 10 SCC 342

(viii) D.S. Nakara Vs. Union of India, reported in (1983) 1 SCC 305

(ix) Ayurveda Pharmacy Vs State of Tamil Nadu, reported in (1989) 1 SCC 305

(x) Associated Cement Companies Ltd. Vs. Government of Andhra Pradesh, reported in (2006) 1 SCC 597

(xi) Amarendra Kumar Mohapatra Vs. State of Orissa, reported in (2014) 4 SCC 583

(xii) In Re. The Special Courts Bill, 1978, reported in (1979) 1 SCC 380

(xiii) Subramanian Swamy Vs. Director, CBI, reported in (2014) 8 SCC 682

Article 14, 15 & 19

(xiv) Union of India Vs. N.S. Rathnam and Sons, reported in (2015) 10 SCC 681;

(xv) Makum Tea Co. (India Ltd) Vs. State of Assam, reported in (1997) 1 GLR 138

Interpretation of taxing statute-Exemption Notification

(xvi) State of Jharkhand Vs. Tata Cummins Ltd., reported in (2006) 4 SCC 57

(xvii) Stat of Bihar Vs. Suprabhat Steel Ltd., reported in (1999) 1 SCC 31

<u>Promissory Estoppel or Equitable Estoppel</u>

(xviii) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P., reported in (1979) 2 SCC 409

(xix) Century Spinning & Mfg Co. Ltd. Vs. Ulhasnagar Municipal Council, reported in (1970) 1 SCC 582

(xx) Pournami Oil Mills Vs. State of Kerala, reported in 1986 Supp SCC 728

(xxi) Shri Bakul Oil Industries Vs. State of Gujarat, reported in (1987) 1 SCC 31

(xxii) Pawan Alloys & Casting (P) Ltd. Vs U.P. SED, reported in (1997) 7 SCC 251

(xxiii) Mahabir Vegetable Oils (P) Ltd. Vs State of Haryana, reported in (2006) 3 SCC 620

(xxiv) State of Pubjab Vs. Nestle India Ltd., reported in (2004) 6 SCC 465

(xxv) Kasinka Trading Vs. Union of India, reported in (1995) 1 SCC 274

(xxvi) Union of India Vs. Lt. Col. P.K. Choudhury, reported in (2016) 4 SCC 236

(xxvii) State of Jharkhand Vs. Brahamaputra Metallics Ltd.,(Civil Appeal No. 3860-3861 of 2020)

(xxviii) Food Corporation of India Vs. Kamdhenu Cattle Feed Industries, reported in (1993) 1 SCC 71

Grounds for judicial review-malafide exercise of power

(xxix) Noida Enterpreneurs Assn. Vs. NOIDA, reported in (2011) 6 SCC 508

19. Per contra, Mr. S.C. Keyal, learned counsel representing the Union of India and Central Excise Department strongly disputes the claims of the petitioners and the submissions of the learned counsel appearing for the petitioners. Mr. Keyal refers to the affidavit-in-opposition filed by the respondent authorities and submits that the Government was not legally obliged to compensate the affected industrial units in NER and other Himalayan States due to the change in Tax policy and structure. It is submitted that there was no relation between Central Excise Duty and GST. The GST council in it's wisdom had left it to the discretion of the Central and State Government to notify schemes of budgetary support to such units you may want to continue with such schemes. During the deliberation held between the concerned departments, it was proposed to Department for Promotion of Industry and Internal Trade (DPIIT) that it should provide budgetary support to eligible units for the residual period stipulated under

the Scheme of NEIIPP-SPS by way of reimbursement of Goods and Service Tax limited to the Central Government Share of CGST and IGST retained after devolution of states. It is stated that only such industrial units which are currently availing area based exemption under the Central Excise Act will be eligible for financial incentives under the scheme for definite period not exceeding 10 years from the date of commencement of commercial production. It is stated that the scheme is for a residual period for which each of the units is eligible and this budgetary support is offered only as a measure of good-will for those units which are eligible for drawing benefits under the earlier excise duty exemption/refund scheme but has otherwise no relation to the erstwhile scheme. It is stated that the budgetary scheme will be available for 58% of the Central Tax Paid through debit in the case leisure account maintained by the unit in terms of Section 49(1) of the Central Goods and Service Tax Act, 2017 after utilization of the input tax credit of the central tax and integrated tax and 29% of the integrated tax paid through debit in cash leisure account maintained by the unit in terms of Section 20 of the Integrated Goods and Service Act, 2017 after utilization of the input tax credit of Central Tax and Integrated Tax. According to the respondents, the petitioners opted to avail the benefit available under Notification No. 8 of 2003-CE dated 01.03.2003 to get the

benefit of exemption from the Central Excise Duty. Since the petitioners did not avail the benefits on the notification and there is no record available with the respondents that the petitioners had approached the respondents to avail the benefits under Notification 20/2007 and since they did not avail the benefits, the question of extending the scheme of budgetary support to them under Notification dated 05.10.2017 does not arise. The respondents state that had the petitioner units been registered under Central Excise Law or had paid Central Excise Duty for the same goods produced by the petitioners units, it would have been eligible for refund of Central Excise Duty in terms of the benefits conferred under NEIIPP, 2007. In that event, the petitioners would have continued to be eligible for grant of budgetary support. The petitioners having opted for availing the benefits under the Notification No. 8/2003-CE dated 01.03.2003 to get the benefit of exemption from payment of Central Excise Duty, they cannot be extended the benefit of budgetary support which is restricted to only those units who had their registration under Central Excise and had paid Central Excise Duty and had collected their refunds as applicable. The learned counsel for the respondents submits that in that view of the matter, there is no merit in the writ petitions and the prayers made in the writ petitions ought not to be allowed and the writ petitions should accordingly be dismissed as being

devoid of any merit. Mr. Keyal has relied upon the following Judgments to buttress his submissions:

Validity of Budgetary support scheme upheld

(i) Hero Motocrop Ltd. Vs. Union of India (W.P.(C) No. 505/2022);

Meaning of eligible industries

(ii) State of Gujarat Vs Arcelor Mittal Nippon Steel India, reported in (2022) 6 SCC 459;

Interpretation of taxing Statute

(iii) State of Maharashtra Vs. Shri Vile Parle Kalvani Mandal & Ors., reported in (2022) 2 SCC 725

(iv) Krishi Upaj Mandi Samiti Vs. Comm. Of Central Excise & Service Tax, reported in (2022) 5 SCC 62

(v) Commissioner of Customs Vs Dilip Kumar & Co. (2018) 9 SCC 1

20. In rejoinder to the submissions of the respondents, the learned Senior Counsel for the petitioner submits that the said contentions of the Respondents are not tenable at all inasmuch as the Petitioners established their industrial units on the basis of the promises held out under the North East Industrial and Investment Promotion Policy (NEIIPP), 2007 and to give effect to the promises made in the said Policy, the Excise Notification No. 20/2007 dated 25.04.2007 was issued. Since the Petitioners are

entitled to the benefits as per the Industrial Policy of 2007 read with notification No. 20/2007, the question of availing benefits as per the Notification No. 8/2003-CE dated 01.03.2003 does not arise at all and thereby the aforesaid contentions made on behalf of the Respondents are totally misconceived.

21. It is submitted that the Petitioners in the present Writ Petitions are not challenging the validity of the Budgetary Support Scheme but have challenged the denial of the benefit of Budgetary Support Scheme to the Petitioners in spite of the fact that the Petitioners are eligible to the said benefits as such rejection of the claim of the petitioners are in complete violation of Article 14 of the Constitution of India. The question which came up for consideration before the Apex Court in Hero Motocrop (Supra) was altogether different than one raised in the present Writ Petitions. The issue which has been raised in the present Writ Petitions was not the subject-matter for consideration before the Apex Court in **Hero Motocorp** (supra). The Apex Court in **Union of India Vs. Arulmozli Arulmozhi** reported in **(2011) 7 SCC 397** held that the Court should not placed reliance on decision without discussing as to how the fact situation of the case before it fits in the facts situation of the decisions on which reliance is placed. Thereby it cannot be said that only because the Supreme Court in **Hero**

Motocorp (supra) while dealing with the said Budgetary Scheme on some other issue and had upheld the Scheme, the said Scheme cannot be subject-matter of challenge in altogether different ground and that too for denying the benefit of the said Scheme in violation of Article 14 of the Constitution of India.

22. In response to the contentions advanced on behalf of the Respondents that exemption notification needs to be construed strictly and reliance were placed a number of decisions of the Apex Court in support of the said contention, the learned Senior counsel for the petitioner submitted that the aforesaid argument of the Respondents is not applicable in the present case inasmuch as in the present case the challenge is basically to the denial of the benefit of the Budgetary Support Scheme although the Petitioner industrial units were eligible for the excise duty exemption as per the Industrial Policy and Excise Notification and also denial is hit by Article 14 of the Constitution of India and thereby the aforesaid submissions of the Respondents have no bearing in resolving the disputes raised in the present set of Writ Petitions.

23. It is submitted by the learned counsel for the petitioners that not only under the Doctrine of Promissory Estoppel but even under the Doctrine of Legitimate Expectation, the petitioners cannot be denied the

benefits under the Budgetary Support Scheme on ground that the petitioners were not registered under the Central Excise Act, 1944 prior to 01.07.2017 as their total turnover of the industrial unit was below threshold limit and/or that the industrial unit was manufacturing exempted goods and as such respondent authorities are liable to be directed to extend the benefits of the Scheme to the petitioner's industrial unit.

24. The learned counsels for the parties have been heard. Pleadings on records have been perused. Judgments cited at the bar also been carefully perused.

25. It is argued on behalf of the petitioner that the budgetary support scheme was made applicable in terms of the definition prescribed at Clause 4.1 of the Office Memorandum dated 05.10.2017 to those units which had been availing the benefit of the NEIIPP policy. Although the petitioner units were eligible under the NEIIPP, but the benefits offered thereunder were not claimed at the relevant point in time as their turnover was below the threshold limit or that they were manufacturing items which were exempted under Central Excise. Therefore, there was no occasion for the petitioners to claim these benefits. Under clause 4.1 of the budgetary scheme, eligible unit means a unit which was eligible before the first day of July 2017 to avail the benefit of the ab-initio exemption or exemption by

way of refund from payment of central excise duty under notifications. It is submitted that as per the said clause 4.1, this benefit of budgetary support under the scheme would be applicable with reference to the central Excise registration number for the premises of eligible manufacturing unit as it existed prior to migration to GST. The determination of the budgetary support is laid down on the clause 5 of the said scheme. Under the said clause, the sum total of 58% of the central tax paid through debit in the cash ledger account maintained by the unit under section 49 of the CGST Act after utilization of the input tax credit of the Central Tax and Integrated Tax would be the extent of the budgetary support. Insofar as the Integrated Tax paid through debit in the cash ledger account maintained by the unit in terms of the section 20 of the Integrated Goods and Service Act, 2017, 29% of the integrated tax paid after utilization of the input tax credit of the central tax and integrated tax shall be the amount of budgetary support under the scheme for specified goods manufactured by the eligible unit. This budgetary support scheme is initiated by the Central Government to obviate the hardships faced by those units who were eligible to avail exemption from payment of Central Excise Duty under the NEIIPP as under the GST regime there is no such exemption and all existing units who are availing exemption from payment of Central Excise

duty prior to 01.07.2017 were required to pay CGST and SGST/IGST like normal unit. The manner of providing the budgetary support is described in the clause 7. According to the petitioners, the turnover of the petitioner units being below 1.5 crores, which was the threshold limit and they were therefore not required to be registered under the Central Excise law as provided under notification number 8/2003 dated 01.03.2023. The petitioner units were therefore was not collecting and paying taxes under the central excise law. Other manufacturing units whose turnovers were above the threshold limit of 1.5 crores were registered under central excise law and were paying taxes and consequently became eligible for a refund under NEIIPP 2007 read with the notification issued under Central Excise Act. However, after introduction of the GST those units like the petitioners which were earlier not required to pay excise duty by virtue of their turnover being below the threshold limit of 1.5 crores, became liable to pay GST. These units who were not paying central excise duties although were otherwise eligible to avail the benefits granted under the NEIIPP, but these benefits were not availed of for the simple reason that under the existing law then which is the central excise and Salt Act 1944, these units were not called upon to pay central excise duty as per the provisions of the

erstwhile central excise law as their turnover fell below the threshold limit of 1.5 crores.

