REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9844 OF 2011

STATE OF JAMMU AND KASHMIR .....APPELLANT(S)

VERSUS

M/s. TRIKUTA ROLLER FLOUR MILLS PVT. LTD. AND ANOTHER .....RESPONDENT(S)

WITH

CIVIL APPEAL NO.9845 OF 2011

STATE OF JAMMU AND KASHMIR AND ANOTHER .....APPELLANT(S)

VERSUS

SANSAR OIL MILLS AND ANOTHER .....RESPONDENT(S)

CIVIL APPEAL NO.9846 OF 2011

STATE OF JAMMU AND KASHMIR AND ANOTHER .....APPELLANT(S)

VERSUS

R.C. FLOUR MILLS AND ANOTHER .....RESPONDENT(S)

CIVIL APPEAL NO.9847 OF 2011

STATE OF JAMMU AND KASHMIR AND ANOTHER .....APPELLANT(S)

VERSUS

SUDERSHAN STEEL (P) LTD. .....RESPONDENT(S)

CIVIL APPEAL NO.9848 OF 2011

STATE OF JAMMU AND KASHMIR
AND ANOTHER .....APPELLANT(S)

VERSUS

JAMMU STEEL INDUSTRIES
AND ANOTHER .....RESPONDENT(S)

CIVIL APPEAL NO.9849 OF 2011

STATE OF JAMMU AND KASHMIR
AND ANOTHER .....APPELLANT(S)

VERSUS

M/s. TRIKUTA ROLLER FLOUR MILLS
PVT. LTD. AND ANOTHER .....RESPONDENT(S)

CIVIL APPEAL NO. 10616 OF 2017
(Arising out of SLP(C) NO.5803 of 2006)

STATE OF JAMMU AND KASHMIR
AND ANOTHER .....PETITIONER(S)

VERSUS

BARI BRAHMA INDUSTRIAL ASSOCIATION
AND OTHERS .....RESPONDENT(S)

CIVIL APPEAL NO. 10615 OF 2017
(Arising out of SLP(C) NO.5835 of 2006)

STATE OF JAMMU AND KASHMIR
AND OTHERS .....PETITIONER(S)

VERSUS

K.B. ROLLER FLOUR MILLS .....RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted in Special Leave Petition (Civil) Nos.5803 and 5835 of 2006.

2. The State government issued a notification bearing G.O. No. 318-GR of 1990, dated 30.11.1990, granting hundred per cent refund of central sales tax (CST), paid by small scale industrial units (SSI units) in the State, on raw materials purchased from outside the State, for a period of five years. It was superseded by G.O. No. 253-Ind/DIC of 1993 dated 01.10.1993, restricting the refund to the maximum annual purchase turnover of Rs.50 lacs to a unit holder. In monetary terms, Rs.2 lacs per annum per unit (taking the maximum rebate of CST at 4%).

3. As part of an executive policy to encourage entrepreneur investment in the State by SSI units, the appellant by G.O. No. 391-Ind of 1972 dated 21.06.1972, provided for refund of CST

paid on purchase of raw materials from outside the State, for a period of 3 years from the date of the order, and 5 years from the date of production. It was superseded by G.O. No. 54-IND of 1983 dated 26.02.1983, providing for refund of CST for a period of 5 years from the date of production.

4. A fresh G.O. No. 318-GR of 1990, dated 30.11.1990, was issued in supersession, providing for such refund in full up to 31.03.1995, after which it was to be provided on a sliding scale of (a) 50 per cent of the tax paid up to end of 31.03.1998 and (b) 25 per cent of the tax paid up to end of 31.03.2000. Option was also given to those entitled to avail the earlier package of incentives, to continue availing the benefit for the remaining period of their entitlement. It was again superseded by G.O. No. 253-Ind/DIC of 1993, dated 01.10.1993, leading to institution of writ petitions assailing it.

5. The challenge to the notification dated 01.10.1993, by the respondents was on principles of promissory estoppel,

contending that having held forth a promise for grant of exemption from CST on raw materials purchased from outside the State for five years from the date of production, the appellant could not have withdrawn or modified the benefit before that time period.

