

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1914 OF 2009

UNION OF INDIA AND OTHERS

Appellant(s)

VERSUS

M/S MEGHALAYA STEELS AND  
CONCRETE PRODUCTS LTD. AND OTHERS

Respondent(s)

WITH

CIVIL APPEAL NO. 1918 OF 2009

CIVIL APPEAL NO. 1915 OF 2009

CIVIL APPEAL NO. 1916 OF 2009

CIVIL APPEAL NO. 1917 OF 2009

O R D E R

CIVIL APPEAL NO. 1914 OF 2009

On 27.10.1996, the Prime Minister of the country made a statement at Guwahati that new initiatives would be announced for the industrial development of the North Eastern region. Pursuant to the said statement, an Office Memorandum dated 24.12.1997 was issued by the Ministry of Industry, Department of Industrial Policy and Promotion, Government of India, by which, *inter alia*, a tax holiday, including exemption from central excise duty, was promised to eligible units for a

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period of 10 years from the date of commencement of commercial production.

In exercise of powers under Section 5A of the Central Excise Act, 1944 (hereinafter referred to as 'Act'), notification dated 08.07.1999 was issued exempting the class of eligible units from payment of, *inter alia*, central excise duty and additional duties of excise for a period of 10 years from the date of publication of the notification in the Official Gazette or from the date of commencement of commercial production, whichever is later. The aforesaid notification under Section 5A of the Act was made applicable to the North Eastern States of Assam and Tripura. Thereafter, amendments were made to the notification dated 08.07.1999 on 01.03.2000 and 29.03.2000 by which the notification dated 08.07.1999 was made applicable to different areas of the State of Meghalaya in which the unit of the respondent was located.

The respondent went into commercial production w.e.f. 14.07.1999. As benefit of exemption was not granted from the said date, the respondent approached the High Court seeking appropriate orders for grant of exemption w.e.f. date of commercial production and not from the date of the later notifications dated 01.03.2000 and 29.03.2000 extending the exemption notification dated 08.07.1999 to the State of Meghalaya. The writ petition and the appeal arising therefrom were answered in favour of the respondent giving

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rise to the present proceedings before this Court.

We have heard Shri K. Radhakrishnan, learned senior counsel appearing for the appellant-Union of India, and Shri V. Giri, learned senior counsel appearing for the respondent.

Having perused the order of the High Court, we find that the entire basis of the High Court's conclusions in the matter and the grant of benefit to the respondent, is on the application of Doctrine of Promissory Estoppel. The High Court, taking into account the industrial policy and the Office Memorandum dated 24.12.1997, was of the view that the respondent-industry was entitled to the benefit of the exemption as promised thereunder which is from the date of commercial production.

Exemption from payment of central excise duty is a matter of statutory dispensation being covered by Section 5A of the Act. In a situation where acting pursuant to promise contained in the Office Memorandum dated 24.12.1997, the benefit of exemption was initially extended to the States of Assam and Tripura on 08.07.1999 and, thereafter, to the State of Meghalaya on 01.03.2000 and 29.03.2000, we do not see how in a situation where the exemption notifications in the State of Meghalaya were issued in the year 2000, the High Court by invoking the Doctrine of Promissory Estoppel could have held the respondent-industry to be entitled to such benefit from the date of commercial production i.e., 14.07.1999. The

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question of invoking the principle of Promissory Estoppel to units on the basis of Office Memorandum dated 24.12.1997 could have been made by the High Court in a situation where there was refusal on the part of the Government to act in terms of the promise made or what was promised was sought to be withdrawn or granted only partially.

This is not what had happened in the present case. The present case, therefore, would be distinguishable from the facts in '*Manuelsons Hotels Private Limited v. State of Kerala and Ors.*' [2016 (6) SCC 766], reliance on which has been placed by the learned senior counsel appearing for the respondent. In the present case, what was promised, i.e., exemption from the payment of central excise duty for a period of 10 years, had been fully complied with by the Union of India though the starting point of the grant of the benefit could be not from the date of commercial production but from the date of the notification making the exemption notification dated 08.07.1999 applicable to the State of Meghalaya. The promise made in the Office Memorandum dated 24.12.1997 having been implemented and no prejudice being caused to the respondent-industry, merely because the starting point of the exemption is shifted to a later date i.e., the date of the notification, we are of the view that the High Court was not correct in applying the principle of Promissory Estoppel to grant the benefit of exemption to the industrial unit from the date of production instead of the

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date of the exemption notification. The High Court by passing the impugned order has really given retrospective effect to the exemption notification which is not permissible in law. We, therefore, do not agree with the conclusion recorded by the High Court in the order under challenge.

The next question that has to be addressed is the relief that should be accorded to the parties at this point of time.

In terms of the conclusion recorded by us above, the position that would emerge is that the respondent-industrial unit would be liable to pay excise duty for the period from 14.07.1999 to 01.03.2000 and would be entitled to refund for excise duty paid for the period from 14.07.2009 to 01.03.2010.

It would, therefore, really be a question of adjustment of accounts between the Revenue and the assessee. To prevent any further litigation over issues that may arise on account of demand of interest etc., we are of the view that the ends of justice would be met by the declaration of the law as has been made hereinabove leaving the parties to continue with their respective position as on date. The appeal shall, accordingly, stand disposed of in the above terms.

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These appeals stand closed in terms of the aforesaid order passed in Civil Appeal No. 1914 of 2009.

....., J.  
[ RANJAN GOGOI ]

....., J.  
[ NAVIN SINHA ]

New Delhi;  
October 26, 2017.

ITEM NO.105

COURT NO.3

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1914/2009

UNION OF INDIA & ORS.

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VERSUS

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Respondent(s)

WITH

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C.A. No. 1916/2009

C.A. No. 1917/2009

Date : 26-10-2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For Parties

Mr. K. Radhakrishnan, Sr. Adv.

Mr. H. R. Rao, Adv.

Mr. T. A. Khan, Adv.

Mr. R. Malhotra, Adv.

Mr. B. Krishna Prasad, AOR

Mr. L. Badri Narayan, Adv.

Mr. Aditya Bhattacharya, Adv.

Mr. Victor Das, Adv.

Ms. Apeksha Mathur, Adv.

Mr. M. P. Devanath, AOR

Mr. V. Giri, Sr. Adv.

Mr. Sunil Murarka, Adv.

Mr. Rameshwar Prasad Goyal, AOR

Mr. Ranjan Mukherjee, AOR

UPON hearing the counsel the Court made the following

O R D E R

Civil Appeal No. 1914/2009 stands disposed of and Civil Appeal Nos. 1918/2009, 1915/2009, 1916/2009 and 1917/2009 stand closed in terms of the signed order.

(NIDHI AHUJA)

COURT MASTER

(ASHA SONI)

COURT MASTER

[Signed order is placed on the file.]