26. This, however, did not mean that the petitioners were otherwise not eligible for claiming benefits. According to the petitioners, they had fulfilled all the necessary requirements and were granted eligibility certificates. They had established their industries or had expanded their installed capacities by the period specified. They had clearances/NOCs being granted by other connected departments. Under such circumstances, debarring the present petitioners from availing the benefit of budgetary support as compared to those units who were availing exemptions by paying Central excise duty under the NEIIPP, is not a reasonable classification and therefore the same is hit by Article 14 of the Constitution of India. The sole ground for making such a classification in not extending the benefit of budgetary support to the petitioners units, are that they were not paying central excise duty under the NEIIPP. It was urged on behalf of the petitioners that to avail the benefit of NEIIPP, the conditions mentioned in the policy, namely that the industry must be set up or their installed capacity be increased within the cutoff date in the Northeast region and that they satisfied all the eligibility criteria. On the basis of the applications made by the petitioners and upon due assessment of their

conditions, they were granted eligibility certificate pursuant to which the industries were set up or the installed capacity of their existing industries were substantially increased within the periods specified under the NEIIPP. However, as per provisions of the central excise laws, they were not required to pay central excise duty as their aggregate turnover was below the threshold limit of 1.5 crores and consequently no registration was called for under the central excite duty. This, however, did not mean that the petitioners were not eligible to avail the benefits of central excise exemption under the NEIIPP. This position that the petitioners were eligible for availing the exemption under NEIIPP and had satisfied all the requirements is also not disputed by the respondent authorities.

27. However, the criteria for extending the budgetary support scheme is only in respect of those industries who had been paying central excise duties by virtue of their turnover exceeding the threshold limit of 1.5 crores. This will have the effect of taking away the promise extended to by the Government of India by its policy brought in through the NEIIPP. These industries were promised to be given a tax free environment to set up their industries for next ten years under the NEIIPP. The very scheme of the budgetary support was brought in to provide a relief to those industries

who were availing the benefits under the area based exemption schemes like the NEIIPP.

28. Consequently, the respondent authorities could not have arbitrarily created a class within a class by permitting budgetary support scheme to be provided only to those industries who were willing benefits under the area based exemption schemes and who were paying Central excise duty under the erstwhile Central Excise law. The essence of the budgetary scheme which has been brought out is to provide budgetary support to all industries who were availing benefits under the area based exemption schemes like the NEIIPP. If that is the avowed policy of the Government to provide budgetary support to all those units or industries who are availing area based exemption schemes under the NEIIPP, the exclusion of the petitioners and/or rejection of their claims seeking budgetary support solely on the premise that they were either not registered under the central excise law or their turnover fell below the threshold limit of 1.5 crores is opposed to the policy brought in by the Government of India and contrary to the promise held out to these industries like the petitioner for encouragement of development of industries in the various areas, including the Northeastern region. Under such circumstances, the respondent

authorities cannot be permitted to create an artificial classification which has no nexus with the object sought to be achieved.

29. The object sought to be achieved is to provide financial support/ budgetary support to all those industries availing area based exemptions. Such area based exemptions to be availed of are permissible only upon such industry fulfilling the requirements specified under the policy of NEIIPP. Once this criteria is satisfied by any industry, then all benefits under the scheme, including central excise exemption benefit, will be available for the entire period of the promise made, namely for a period of ten years. With the advent of the GST regime, the central excise law came to be subsumed into the GST and consequently there is no separate duty of central excise. The units are required to pay GST which includes a portion of the central excise duty which was earlier paid by those industries whose turnover was beyond the threshold limit of 1.5 crores. After the GST regime and after the central excise duty had been subsumed into GST, all units, including the petitioners, are now required to pay GST. Therefore, the classification sought to be made by the respondent authorities to grant the benefit of budgetary support to only those units who were earlier claiming central excise exemption after paying their duty is wholly without basis inasmuch as there is no component of central excise that has been

worked out or apportioned under the GST tax payable by such units so as to confer the benefit of budgetary support scheme only to those manufacturing units to the exclusion of other units like the petitioners. The petitioners urge that this is a classification which is not reasonable and is therefore hit by Article 14 and consequently, this court should issue appropriate writ direction or order to the respondent authorities to include the claims of the petitioners units also for grant and benefit of the budgetary support scheme.

30. Mr. S.C. Keyal, learned CGC on the other hand disputed the claims of the learned counsel for the petitioners and submits that the claims of the petitioners are not maintainable in the eye of law. Therefore the writ petitions should be dismissed. At the outset. Mr. Keyal submits that the scheme of budgetary support dated 5.10.2017 was put to challenge before the Delhi High Court in WP(C) No. 505/2022 (Hero Motocrop Ltd. Vs. Union of India). This writ petition was dismissed by judgment and order dated 02.03.2020. The SLP filed against the Judgment was also dismissed by the Apex Court on 17.10.2022 in Civil Appeal no.7405/2022 reported in (2023) 1 SCC 386. Mr. Keyal submits that in view of the authoritative finding by the Apex court negating the challenges made to the budgetary scheme, the entire matter actually stands covered by the Apex Court Judgment. In

the said writ petitions, the very budgetary scheme was challenged in its present form and that being negated and the budgetary scheme being upheld, the arguments made by the learned counsel for the petitioner need not be specifically dealt with and the issue stands covered by the Judgment and Order of the Apex court as the budgetary scheme itself has been upload. Mr. Keyal submits that under clause 2.3 of the scheme, although a reference is made to the notification number 20/2007- CE dated 25.04.2007, but in clause 4, there is no mention of the notification 20/2007-CE dated 25.04.2007 and as such, the petitioner units are not entitled to the benefit of scheme of budgetary support. The respondents submit that the budgetary support scheme is not supported by any statute. It is a policy decision taken by the Government of India to give support to the units who are paying central excise duty and claiming exemptions under the erstwhile NEIIPP policy. Since the units of the petitioners were not even registered under central excise or were required to pay central excise duty by virtue of their annual turnover being below the threshold limit of 1.5 crores, they had never paid any central excise duty. Consequently, with the advent of GST, they are now required to pay the GST as per the provisions of the GST statute. The Government of India took a policy decision to provide some benefit to those industries only who

were paying central excise duty and claiming exemptions under the erstwhile central excise laws prior to the GST regime. Under such circumstances, the decision not to offer budgetary support to the petitioner units cannot be faulted with. The petitioner units and the other units who have been given budgetary support are not on the same footing and the classification made by the respondent authorities is based on reasonable basis with the sole object to provide financial or budgetary support to only those industries who are paying central excise duty under the erstwhile central excise law statute. As such, since the Government has taken a decision to grant benefit of budgetary support to those industries paying central excise duty, there is no arbitrariness in the policy adopted by the government not to provide budgetary support to the petitioners. Under such circumstances, according to the respondents there is no violation of Article 14 in providing budgetary support scheme and restricting it to only those units who were paying central excise duty and availing exemption under the erstwhile Central excise law

31. In rejoinder, the petitioners submits that the decision of the Apex court in Hero Motor Corp (Supra) is on the issue of the validity of the scheme, which has not been questioned by the present petitioners in the present proceedings. On the contrary, it is the claim of the petitioners to

extend the benefit of budgetary support to the petitioners as have been done in cases of other similarly situated units. Therefore, the contention of the respondents that in view of the authoritative finding of the Apex court in Hero Motocorp(Supra), the matter does not require any further consideration inasmuch as the Apex court has upheld the validity of the budgetary scheme, is thoroughly misplaced and not applicable to the issues raised by the present petitioners in the present proceedings. The fact that the Apex Court had upheld the validity of the budgetary scheme is all the more reason why the petitioners should also be granted and extended the benefit of the budgetary scheme. The grievances of the petitioners is in respect of the exclusion of the petitioner units from the benefit of being granted the budgetary support scheme by creating an artificial classification that the benefit is to be extended to only those industries who are eligible and were paying central excess duties and claiming exemptions.

32. In so far as the contentions of the respondents that the exemption notification needs to be interpreted strictly, the petitioners submit that this argument is not applicable in the facts and circumstances of this case as the challenge in the present proceeding is to the denial of extending the benefit of budgetary support scheme. Although the petitioner industrial

units are all eligible for the excise duty exemption under the industrial policy announced by the Government of India and the consequent central excise notifications, but this benefit has been denied to the petitioner industrial units on an artificial classification made by the respondent authorities that the budgetary support scheme is to be provided to only those industrial units who were paying Central Excise Duty and claiming exemptions. This classification is unreasonable and has no nexus to the objects sought to be achieved, as the entire benefit conferred by the Government of India through the budgetary support appears to be towards the central excise duty which was paid by those industrial units under the industrial policy prior to the GST regime. However, with effect from 01.07.2017 pursuant to the GST regime, there is no distinction or component of central excise which can be curved out of the GST tax required to be paid by the industrial units. If the classification is based on only the payment of central excise duty earlier by the Industries, then w.e.f 01.07.2017, under the GST, that classification is no longer available and the central excise duty has lost its identity and has been entirely subsumed into GST. Under such circumstances, the authorities could not have culled out or calculated the central excise duty paid component when such provision is not even envisaged under the GST statute. Under the GST

statute, all units like the petitioners are required to pay GST. Under such circumstances, where the petitioners as well as the other industries to whom the benefit of budgetary support has been extended, are both paying GST uniformly, the benefit of granting budgetary support to only those units who had paid central excise duty under the erstwhile central excise laws and excluding the same benefit to the petitioner units by creating their artificial classification, the same is certainly not based on any reasonable classification and if that classification which is sought to be projected by the respondents is to be accepted, then the same is contrary to the statute itself and therefore, the said classification is arbitrary on contrary to the provisions of the GST laws and therefore the same needs to be suitably interfered with, set aside and quashed, and the respondents be directed to extend the benefit of budgetary scheme to the petitioners.

33. On the basis of the contentions made before this Court, the writ petitioners can be broadly classified into two groups:-

a) One category are those units which were not paying central excise Duty because their annual turnover was below the threshold limit of rupees 1.5 crores per annum.

b) The second category comprises of the writ petitioners who are manufacturing exempted goods which were exempted from

the duty under the Central Excise and Salt Act 1944. Both these groups were therefore not required to be registered under the Central Excise and Salt Act 1944. With effect from 01.7.2017, the Goods and Services Act having been enacted, the items which are manufactured by both these categories of units are taxable under the GST laws and therefore they are now required to pay the GST. The respondent authorities did not consider the cases of these petitioners for being given the benefit of budgetary support scheme on the ground that they were not registered under the Central Excise law prior to the GST act.

34. In the Chart extracted at Paragraph-2 above, the petitioners listed at Sl. Nos. **1 to 6** fall under category (a) above, namely, those manufacturing units whose turnover was below the threshold limit under the Central Excise Act, 1944 prior to the introduction of the Goods and Service Tax Act, 2017 with effect from 01.07.2017 and thereby were not registered under the Central Excise Act, 1944 but became liable to payment of goods and service tax after 01.07.2017.

The petitioners at Sl. Nos. **7 to 14** in the Chart at Paragraph-2 fall under Category (b) namely, those units who were manufacturing exempted goods under the Central Excise Act, 1944 prior to the introduction of the

Goods and Service Tax Act, 2017 and thereby were not registered under the Central Excise Act, 1944 but became liable to payment of goods and service tax after 01.07.2017.