6. The Division Bench of the High Court rejected the plea of promissory estoppel. But, regarding the plea of the State change in policy on account of refunds availed fraudulently, it was held that administrative apathy, could not be a justification for putting a ceiling on the quantum of refund. The restriction sought to be introduced, had no nexus with the object sought to be achieved. If the government bonafide deemed it against public interest, it could have withdrawn the policy. The appellant was required to provide refund for a period of 5 years from the date of production.

7. Shri R. Venkataramani, learned Senior Counsel appearing on behalf of the appellant, submitted that the

respondents had no legal or indefeasible right to claim refund of CST paid, except in terms of the benefit as may have been granted under the executive policy decision, and as modified from time to time. The benefit being in the nature of a concession, could be withdrawn at any time, for just and valid reasons in the larger public interest. The detection of false claims for refund of CST, leading to institution of FIRs, enquiries and vigilance cases, affecting the State exchequer, led to a conscious policy decision to put a cap on the earlier policy. Judicial review of the policy decision dated 01.10.1993, will have to be circumscribed within limits of relevancy of materials considered only. If the policy decision was found to be completely arbitrary, based on no materials, or took into consideration irrelevant materials, then only the Court could have interfered. A reasonable conclusion based on satisfaction culled out from relevant materials regarding misuse of the concession, and protection of the State exchequer were sufficient justification for change in policy. The decision to put a cap on reimbursement was, therefore, not arbitrary.

8. Learned Counsel for the respondents, supporting the impugned order of the High Court, submitted that no material had been brought on record, in support of the contention regarding raising of false claims by SSI units in the State. If CST had not been paid by the dealers in the other State from whom the raw materials had been purchased, the respondents could not be visited with the consequences by denial of refund. The Division Bench had aptly observed that administrative apathy in detecting false claims could not be a justification for an across the board decision to curtail the benefit. Moreover, if false and bogus claims were an issue, and the intention was to curb it, capping the limit for exemption had no nexus with the object sought to be achieved.

9. The respective submissions have received our thoughtful consideration. The grant of refund on CST paid, to boost entrepreneur investment was primarily an executive economic policy decision. The scope for judicial scrutiny and interference with the same, has to be restricted to

arbitrariness and unreasonableness as observed in ***Ugar Sugar Works Ltd. vs. Delhi Admn.,*** (2001) 3 SCC 635, as follows:-

> "18.....It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."

10. The respondents had no legal or indefeasible right to claim refund of CST paid by them. The policy rested on an executive decision to encourage entrepreneur investment. It naturally includes the power of the State to review the policy from time to time, including on considerations for the manner

in which the policy was proving beneficial or detrimental to the larger public interest, and the State exchequer. The policy could therefore well be withdrawn or modified at any time for just, valid and cogent reasons. Judicial review of a policy decision, especially an economic policy decision, shall have to be restricted to the presence of just and valid reasons eschewing arbitrariness, so as not to fall foul of Article 14 of the Constitution. But, in the garb of judicial review, the Court will not examine the sufficiency or adequacy of the reasons or materials, in the manner of an appellate authority, to substitute its own wisdom for that of the government. That would tantamount to taking over of the executive decision making process.

11. The appellant had specifically contended before the High Court that based on verification of complaints regarding refunds having been obtained without any payment of CST, causing revenue loss to the State, the decision had been taken in larger public interest. The High Court unfortunately dealt

with it very cursorily, as a simple issue of administrative apathy without further discussion. The reasonableness in action on part of the State, in not having withdrawn the benefit completely, balancing competing interests, was considered negatively holding that it could have been completely withdrawn but not curtailed. Misuse of exemption, fraudulent claims for refund, affecting the financial health and coffers of the State can certainly be valid and germane reasons in the larger public interest, to restrict or revoke the benefit as observed in ***Commissioner of Commercial Taxes (Asstt.) vs. Dharmendra Trading Co.,*** (1988) 3 SCC 570, as follows:-

