A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.36871 of 2020
CNR No. ODHC010781632020

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

M/S JSW Cement Limited, Jajpur & Anr. .... ***Petitioner (s)***

-versus-

State of Odisha & Ors. .... ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Mr. Surya Prasad Mishra, Senior Advocate*
Along with
Ms. Pami Rath, Senior Advocate
assisted by
Ms. Chitta Ranjan Dash, Advocate

For Opposite Party (s) : *Mr. Satyabrata Mohanty, AGA*
Mr. Surya Kanta Padhy, Senior Advocate
for O.P. No.4

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

DATE OF HEARING:-07.10.2026
DATE OF JUDGMENT:-16.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present Writ Petition calls in question the validity of the amendment introduced by the Industries Department, Government of Odisha, by Resolution dated 18.8.2020, whereby cement manufacturing and grinding units were excluded from the benefit of reimbursement of net State Goods and Services Tax (SGST) under Clause 5.4.5(a) of the

Industrial Policy Resolution, 2015 (hereinafter referred to as "IPR 2015"), with retrospective effect from 1.07.2017. The petitioners contend that the amendment withdraws an incentive which formed part of the policy framework under which they altered their position, undertook substantial investment, established the industrial unit and proceeded to commence commercial production. They also question the failure of the authorities to recognise their provisional Priority Sector status, despite the application having been inspected and forwarded by the Regional Industries Centre (RIC).

I. **FACTUAL MATRIX OF THE CASE**:

2. The Government of Odisha introduced IPR 2015 on 24.8.2015 with the object of promoting industrial development in the State through a framework of incentives and facilitation for eligible industrial units. Among the incentives contemplated under the policy was reimbursement of tax to eligible units falling within the "Priority Sector", subject to the prescribed conditions and operational guidelines.

3. The petitioners state that, acting upon the policy, they proceeded with the establishment of a cement manufacturing unit in Odisha. The proposal of the JSW group received in-principle approval of the State Level Single Window Clearance Authority (SLSWCA) on 2.12.2015. Thereafter, land was allotted by the Industrial Infrastructure Development Corporation of Odisha (IDCO) on 22.1.2016 for the proposed industrial project.

4. The petitioners assert that substantial investment was thereafter made towards establishment of the unit. The first fixed capital investment is

recorded as having been made on 31.7.2017. The petitioners have referred to a total capital investment of approximately ₹350 crore in the new unit and fixed capital investment of ₹167.78 crore. Their case is that the investment was undertaken in furtherance of the industrial project and in the expectation that the incentives available under IPR 2015 would govern the project, subject to fulfilment of the conditions prescribed by the policy.

5. The Operational Guidelines for Grant of Priority Sector Status under IPR 2015 prescribe a procedure for recognition of an eligible industrial unit. During implementation of the project, an eligible unit may obtain provisional Priority Sector status. Upon commencement of commercial production, the unit may apply for recognition as a Priority Sector industry in accordance with the prescribed procedure. The guidelines also prescribe timelines for scrutiny and processing of the application by the RIC and the Director of Industries.

6. On 16.8.2017, the petitioners submitted an application before the RIC seeking provisional Priority Sector status. The application was acknowledged on 21.8.2017, and the unit was inspected on 22.8.2017. Following inspection, the RIC forwarded the application to the Director of Industries on 22.9.2017 along with its inspection report and certificate of verification.

7. The petitioners rely upon the verification undertaken by the RIC, which recorded the date of the first investment, examined whether the unit fell within the Negative List and recommended grant of provisional Priority Sector status. According to the petitioners, the application had

thus undergone the scrutiny contemplated by the guidelines and had been forwarded to the authority responsible for issuing the certificate. The petitioners maintain that no order rejecting the application was communicated within the period prescribed under the guidelines.

8. The petitioners also rely upon Section 11 of the Orissa Industries (Facilitation) Act, 2004 (hereinafter referred to as "the Facilitation Act"), which provides for deemed issuance of the requisite clearance where the concerned Department or Authority fails to issue the same within the prescribed period. Clause 4.2 of IPR 2015 is relied upon in support of the applicability of the statutory facilitation framework to the grant of industrial incentives. The petitioners contend that the failure to decide their application within the prescribed time must be considered in the light of these provisions.