35. Before proceeding further, it is apposite to refer to the Industrial Policies announced by the Government of India, the Government of India by the office Memorandum dated 24.12.1997 announced the new industrial policy and other concessions in the Northeastern region. Under the fiscal incentives announced, it was mentioned that the Government has approved for converting the growth centers and the Integrated Infrastructure Development Centres (IIDC) into total tax free zone for the next ten years. All industrial activity in these zones would be free from Income Tax, Excise for a period of ten years from the commencement of production. State Governments would also be requested to grant exemptions in respect of sales tax and municipal tax. These fiscal initiatives and exemptions were clearly provided for under clause C of the OM dated 24th December 1997. In furtherance to be promises held out under the new industrial policy notified by OM dated 24th December 1997. Notification number 32/1999-CE dated 08.07.1999 was issued by the Government of India. Under the said notification at Clause-3, it was provided that the exemptions contained in that notification shall apply only to the following

units, namely clause (a) New Industrial units which have commenced their commercial production on or after the 24th day of December, 1997 and (b) Industrial units existing before the 24th day of December, 1997 but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty five per cent on or after the 24th day of December, 1997. The said notification also contained the particulars of the various integrated infrastructure development centers and growth centers, export promotion Industrial Park, Industrial estates, industrial area, commercial estate for the various states of the Northeastern Region including the State of Assam. The procedure prescribed for claiming the exemption is detailed in clause 2 of the said notification.

36. This was followed by another Notification being notification number 33/1999-CE dated 08.07.1999. This notification was in respect of the goods of the specified newly expanded units in the states which are exempt from the basic and additional duties equivalent to the duty paid by the manufacturer in respect of the units/factories in the Northeastern region. Under the said Notification, the goods specified in the schedule were exempted from payment of basic and additional duties. The Government of India thereafter by Office Memorandum dated 01.04.2007 approved another package of fiscal incentives and other concessions for the

Northeast region, namely the Northeast Industrial Investment promotion policy NEIIPP, 2007 with effect from 01.04.2007. The said policy inter alia also included excise duty exemption. Under the said policy, 100% of the excise duty exemption will be continued on the finished products made in the northeastern region as was available under the earlier industrial policy of 1997. The said NEIIPP also provided for a *"negative"* list specifying the industries which will not be eligible for benefits under NEIIPP of 2007. Although the petitioner units established their units and commenced production from such units or from such expanded units, they were either manufacturing goods which were already exempted from excise duty or their turnover fell below the threshold limit of 1.5 crores. Consequently, none of the petitioners at the relevant point in time were required to pay excise duty and claim their refunds. However, the requirement of fulfilling the criteria for being considered eligible for the fiscal incentives under both the NEIP, 1997 as well the NEIIPP, 2007. However, since they were not required to pay the excise duty because of the reasons mentioned above, there was no occasion for them to claim any exemption.

37. Pursuant to the Government bringing in the GST Law, several taxes including central excise duty were subsumed into the GST. The GST was brought into effect from 01.07.2017. However, the industrial policies which

were commenced by the Government of India and the benefits thereunder were not recalled or modified or annulled pursuant to introduction of GST. By notification dated 05.10.2017, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India brought out the scheme of budgetary support under the Goods and Service Tax scheme to the units located inter alia Northeast including Sikkim. Under the said notification, budgetary support was given to existing eligible manufacturing units operating inter alia in the States of Northeast under different industrial policy schemes of the Government of India for a residual period for which each of the units is eligible. This new scheme of budgetary support was offered as a measure of goodwill only to the units who were eligible for drawing benefits under the earlier excise duty exemption/refund schemes. However, the scheme otherwise has no relation to the earlier industrial policy schemes. The pleaded case of the petitioner units is that although at the relevant point in time the petitioner units were not required to claim exemption as they were not required to pay central excise duty under the statute either because the manufactured goods were exempted from excise duty or their total turnover fell below the threshold limit of 1.5 crores. However, post introduction of GST, all these items which were manufactured by the petitioner units became

taxable under GST and they were not exempted on that basis or on the basis of their turnover falling below 1.5 crores. However, their claim for the benefit of budgetary financial support was clarified by the government by notification dated 10.01.2019 whereby the budgetary support scheme was extended only to those eligible units for the residual period for which they were availing exemptions under the erstwhile exemption notification issued under the Central Excise Laws and statutes. This clarification was issued by circular number 116/15/2017-CX-3 dated 10.01.2019. It is this decision of the respondents which is being assailed in the present proceedings whereby the petitioner units were excluded from being conferred the benefit of the budgetary support scheme.

38. It is necessary to refer to the Notification and the Circular which have given rise to the controversy which are the subject matters of the present proceedings namely:

(a) Notification No. 5th October, 2017 whereby the scheme of budgetary support under Goods and Service Tax Regime to the units located in State of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim; and

(b) Circular No. 1068/1/2019-CX dated 10th January, 2019 whereby the review of progress of implementation of Scheme of Budgetary Support to eligible industrial units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim.

(i) The Notification dated 5th October, 2017 is extracted below:

MINISTRY OF COMMERCE & INDUSTRY

(Department of Industrial Policy and Promotion)

NOTIFICATION

New Delhi, the 5th October, 2017

Subject : Scheme of budgetary support under Goods and Service Tax Regime to the units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim.

F. No. 10(1)/2017-DBA-II/NER.—In pursuance of the decision of the Government of India to provide budgetary support to the existing eligible manufacturing units operating in the States of Jammu& Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim under different Industrial Promotion Schemes of the Government of India, for a residual period for which each of the units is eligible, a new scheme is being introduced. The new scheme is offered, as a measure of goodwill, only to the units which were eligible for drawing benefits under the earlier excise duty exemption/refund schemes but has otherwise no relation to the erstwhile schemes.

1.2 Units which were eligible under the erstwhile Schemes and were in operation through exemption notifications issued by the Department of Revenue in the Ministry of Finance, as listed under para 2 below would be considered eligible under this scheme. All such notifications have ceased to apply w.e.f. 01.07.2017 and stands rescinded on 18.07.2017 vide notification no. 21/2017 dated 18.07.2017. The scheme shall be limited to the tax which accrues to the Central Government under Central Goods and Service Act, 2017 and Integrated Goods and Services Act, 2017, after devolution of the Central tax or the Integrated tax to the States, in terms of Article 270 of the Constitution.

2. The erstwhile Schemes which were in operation on 18.07.2017 were as follows:

2.1 Jammu & Kashmir- Notification nos. 56/2002-CE dated 14.11.2002, 57/2002-CE dated 14.11.2002 and 01/2010-CE dated 06.02.2010 as amended from time to time;

2.2 Himachal Pradesh & Uttarakhand- *Notification nos. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 as amended from time to time;*

2.3 North East States including Sikkim- *Notification no 20/2007-CE dated 25.04.2007 as amended from time to time.*

3. SHORT TITLE AND COMMENCEMENT

3.1 The scheme shall be called Scheme of Budgetary Support under Goods and Services Tax (GST) Regime to the units located in State of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim. The said Scheme shall come into operation w.e.f. 01.07.2017 for an eligible unit (as defined in para 4.1) and shall remain in operation for residual period (as defined in para 4.3) for each of the eligible unit in respect of specified goods (as defined in para 4.2). The overall scheme shall be valid upto 30.06.2027.

3.2 OBJECTIVE:

The GST Council in its meeting held on 30.09.2016 had noted that exemption from payment of indirect tax under any existing tax incentive scheme of Central or State Governments shall not continue under the GST regime and the concerned units shall be required to pay tax in the GST regime. The Council left it to the discretion of Central and State Governments to notify schemes of budgetary support to such units. Accordingly, the Central Government in recognition of the hardships arising due to withdrawal of above exemption notifications has decided that it would provide budgetary support to the eligible units for the residual period by way of part reimbursement of the Goods and Services Tax, paid by the unit limited to the Central Government's share of CGST and/or IGST retained after devolution of a part of these taxes to the States.

4. DEFINITIONS

4.1 'Eligible unit' means a unit which was eligible before 1st day of July, 2017 to avail the benefit of ab-initio exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may be, issued in this regard, listed in para 2 above and was availing the said exemption immediately before 1st day of July, 2017. The eligibility of the unit shall be on the basis of application filed for budgetary support under this scheme with reference to:

(a) Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST; or

(b) GST registration for the premises as a place of business, where manufacturing activity under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 were being carried prior to 01.07.2017 and the unit was not registered under Central Excise.

4.2 'Specified goods' means the goods specified under exemption notifications, listed in paragraph 2, which were eligible for exemption under the said notifications, and which were being manufactured and cleared by the eligible unit by availing the benefit of excise duty exemption, from:

(a) The premises under Central Excise with a registration number, as it existed prior to migration to GST; or

(b) The manufacturing premises registered in GST as a place of business from where the said goods under exemption notification no. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 10.06.2003 were being cleared

4.3 'Residual period' means the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production, as specified under the relevant notification listed in paragraph 2, during which the eligible unit would have been eligible to avail exemption for the specified goods. The documentary evidence regarding date of commercial production shall be submitted in terms of para 5.7.

5. DETERMINATION OF THE AMOUNT OF BUDGETARY SUPPORT

5.1 The amount of budgetary support under the scheme for specified goods manufactured by the eligible unit shall be sum total of –

(i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub- section (1) of section 49 the Central Goods and Services Act,2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax.

(ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax of the Central Tax and Integrated Tax.

Provided where inputs are procured from a registered person operating under the Composition Scheme under Section 10 of the Central Goods and Services Act, 2017 the amount i.e. sum total of (i) & (ii) above shall be reduced by the same percentage as is the percentage value of inputs procured under Composition scheme out of total value of inputs

procured.

Explanation:-

Explanation-I

A	*Sum total worked out under clause (i) & (ii)*	***Rs.200***
B	*Percentage value of inputs procured under Composition Scheme out of total value of inputs procured*	***20%***
C	*Admissible amount out of (a) above*	***Rs (200-20% of 200)= Rs.160***

Explanation-II

(a) Calculation of (ii) shall be followed by calculation of (i)

(b) To avail benefit of this scheme, eligible unit shall first utilize input tax credit of Central tax and Integrated tax and balance of liability, if any, shall be paid in cash and where this condition is not fulfilled, the reimbursement sanctioning officer shall reduce the amount of budgetary support payable to the extent credit of Central tax and integrated tax, is not utilized for payment of tax.

5.2 The above 58% has been fixed taking into consideration that at present Central Government devolves 42% of the taxes on goods and services to the States as per the recommendation of the 14th Finance Commission.

5.3 Notwithstanding, the rescinding of the exemption notifications listed under para 2 above, the limitations, conditions and prohibitions under the respective notifications issued by Department of Revenue as they existed immediately before 01.07.2017 would continue to be applicable under this scheme. However, the provisions relating to facility of determination of special rate under the respective exemption notifications would not apply under this scheme.

5.4 Budgetary support under this scheme shall be worked out on quarterly basis for which claims shall be filed on a quarterly basis namely for January to March, April to June, July to September & October to December.

5.5 Any unit which is found on investigation to over-state its production or make any mis-declaration to claim budgetary support would be made in-eligible for the residual period and be liable to recovery of excess budgetary support paid. Activity relating to concealment of input tax credit, purchase of inputs from unregistered suppliers (unless specifically exempt

from GST registration) or routing of third party production or other activities aimed at enhancing the amount of budgetary support by mis-declaration would be treated as fraudulent activity and, without prejudice to any other action under law may invite denial of benefit under the scheme ab-initio. The units will have to declare total procurement of inputs from unregistered suppliers and from suppliers working under Composition Scheme under CGST Act, 2017.

5.6 The grant of budgetary support under the scheme shall be subject to compliance of provisions relating to any other law in force.