> "4……It is well settled that if the government wants to resile from a promise or an assurance given by it on the ground that undue advantage was being taken or misuse was being made of the concessions granted the court may permit the government to do so but before allowing the government to resile from the promise or go back on the assurance the court would have to be satisfied that allegations by the government about misuse being made or undue advantage being taken of the concessions given by it were reasonably well established……"

12. It is the contention of the appellants that in or about 1992, genuine doubts were entertained about the veracity of

the refund claims of CST made by SSI units. A specific reference has been made by illustration to the case of the respondent in Civil Appeal No. 9844 of 2011. Enquiries were also made from the Excise and Taxation Officer II, Amritsar, as dealers at Amritsar were suspected of being in connivance with the dealers in the appellants State. It was observed on the basis of information furnished by the authorities at Amritsar that the original payee receipts produced by the SSI units in the appellant State, did not tally with that given by the sales tax authorities of Punjab, and who had also confirmed that the suppliers did not deposit any CST. Enquiries from the authorities at Punjab further revealed that M/s. Sewak Traders, one of the dealers of Punjab, from whom purchase was said to have been made, was found to be a non-existent trader in Amritsar district, never registered with the authorities at Punjab, and had never filed any return or deposited any taxes. Consequently, FIRs had been lodged, as also vigilance inquiries setup, as it was causing great amount of revenue loss to the State Exchequer. It was the further case of the appellants, that even otherwise, serious reservations

were expressed time and again regarding the incentives, observing that they were regular eroding the non-plan resources of the State and that curtailment was becoming unavoidable. These were all relevant considerations, the State being the guardian of State finances.

13. There has been much passage of time since the issue originated and the litigation that followed. The mere fact that ample documentary evidence may not be available with the State today, for valid reasons as mentioned in the additional affidavit, it cannot be held that what was valid when done, must be pronounced as illegal today, merely because the evidence may have been lost with passage of time for unavoidable reasons. Undoubtedly, fraudulent refund claims obtained, would be contrary to the financial interests of the State, thereby affecting the larger public interest. The policy wisdom of the State that the grant of refund was eroding non-plan resources is a matter exclusively in the executive domain.

14. The order of the High Court is, therefore, held to be unsustainable and is set aside. It is however clarified that only such claims which have already been granted and the financial benefit availed, shall not be reopened or withdrawn, and no refund shall be required to be made by any such unit to the State.

15. The appeals are allowed with directions.

.....J.
(Ranjan Gogoi)

.....J.
(Prafulla C. Pant)

.....J.
(Navin Sinha)

New Delhi,
August 18, 2017

ITEM NO.1501 COURT NO.4 SECTION XVI -A
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).9844/2011

STATE OF JAMMU AND KASHMIR **Appellant(s)**

VERSUS

M/S.TRIKUTA ROLLER FLOUR MILLS.P.LTD & ANR. **Respondent(s)**

WITH

C.A. No. 9848/2011

C.A. No. 9849/2011

C.A. No. 9845/2011

SLP(C) No. 5803/2006

SLP(C) No. 5835/2006

C.A. No. 9846/2011

C.A. No. 9847/2011

Date : 18-08-2017 **These matters were called on for pronouncement of judgment today.**

For Appellant(s) **Mr. R. Venkataramani, Sr. Adv.**
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Mr. Ujjwal Singh, Adv.
Mr. Mojahid Karim Khan, Adv.

For Respondent(s) **Mr. Abhinav Mukerji, AOR**

Mr. V. Lakshmi Kumaran, Adv
Mr. L. Badri Narayanan, Adv.
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Mr. Aditya Bhattacharya, Adv.
Mr. Victor Das, Adv.
Ms. Apeksha Mehta, Adv.

Mr. M. P. Devanath, AOR

Mr. D. Mahesh Babu, AOR

Hon'ble Mr. Justice Navin Sinha pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Ranjan Gogoi, Hon'ble Mr. Justice Prafulla C. Pant and His Lordship.

Leave granted in Special Leave Petition (Civil) Nos.5803 and 5835 of 2006.

The appeals are allowed in terms of the signed judgment.

Pending application(s), if any, shall stand disposed of.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
BRANCH OFFICER

(Signed reportable judgment is placed on the file)