9. The unit commenced commercial production on 1.5.2020. According to the petitioners, production commenced within the period contemplated under IPR 2015, reckoned from the date of the first fixed capital investment.

10. In the meantime, the State Government issued the impugned Resolution dated 18.8.2020 amending Clause 5.4.5(a) of IPR 2015. The amendment substituted the earlier tax reimbursement framework with reimbursement of net SGST but excluded cement manufacturing and grinding units, blast furnace slag-based units and other specified categories from the benefit. The amendment was made operative retrospectively with effect from 1.7.2017.

11. The petitioners contend that the retrospective date is material because the first fixed capital investment had already been made and the application for provisional Priority Sector status had been submitted before the amendment was issued. The unit had also commenced commercial production by that time. The petitioners further state that, on 7.9.2020, IPICOL conveyed the in-principle approval of the SLSWCA in relation to the additional investment for the expansion project.

12. The petitioners have also relied upon a communication issued by the RIC on 27.5.2020. According to them, the communication recorded that the application for provisional Priority Sector status had already been forwarded to the Director of Industries and remained under consideration. Certain additional documents and information, including the date of commencement of production, were also sought. The petitioners contend that this communication did not reject the earlier application and cannot be treated as a decision within the period prescribed under the guidelines.

13. The State has filed its counter affidavit opposing the writ petition. It relies, *inter alia*, upon the proceedings of the High Level Committee dated 24.1.2019, the decision of the Cabinet and the financial implications associated with reimbursement of SGST following the introduction of the Goods and Services Tax regime. The State maintains that the policy could be modified in view of the financial burden upon the exchequer and that the petitioners cannot claim the incentive merely on the basis of an application or recommendation made by the RIC.

14. In their rejoinder, the petitioners dispute the State's stand. They maintain that the RIC inspected the unit, verified the relevant particulars and forwarded the application with its recommendation; that no rejection was communicated within the stipulated period and that the subsequent request for additional documents could not cure the earlier failure to decide the application. They also dispute the contention that the unit falls within the Negative List and rely on the inspection and verification undertaken by the RIC.

15. The controversy must be considered against this factual background. The challenge to the retrospective amendment concerns the effect of a subsequent policy decision upon an industrial project which had already progressed under IPR 2015. The claim concerning provisional Priority Sector status, on the other hand, turns upon the procedure prescribed for processing the application, the failure to communicate a decision within the stipulated period and the consequence, if any, flowing from Section 11 of the Facilitation Act. The question of reimbursement ultimately depends on the application of these findings to the terms of the policy and the eligibility conditions applicable to the unit.

II. **SUBMISSIONS ON BEHALF OF THE PETITIONERS**:

16. Learned Sr. Counsel for the petitioners submits that the Resolution dated 18.8.2020 is arbitrary and unsustainable insofar as it excludes cement manufacturing and grinding units from reimbursement of net SGST with retrospective effect from 1.7.2017. The petitioners had undertaken substantial investment under IPR 2015, obtained the

requisite in-principle approvals, secured land, established the unit and commenced commercial production. It is contended that the incentive formed part of the policy framework under which the project was undertaken and that its subsequent withdrawal for a period preceding the date of the amendment defeats the legitimate expectation created by the State's own policy.

17. Learned Sr. Counsel distinguishes between the power of the State to amend an industrial policy prospectively and the power to withdraw an existing benefit retrospectively. It is submitted that the State may alter the terms of its incentive scheme in accordance with law, but such power cannot be exercised in a manner that arbitrarily deprives an industrial unit of an incentive for a period during which the policy was in force, particularly when the unit has already altered its position and incurred substantial expenditure in reliance upon that policy.

