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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 7453 OF 2007

1. Reliance Industries Limited
a Company registered under the
provisions of the Companies Act, 1956
having its registered office at Maker
Chambers IV, 222, Nariman Point,
Mumbai – 400 021 and having its
Petrochemical Division at MIDC
Industrial Estate Area, Patalganga -
410 220, Rasayani 410 207
District – Raigad.

2. Mr. V.K. Chandran
Shareholder of the 1st Petitioner,
having its office at 3rd Floor,
Maker Chambers IV, Nariman Point
Mumbai – 400 021.

.. Petitioners

Vs.

1. The State of Maharashtra
through Principal Secretary
Industry (Industries, Energy & Labour)
Mantralaya, Mumbai – 400 032.

2. Principal Secretary (Energy)
Government of Maharashtra,
Ministry of Industries, Energy and
Labour Department,
Mantralaya, Mumbai – 400 032.

3. Deputy Secretary (Energy)
Government of Maharashtra,
Mantralaya, Mumbai – 400 032.

4. The Electrical Inspector
Electricity and Labour Department

Inspection Division No.1
Wagle Industrial Estate, Road No.11,
Thane (W) – 400 604.

.. Respondents

WITH
WRIT PETITION NO. 897 OF 2008

1. The Hindoostan Spinning & Weaving
Mills Limited.

A Company incorporated under the
Companies Act, 1956, having its
registered office at Sir Vithaldas
Chambers, 16, Bombay Samachar
Marg, Mubai – 400 001.

2. Shri Chandrahas K. Thackersey
adult Indian inhabitant, the Director
of Petitioner No.1 having its office
at Sir Vithaldas Chambers, 16, Bombay
Samachar Marg, Mumbai 400 001.

.. Petitioners

Vs.

1. The State of Maharashtra
through its Secretary to the Department of
Industry, Energy & Labour having office at
Mantralaya, Mumbai.

2. The Chief Engineer (Electrical)
Government of Maharashtra having office
at PWD Administration Building, 3rd floor,
Ramkrishna Chemburkar Marg, Chembur,
Mumbai – 400 071.

3. The Electrical Inspector
PMT Commercial Building No.1, 3rd Floor,
Swargate, Pune – 411 042.

.. Respondents

WITH
WRIT PETITION NO. 1960 OF 2007

1. Eurotex Industries and Exports Ltd.
A Company incorporated under

the Companies Act, 1956, having
its Regd. Office at
Raheja Chambers, 12th floor, 213,
Nariman Point, Mumbai – 400 021.

2. R.K. Agrawal
Adult Indian inhabitant residing at
B-19/20 Omlata Jain Tower,
Anand Nagar, Vasai Road West,
Dist. Thane 401 202. .. Petitioners

Vs.

State of Maharashtra
having its office at Mantralaya,
Mumbai – 400 032. .. Respondent

WITH
WRIT PETITION NO. 1962 OF 2007

1. M/s. Lupin Limited
formerly known as Lupin Chemicals Ltd.
Being a Company registered under the
Companies Act, 1956 and having its
registered office at 159, CST Road,
Kalina, Santacruz (E), Mumbai – 400 098.
Having one of it's manufacturing
locations at T-142, M.I.D.C. Tarapur,
District – Thane, Maharashtra 400 506
2. Rajvardhan Vishnu Satam
an Indian inhabitant, residing at
B/1507, Shree Prabha CHS Ltd.
Sejal Park, Next to Goregaon Bus Depot
Link Road, Goregaon (W),
Mumbai – 400 104. .. Petitioners

Vs.

State of Maharashtra
having its office at Mantralaya
Mumbai 400 032. .. Respondent

WITH
WRIT PETITION NO. 2003 OF 2007

1. M/s. Amit Spinning Industries Ltd.
A Company incorporated under the
Companies Act 1956, having its registered
office at Lotus House, 5th floor, 33-A
New Marine Lines, Mumbai – 400 020.

2. Ranjan Mangtani, an Indian
Inhabitant, Director of 1st Petitioner,
his office at A-60, Okhla Industrial Area,
Phase II, New Delhi – 20.

Vs.

State of Maharashtra
having its office at Mantralaya
Mumbai 400 032.

.. Respondent

WITH
WRIT PETITION NO. 2262 OF 2007

1. M/s. Standard Industries Ltd.
Being a Company registered under the
Companies Act, 1956 and having its
registered office at 59, Arcade,
World Trade Centre, Cuffe Parade,
Mumbai – 400 005.

2. Mrs. T.B. Panthaki, an Indian
Inhabitant working at 59, Arcade World
Trade Centre, Cuffe Parade, Mumbai – 5.

.. Petitioners

Vs.

State of Maharashtra
having its office at Mantralaya,
Mumbai – 400 032.