***5.7** The manufacturer applying for benefit under this scheme for the first time shall also file the following documents:*

(a) the copy of the option filed by the manufacturer with the jurisdictional Deputy Commissioner/ Assistant Commissioner of Central Excise officer at the relevant point of time, for availing the exemption notification issued by the Department of Revenue;

(b) document issued by the concerned Director of Industries evidencing the commencement of commercial production

(c) the copy of last monthly/quarterly return for production and removal of goods under exemption notification of the Department of Revenue.

(d) An Affidavit-cum-indemnity bond, as per AnnexureA, to be submitted on one time basis, binding itself to pay the amount repayable under para 9 below.

Any other document evidencing the details required in clause (a) to (c) may be accepted with the approval of the Commissioner.

5.8 For the purpose of this Scheme, "manufacture" means any change(s) in the physical object resulting in transformation of the object into a distinct article with a different name or bringing a new object into existence with a different chemical composition or integral structure. Where the Central Tax or Integrated Tax paid on value addition is higher than the Central Tax or Integrated Tax worked out on the value addition shown in column(4) of the table below, the unit may be taken up for verification of the value addition:

TABLE

Serial No.	*Chapter*	*Description of goods*	*Rate (%)*	*Description of inputs for manufacture of goods in column (3)*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1.	*17 or 35*	*Modified starch or glucose*	*75*	*Maize, maize starch or tapioca starch*
2.	*18*	*Cocoa butter or powder*	*75*	*Cocoa beans*

3.	*25*	*Cement*	*75*	*Lime stone and gypsum*
4.	*25*	*Cement clinker*	*75*	*Limestone*
5.	*29*	*All goods*	*29*	*Any goods*
6.	*29 or 38*	*Fatty acids or glycerine*	*75*	*Crude palm kernel, coconut, mustard or rapeseed oil*
7.	*30*	*All goods*	*56*	*Any goods*
8.	*33*	*All goods*	*56*	*Any goods*
9.	*34*	*All goods*	*38*	*Any goods*
10.	*38*	*All goods*	*34*	*Any goods*
11.	*39*	*All goods*	*26*	*Any goods*
12.	*40*	*Tyres, tubes and flaps*	*41*	*Any goods*
13.	*72*	*Ferro alloys, namely, ferro chrome, ferro manganese or silico manganese*	*75*	*Chrome ore or manganese ore*
14.	*72or73*	*All goods*	*39*	*Any goods, other than iron ore*
15.	*72 or 73*	*Iron and steel products*	*75*	*Iron ore*
16.	*74*	*All goods*	*15*	*Any goods*
17.	*76*	*All goods*	*36*	*Any goods*
18.	*85*	*Electric motors and generators, electric generating sets and parts thereof*	*31*	*Any goods*
19.	*Any chapter*	*Goods other than those mentioned above in S.Nos.1 to 18*	*36*	*Any goods*

Explanation: For calculation of the value addition the procedure specified in notification no 01/2010-CE dated 06.02.2010 of the Department of Revenue as amended from time to time shall apply mutatis-mutandis.

5.9.1 In cases where an entity is carrying out its operations in a State from multiple business premises, in addition to manufacture of specified goods by the eligible unit, under the same GST Identification Number (GSTIN) as that of the eligible unit, the eligible unit shall submit application for reimbursement of budgetary support alongwith additional information, duly certified by a Chartered Accountant, relating to receipt of inputs, input tax credit involved on the inputs or capital goods received by the eligible unit and quantity of specified goods manufactured by the eligible unit vis-a-vis the inputs, input tax credit availed by the registrant under the given GSTIN.

5.9.2 Under GST, one business entity having multiple business premises would generally have one registration in a State and it may so happen that only one of them (eligible unit) was operating under Area Based Exemption Scheme. In such situations where inputs are received from another business premises of (supplying unit) of the same registrant (GSTIN) by, the details of input tax credit of Central Tax or Integrated Tax availed by the supplying unit for supplies to the eligible unit shall also be submitted duly certified by the Chartered Accountant. The jurisdictional Deputy/Assistant Commissioner in such cases shall

sanction the reimbursement of the budgetary support after reducing input tax credit relatable to inputs used by the supplying unit.

6. INSPECTIONOFTHEELIGIBLEUNIT

6.1 The Budgetary Support under the Scheme shall be allowed to an eligible unit subject to an inspection by a team constituted by DIPP for every State to scrutinize in detail the implementation of the previous schemes. The inspection report shall be uploaded by the inspection team on ACES-GST portal of the Central Board of Excise& Customs (CBEC) and shall be made available to the jurisdictional Deputy/Assistant Commissioner of the Central Tax on the portal before sanction of the budgetary support. Budgetary support will be released only after the findings to these teams are available. Provided that where delay is expected in such findings of the inspection, the Deputy/ Assistant Commissioner of Central Taxes may sanction provisional reimbursement to the eligible unit. Such provisional reimbursement shall not continue beyond a period of six months.

7. MANNEROFBUDGETARYSUPPORT

7.1 The manufacturer shall file an application for payment of budgetary support for the Tax paid in cash, other than the amount of Tax paid by utilization of Input Tax credit under the Input Tax Credit Rules, 2017, to the Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case maybe, by the 15th day of the succeeding month after end of quarter after payment of tax relating to the quarter to which the claim relates.

7.2 The Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be, after such examination of the application as may be necessary, shall sanction reimbursement of the budgetary support. The sanctioned amount shall be conveyed to the applicant electronically. The PAO, CBEC will sanction and disburse the recommended reimbursement of budgetary support.

8. BUDGETARY PROVISION AND PAYMENT OF AMOUNT OF BUDGETARY SUPPORT

8.1 The budgetary support shall be disbursed from budgetary allocation of Department of Industrial Policy& Promotion (DIPP),Ministry of Commerce & Industry. DIPP shall keep such budgetary allocation on the disposal of PAO, CBEC. The eligible units shall obtain one time registration on the ACES-GST portal and obtain a unique ID which is to be used for all processing of claims under the scheme. The application by the eligible unit for reimbursement of budgetary support shall be filed on the ACES-GST portal with reference to unique ID obtained and shall be processed by the Deputy Commissioner or Assistant Commissioner of the Central Tax for sanction of the admissible amount of budgetary support.

8.2 The application for imbursement of budgetary support shall be made by the eligible unit after the payment of CGST/IGST has been made for the quarter to which the claim relates, in cash in respect of specified goods after utilization of Input Tax credit, if any.

8.3 The sanctioning authority (AC/DC) with the approval of the Commissioner may call for additional information (inclusive but not limited to past data on trends of production and removal of goods) to verify the correctness of various factors of production such as consumption of principal inputs, consumption of electricity and decide on the basis of the same, if the quantum of supply have been correctly declared.

8.4 Special audit by the Chartered Accountant/Cost Accountant may be undertaken for units selected based on the risk parameters identified by CBEC in order to verify correctness of declared production capacity and production or overvaluation of supplies. Such special audit shall be undertaken only with the approval of the Commissioner, CGST.

8.5 The list of sanctions for payment, on the basis of amount sanctioned by the jurisdictional Deputy Commissioner or Assistant Commissioner of the Central Tax shall be forwarded by the authorised officer of the jurisdictional Commissionerate of the Central Tax through the ACES-GST portal to e-PAO, CBEC for disbursal directly into the bank accounts of the eligible units.

9. REPAYMENT BY CLAIMANT/RECOVERY AND DISPUTE RESOLUTION

9.1 The budgetary support allowed is subject to the conditions specified under the scheme and in case of contravention of any provision of the scheme/ notification, the budgetary support shall be deemed to have never been allowed and any inadmissible budgetary support reimbursed including the budgetary support paid for the past period under this scheme shall be recovered alongwith an interest @15% per annum thereon. In case of recovery or voluntary adjustment of excess payment, repayment, recovery or return, interest shall also be paid by unit at the rate of fifteen per cent per annum calculated from the date of payment of refund till the date of repayment, recovery or return.

9.2 When any amount under the scheme is availed by wrong declaration of particulars regarding meeting the eligibility conditions in this scheme or as specified under respective exemption notification issued by the Department of Revenue, necessary action would be initiated and concluded in the individual case by the Office of concerned Assistant Commissioner or Deputy Commissioner of Central Taxes, as the case may be.

9.3 The procedure for recovery: Where any amount is recoverable from a unit, the Assistant Commissioner or Deputy Commissioner of Central Tax, as the case may be, shall issue a demand note to the unit (i) intimating the amount recoverable from the unit and the date from which interest thereon is due and (ii) directing the manufacturer to deposit the full sum

within 30 days of the issue of the demand note in the account head of DIPP and submit proof of deposit to him/her

9.4 Where the amount is not paid by the beneficiary within the time specified as above, action for recovery shall be taken in terms of the affidavit –cum- indemnity bond submitted by the applicant at the time of submission of the application, in addition to other modes of recovery.

9.5 Where any amount of budgetary support and/or interest remains due from the unit, based on the report sent by the Assistant Commissioner or Deputy Commissioner of Central Tax as the case may be, the authorized officer of DIPP shall, after the lapse of 60 days from the date of issue of the said demand note take required legal action and send a certificate specifying the amount due from the unit to the concerned District Magistrate/ Deputy Commissioner of the district to recover that amount, as if it were arrears of land revenue

10 Residual issues related to the Scheme arising subsequently shall be considered by DIPP, Ministry of Commerce & Industry whose decision shall be final and binding.

11. SAVING CLAUSE

11.1 Upon cessation of the Scheme, the unpaid claims shall be settled in accordance with the provisions of the Scheme while the recovery and dispute resolution mechanisms shall continue to be in force.

Sd-
(RAVINDER)
Joint Secretary to the Government of India

(ii) The Circular dated 10th January, 2019 by which the review of the progress of implementation of budgetary scheme is also extracted below:

"Circular No, 1068/1/2019-CX

F .No: 116/1512017-CX-3
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi, dated 10th January, 2019

To

The Principal Chief Commissioner / Chief Corn missioner of CGST & Central Excise (Chandigarh, Meerut, Koikata and Shillong zone) DG, GSTI.

Subject: Review of progress of implementation of Scheme of Budgetary Support to eligible industrial units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim —clarification reg.

Madam/Sir,

*A meeting was convened at Central Board of Indirect Taxes and Customs (CBIC) on 23.05,2018 to review progress of implementation of Scheme of budgetary support. In the meeting various technical and operational issues forwarded by Department of Industrial Policy and Promotion (DIPP), Trade associations and field formations were also discussed and recommendations forwarded to Department of industrial Policy and Promotion (DIET), Ministry of Commerce & Industry for consideration. The issues requiring amendment of the scheme are proposed to be addressed by DIPP by way of issuance of notification amending the scheme_ The issues which are operational and clarificatory in nature are addressed by way of issuance of this circular_*

Eligibility of units which were under threshold exemption or manufacturing exempted goods but are required to pay GST under the GST regime: Under the erstwhile regime, the benefit was made available to such units if excise duty was imposed at a later date.

2. The scheme seeks to provide benefit to the eligible units for the residual period which were availing exemption under erstwhile exemption notifications issued under Central Excise regime, As such the benefit would not be available to such units.

Procurement of inputs for supply as a part of Kit A cosmetics manufacturer has sought clarification as to whether its hair colour kit, would be considered as manufacture. The kit consist of colourant tube manufactured in their own factory at Baddi and other items manufactured by third parties situated in area based exempt locations and are procured to be part of the kit. This finished hair colour kit is cleared by their factory.

*3. As long as, the sourced goods from third party are in the nature of inputs for the kit in respect of which some of the goods are being manufactured by themselves, the kit would be considered to be a product which is being supplied. The benefit for the kit would be available so long as the sourced products are in the nature of inputs/accessories and are supplied in form of kit in general trade parlance for such goods_*

Multiple business premises under the same GSTN and determination of amount of refund: Trade has represented that where the entities are having multiple operations in the state on account of there being single return for all the transactions, the credit of one gets off-set against the other and the budgetary support is not being allowed over and above the cash paid by them.