18. Reliance is placed upon the judgment of this Court in ***Ultratech Cement Limited and Another v. State of Odisha and Others***[1]. It is submitted that the said judgment considered the Resolution dated 18.8.2020 insofar as it amended IPR 2007 and retrospectively excluded cement units from the relevant tax reimbursement benefit. This Court rejected the justification advanced for giving the amendment retrospective effect and held that it could only operate prospectively. The petitioners further point out that the judgment was affirmed by the Hon'ble

[1] 2022 SCC OnLine Ori 13

Supreme Court vide order dated 14.10.2022[2] and thus ***Ultratech Cement*** (supra) has attained finality.

19. According to the petitioners, the principle laid down in ***Ultratech Cement*** applies with equal force to the impugned amendment of IPR 2015. Although the two cases concern different industrial policies, the amendment challenged in both matters is the exactly the same Resolution dated 18.8.2020, which seeks to exclude cement units from a tax reimbursement incentive with retrospective effect. The petitioners also rely upon ***M/s Maa Bhairabi Industries LLP v. State of Odisha***[3], in support of their objection to the retrospective withdrawal of an industrial incentive.

20. Learned counsel submits that the financial considerations relied upon by the State may explain the decision to review the incentive scheme, but do not, by themselves, justify applying the exclusion retrospectively. The State was aware of the terms of IPR 2015 when the project was approved and investment was undertaken. If a change in fiscal circumstances warranted modification of the policy, the State could amend it for the future. It could not, according to the petitioners, use a subsequent amendment to defeat the very incentive for a period during which the petitioners claim to have fulfilled the applicable requirements.

21. On the question of provisional Priority Sector status, learned counsel submits that the application dated 16.8.2017 was made in accordance

[2] Order dated 14.10.2022 in SLP(C) Nos. 13756-13757 of 2022

[3] W.P.(C) No. 5449 of 2018, decided on 13.07.2021

with the Operational Guidelines. The RIC acknowledged the application, inspected the unit and forwarded it to the Director of Industries on 22.9.2017 with its inspection report and certificate of verification. The petitioners rely upon the recommendation made by the RIC and submit that the verification did not record any disqualification under the Negative List.

22. It is contended that Clauses 6.1, 6.2, 7.1 and 8.1 of the Operational Guidelines prescribe a time-bound procedure for processing applications for Priority Sector status. The RIC is required to examine and forward the application within the prescribed period, while the Director of Industries is required to issue the certificate within the stipulated time after receipt. The guidelines also contemplate communication of rejection within the prescribed period. In the present case, no rejection was communicated within that period, although the application had already been forwarded by the RIC.

23. Learned counsel relies upon Section 11 of the Facilitation Act, read with Clause 4.2 of IPR 2015, to submit that failure by the competent authority to issue the requisite clearance within the prescribed period attracts the statutory consequence of deemed issuance. It is argued that the requirement of a subsequent written communication by the Nodal Agency cannot be interpreted to mean that the statutory consequence arises only if the defaulting authorities choose to acknowledge it. Such an interpretation, according to the petitioners, would permit the authorities to defeat the object of the legislation by their own inaction.

24. The case is, therefore, not one where the entrepreneur failed to submit an application or bypassed the prescribed procedure. The petitioners participated in the inspection and awaited a decision from the competent authority. They contend that the absence of a formal certificate cannot be relied upon to defeat their claim when the application remained undecided beyond the time stipulated under the applicable framework.

25. The communication dated 27.5.2020 is also relied upon by the petitioners. It is submitted that the communication acknowledged that the application had been forwarded to the Director of Industries and remained under consideration. The request for additional documents and information did not amount to a rejection of the application. Nor, according to the petitioners, could it revive a period which had already expired or nullify the consequence claimed to have arisen from the earlier failure to decide the application.

26. The petitioners also dispute the State's reliance upon the Negative List. They submit that the relevant entry, properly construed, does not exclude their unit in the manner suggested by the State. According to them, the entry concerning certain grinding or size-reducing units is subject to the terms and qualifications contained therein, including the investment threshold and the distinction relating to cement manufacturing with clinker. The nature of the unit and the investment involved, it is argued, take the petitioners outside the exclusion relied upon by the State. Particular reliance is placed upon the RIC's

inspection and verification, which recorded that the unit did not fall within the Negative List.