.. Respondent

WITH
WRIT PETITION NO. 2364 OF 2007

1. M/s. Mukand Limited,
being a Company registered under the
Indian Companies Act, 1913 and having
its registered office at Bajaj Bhavan,
Jammalal Marg, 226, Nariman Point,
Mumbai – 400 021.

2. Vinod Shah, an Indian Inhabitant,
Working as Director and Advisor
(Special Project) at Mukand Ltd.
Thane-Belapur Road, Dighe,
P.O. Kalwe, Dist. Thane – 400 605 .. Petitioners

Vs.

State of Maharashtra
having its office at Mantralaya,
Mumbai 400 032. .. Respondent

WITH
WRIT PETITION NO. 5954 OF 2007

1. NRC Limited, a Company incorporated
under the Indian Companies Act, 1913,
and having its registered office at
Ewart House, Homi Modi Street,
Mumbai 400 001 and its plant at Post
Mohone, Taluka Kalyan, Dist. Thane.

2. Jayantkumar Hirachand Killedar
Deputy Manager Engineering and
shareholder of Petitioner No.1 and
residing at CN-2/2, NRC Colony, Mohone
Kalyan – 421 102. .. Petitioners

Vs.

1. The State of Maharashtra

through Ministry of Industries, Energy and
Labour Department, Mantralaya,
Mumbai – 400 032.

2. The Electrical Inspector
Electricity and Labour Department
Inspection Division No.1
Kalyan.

.. Respondents

WITH
WRIT PETITION NO. 2204 OF 2007

1. Indo Count Industries Ltd.
A Company incorporated under the
Companies Act, 1956, having its
Regd. Office at D-1, M.I.D.C.
Gokul Shirgaon Kolhapur.

2. Ghanshyam Sen, aged 46 years,
of Bombay, Indian Inhabitant,
residing at Siddhi Apts. B-203,
Shripratha Comlex Nallasopara,
(W), Room No.1, Dist.
Thane – 400 023.

.. Petitioners

Vs.

1. State of Maharashtra
having its office at Mantralaya,
Mumbai – 400 032.
2. The Secretary (Energy)
Government of Maharashtra having
its office at Mantralaya,
Mumbai – 400 032.
3. The Deputy Secretary
(Industries, Energy & Labour Dept.)
Government of Maharashtra,
having his office at Mantralaya,
Mumbai – 400 032.

.. Respondents

WITH
WRIT PETITION NO. 2245 OF 2007

1. SI Group-India Limited
A Limited Company, having registered
office at Plot No. 2/1, TTC Industrial
Area, Thane-Belapur Road, Navi
Mumbai – 400 703.

2. Pradip S. Paradkar, aged 51 yrs.
Shareholder of the Petitioner No.1
of Bombay, Indian Inhabitant
residing at S/27 Jai Satyam-B,
Shiv Mandir Path, Ramnagar,
Dombivli (East) – 421 201. .. Petitioners

Vs.

1. State of Maharashtra
having its office at Mantralaya,
Mumbai – 400 032.

2. The Secretary (Energy)
Government of Maharashtra having
its office at Mantralaya,
Mumbai – 400 032.

3. The Deputy Secretary
(Industries, Energy & Labour Dept.)
Government of Maharashtra,
having his office at Mantralaya,
Mumbai – 400 032. .. Respondents

WITH
WRIT PETITION NO. 2443 OF 2007

1. Graphite India Ltd.
A Limited Company, having registered
office and Factory at 88, MIDC
Industrial Area, Satpur, Nashik
Pin – 422 007.

2. Shiva Balan, adult aged 48 yrs.
Of Bombay, Indian Inhabitant,
residing at A-3/102, Gangotri
Bangur Nagar, Goregaon (W),
Mumbai – 400 090.

.. Petitioners

Vs.

1. State of Maharashtra
having its office at Mantralaya,
Mumbai – 400 032.
2. The Secretary (Energy)
Government of Maharashtra having
its office at Mantralaya,
Mumbai – 400 032.
3. The Deputy Secretary
(Industries, Energy & Labour Dept.)
Government of Maharashtra,
having his office at Mantralaya,
Mumbai – 400 032.

.. Respondents

WITH
WRIT PETITION NO. 5966 OF 2007

1. Jindal Poly Films Limited
previously known as
Jindal Polyesters Limited
a company incorporated under the
Companies Act, 1956, having its
Regd. Office at 19th K.M. Hapur,
Bulandshahar Road, P.O. Gulauthi
Dist. Bulandshahar, U.P.
2. Rangbehari Bhoot
Shareholder of the Company, having
his address at 602, Radha Kunj “B”
Navetia Road, Malad (East),
Mumbai 400 097.

.. Petitioners

Vs.