4. Under the scheme, a provision of certificate by the Chartered accountant has already been provided for. In addition, an assesee also has an option to register its operations other than eligible unit as a separate business vertical having a unique GSTIN. The definition of business vertical is proposed to be omitted in terms of CGST (amendment) Act, 2018 from the date to be notified in this regard. Therefore after operationalization of the said act the eligible unit may maintain its existing GSTIN and for other operations separate GSTIN may be obtained. Such a benefit should be available from 1st day of commencement of a quarter as per the scheme of budgetary support.

Cases where the finding of sanctioning authority differs from inspection team: There is no provision in the scheme as to whose views will prevail in case the sanctioning authority differs with the findings of the inspection team

5. The mandate of the inspection team and the sanctioning authority are different, The inspection team has to decide the eligibility of the unit whereas the sanctioning authority verifies and quantifies the refund claim. In cases where refunds have been sanctioned prior to inspection by DIPP team, such claims are provisional. Where any of these units are found to be not eligible on the basis of inspection report, the refund amount is liable to be recovered in the manner provided in the scheme.

An issue regarding difficulty in verification of the refund claim was raised by Chief Commissioner {Shillong). As per the procedure in place, an assessed files monthly returns under the GST whereas the refund application is for the quarter.

6. Accordingly, it was decided that in the table annexed to the refund application month wise details may be attached. This would enable speedier and more accurate verification of the refund claims.

Time limit for disposal of the claims filed by the eligible units was discussed as at present no time limit is provided in the scheme itself.

7. It was decided that the claims should be disposed off within 2 weeks since the applicant has already incurred liability and paid the tax and in no case, it should be later than 30 days. Jurisdictional Chief Commissioner is to monitor the same and ensure expeditious disposal.

Insistence on ink signed copy by PAO, of sanction order, creates delay in the sanction of refund. It was suggested that there should not be any requirement of ink signed copy of the sanction order to the PAO by the DC/AC especially in areas where Commission rates are located in far flung areas.

8. It was clarified that in the manual mode there is a requirement for the same. However, in the automated mode after roll out of the third phase of the automation, there will not be any requirement of ink signing of the sanction order.

Provision for appeal: There is no provision for appeal for the unit in case the unit is aggrieved with the findings of sanctioning authority / Inspection team.

9. The support under the scheme is in the nature of grant and not refund of duty under taxation law. As such there is no requirement for any appellate forum as the decision of the sanctioning authority is final.

Verification in respect of multi-location assesse: The budgetary support is to be sanctioned to the eligible unit by DC\AC having jurisdiction over the 'Principal Place of Business'. In some cases location of the eligible unit and principal place of unit is different. It needs to be clarified as to which of the two officers will verify the claims.

10. The system being followed under the GST regime will be applicable mutatis mutandis and the Central Tax officer having jurisdiction over the 'Principal Place of Business' shall sanction the refund claim. Such officer is the jurisdictional officer in respect of eligible unit located at any other place in the State as is the position as per GST law. While conducting verification of multi locational assesse covered under the same registration number, the jurisdictional AC/DC may take inputs from other jurisdictions, wherever necessary.

It was pointed out that there is no access to Electronic Credit Ledger and Electronic cash ledger for verification of the claim by the field officers. This leads to difficulty in verifications.

11. Field officers presently have access to Electronic Credit Ledger and Electronic cash ledger.

There is no clarity w.r.t requirement of pre-audit or post —audit for the budgetary support amount sanctioned.

12.1. As such payments will be liable to be audited by the C&AG office accordingly there is no requirement for audit by departmental officers. It is reiterated that these payments are not tax refunds but budgetary support.

12.2. The clarifications are expected to bring clarity and uniformity in implementation of the scheme by the filed formations. Difficulty experienced, if any, in implementation may be brought to the notice of the Board. Hindi version of this circular will follow,

Yours faithfully

Mazid Khan
(OSC-CX)"

39. By Notification Nos. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 11.06.2003 excise duty exemption granted to the industrial units in the State of Himachal Pradesh and Uttarakhand. Unlike Notification No. 20/2007 dated 25.04.2007 as applicable to the North Eastern States including Sikkim where exemption was granted by way of refund of the excise duty paid through account PLA after availing the CENVAT credit available; vide Notification Nos. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 11.06.2003 in the state of Himachal Pradesh and Uttarakhand, the eligible industrial units were exempted from whole of the duty of excise or additional duty of excise as the case may be leviable thereon. Since the excise duty and additional excise duty was totally exempted in respect of the goods cleared by eligible industrial units in the State of Himachal Pradesh and Uttarakhand, the said eligible industrial units were not required to be registered under the Central Excise Act.

Keeping in view the position as reflected above, though Clause 4.1(a) of the Budgetary Support Scheme provides that the eligibility of the unit shall be on the basis of the application filed for budgetary support under the Budgetary Support Scheme with reference to the Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST, Clause 4.1(b) provides for requirement

of only GST registration in respect of the industrial units covered by Notification Nos. 49/2003-CE dated 10.06.2003 and 50/2003-CE dated 11.06.2003 where manufacturing activities were carried on prior to 01.07.2017 and the unit was not registered under the Central Excise. The framers of the Scheme were very much conscious of the fact that when the Central Excise duty and the additional duties of excise was totally exempted, the question of the registration of the Central Excise Act shall not arise and thereby provided for the requirement of only GST registration number in respect of such industrial units.

40. The Petitioners before this Hon'ble Court stand on the same footing as that of the eligible units situated in the State of Himachal Pradesh and Uttarakhand inasmuch as the Petitioners were not required to pay Central Excise Duty under the Central Excise Act as the items manufactured by them were either exempted under the Central Excise Act or the total turnover were below threshold limit. Under such circumstances, denial of the benefit of the Budgetary Support Scheme to the Petitioners only on the ground that they were not having the Central Excise registration prior to 01.07.2017 is assailed in the present proceedings as being absolutely illegal and thereby requiring the industrial units to comply with the provisions which are not envisaged under law as per the Central Excise Act. Thereby

the impugned clarification provided that the benefit of the Budgetary Support Scheme shall not be available to the industrial units who were under the threshold exemption or manufacturing exempted goods, but to require them to pay under the GST regime although the benefits under the Industrial Policies are still subsisting, is absolutely illegal while under the similar situation the benefit of the Budgetary Support Scheme has been granted to the eligible industrial units in the State of Himachal Pradesh and Uttarakhand. Such classification is questioned as being unreasonable as it does not seek to achieve the purpose and is therefore hit by Article 14 of the Constitution of India.

41. As per the Industrial Policy and Central Excise Notification No. 20/2007 dated 25.04.2007, the exemption was available for a period of 10 years from the date of commencement of the commercial production. There is no requirement in the Industrial Policy as well as in the Notification No. 20/2007 dated 25.04.2007 that the eligible industrial units must continue the manufacturing activities for the entire period of 10 years for example if an industrial unit which was established in the year 2014 and continued manufacture activities upto 2015 and for some reason the industrial unit was closed thereafter but again started from 01.08.2017 i.e. after the introduction of the GST, it will not be entitled to the benefit of the

Budgetary Support Scheme though the said industrial unit was entitled to the exemption as per the Industrial Policy and Notification No. 20/2007 dated 25.04.2007 for a period of 10 years from the date of the commencement of the production. A similar situation came up before the Tripura High Court in the case of Sukhamoy Paul Vs. State of Tripura & Others, reported in 2021 SCC OnLine Tri 273, in respect of the claim of transport subsidy wherein the eligible industrial units after commencing its production got engaged into the same activity as job worker and subsequently was not entitled to the transport subsidy, held as under:

> *".....The eligibility period for claiming subsidy may be 5 years, the scheme nowhere provides that only if a new industrial unit continues such manufacturing activity for a period of 5 years that it can claim the transport subsidy. Therefore, even if, as pointed out by the respondents, the petitioner at some later point of time after commencing its production got engaged into the same activity as a job worker, this would not amount to breach of any of the eligibility conditions of the scheme."*

The aforesaid observations made by the Tripura High Court are squarely applicable in the case of the Petitioners and thereby the Petitioners cannot be denied the benefit of the Budgetary Support Scheme

on the ground that the Petitioners have not having Central Excise Registration prior to 01.07.2017.

42. There were certain industrial units which were established prior to the introduction of GST w.e.f 01.07.2017 and since after availing the CENVAT credit no amount was payable through account PLA, the said industrial units had not paid any amount through account PLA and consequently no refund was claimed and disbursed as per notification no. 20/2007 and those industries were held to be ineligible for benefits under the budgetary support scheme on the ground that the said industrial units were not availing excise exemptions as per notification no. 20/2007 prior to the introduction of GST w.e.f 01.07.2017. A number of writ petitions were filed before this Hon'ble Court challenging the said decision of the Department in holding the said industrial units to be ineligible on the ground that the said industrial units were not availing excise exemptions as per notification no. 20/2007 prior to the introduction of GST w.e.f 01.07.2017. During the pendency of the writ petitions, a clarification was issued by the Government of India, Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade (GSTSS Section) dated 22.02.2023 bearing F.No. 10/3/2021-GSTSS to the effect that for non-filing of refund application, on account of sufficient CENVAT Credit

balance in initial period/years and non-payment of Central Excise duty in cash for claiming refund cannot be, in any manner, be interpreted to mean that the unit was either not eligible or not availing the benefit under the area based notification and thereby it was clarified that such units should be considered as eligible unit under the Budgetary Support Scheme for taking the benefit of the said scheme for the residual period.

43. From the aforesaid clarifications, it is clear that not claiming of any refund under Notification No. 20/2007 cannot be construed to mean that the said industrial unit was not eligible for benefits of Notification No. 20/2007 if the said the industrial unit was established after fulfilling the conditions of the Industrial Policy of 2007 and is an eligible industrial unit for claiming the benefits as provided in the Industrial Policy including the excise benefits as granted by Notification No. 20/2007. In the present set of cases, the industrial units, though eligible for benefits under the Industrial Policy of 2007 in so far as excise benefits was concerned, the said benefit could not be claimed inasmuch as either the goods manufactured were exempted from payment of excise duty or the total turnover of these units were below the threshold limit. On the above two grounds, it cannot be said that the said industrial units were not eligible units for claiming benefits under Notification No. 20/2007. The aforesaid

Clarification dated 22.02.2023 reinforces the submission of the petitioners that not claiming of any refund of excise duty as per Notification No. 20/2007 cannot be a ground to hold that the said industrial units were not eligible and/or not availing benefits of Notification No. 20/2007. In view of the aforesaid, the impugned circular dated 10.01.2019 holding that industrial units like that of the petitioner are not eligible for benefits under the Budgetary Support Scheme is absolutely illegal, not tenable in law, without jurisdiction and the petitioners are liable to be considered to be an eligible unit after introduction of GST when the goods manufactured by the petitioner have become taxable under GST.

44. The classification made between an industrial unit registered under Central Excise Act prior to 01.07.2017 and other industrial units which was not required to be registered under the Central Excise Act because the total turnover of the said industrial unit was below the threshold limit and/ or were manufacturing goods that were exempted under the Central Excise Act, though such industrial units were established in pursuance to the promises and assurances made under NEIIPP, 2007 and were entitled to all the benefits and concessions covered under Notification No. 20/2007 dated 25.04.2007, is absolutely irrational and has no nexus with the object sought to be achieved. The said Scheme of budgetary support has treated

the similarly situated industrial units in two different manner by making an unreasonable classification and thereby discriminating between two types of industrial units similarly situated. Such discrimination made by the Government is hostile discrimination inasmuch as equals have been treated unequally and thereby such classification made to exclude the petitioners from the purview of the Scheme of budgetary support cannot withstand the scrutiny of Article 14 of the Constitution of India and thereby the said classification is clearly in violation of Article 14 of the Constitution of India and thereby the same is liable to be declared illegal and the respondent authorities are liable to be directed to extend the benefits to the petitioner's industrial unit.