27. The petitioners invoke Articles 14, 19(1)(g) and 300A of the Constitution of India. It is contended that retrospective withdrawal of the incentive, in the circumstances of the present case, is arbitrary and adversely affects the petitioners' ability to carry on their industrial activity on the terms under which the project was undertaken. Reliance is also placed upon the principles of promissory estoppel and legitimate expectation, with reference to the decision of the Hon'ble Supreme Court in ***MRF Ltd. v. Assistant Commissioner (Assessment), Sales Tax***[4].

28. On the aforesaid grounds, the petitioner seeks quashing of the impugned amendment insofar as it operates retrospectively against their unit, a declaration that their application for provisional Priority Sector status is to be treated in accordance with Section 11 of the Facilitation Act and the applicable guidelines, and consequential relief in respect of reimbursement of net SGST under IPR 2015.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

29. Learned counsel appearing for the State opposes the writ petition and submits that the impugned amendment is a policy decision taken by the State Government in the exercise of its authority to determine the nature and extent of fiscal incentives to be extended to industrial units. It is contended that the State is not bound to continue a particular incentive indefinitely and may modify its industrial policy in response

[4] (2006) 8 SCC 702

to changing economic circumstances and the financial implications of the scheme.

30. It is submitted that the transition to the GST regime materially altered the fiscal context in which the incentive was originally framed. The Government was, therefore, entitled to review the policy and exclude categories of units for which continuation of the reimbursement scheme was considered financially unsustainable.

31. The State further relies upon paragraph 14(f) of IPR 2015 to contend that the policy is capable of being reviewed or modified by the Government. According to the State, an industrial policy is not an immutable promise, and an entrepreneur cannot claim an indefeasible right to the continuation of a fiscal incentive merely because the project was undertaken while the policy was in force.

32. Learned counsel submits that the petitioners' reliance upon *Ultratech Cement* (supra) is misplaced. It is pointed out that the said case concerned IPR 2007 and the circumstances of the industrial units involved therein. In the present case, the petitioners did not possess a final certificate recognising the unit as a Priority Sector industry when the amendment dated 18.8.2020 was issued. The State accordingly contends that the petitioners cannot equate their position with that of an industrial unit whose entitlement had already been formally recognised by the authorities.

33. The State disputes the contention that the petitioners had acquired an enforceable right to reimbursement of SGST. It is argued that the incentive was subject to the conditions contained in IPR 2015 and the

applicable Operational Guidelines. Until the competent authority granted the requisite Priority Sector status and the other conditions of eligibility were verified, the petitioners could not claim reimbursement as a matter of right.

34. On the question of deemed approval, the State submits that the RIC's forwarding of the application to the Director of Industries was only an intermediate step in the administrative process and did not amount to a final decision granting Priority Sector status. The recommendation of the RIC, according to the State, could not substitute the certificate required to be issued by the competent authority. The application remained subject to further consideration and verification, and no final order granting the benefit had been issued.

35. The State also relies upon the communication dated 27.5.2020, under which certain additional documents and information were sought from the petitioners, including the date of commencement of commercial production. According to the State, the requirement to furnish further documents demonstrates that eligibility had not been finally determined and that the authorities were entitled to seek information before deciding the application.

36. The State disputes the petitioners' interpretation of the Negative List and maintains that the unit falls within the category of industrial units excluded from the relevant incentive. It is submitted that the nature of the industrial activity and the applicable policy provisions must be examined before the benefit can be granted. The petitioners cannot, according to the State, rely solely upon the RIC's recommendation to

avoid such scrutiny or claim a benefit contrary to the terms of the policy.

37. The State, accordingly, submits that neither the retrospective amendment nor the absence of a final Priority Sector certificate warrants interference by this Court. It is submitted that the petitioners have failed to establish an unconditional entitlement to reimbursement and that the writ petition ought to be dismissed.