1. State of Maharashtra
having its office at Mantralaya,
Mumbai – 400 032.
2. The Secretary (Energy)
Government of Maharashtra having
its office at Mantralaya,
Mumbai – 400 032.
3. The Deputy Secretary
(Industries, Energy & Labour Dept.)
Government of Maharashtra,
having his office at Mantralaya,
Mumbai – 400 032.
4. The Controller of Electricity
Industries, Energy and Labour
Division, 21, Rawal Bungalow,
Tidke Colony, Nasik 422 002.

.. Respondents

WITH
WRIT PETITION NO. 4962 OF 2007

M/s. Pudumjee Pulp and Paper Mills Limited
A Company Registered under the provisions
of Companies Act, 1956
[Act No.1 of 1956]
having its Registered Office and Factory
at Thergaon Chinchwad,
Pune – 411 033.

.. Petitioner

Vs.

1. State of Maharashtra
[Summons to be served on the learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908].

2. The Secretary
Industries, Energy and Labour Department
Government of Maharashtra
Mantralaya,
Mumbai – 400 032.

[Summons to be served on the learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908].

3. The Electricity Inspector,
PMT Commercial Building No.1,
3rd Floor, Swargate,
Pune – 411 042.

.. Respondents

WITH
WRIT PETITION NO. 8260 OF 2007

1. Soma Textiles & Industries Limited
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at D-49, MIDC
Baramati, District Pune.
2. Shri Shrikant Bhat, Adult, Indian
Inhabitant, resident of 702 B, Patel
Terrace, Jijamata Road Pump House,
Andheri (East), Mumbai – 400 093.

.. Petitioners

Vs.

The State of Maharashtra
Through Government Pleader,
Appellate Side, High Court,
Bombay.

.. Respondent

WITH
ORIGINAL SIDE WRIT PETITION NO. 1508 OF 2007

M/s. Nagreeka Exports Ltd.,
Having factor at village Yavaluj,
Taluka Panhala, Dist. Kolhapur,
Kolhapur – 416 008 and having
office at 7, Kala Bhavan,
3, Mathew Road, Mumbai – 400 004.

.. Petitioner

Vs.

1. State of Maharashtra
Through Govt. Pleader,
High Court, Bombay.
2. The Secretary (Energy) and Labour
Department, Government of
Maharashtra, Mantralaya,
Mumbai – 400 032.

.. Respondents

Mr. Milind Sathe, Senior Advocate with Mr. Apsi Chinoy, Senior Advocate with Mr. Chirag Balsara and Mr. C.D. Patel i/by M/s. Junnarkar and Associate for petitioners in Writ Petition No. 7453 of 2007.

Mr. Z. T. Andhyarujina a/w Mr. Parag Patil i/by Hariani & Co. for the petitioners in W.P. No. 897/08.

Mr. Haresh Jagtiani, Senior Advocate a/w Mr. Anil D'Souza & Mr. Siddesh Bhole i/by M/s. Haresh Jagtiani & Associate for petitioners in W.P. Nos. 1960, 1962, 2003, 2262 and 2364 of 2007.

Mr. Satish Shah, Senior Advocate a/w Ms. Gauri Gandhi Kothari, Ms. Savita Sawalkar, Khurhnood Akhtar, Mrs.Suryawanshi i/by Mr. Vigil Juris for the petitioners in W.P. No. 5954/07.

Mr. Satish Shah, Senior Advocate with Ms. Gauri Gandhi Kothari with Ms.Savita Sawalkar i/by M/s. Tamhane and Co. for petitioners in W.P. Nos.2204, 2245, 2443, 5966 of 2007.

Mr. A.V. Anturkar i/by Mr. S.B. Deshmukh for petitioners in W.P. No. 4962/07.

Mr. Anoshak Daver a/w Mr. Nikhil Rajani i/by M/s. V. Deshpande & Co. for petitioners in W.P. No. 8260/07.

None for the parties in O.S. W.P. No. 1508/07.

Mr. V.A. Sonpal, "A" Panel Advocate for State all the matters.

CORAM: B.H.MARLAPALLE & SMT. ROSHAN DALVI, JJ.

Reserved On : September 24, 2009.

Pronounced On : November 07, 2009.

JUDGMENT (Per B.H. Marlapalle,J.).

1. The factual matrix, leading to the filing of these petitions in the second round, could, in briefly, be set out as follows:-

The Government of Maharashtra announced its Industrial Policy sometimes in early 1993 and proposed not to charge electricity duty on the power generated by the captive power plants and its utilization. Clause 5.3.3.1 of the said policy reads as under:-

"5.3.3.1 – On the power front, the State has always accorded a very high priority to this sector. Nearly one fourth of its plan outlay is earmarked for this purpose. Today, our installed capacity is 9,300 mega watts. In the next 5 years, we propose to add 5,500 mega watts to this capacity. Maharashtra was the first State in which private sector participation has been permitted in power

projects. We have now been able to seek participation of an international power company which is planning to set up a large power plant based on liquefied natural gas in Ratnagiri at a total investment of Rs.8,000 crore. We will also welcome captive generation of power by any unit so as to augment the overall power availability in the State. To encourage such captive power generation, it is proposed not to charge electricity duty to the extent of such captive power generation and its utilization.”