45. Let us now examine the Judgments pressed into service at the bar in support of their respective contentions.

46. In *Budhan Choudhury Vs. State of Bihar*, reported in *AIR 1955 SC 191*, the Apex Court although was essentially dealing with an appeal arising out of a criminal trial. It is very succinctly explained the principle governing reasonable classification under Article 14. The Apex Court held that it is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must

be fulfilled, namely, (*i*) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (*ii*) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

47. In Ram Krishna Dalmia Vs. Sri Justice S.R. Tendolkar and Ors, reported in AIR 1958 SC 538. While the examining the validity of a notification issued by the Government of India under the Commission of Inquiry Act, 1952. The earlier judgment of the Apex Court in Budhan Choudhury (Supra) was also considered and the Apex Court examine the decisions of the Apex Court in Budhan Choudhury (Supra) and other Judgments and has held that the decisions of the Apex Court established the following:

(*a*) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons

applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(*b*) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(*c*) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(*d*) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(*e*) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be concieved existing at the time of legislation; and

(*f*) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the

face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

48. In *Nagpur Improvement Trust Vs. Vithal Rao* reported in *(1973) 1 SCC 500*, the Apex Court held that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests: (*i*) the classification must be founded on intelligible differentia and (*ii*) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

49. In *E.P. Royappa Vs. State of Tamil Nadu*, reported in *(1974) 4 SCC 3*, the Apex Court held that "the equality and arbitrariness are sworn

enemies". Where the act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

50. In State of UP Vs. Deepak Fertilizers & Petrochemical Corp. Ltd, reported in (2007) 10 SCC 342. In this matter the Apex Court was examining the challenge in respect of the denial of exemption in respect of NPK 23:23:0 fertilizer which was of the same category as that of other fertilizers which were included in the exemption list. The Apex Court held

that this denial was impermissible and NPK 23:23:0 fertilizer was directed to be given exemption in respect of the relevant period. The Apex Court held that the reasonableness of this classification must be examined on the basis, that when the object of the taxing provision is not to tax the sale of certain chemical fertilisers included in the list, which clearly points out that all the fertilisers with the similar compositions must be included without excluding any other chemical fertiliser which has the same elements and composition.

51. In *D.S. Nakara Vs. Union of India*, reported in *(1983) 1 SCC 305*, in this celebrated case, the Constitution Bench of the Apex Court was held that the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

52. Again the Apex Court in **Ayurveda Pharmacy vs. State of Tamil Nadu[(1989) 2 SCC 285 : 1989 SCC (Tax) 273]** held that two items of the same category cannot be discriminated and where such a distinction is

made between items falling in the same category it should be done on a reasonable basis, in order to save such a classification being in contravention of Article 14 of the Constitution of India.

53. Again in *Associated Cement Companies Ltd. Vs. Government of Arunachal Pradesh*, reported in *(2006) 1 SCC 597*, the Apex Court negated the classification sought to be made by the government that that all other patent or proprietary medicinal preparations belonging to different systems of medicine were taxed at the rate of 7%. Only, arishtams prepared under the Ayurvedic system were made subject to a levy of 30%. Arishtams and Asavas contained alcohol which are essential for effective and easy absorption of the medicine by the human system and also because it acted as preservative. This classification was negated by the Apex Court on the ground that it is not based on a reasonable classification.

54. While examining the decision in **Ayurveda Pharmacy (Supra),** the Apex Court in **Associated Cement Companies Ltd. vs. Government of Andhra Pradesh, (2006) 1 SCC 597,** observed as under:

> ""29. In Ayurveda Pharmacy v. State of T.N. [(1989) 2 SCC 285 : 1989 SCC (Tax) 273] which is the sheet anchor of the appellants' submission the facts were: that the appellants were manufacturers of ayurvedic drugs and medicines, including

arishtams and asavas. Arishtams and asavas contain alcohol, which according to the assessee was essential for the effective and easy absorption of the medicine by the human system and also because it acted as a preservative. While all other patent or proprietary medicinal preparations belonging to the different systems of medicines were taxed at the rate of 7% only, arishtams prepared under the ayurvedic system were made subject to a levy of 30%. The appellants filed the writ petitions in the High Court of Madras challenging the levy at 30% on arishtams and asavas, being violative of Article 14 as well as Article 19(1)(g) of the Constitution. The High Court dismissed the writ petition by observing that the imposition of the rate of 30% on the sale of arishtams and asavas must be regarded principally as a measure for raising revenue, and repelled the argument that the rate of tax was discriminatory or that Article 19(1)(g) was infringed."

55. In Associated Cement Companies Ltd. (Supra), the Apex Court noted the facts laid down in Ayurveda Pharmacy (Supra), and after noticing the same at p. 611 of the decision in Associated Cement (Supra), the Apex Court observed as under:

> "29. … Reversing the decision it was held by this Court that the two preparations, arishtams and asavas, were medicinal preparations, and even though they contained a high alcohol content, so long as they continue to be identified as medicinal preparations they must be treated, for the purposes of the sales tax law, in like manner as medicinal preparations generally, including those containing a lower percentage of alcohol."

56. *In Amarendra Kumar Mohapatra Vs. State of Orissa*, reported in *(2014) 1 SCC 380*, the Apex Court held that real difficulty as often acknowledged by the Court lies not in stating the principles applicable to any forensic exercise aimed at examining the validity of the legislation on the touchstone of Article 14 of the Constitution, but in applying them to the varying facts situation that come up for consideration. Trite it is to say that at the outset a piece of legislation carries with it a presumption of constitutional validity and Article 14 in-principle does not forbid reasonable classification. However, such a classification can only be valid if the same is reasonable, that it is based on a reasonable and rational differentia and has a nexus with the object sought to be achieved.

57. In Re: the Special Courts Bill, 19778, reported in (1979) 1 SCC 380, after examining various judgments of the Apex Court after examining

various earlier judgments of the Apex Court laid down certain propositions culled out from these judgments in respect of the principle applicable and arising under Article 14 of the Constitution of India. Those propositions may be stated thus:

"(1) The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality;

but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

(9) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute

itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article

14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

58. In *Subramanian Swamy Vs. Director, CBI,* reported in *(2014) 8 SCC 682*, the Apex Court examined the principles applicable to Article 14 held as under:

> ***38.*** *Article 14 reads:*
>
> *"**14. Equality before law**.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*
>
> *The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances [(1979) 1 SCC 380]*
>
> ***39.*** *Article 14 of the Constitution incorporates concept of equality and equal protection of laws. The provisions of Article 14 have engaged the attention of this Court from time to time. The plethora of cases dealing*

with Article 14 has culled out principles applicable to aspects which commonly arise under this article. Among those, may be mentioned, the decisions of this Court in Charanjit Lal Chowdhury [Charanjit Lal Chowdhury v. Union of India, 1950 SCC 833 : AIR 1951 SC 41 : 1950 SCR 869] , F.N. Balsara [State of Bombay v. F.N. Balsara, 1951 SCC 860 : AIR 1951 SC 318 : 1951 Cri LJ 1361 : 1951 SCR 682] , Anwar Ali Sarkar [State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 Cri LJ 510 : 1952 SCR 284] , Kathi Raning Rawat [Kathi Raning Rawat v. State of Saurashtra, (1952) 1 SCC 215 : AIR 1952 SC 123 : 1952 Cri LJ 805 : 1952 SCR 435] , Lachmandas Kewalram Ahuja [Lachmandas Kewalram Ahuja v. State of Bombay, (1952) 1 SCC 726 : AIR 1952 SC 235 : 1952 Cri LJ 1167 : 1952 SCR 710] , Syed Qasim Razvi [Syed Qasim Razvi v. State of Hyderabad, AIR 1953 SC 156 : 1953 Cri LJ 862 : 1953 SCR 589] , Habeeb Mohamed [Habeeb Mohamed v. State of Hyderabad, AIR 1953 SC 287 : 1953 Cri LJ 1158 : 1953 SCR 661] , Kedar Nath Bajoria [Kedar Nath Bajoria v. State of W.B., AIR 1953 SC 404 : 1953 Cri LJ 1621 : 1954 SCR 30] and innovated to even associate the members of this Court to contribute their V.M. Syed Mohammad & Co. [V.M. Syed Mohammad & Co. v. State of Andhra, AIR 1954 SC 314 : 1954 SCR 1117] Most of the above decisions were considered in Budhan Choudhry [Budhan Choudhry v. State of Bihar, AIR 1955 SC 191 : 1955 Cri LJ 374 : (1955) 1 SCR 1045]

***40.** This Court exposited the ambit and scope of Article 14 in Budhan Choudhry [Budhan Choudhry v. State of Bihar, AIR 1955 SC 191 : 1955 Cri LJ 374 : (1955) 1 SCR 1045] as follows: (SCC p. 193, para 5)*

"5. … It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

41. *In Ram Krishna Dalmia [Ram Krishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 538 : 1959 SCR 279] , the Constitution Bench of five Judges further culled out the following principles enunciated in the above cases: (AIR pp. 547-48, para 11)*

"11. … (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

42. *In Ram Krishna Dalmia [Ram Krishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 538 : 1959 SCR 279] , it was emphasised that: (AIR p. 548, para 11)*

"11. … the above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of laws."

43. *Having culled out the above principles, the Constitution Bench in Ram Krishna Dalmia [Ram Krishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 538 : 1959 SCR 279] , further observed that the statute which may come up for consideration on the question of its validity under Article 14 of the Constitution may be placed in one or other of the following five classes: (AIR pp. 548-49, para 12)*

"12. … (i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law.

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination….

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or

things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law….

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification….

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle … that in such a case the executive action but not the statute should be condemned as unconstitutional."

44. *In Vithal Rao [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , the five-Judge Constitution Bench had an occasion to consider the test of reasonableness under Article 14 of the Constitution. It noted that: (SCC p. 506, para 26)*

"26. … the State can make a reasonable classification for the purpose of legislation [and] that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia, and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question."

The Court emphasised that in this regard object itself should be lawful and it cannot be discriminatory. If the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

45. *The constitutionality of the Special Courts Bill, 1978 came up for consideration in Special Courts Bill, 1978, In re [(1979) 1 SCC 380] as the President of India made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the "Special Courts Bill" or any of its provisions, if enacted would be constitutionally invalid. The seven-Judge Constitution Bench dealt with the scope of Article 14 of the Constitution. Noticing the earlier decisions of this Court*

in Budhan Choudhry [Budhan Choudhry v. State of Bihar, AIR 1955 SC 191 : 1955 Cri LJ 374 : (1955) 1 SCR 1045] , Ram Krishna Dalmia [Ram Krishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 538 : 1959 SCR 279] , C.I. Emden [C.I. Emden v. State of U.P., AIR 1960 SC 548 : 1960 Cri LJ 729 : (1960) 2 SCR 592] , Kangshari Haldar [Kangshari Haldar v. State of W.B., AIR 1960 SC 457 : 1960 Cri LJ 654 : (1960) 2 SCR 646] , Jyoti Pershad [Jyoti Pershad v. UT of Delhi, AIR 1961 SC 1602 : (1962) 2 SCR 125] and Shri Ambica Mills Ltd. [State of Gujarat v. Shri Ambica Mills Ltd., (1974) 4 SCC 656 : 1974 SCC (L&S) 381 : (1974) 3 SCR 760] , in the majority judgment the then Chief Justice Y.V. Chandrachud, inter alia, exposited the following propositions relating to Article 14: (Special Courts Bill, 1978, In re [(1979) 1 SCC 380] , SCC pp. 424-26, para 72)

*"(1)****

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no

application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

(9) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

46. *In Nergesh Meerza [Air India v. Nergesh Meerza, (1981) 4 SCC 335 : 1981 SCC (L&S) 599] , the three-Judge Bench of this Court while dealing with the constitutional validity of Regulation 46(i)(c) of the Air India Employees' Service Regulations (referred to as "the AI Regulations") held that certain conditions mentioned in the Regulations may not be violative of Article 14 on the ground of discrimination but if it is proved that the conditions laid down are entirely unreasonable and absolutely arbitrary, then the provisions will have to be struck down. With regard to due process clause in the American Constitution and Article 14 of our Constitution, this Court referred to Anwar Ali Sarkar [State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 Cri LJ 510 : 1952 SCR 284] , and observed that the due process clause in the American Constitution could not apply to our Constitution. The Court also referred to A.S. Krishna [A.S. Krishna v. State of Madras, AIR 1957 SC 297 : 1957 Cri LJ 409 : 1957 SCR 399] wherein Venkatarama Ayyar, J. observed: (AIR p. 303, para 13)*

"13. … The law would thus appear to be based on the due process clause, and it is extremely doubtful whether it can have application under our Constitution."