IV. REASONING AND JUDGMENT ANALYSIS OF THIS COURT:

38. Having considered the pleadings, the materials placed on record and the submissions advanced on behalf of the parties, the following issues arise for consideration:

A. *Whether the amendment introduced by Resolution dated 18.8.2020, insofar as it retrospectively excludes cement manufacturing and grinding units from the benefit of net SGST reimbursement under IPR 2015 with effect from 1.7.2017, can be sustained in the facts and circumstances of the present case.*

B. *Whether, having regard to Section 11 of the Facilitation Act, Clause 4.2 of IPR 2015 and the Operational Guidelines for Grant of Priority Sector Status, the petitioners' application dated 16.8.2017 attracts the consequence of deemed approval in view of the failure of the authorities to decide it within the prescribed period.*

C. *Whether the petitioners' unit is liable to be treated as falling within the Negative List and, consequently, whether the*

petitioners are entitled to consequential consideration and grant of reimbursement of net SGST under IPR 2015.

A. Retrospective withdrawal of the incentive/ Doctrine of Promissory Estoppel and Legitimate Expectation:

39. The first issue concerns the retrospective operation of the Resolution dated 18.8.2020. The State's competence to frame an industrial policy and to modify the incentives offered under it is not in dispute. Nor can it be disputed that the Government may, in an appropriate case, reconsider the financial terms of an incentive scheme in public interest. The question is whether the decision to exclude a category of industrial units could be made operative from a date preceding the amendment, thereby affecting an industrial project which had already proceeded under the existing policy.

40. The chronology assumes importance in this regard. IPR 2015 was issued on 24.8.2015. The petitioners' project received in-principle approval on 2.12.2015, land was allotted on 22.1.2016, and the first fixed capital investment is recorded as having been made on 31.7.2017. The application for provisional Priority Sector status followed on 16.8.2017. The unit thereafter proceeded towards establishment and commenced commercial production on 1.5.2020. These events preceded the Resolution dated 18.8.2020. The petitioners' case is, therefore, founded upon steps actually taken towards implementation of the industrial project and not merely upon an intention to invest at some future point.

41. The State relies upon paragraph 14(f) of IPR 2015, which permits review or modification of the policy. Such a provision recognises the

Government's authority to reconsider its industrial policy; it does not, by itself, answer whether every amendment may be given retrospective effect. The power to alter the policy framework and the power to withdraw a benefit for a period preceding the amendment are distinct questions. The latter must be examined with reference to the language of the amendment, the nature of the incentive, the terms of the original policy and the circumstances in which the industrial project was undertaken.

42. The Resolution dated 18.8.2020 did not merely prescribe different conditions for reimbursement in the future. It excluded the specified categories of units with effect from 1.7.2017. The effect was to extend the exclusion to a period commencing more than three years before the Resolution was issued. An industrial unit which had acted upon IPR 2015 and incurred expenditure before the amendment could consequently be deprived of the benefit for a period during which the earlier policy governed the project. It is this retrospective consequence, rather than the mere decision to alter the incentive, which requires examination.

43. The State seeks to justify the amendment by reference to the financial implications of reimbursement following the introduction of GST and the decision taken by the Government after consideration at the appropriate levels. These considerations may explain why the Government decided to review the scheme. They do not, without further justification, explain why the exclusion had to be imposed retrospectively upon units which had already acted under the existing

policy. The financial consequences of continuing an incentive and the legality of withdrawing it for a past period are separate matters. The former may support a policy change; it does not, by itself, resolve the latter.

44. In examining the retrospective operation of the amendment, this Court must also consider the nature of the representation made through the industrial policy and the extent to which the petitioners acted upon it.

45. The principal authority relied upon by the petitioners is the judgment of this Court in *Ultratech* (supra). In that case, this Court examined the Resolution dated 18.8.2020 insofar as it amended IPR 2007 by retrospectively excluding cement units from the relevant tax reimbursement benefit. The Court considered the justification advanced by the State and rejected the retrospective operation of the exclusion, holding that the amendment could operate prospectively and could not be used to withdraw the benefit for the preceding period in the manner sought by the State. The judgment was subsequently affirmed by the Hon'ble Supreme Court.