2. In keeping with the Industrial Policy so announced, the State Government issued a notification dated 22/6/1993 in exercise of the powers conferred by Section 5A of the Bombay Electricity Duty Act, 1958 (“the Act” for short) and exempted from July 1993 the consumption of energy in respect of any industrial purpose in the whole of the State of Maharashtra from payment of the whole of the electricity duty payable under Part – F of the schedule to the said Act subject to the following conditions, namely,
 - (i) The exemption shall be available only in respect of energy generated in generating station installed on or after 1/7/1993 by the person carrying on the Industry and consumed by himself for such industry.
 - (ii) The exemption shall not be available in respect of any energy consumed for residential or office purpose in any industry.
3. On 1/9/1994, the Government issued a fresh notification in

supersession of its earlier notification dated 22/6/1993 in exercise of the powers conferred by Section 5A of the Act and exempted with effect from 1/9/1994 the consumption of energy generated in a generating station by a person carrying on the industry and consumed by himself for such industry, in the whole of the State of Maharashtra, from the payment of the whole electricity duty payable under Part – F of the schedule to the Act. On 30/10/1996 the State Government issued a fresh notification in supersession of the earlier notification dated 1/9/1994 in exercise of the powers conferred by Section 5A of the Act and exempted with effect from the billing month of October, 1996, the consumption of energy generated in a generating station by a person carrying on an industry and consumed by himself for such industry, in the whole of the State of Maharashtra from payment of the whole electricity duty payable under clause (b) of Part – G of the schedule appended to the said Act. However, on 1/4/2000, the State Government issued a notification and withdrew the exemption on the payment of electricity duty on the power generated by the captive power plants and decided to charge 30 paise per unit as electricity duty with effect from the billing month of April, 2000 in supersession of all the earlier notifications. On the very same day, the State Government issued yet another notification in exercise of the powers conferred by Section 5A of the Act and in supersession of the earlier notification dated 30/10/1996 and exempted with effect from the billing month of April, 2000, the consumption of energy generated through non-conventional sources by a person carrying on an industry in the Co-operative sector and consumed by himself for such industry, in the whole of the State of Maharashtra from payment of the whole

electricity duty payable under clause (b) of Part – G of the schedule appended to the said Act. On 4/4/2001, the State Government issued yet another notification in exercise of the powers conferred by Section 5A of the Act and reduced the electricity duty from 30 paise per unit to 15 paise per unit payable under clause (b) of Part – G of the schedule to the said Act, subject to the condition that the generating set is installed in pursuance of the Government of Maharashtra policy prior to the revised policy regarding captive generation declared vide GR dated 25/4/2000. Thus, the captive power plants installed after the Government Resolution dated 25/4/2000 were not entitled for the electricity duty payment at the reduced rate of 15 paise per unit, as per the notification dated 4/4/2001.

4. The notifications dated 1/4/2000 and 4/4/2001 came to be challenged in a group of Writ Petitions before this Court i.e. Writ Petition Nos. 652/01, 2604/01, 2849/01, 3005/01, 3006/01, 4847/01, 4848/01, 380/02, 558/02, 864/02, 1295/02, 1336/02, 1636/02, 2940/02, 3132/02, 3716/02 and 4711/05 and these petitions were filed by the present petitioners. The petitions were admitted and either stay to the recovery was granted or some conditional orders were passed so as not to take any coercive action against the petitioners. While these petitions were pending, the Maharashtra Electricity Regulatory Commission passed an order on 18/9/2004 and rendered an advice to the Government of Maharashtra regarding exemption in electricity duty in the following words:-

“ADVICE TO THE GOVERNMENT OF MAHARASHTRA

Electricity Duty

1.105 State taxation is outside the domain of determination by the Commission. However, the Commission notes that the Government of Maharashtra currently levies an Electricity Duty (ED) on the consumption of the units generated from the Captive Power Plant, under the Bombay Electricity Duty Act 1958, at the rate of 30 Paise per unit on CPPs commissioned after 01.04.2000, and at the rate of 15 paise per unit on CPPs commissioned before 1st April, 2000.

1.106 An important aspect of the philosophy behind this Order on Fossil Fuel based Captive Power Plants is to gainfully utilise the excess saleable capacity of the Captive Power Plants. This is important especially in the context of the considerable demand-supply gap prevailing in the State, which could be partially bridged through surplus CPP power.

1.107 Given the above, to encourage and promote sale of available surplus captive power within the State and to avoid unduly overburdening the Captive Power Plants with further levy of Electricity Duty, the Commission, in exercise of the powers vested in it under Section 86(2), advises the Government of Maharashtra to abolish the Electricity Duty on the self-consumption by Fossil Fuel based Captive Power Plants in the State. The Commission also recommends that Tax on Sale of Electricity should not be levied in the case of CPPs.”