47. *In D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] , the Constitution Bench of this Court had an occasion to consider the scope, content and meaning of Article 14. The Court referred to earlier decisions of this Court and in para 15, the Court observed: (SCC pp. 317-18)*

"15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

48. *In E.P. Royappa [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] , it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 as under: (SCC p. 38)*

"85. … From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

59. After elaborate discussion of the earlier judgments, the Apex Court culled out the principle which should be adopted by the courts for application of the principle of Article 14. The Apex Court held that Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption

of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (*i*) discrimination, based on an impermissible or invalid classification, and (*ii*) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.

60. After elaborate discussion the Apex Court held that the Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

61. In *Union of India Vs. NS Ratnam*, reported in *(2015) 10 SCC 681*, the Apex Court held that in the context of reasonable classification and/or hostile discrimination that although in the field of taxation, the legislature has an extremely wide discretion to classify items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes (see *State of Madras* v. *P.R. Sriramulu* [(1996) 1 SCC

345]). However, at the same time, when a substantive unreasonableness is to be found in a taxing statute/notification, it may have to be declared unconstitutional. Although the Court may not go into the question of a hardship which may be occasioned to the taxpayers but where a fair procedure has not been laid down, the validity thereof cannot be upheld. A statute which provides for civil or evil consequences must conform to the test of reasonableness, fairness and non-arbitrariness.

62. In State of Jharkhand Vs. Tata Cummins Ltd., reported in (2006) 4 SCC 57, in respect of the principle for interpretation of exemption notification, the Apex Court held that an exemption notification under an enactment law has to be construed strictly. However, any exemption notification issued for implementing an industrial policy of the state which had promised exemption for setting up new industries in a backward area held should be construed not strictly, but liberally keeping in view, the objectives of such policy.

63. In *State of Bihar Vs. Suprabhat Steel Ltd.*, reported in *(1999) 1 SCC 31*, in the context of exemptions offered under the industrial policies held that even old industrial units starting production prior to 01.04.1993 and whose investment in plant and machinery did not exceed the prescribed limit, held entitled to exemption on purchase of raw material for seven

years from the period indicated. The Apex Court held that the policy has to be read as a whole and harmonious construction to be applied. The notifications denying exemption to those eligible under the state's industrial policy, which was held to be bad by the High Court was upheld by the Apex Court. The notification issued by the State Government in exercise of powers under section 7 of the Bihar Finance Act, if found to be a repugnant to the industrial policy declared in a Government resolution, then the said notification must be held to be bad to that extent. The Apex Court held that the High Court was fully justified in striking down that part of the notification which is a repugnant to the said relevant clause in the industrial policy.

64. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P.,* reported in *(1979) 2 SCC 409*, the Apex Court held that promissory estoppel also applies to Government and State in whichever capacity it acts. However, the Government will not be bound if it can show that equity lies in its favour. The Apex Court held that there is a heavy responsibility on the government in such a situation to project the relevant facts and circumstance that under certain circumstances the government could resile from the promises made. Such a stand of the Government can also be accepted if notice and reasonable opportunity was given to the promise to

resume its position as it stood earlier. However, promissory estoppel cannot be applied against the government if it is under an obligation or a liability imposed by law to act differently.

65. In Century Spinning and Manufacturing Co. Ltd and Anr. Vs. The Ulhasnagar Municipal Council and Anr, reported in (1970) 1 SCC 582, the Apex Court held that public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contracts by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may if the contract be not in that form be enforced against it in appropriate cases in equity. In *Union of India* v. *Indo-Afghan Agencies Ltd.* [(1968) 2 SCR 366] this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. The Apex Court also observed that in appeal from that judgment

(*Howell* v. *Falmouth Boat Construction Co. Ltd.*) Lord Simonds observed after referring to the observations of Denning, L.J.:

> "The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government officer however high or low in the hierachy.
>
> * * *
>
> The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly: No."

66. In Pournami Oil Mills and Ors, Vs. State of Kerala, reported in (1986) (Supp) SCC 728, the Apex Court held that it is a well settled principle of law that where the authority making an order has power conferred upon it by statute to make an order made by it and an order is made without indicating the provision under which it is made, the order would be deemed to have been made under the provision enabling the making of it. The Apex Court were cited in support of the stand of the appellants therein that in similar circumstances, the plea of estoppel can be and has been applied and the leading authority on this point is the case of *M.P. Sugar Mills* [*Motilal Padampat Sugar Mills Co.*

Ltd. v. *State of U.P.*, (1979) 2 SCC 409 : 1979 SCC (Tax) 144] . On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in *Bakul Cashew Co.* v. *STO* [(1986) 2 SCC 365 : 1986 SCC (Tax) 385] . In *Bakul Cashew Co. case* [(1986) 2 SCC 365 : 1986 SCC (Tax) 385] this Court found that there was no clear material to show any definite or certain promise had been made by the Minister to the concerned persons and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred.

67. In Shri Bakul Oil Industries and Anr. Vs. State of Gujarat and Anr, reported in (1987) 1 SCC 31, the Apex Court held that if the Government grants exemption to a new industry and if on the basis of the representation made by the Government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption could not be

withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute. In order to claim the benefit of promissory estoppel the appellants must establish:

(*i*) that a representation was made to grant the exemption for a particular period to a new industry established in view of the representation held out by the State Government; and

(*ii*) that the appellants had established the new industry acting upon the representation made by the State Government.

68. In Pawan Alloys & Casting Pvt. Ltd, Meerut Vs. U.P. State Electricity Board and Ors, reported in (1997) 7 SCC 251, the Apex Court held that the it may be found that the Government or any other competent authority had held out any promise on the basis of which the promise might have acted, if public interest required recall of such a promise and such a public interest outweighed the interest of the promise then the doctrine of promissory estoppels against the Government would lose its rigor and cannot be of any avail to such promisee. The Apex Court also held that they have neither expressly nor impliedly agreed that the Board will have absolute power and discretion to withdraw this incentive of development rebate at any time prior to the expiry of three years for which it was guaranteed to them by the earlier representation held out by the Board

and which representation resulted into promissory estoppel against the Board and in favour of the appellants.

69. In Mahabir Vegetable Oils (P) Ltd., Vs. State of Haryana and Others, reported in (2006) 3 SCC 620, the Apex Court held that it is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See *West* v. *Gwynne* [(1911) 2 Ch 1 : 104 LT 759 (CA)] .) Although there lies a distinction between vested rights and accrued rights as by reason of a delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not, thus, have taken away the rights of the appellant with retrospective effect.

70. In State of Punjab Vs. Nestle India Ltd and Anr, reported in (2004) 6 SCC 465, the Apex Court reiterated the well-known preconditions for the operations of the doctrine:

(*1*) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;

(*2*) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

The doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future.

71. In Kasinka Trading and Anr. Vs. Union of India and Anr., reported in (1995) 1 SCC 274, the Apex Court held that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine.

The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The courts, do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act.

It needs no emphasis that the power of exemption under Section 25(1) of the Act has been granted to the Government by the Legislature with a view to enabling it to regulate, control and promote the industries and industrial productions in the country. Where the Government on the basis of the material available before it, bona fide, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so.

72. In Union of India and Anr. Vs. Lieutenant Colonel P.K. Choudhury and Ors, reported in (2016) 4 SCC 236, the Apex Court held that the Committee

noted that officers beyond the age of 50 years find it difficult to sustain mental and physical alertness at high altitude and hazardous and hostile topography along the Line of Control where a Brigade Commander is required to serve for effective command and control. This was true even about Battalion Commanders who are required to move during operations with their units for effective command and control. The Committee, therefore, took the view that the officers of Combat Arms should assume command at the age of 36-37 years by which time they would have attained the requisite experience and the ability to finish their command tenure before attaining 40 years of age. The Apex Court held that the plea of legitimate expectation does not appear to be of any assistance to the respondents for two precise reasons. Firstly, there is no real basis for the respondents to argue that the Government of India had either by representation or by any sustained course of conduct created an impression in the minds of the respondents that any additional vacancies created to the lower age profile of commanding officers serving in Combat Arms or Combat Arms Support shall also benefit those serving in the Service streams of the Army. There is no factual basis laid by the respondents in the pleadings before the Tribunal to suggest that any such impression was gathered by the officers serving in the Service

streams. Legitimate expectation as an argument cannot prevail over a policy introduced by the Government which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondents. In the case in hand, the Government has, as a matter of policy, decided to lower the age profile of officers serving in Combat Arms and Combat Arms Support pursuant to the recommendations made by the Expert Committees.

73. In State of Jharkhand and Ors. Vs. Brahmaputra Metallics Ltd., Ranchi and Anr, reported in 2020 SCC OnLine SC 968, the Apex Court held that the scope of the doctrine of legitimate expectation is wider than promissory estoppel because it not only takes into consideration a promise made by a public body but also official practice, as well. Further, under the doctrine of *promissory estoppel*, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although typically it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been caused to the promisee may be relevant to hold that it would not be "inequitable" for the promisor to go back on their promise. However, no such requirement is present under the doctrine of legitimate expectation.

The doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

74. Food Corporation of India Vs. M/s Kamdhnu Cattle Feed Indusries, reported in (1993) 1 SCC 71, the Apex Court that in contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case.

75. Noida Enterprise Association Vs. Noida and Ors, reported in (2011) 6 SCC 508, the Apex Court held that State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law. The power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a

case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons".

76. In this context, it is also trite to refer to another important judgment of the Apex Court rendered in Manuelsons Hotels Private Limited Vs. State of Kerala, reported in (2016) 6 SCC 766. In that case, the State Government of Kerala offered certain fiscal incentives as tourism was declared to be an "industry". These fiscal incentives that were promised included exemption from building tax levied by the Revenue Department of the State of Kerala. There was a Government order whereby it was proposed to amend the Kerala Building Tax Act 1975. Pursuant to the said promise and the subsequent Government order issued by the Government, the petitioners took all steps necessary to construct their hotels. Subsequently, notices for filing returns under the Kerala Building Tax Act was issued to the said petitioners and which however, they declined to furnish on the ground that as per the Promise given by the Government,

they were exempt from paying building tax. However, the government rejected their claims that the Act of 1975 was not amended and consequently they are duty bound to pay the building taxes. The high Court rejected the writ petiton on two grounds- firstly that since no exemption notification in fact was issued under section 3A, when it was in existence in the statute book, no claim for exemption from payment of building tax would be allowed. It was further held that the mere promised to amend any law does not hold out a promise of exemption from payment of building tax. Secondly, the High Court also held that the question of now exempting the appellants from building tax would not arise as Section 3A had itself been omitted with effect from 01.03.1993.

77. The Apex Court while examining the matter and several other earlier judgments of the Apex Court held that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of

this doctrine has been well put in a judgment of the Australian High Court in *Commonwealth of Australia* v. *Verwayen* [*Commonwealth of Australia* v. *Verwayen*, (1990) 170 CLR 394 (Aust)] , by Deane, J. in the following words:

> "*1*. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.
>
> *2*. *The central principle of the doctrine is that the law will not permit an unconscionable—or, more accurately, unconscientious—departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation*.
>
> *3*. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.
>
> *4*. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:
>
> (*a*) has induced the assumption by express or implied representation;

(*b*) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;

(*c*) has exercised against the other party rights which would exist only if the assumption were correct;

(*d*) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (*a*), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (*b*), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. *The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct)*.