46. The State is correct in pointing out that *Ultratech Cement* (supra) concerned IPR 2007, whereas the present petition concerns IPR 2015. The petitioners' entitlement must, therefore, be determined under the latter policy and the applicable guidelines. However, the distinction between the two policies does not render the reasoning in *Ultratech Cement* (supra) irrelevant. In both cases, the challenge concerns the retrospective exclusion of cement units from a tax reimbursement incentive through the self-same Resolution dated 18.8.2020. The

principle emerging from that decision is directly relevant to the question whether the State may apply the exclusion retrospectively to a period during which an industrial unit had acted under the existing policy.

47. The absence of a final Priority Sector certificate on the date of the amendment is a circumstance which must be considered, but it cannot by itself determine the validity of the retrospective exclusion. The petitioners' case is that they applied for provisional status in August 2017, that the RIC inspected and verified the unit and forwarded the application in September 2017 and that the competent authority did not reject it within the prescribed period. Whether the petitioners can rely upon deemed approval is a separate question to be considered under Section 11 of the Facilitation Act. The State cannot dispose of the challenge to retrospective operation merely by pointing to the absence of a certificate without addressing the circumstances in which the application remained pending.

48. Further, this is a fit case for governing the principle of promissory estoppel. The principles governing promissory estoppel and legitimate expectation, as explained by the Hon'ble Supreme Court in ***MRF Ltd. v. Assistant Commissioner (Assessment), Sales Tax*** **(supra),** ***State of Uttar Pradesh v. Birla Corporation Limited***[5]***, Manuelsons Hotels Pvt. Ltd. v. State of Kerela***[6]***, State of Punjab v. Nestle India Ltd.***[7]***, Motilal***

[5] (2019) SCC OnLine SC 1569
[6] (2016) 6 SCC 766
[7] (2004) 6 SCC 465

Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh[8], are also relevant. The doctrine does not prevent the Government from changing its policy in the public interest or from exercising a lawful power to modify an incentive scheme. At the same time, the Government cannot disregard the consequences of a representation upon which a party has acted merely by asserting that the representation formed part of a policy capable of amendment. The nature of the representation, the conduct of the party claiming its benefit and the justification for the change must be considered together.

49. In the present case, the petitioners rely upon the approvals obtained for the project, the allotment of land, the investment made, the application for provisional Priority Sector status and the subsequent commencement of commercial production. The State, on the other hand, relies upon the financial consequences of the incentive scheme and its power to review the policy. The financial considerations explain the decision to modify the scheme, but the material placed before this Court does not disclose a sufficient justification for applying the exclusion retrospectively from 1.7.2017 to a project which had already proceeded under IPR 2015. The position would have been different had the amendment merely prescribed the terms governing incentives for the future.

50. There is merit in the contention of the petitioners that there is no justification given by the opposite parties as to why only cement manufacturing/grinding units and blast furnace slag-based units have

[8] (1979) 2 SCC 409

been chosen for denial of SGST reimbursement and that too with retrospective effect, if in fact the idea was to revisit the incentive under the IPR 2007 as a result of introduction of the GST regime. It will be recalled that the GST regime was introduced in the country with effect from 1.7.2017 whereas the retrospective amendment was made more than three years later on 18.8.2020 and that too only for cement manufacturing/grinding units and blast furnace slag-based units. In the absence of a convincing justification provided, a move directed at only a few industries for denial of SGST reimbursement can only be termed irrational, arbitrary and discriminatory.

51. This court would first like to take up for discussion the decision of the Supreme Court of India in ***MRF Ltd. v. Assistant Commissioner (Assessment), Sales Tax*** (supra), which in the considered view of this court is squarely applicable to the present case. It was held by the Hon'ble Supreme Court in the said decision as under:

> *"32. State and its instrumentalities. .. can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any statutory prohibition, absence of power and authority of the promisor and is otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.*
>
> *…*
>
> *34.. .. where a right has already accrued, for instance, the right to exemption of tax for a fixed period and the conditions for that exemption have been fulfilled, then the withdrawal of the exemption during that fixed period*

cannot affect the already accrued right. Of course, overriding public interest would prevail over a plea based on promissory estoppel, but in the present case there is not even a whisper of any overriding public interest or equity.. .