4A. The Government conceded to the said advice and issued the notification dated 16/6/2005 in exercise of the powers conferred by Section 5A of the Act and in supersession of the Government notification dated 4/4/2000 and exempted, for a period of five years with effect from 1/5/2005, the consumption of energy, generated in a captive power generating station, by a person carrying on an industry, for his industry, from payment of whole of the electricity duty payable under clause (b) of Part – G of the Schedule appended to the said Act. The said notification was placed on record in the above mentioned pending writ petitions and, therefore, on 6/6/2006 a Division Bench of this Court disposed off all the pending writ petitions and by granting liberty to the petitioners to submit a representation for exemption of electricity duty in its entirety for the period from 1/4/2000 to 30/4/2005 to the State Government and if such a representation was submitted, the State Government was directed to decide the same as early as possible and preferably in four weeks. The interim orders granted earlier were directed to be continued till the decision on the representations to be taken by the State Government. The Captive Power Producers Association, in the meanwhile, had submitted a representation dated 27/4/2006 to the Secretary, Industries, Energy and Labour Department, Government of Maharashtra. Some of the petitioners had also submitted similar representation in May, 2006 to the State Government. It appears on 5/6/2006 there was a meeting held by the Secretary (Energy) with the representatives/officials of the Captive Power Producers Association and Reliance Industries Ltd. and the minutes of the said meeting were reduced in writing. The last paragraph of the said minutes read as under:-

“On hearing the representations made by the representatives/officers present for the meeting, Secretary (Energy) clarified that, in 2005, when the proposal for granting concessions to CPPs was submitted to the Cabinet, it was pointed out that the Captive Power Producers Association and other industries units have already filed a petition in the High Court, to waive off all the electricity duty from the year 2000 itself. However, it was agreed by the representatives of Captive Power producers, that then the said petition shall be withdrawn, if Govt. waives off Electricity duty on Captive power generation, Govt. shall examine this and shall take a decision on the present request of the Association. It is expected that this process would take some time. It would therefore be appropriate to inform the High Court, that about 3 months time would be required to arrive at a decision on the issue. The representatives agreed to the said proposal.”

On account of these intervening developments, the order dated 6/6/2006 came to be passed by this court directing the State Government to decide the representations for total exemption from the payment of electricity duty by the Captive Power Producers. On 25/1/2007, the Government of Maharashtra in the Department of Industry, Energy and Labour addressed a letter to the President of CPPA and informed that the request for exemption from payment of electricity duty could not be accepted. The CPPs were advised to immediately pay their electricity duty dues together with interest thereon to the Governemnt. The CPPs submitted yet another representation to the Minister for

Energy and Higher Technical Education on 6/2/2007 and 23/2/2007 some of the petitioners received notices demanding payment of electricity duty arrears for the period from April 2000 to May, 2005 and it is under these circumstances that these petitions came to be filed in the fresh round. The petitioners have prayed for quashing and setting aside the notification dated 4/4/2001 and the demand notices issued from time to time for the recovery of arrears in the payment of electricity duty for the period from 1/4/2000 to 30/4/2005 as well as the communication/order dated 25/1/2007.

4B. Writ Petition Nos. 6414/2000, 495/01 and 5207/01 came to be decided by us as per the common judgment dated 5/10/2009 and they were partly allowed. The notifications dated 1/4/2000 and 4/4/2001 were quashed and set aside and it was held that the petitioners were entitled for exemption in payment of electricity duty in terms of the notification dated 30/10/1996 for the period from 1/4/2000 to 30/4/2005. The demand notices for the recovery of arrears in electricity duty for the period from 1/4/2000 to 30/4/2005 were quashed and set aside.

5. The relief prayed for in this group of petitions is on the lines of the relief granted by us by our common judgment dated 5/10/2009. However, some additional grounds, in addition to the grounds raised in Writ Petition Nos. 6414/2000, 495/01 and 5207/01 have been set out in these petitions and, therefore, this separate judgment to deal with those additional grounds, which

ought to be treated as an extension of our common judgment dated 5/10/2009.