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. *In some cases, the estoppel may operate to fashion an assumed*

state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed."

(emphasis supplied)

78. The Apex Court went on to hold that between the English Law and the Indian law there is one difference that under the Indian Laws, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. The Apex Court reiterated the two fundamental concepts relating to doctrine of promissory estoppel- firstly that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And secondly that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And

this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party. The Apex Court thereafter held that the non issue of the notification under the relevant laws by the Government of Kerala was a ministerial Act. This ministerial Act of non issue of the notification cannot possibly stand in the way of the appellants therein getting relief under the said doctrine as it would be unconscionable on the part of the government to get away without fulfilling its promise. On the facts the Apex Court held that no other consideration of overwhelming public interest exists in order that the government would be justified in resiling from its promise. The Apex Court therefore moulded the relief on the facts of the case that for the period that Section 3A was in force, no building tax is payable by the appellants.

(emphasis supplied)

79. After examining the various Judgments earlier rendered by the Apex Court, it was held that it is well established that Article 14 is certainly attracted where equals are treated differently without reasonable basis. The Apex Court went on to hold that the State therefore will have to affirmatively satisfy the court that the twin tests have been satisfied. It can only be satisfied if the state establishes not only the rational principle on

which a classification founded, but correlates it to the objects to be achieved.

80. While there is no quarrel with the fact that the government can resile from any promises made, however, the government will be under a bounden duty to justify as to why they had to resile from the promises made earlier. However, in the present case, this Court is not called upon to decide the question of the correctness of the government's decision vis-à-vis its position earlier as is reflected under the industrial policy resolution. In the context of the present proceedings, the question which is to be decided is whether the decision of the government and the respondent authorities in excluding the present petitioners from being extended the benefit of the budgetary support scheme is violative of Article 14 as the same is stated to be not based on a reasonable classification. From the elaborate pleadings on record and the extensive submissions made by the learned counsels for the parties, it is clear that the basis for grant of the benefit of the budgetary support scheme are only to those industries who had paid the Central Excise Duty and were registered under Central Excise Act and had claimed the exemptions offered under the industrial policy. It is also seen that this budgetary scheme is not a part of any statute. It is a policy decision taken by the government. The reasons for which the

budgetary scheme has been proposed are evident from the notification. The benefit has been extended by the government keeping in view its promise earlier made under the industrial policy resolution.. Accordingly, the government is conscious that because of the promise extended earlier under the NEIIPP 2007, the industries who are availing these benefits have changed their positions to their detriment relying upon the claims and offers and the promise made by the Government of India through the industrial policy and the introduction of GST having subsumed many taxes which were earlier prevalent in India including the Central Excise Duty.

81. Under such circumstances, perhaps till any further or new policies are undertaken or brought in, the government has decided to extend the benefit of budgetary support scheme to those industries with the condition that they should be registered under Central Excise Law and should have paid the Central Excise Duty and thereafter claimed the exemption as provided under the scheme. A deeper look into the policy adopted for grant of budgetary support scheme while excluding the units like the petitioner units from such benefit, it is seen that the only basis for providing the budgetary support is the payment of Central Excise Duty by the units prior to the GST regime. What is not in dispute or what has not been disputed by the respondents in the present proceedings is that the petitioner units

also had the eligibility to claim the benefits and the exemptions offered under the NEIIPP scheme. These industries were all set up pursuant to the NEIIPP being brought in by the Government of India and they all satisfied the eligibility criteria required for availing the benefits. They were given the eligibility certificates by the competent components under the industrial policy. They satisfy the cut-off date prior to which the industry was required to be set up for the existing unit was required to initiate production from its newly extended units of an already existing unit. No material has been placed by the respondents to show that these petitioners at any point in time were declared to be ineligible to avail the benefits offered under the NEIIPP because of non fulfilment of any conditions. Further, the position which is also not disputed is that one group of petitioners before this Court have turnovers which are below the threshold limit of 1.5 crores and thereby they are not required to pay any Central Excise Duty as per the law as it existed then. The other group of petitioners produce items which are already exempted under the erstwhile Central Excise Law and were therefore not required to pay any duty and consequently there was no necessity for claiming any exemption offered under the NEIIPP. These facts are not disputed by the respondents. Consequently, notwithstanding that these petitioners fall into these two

categories, they were considered to be eligible industries to avail the benefits under the NEIIPP subject to their necessity and requirement of payment of the excise duty. With effect from 01.07.2017, the GST had subsumed many of the taxes, including central excise. All industries and units including the present petitioners were required to be registered under the GST laws. As it stands today, the petitioners are registered assessees under the GST laws and they are required to pay GST. The industries which have been granted the budgetary support scheme also stand on the same footing, namely that they are also registered under the GST and are required to pay the taxes under the GST. As discussed the present petitioners who were not required to pay Central Excise under the erstwhile Central Excise Act by virtue of the fact that their annual turnover is below the threshold limit, or that they had manufactured or they were manufacturing certain goods which were already exempted under the central excise, can no longer avail these benefits under the GST laws. In the absence of these benefits being continued or conferred under the GST laws, the petitioner units are required to pay the GST tax as per the prescription under the statute. Therefore, the respondents while extending the benefit of budgetary support scheme have permitted the scheme to be available to only those industries who have been paying Central Excise

Duty and claiming exemptions. Viewed from the context of the present GST regime, such a classification does not appear to have a reasonable nexus with the object sought to be achieved. It is clear from the pleadings as well as from the submissions made by the respective counsels as well as by the notifications available on the pleadings issued by the Central Government that this budgetary support scheme is a scheme to provide some financial benefits to those industries who were eligible to claim the benefits under the Industrial Policy. No reference has been made to the provisions of the CGST, SGST or IGST Act and the Rules framed thereunder by the respondent authorities to submit that there is any provision prescribed under the statute which permits determination or quantification of the Excise Duty component within the GST tax payable. No such mechanism is seen from the statutes. The forms appended to the Circular dated 27.01.2017 shows that particulars of Central Tax, State/U.T. Tax, Integrated Tax, Cess paid are required to be submitted by the units claiming budgetary support. A perusal of these particulars required to be furnished reveals that the particulars of tax payable under the GST is required to be submitted. There is no requirement of showing Central Excise Duty paid under the erstwhile Central Excise Act. It is, therefore, evident that only particulars of tax paid under GST is to be submitted by

the units claiming budgetary support. It is clear that under the scheme itself there is no scope or provision to work out or calculate the component of Central Excise Duty under the GST paid as such a situation is not even conceived of under the GST Laws. Therefore, as on date, all the petitioners are also admittedly paying GST on the grounds which were earlier exempted or excluded from payment of Central Excise. As such denial of the benefit of Budgetary Support cannot be supported by any reasonable clarification which was made by the respondents to offer the financial support to Industries/units who were considered eligible to avail the benefits under the NEIIPP cannot be held to be valid in law. Such classification to exclude units/industries who were not paying Central Excise duty earlier is opposed to the very purpose of the Industrial Policies and also contrary to the Budgetary Support scheme itself as is evident from the recital in the Circular dated 27.11.2007.

82. Under such circumstances, the criteria evolved by the Government of India to grant to extend the benefit of budgetary support scheme only to those units who had paid central excise duty and claimed exemption under the erstwhile Central Excise Act could have been a valid classification had this scheme been introduced prior to the introduction of GST. Post introduction of GST, there is no concept of Central Excise Duty. All these

duties have been subsumed into the GST. There are no materials to suggest as to how the component or the percentage of Central Excise Duty paid within the GST have been worked out or arrived at by the respondents to support their contentions that this budgetary scheme is extended only as a financial support to those industries who had paid Central Excise Duty. Therefore, this criteria, which has been evolved by the respondent authority to extend the benefit to those units who had continued to pay central excise duty and had claimed benefits while excluding the petitioner units because they were not found to be paying Central Excise Duty under the erstwhile the Central Excise Act, is absolutely based on fiction. Such artificial and imaginary classification brought out by the Union of India by the respondents to exclude the present petitioners from being extended the benefit of the budgetary support scheme cannot be countenanced in the absence of any explanation as to how it will seek to achieve the object for which the budgetary scheme has been introduced.

83. As discussed above, as is seen from the recital of the notification of the budgetary support scheme, it is to provide financial support to those industries who were existing eligible manufacturing units operating in the various states mentioned including the North Eastern States under the industrial policies announced. The petitioner units were also availing

benefits under the Industrial Policy and under the erstwhile Central Excise Law but were however either exempted from payment of central excise duty by virtue of their turnover being below threshold limit of 1.5 crores per annum or that the items which they had manufactured were already exempted. No materials have been placed before the Court by the respondents to suggest that because the petitioner units were not required to pay Central Excess Duty by virtue of their annual turnover being below the threshold limit of 1.5 crores or that they had produced goods which were already exempted under Central Excise Duty, they were not considered to be eligible industries to avail the benefits offered under the NEIIPP industry policy.

84. In the absence of such specific averments and contentions on behalf of the respondents or in the absence of such specific clauses being available under the industrial policy itself, the petitioner industries will have to be considered to be eligible industries to avail the benefits as applicable and as conferred under the NEIIPP.

85. The judgment of the Apex Court in Hero Motocrop (Supra), relied upon by the respondents, had upheld the validity of budgetary scheme support. However, the question of the manufacturing units, like the petitioners, who, although were eligible to avail the benefits under the

industrial policies, were not required to avail those benefits by virtue of their manufactured goods being exempted or their turnover fell below the threshold limit, was not at all an issue before the Apex Court in the said Judgment. The issue before the Apex Court was the validity of the budgetary scheme and which was upheld by the Apex Court. The Apex Court however although rejected the challenge made to the validity, however, permitted the petitioners therein to approach the authorities for filing necessary applications for revealing their benefits. In view of the discussions made above, the other judgments referred by the respondents, regarding the interpretation of exemption notification does not come to the aid of the respondents as this Court has come to a finding that the budgetary scheme itself is meant for "the manufacturing units who were eligible" to avail the benefits under the various industrial policies. The scheme does not conceive of a class of manufacturing units who, although were eligible, were not availing the benefits under the industrial policies. The subsequent interpretation given by the respondent authorities vide the circular dated 10.01.2019 by way of a clarification is held to be beyond the purview of the budgetary scheme notification itself. The said clarification by circular dated 10.01.2019 to the extent it excludes the manufacturing units like the petitioner is therefore held to be bad and set aside accordingly.

86. Under such circumstances when the avowed object of the budgetary support scheme is to provide financial support to those industries who were eligible to avail benefits under the NEIIPP, the exclusion of the petitioner units on the classification that they did not pay Central Excise Duty either because their annual turnovers were below the threshold limit of 1.5 crores or that they had produced items which were already exempted is based on fiction and cannot be permitted to be a ground to deny the benefits of budgetary support scheme. Such classification cannot be held to be a reasonable classification as it fails to achieve the object for which the classification is made, namely providing financial support to those industries availing benefits under the NEIIPP. The said classification of the respondent authorities is therefore arbitrary and is hit by Article 14 of the Constitution of India and the same is, therefore, held to be bad in law.

87. The respondent authorities are therefore directed to examine the individual claims of the petitioners and if they are found to have satisfied the criteria and the eligibility laid down under the NEIIPP, the benefits of budgetary support scheme as had been extended to other similarly situated units shall also be extended to the petitioner units. The respondent authorities will forthwith proceed to examine the individual claims and pass appropriate orders within a period of 30 days from the date of receipt of the certified copies this order.

88. All the writ petitions are accordingly allowed and disposed of. No order as to cost.

89. Pending I.As. if any, shall also stand disposed of.

JUDGE

Comparing Assistant