…

39. MRF made a huge investment in the State of Kerala under a promise held to it that it would be granted exemption from payment of sales tax for a period of seven years. It was granted the eligibility certificate. The exemption order had also been passed. It is not open to or permissible for the State Government to seek to deprive MRF of the benefit of tax exemption in respect of its substantial investment in expansion in respect of compound rubber when the State Government had enjoyed the benefit from the investment made by the MRF in the form of industrial development in the State, contribution to labour and employment and also a huge benefit to the State exchequer.. . The impugned action on the part of the State Government is highly unfair, unreasonable, arbitrary and, therefore, the same is violative of article 14 of the Constitution of India. The action of the State cannot be permitted to operate if it is arbitrary or unreasonable... Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of 'justice and fair play'. The attempt to take away the said benefit of exemption with effect from January 15, 1998 and thereby deprive MRF of the benefit of exemption for more than five years out of a total period of seven years, in our opinion, is highly arbitrary, unjust and unreasonable and deserves to be quashed. In any event, the State Government has no power to make a retrospective amendment to SRO No. 1729/93 affecting rights already accrued to MRF thereunder.

…

43.. .. Amendment notification SRO No. 38/98 (second notification) has to be read so as not to take away or

disturb any manufacture's pre-existing accrued right of exemption for a period of seven years.. .' under first notification

45. The State Government is restrained from initiating any proceedings against MRF contrary to or inconsistent with eligibility certificate and exemption order issued in terms of first notification."

52. The excuse of financial implication does not stand scrutiny in view of the observations of the Hon'ble Supreme Court in ***State of Uttar Pradesh v. Birla Corporation Limited***[9]. The Hon'ble Supreme Court in the said decision held as under:

"23.. .. the State Government or the executive is competent to rescind the earlier notification and the doctrine of promissory estoppel can be no impediment in that behalf. That, however, is hedged or laced with condition that the burden is upon the Government to show that it acted in furtherance to public interest in issuing such a

notification otherwise than in accordance with the promise and that the public interest is so overwhelming that it would be inequitable to hold the Government bound by the promise. It is well established that the court would not act on mere ipse dixit of the Government and must insist on a highly rigorous standard of proof in discharge of its burden by the Government. Resultantly, it is not necessary for us to dilate on the precedents pressed into service by the respondents on the application of doctrine of promissory estoppel of the State Government like any other private party or individual.

.. ..

25. The power to retrospectively withdraw a rebate or concession must be expressly conferred upon the executive, and in the absence thereof, it is not open to

[9] [2019] SCC OnLine SC 1569

state to retrospectively withdraw or rescind such benefits.

……..

27.. .. all the industrial units set up after February 27, 1998 and before October 14, 2004 which had commenced commercial production, must continue to qualify for rebate for specified term mentioned in notification dated February 27, 1998, subject to fulfilling all other conditions specified therein.

.. ..

29.. .. It is also indisputable that the industrial units set up in furtherance of the promise or representation made in the notification dated February 27, 1998 which had commenced commercial production in respect of specified goods before October 14, 2004, would continue to achieve the same objective as is specified in the notification dated February 27, 1998. In that, the concerned manufacturing units continue to manufacture specified goods by using fly ash purchased or produced from the thermal power stations situated within the State. As long as that activity is continued until the term specified under the notification dated February 27, 1998, namely ten years from the date of commencement of commercial production, there is no tangible reason nor it is open to contend that the dominant purpose underlying notification dated February 27, 1998 had ceased to exist or had become irrelevant in any manner, much less there are supervening circumstances qua such units which are so overwhelming that it would be inequitable for the State Government to be bound by the promise given in notification dated February 27, 1998.