6. The petitioners have, in addition, invoked the doctrines of promissory estoppel and legitimate expectations while praying for the exemption in payment of electricity duty in its entirety for the period from 1/4/2000 to 30/4/2005. It has been submitted that the petitioners, on the basis of the industrial policy announced by the State Government in early 1993 and the said policy having been translated in terms of the notification dated 22/6/1993, they have set up their captive power plants at huge investments in crores of rupees and, therefore, the State Government ought not to be permitted to resile from the same and it must be bound by the promises made. In addition, the petitioners contend that while rejecting their representations as per the communication dated 25/1/2007, the State Government did not seek the advice from the Maharashtra Electricity Regulatory Commission which is a statutory body created under the Electricity Act, 2003 and on that ground the denial of total exemption in the payment of electricity duty is vitiated. It is further contended that the communication dated 25/1/2007 rejecting the representations submitted by the petitioners or their Association is without any reasons and that by itself is a sufficient ground to set aside the same. Pursuant to the Industrial Policy announced by the State Government, it had made an unequivocal representation/assurance/promise to exempt captive power generation from electricity duty payment in order to induce an incentive to industrial units without setting up a particular period and, in fact, it was open ended. Moreover

by its subsequent resolution dated 20/12/1995 framing guide-lines / directions to the MSEB to freely give permission to new industrial units to set up CPPs, the exemption from electricity duty was continued to remain in force thereafter, as per clause (vi) of the said GR. It is specifically stated that the exemption from electricity duty which is at present available to the electricity generated from captive power generation would continue to remain in force hereafter. The minimum life of a captive power plant is 15 years as per the notification dated 29/3/1994 issued by the Ministry of Power under the Electricity Supply Act, 1948 and the petitioners worked out the costing of their plant on the basis that the exemption for payment of electricity duty would be available for at least 15 years. On these facts, the Government is required to be held accountable to its assurances/promises on the well settled principle of promissory estoppel and in support of these contentions the petitioners have relied on the following decisions:-

- (a) Union of India vs. Indo-Afghan Agencies Ltd. [AIR 1968 SC 718].
- (b) M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. The State of Uttar Pradesh and ors. [AIR 1979 SC 621]
- (c) Madan Mohan Pathak and anr. vs. Union of India and ors. [(1978) 2 SCC 50]
- (d) State of Madhya Pradesh and ors. vs. Orient Paper Mills Ltd. [(1990) 1 SCC 176].

- (e) Pawan Alloys & Casting Pvt. Ltd., Meerut vs. U.P. State Electricity Board and ors. [(1997) 7 SCC 251].
- (f) State of Punjab vs. Nestle India Ltd. & anr. [(2004) 6 SCC 465].
- (g) Mahabir Veg Oils vs. State of Haryana [(2006) 3 SCC 620].

6A. In the case of M/s. Indo-Afghan Agencies Ltd. (Supra), it was held,

“Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen.”

In the case of Shrijee Sales Corporation and anr. vs. Union of India [(1997) 3 SCC 398], the Supreme Court laid down the following two propositions, namely,

- (a) The determination of applicability of promissory estoppel

against public authority/Government hinges upon balance of equity or “public interest”, and

(b) It is the Court which has to determine whether the Government should be held exempt from the liability of the “promise” or “representation”.

In the case of Motilal Padampat Sugar Mills (Supra), the Supreme Court stated, inter alia,

“....It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah,J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise “on some indefinite and undisclosed ground of necessity or expediency”, nor can the Government claim to be the sole judge of its liability and repudiate it “on an ex parte appraisal of the circumstances”. If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the

Government from the liability; the Government would have to show what precisely is the changed policy and also its reason and justification so the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability.....”

In the case of U.P. Power Corporation Ltd. and anr. vs. Sant Steels & Alloys (P) Ltd. and ors. [(2008) 2 SC 777], while dealing with the principle of promissory estoppel, the Supreme Court observed as under:-

“35. In this 21st century, when there is global economy, the question of faith is very important. The Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the short-sightedness of governance. Therefore, in order to keep the faith of the people, the Government or its instrumentality should abide by their commitments.....”

In the case of Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector and E.T.I.O. & ors. [(2007) 5 SCC 447], the doctrine of

promissory estoppel was highlighted in the following words:

“ The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis of the current tariff. Such a policy-decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the executive instructions.....”

7. The State Government has filed affidavit in reply opposing the petitions. It has been pointed out that the notifications issued by the State Government and relied upon by the petitioners regarding exemption from the payment of electricity duty do not state that the exemption shall continue permanently and indeed no specific period for exemption has been set out in any of these notifications. The meaning of the word “hereafter” means “henceforth” and not for an indefinite period. The decisions relied upon by the petitioners on the doctrine of promissory estoppel arise from the cases where there was a promise for exemption for a particular period. The promise of exemption can be assailed only when the notification exempting duty is withdrawn retrospectively in a case where no time period is mentioned. There is no statutory or fundamental right to claim exemption and financial crunch leading to withdrawal of exemption is a good and reasonable ground to withdraw the exemption. The exemption was already enjoyed for about five years and it was not a case of premature withdrawal. The duty exemption was already reduced by 50% in as

much as the duty chargeable at the rate of 30 paise per unit of electricity generated by the CPPs came to be reduced to 15 paise per unit with effect from 1/4/2000 and thus the difficulties pointed out by the petitioners or their Association were considered by the State Government. The subordinate legislative actions have force of law and, therefore, there cannot be estoppel against the statute. The petitioners have not given any statistics as to their annual benefit of duty exemption which has been eroded by withdrawal of the exemption. The CPPs have been installed irrespective of the exemption granted and for ensuring uninterrupted power supply. At the same time, the petitioners have not clarified whether the CPPs are a standby or the grid power is standby or the CPPs supply power continuously. The power of granting exemption is coupled with the power to withdraw the exemption and the withdrawal of exemption in the instant cases is on the ground of policy of the Government and it has been withdrawn prospectively. In support of these contentions, the State Government has relied upon the following decisions:

- (a) Kasinka Trading and anr. vs. Union of India and anr. [(1995) 1 SCC 274.
- (b) Sales Tax Officer and anr. vs. Shree Durga Oil Mills and anr. [(1998) 1 SCC 572].
- (c) Shrijee Sales Corporation and anr. vs. Union of India [(1997) 3 SCC 3980.

7A. It is evident from the following chart that the petitioners have set up the CPPs post the notification dated 15/6/1993 and all of them have contended that the investment on the CPPs was made mainly by taking into consideration the policy announced by the State Government of exemption in payment of electricity duty on the power generated by the CPPs and utilized for captive consumption. The submissions made by Mr. Sonpal that none of them have indicated as to whether the installation of CPPs was post the exemption policy of the State Government:

W.P. No.	Date / Year of installation of CPP	Capacity of CPP	Amount Invested (Crores)
7453/07	1995 to 1997	68 MW	252
897/08	01/07/1996	860 KVA	2
1960/07	Post 1998	7 MW	18
1962/07	Post 1998	6 MW	20
2003/07	Post 1997	2.7 MW	8
2262/07	Post 1996	23 MW	105
2364/07	Post 1997	35 MW	75
5954/07	1999		50
2204/07	1996	6 MW	15
2245/07	Beginning of 1998	5 MW	30
2443/07	March, 2000	7.50 MW	22

5966/07	Jan. 1998	3.84 MW	8.60
4962/07	Dec. 1998	6.25 MW	17
8260/07	1/4/1994	2270x3, 2300x1 KVA	8.78
1508/07	1995 1997	1720 KVA 860 KVA	1.25 80 lacs

7B. In Writ Petition No. 4962 of 2007, Mr. Anturkar the learned counsel for the petitioner has raised some additional issues. As per him a person like the petitioner, who generates electricity and uses it for himself is not a consumer within the meaning of Section 2(a) of the Act to the extent of energy so generated and used by himself. Consequently, the act of the person generating and using the electricity is not “consumption” and, therefore, Part -G (b) of the Act is otios and it becomes meaningless. It is further submitted that under these circumstances the petitioner cannot be levied electricity duty under Section 3 of the Act and, therefore, the demand notices are required to be quashed and set aside. This additional issue raised by Mr. Anturkar is no more res integra in view of the judgment of the Supreme Court in the case of Jiyajeerao Cotton Mills Limited vs. State of Madhya Pradesh [AIR 1963 SC 414]. The Supreme Court observed,

“Section 2(a) of the Act defines “consumer”. The definition, so far as relevant, runs thus: ‘Consumer’ means any person who consumes electrical energy sold or supplied by a distributor of electrical energy or a producer” ‘Producer’ as

defined in Section 2(d-1) of the Act means “a person who generates electrical energy at a voltage exceeding hundred volts for his own consumption or for supplying to others”. If we read the two definitions together, omitting the non-essentials, ‘consumer’ would include “any person who consumes electrical energy supplied by a person who generates electrical energy for his own consumption”. Under Section 3 a person who generates electrical energy over hundred volts for his own consumption is liable to pay duty on the units of electrical energy consumed by himself. A producer consuming the electrical energy generated by him is also a consumer, that is to say, he is a person who consumes electrical energy supplied by himself.....”

Thus the additional ground raised by Mr. Anturkar is unsustainable and, therefore, we proceed to consider the limited issue, along with other petitioners, as to whether the petitioner is eligible for full exemption from the payment of electricity duty for the period from 1/4/2000 to 30/4/2005.

In Writ Petition No. 897 of 2008, it appeared at the threshold that the petitioner-company has not installed the captive power plant and it has installed only Diesel Generating sets as and by way of a standby arrangement so as to provide uninterrupted power supply to its manufacturing activity. However, the additional affidavit filed on 10/9/2009 has clarified our doubts and additional

documents have been brought on record pointing out that the Maharashtra State Electricity Board (MSEB) by its letter dated 10/4/1996, while granting permission to install three Diesel Generating sets of the capacity of 860 KVA at its factory premises called upon the petitioner to use the generating sets as CPPs and the Board has recognized the installation by the petitioner as a captive power plant.

8. It is to be noted that the notifications issued by the State Government in exercise of its power under Section 5A of the Act from June 1993 to 30/10/1996 granting exemption of electricity duty on the power generated by the CPPs, the State Government has not mentioned any specific period for which the said exemption would continue to operate and, therefore, the impugned notification dated 1/4/2000 or 4/4/2001 does not amount to a premature resale from the exemption granted by the State Government. The term “hereafter” signifies the time present and to come and from the period at which they are used. As per the Law Lexicon the word “hereafter” used as an adverb, does not necessarily refer to unlimited time and it is not used in common parlance as a synonym for the term “forever”. The duration of the “hereafter” is usually expressed by some other word, or is inferred from the context. In the construction of statutes the word “hereafter” shall mean any time after the day on which the statute takes effect. Thus the State Government did not make a commitment or promise for an indefinite period to come and it is well settled that the power to grant exemption is coupled with the power to withdraw the same.

However, the withdrawal cannot be arbitrary and the Government cannot be allowed to change its position without justifications. At the same time, it is for the State Government to justify the discontinuation of such withdrawal and it is not enough to say that exemption is being withdrawn as a matter of policy or in public interest. Mr.Sonpal emphasized before us, like in the connected writ petitions, that the exemption was warranted on account of budgetary deficit and the Government wanted to collect more revenue. This issue has been already dealt with by us in the common judgment dated 5/10/2009 by holding that the budgetary deficit cannot be termed as public interest so as to justify the discontinuation of exemption.

9. What is relevant in these cases is that the State Government on the advice of the MERC, issued the notification dated 16/6/2005 in exercise of the powers conferred by Section 5A of the Act and restored the exemption in its entirety with effect from 1/5/2005 and all the petitioners before us are the beneficiaries of the said notification. The only issue that requires consideration is whether the Government has justified its decision to deny the full exemption for the period from 1/4/2000 to 30/4/2005 and instead of charging electricity duty at the rate of 15 paise per unit on the power generated by the CPPs. It is fairly conceded that State Government did not seek the advice of MERC before issuing the impugned communication dated 25/1/2007. It has been submitted by Mr. Sonpal that the term “tariff” and “duty” are different and the tariff is regulated by the MERC under the Electricity Act, 2003, whereas the imposition of levy or

exemption thereunder is under the exclusive domain of the State Government and it is not obligatory for the State Government to seek advice from the MERC for granting exemption. This submission has been repelled by us in the common judgment dated 5/10/2009 and in any case, such an advice could have been an additional ground either to support or otherwise the impugned communication dated 25/1/2007.

10. When the Government wanted to deny exemption for the period from 1/4/2000 to 30/4/2005, it was imperative to set out the reasons in the impugned communication dated 25/1/2007 and admittedly no such reasons have been set out. This clearly indicates lack of application of mind on the part of the State Government and its failure to set out just and proper reasons to deny the benefit of exemption for the intermittent period vitiates the order dated 25/1/2007 and this is more relevant because in its own wisdom the Government has restored full exemption by the notification dated 16/6/2005. The communication dated 25/1/2007, therefore, smacks of arbitrariness on the part of the State Government and in any case the State Government has not been able to justify its decision to deny the full exemption for the intervening period as has been noted by us in the common judgment dated 5/10/2009. The minutes of the meeting dated 5/6/2006 and reproduced in para 4A hereinabove clearly indicated that the proposal for granting concession to CPPs was submitted to the cabinet and the cabinet could not take any decision presumably because the pendency of the petitions in the first round was pointed out. The representative of the petitioners had agreed to

withdraw the petitions if the Government would waive of electricity duty on CPPs. The Government had agreed to examine the same and take a decision on the request of the Association. It was, therefore, imperative that after the petitions in the first round were disposed off as per the order dated 6/6/2006, the issue of granting exemption for the period from 1/4/2000 to 30/4/2005 was placed before the cabinet and the cabinet decided against the petitioners. As noted in our common judgment dated 5/10/2009 we had called upon Mr.Sonpal to submit the original files so as to find out whether the issue was placed before the cabinet before the impugned order dated 25/1/2007 was passed and whether the noting placed before the cabinet indicated any reasons to deny full exemption in the payment of electricity duty to the CPPs. Despite adjournments, no such record was placed before us and it was stated that the record was misplaced.

11. For the reasons set out hereinabove and in addition to the reasons set out in our common judgment dated 5/10/2009, these petitions succeed. We hereby quash and set aside the notification dated 4/4/2001 and the communication/order dated 25/1/2007 and we hold that the petitioners are entitled for full exemption in the payment of electricity duty for the period from 1/4/2000 to 30/4/2005. Consequently, the impugned demand notices are also quashed and - set aside. Rule is made absolute accordingly with no order as to costs.

(SMT. ROSHAN DALVI,J.)

(B.H. MARLAPALLE,J.)