30. Indeed, the judgment rendered by the High Court and affirmed by this court in interpreting the notification dated February 27, 1998, at best, may have given rise to some logistical issues for the State including financial implications regarding future revenue loss. That ground cannot be invoked as supervening public

interest in reference to the activities of the industrial units who qualify the conditions specified in notification dated February 27, 1998 in all other respects and had commenced commercial production of the specified product before October 14, 2004. Indubitably, an enforceable right had accrued to and crystallised in favour of such industrial units which could not be truncated or snapped unless the dominant purpose for which the notification dated February 27, 1998 came to be issued had ceased to exist, namely, generation of fly ash by the thermal power stations situated within the State and consumption of that fly ash by the industrial units established within the designated areas of the State as per the specified quantity to become entitled for rebate for the duration mentioned therein... Suffice it to observe that the argument about future revenue loss cannot be invoked against the industrial units who had already established and commenced production after February 27, 1998 and before October 14, 2004. For, it can be safely presumed that the policy makers were fully conscious about the so-called loss of future revenue due to rebate to those units when they had issued notification dated February 27, 1998. That ground cannot be set up against the industrial units who qualify in all other respect under the notification dated February 27, 1998 and have made substantial investment running into crores much less as being supervening public interest, as is being placated by the State in these proceedings. This is clearly an afterthought plea, which by no standards can stand the test of judicial scrutiny. It is well established that the court is obliged to insist for a highly rigorous standard of proof in the discharge of the burden and onus upon the State to justify its action as supervening public interest."

53. In the present case, no material whatsoever has been placed on record by the opposite parties to establish that the impugned resolution retrospectively is in public interest. As already pointed out, there was

no justification in arbitrarily singling out cement manufacturing units for denial of the SGST reimbursement.

54. In the circumstances, the reasoning adopted by this Court in ***Ultratech Cement*** (supra) squarely applies to the retrospective operation of the impugned Resolution *qua* IPR 2015. The State was competent to review its policy and prescribe the terms upon which incentives would be available in the future, subject to law. It could not, however, by the Resolution dated 18.8.2020, retrospectively exclude the petitioners' unit from the incentive for the period preceding the amendment, without sufficient justification and without regard to the policy under which the project had been undertaken. The retrospective operation of the amendment, insofar as it is sought to be applied against the petitioners for the period preceding 18.8.2020, cannot be sustained.

B. Deemed approval under the Facilitation Act and the Operational Guidelines:

55. The next issue concerns the effect of the petitioners' application dated 16.8.2017 for provisional Priority Sector status. The petitioners rely upon Section 11 of the Facilitation Act, read with Clause 4.2 of IPR 2015 and the Operational Guidelines. The State contends that the forwarding of the application by the RIC was only an intermediate administrative step and that no status could arise without a final certificate from the Director of Industries. The question is not whether the RIC's recommendation itself constituted a final certificate, but whether the failure of the competent authority to decide the application within the

prescribed period attracts the statutory consequence as has been claimed by the petitioners.

56. Section 11 of the Orissa Industries (Facilitation) Act, 2004 (hereinafter referred to as the "Facilitation Act") provides for a time-bound process for issuance of clearances by the concerned Department or Authority. Under sub-section (1), where a clearance required under the applicable law is not issued within the specified period, the clearance is "deemed to have been issued" and the entrepreneur may proceed with the project. Sub-section (2) provides for continuation of such deemed approval until formal clearance is issued. Sub-section (3) contemplates written communication by the Nodal Agency to the entrepreneur, with a copy to the concerned Department or Authority, informing the entrepreneur of the deemed approval. The provision must be read as a whole, having regard to its object of preventing delay on the part of the authorities from indefinitely obstructing an industrial project.

57. The statutory scheme proceeds on the basis that an application covered by the provision must be dealt with within the prescribed period. The consequence contemplated by sub-section (1) is not merely an administrative reminder to the concerned authority; there is a coercive consequence attached by the statute in case of failure to issue the requisite clearance within time. The requirement of communication under sub-section (3) serves the purpose of informing the entrepreneur and the concerned Department or Authority of the deemed approval. It cannot be read in isolation from sub-section (1) so as to permit the

consequence expressly contemplated by the statute to be defeated solely because the authorities failed to communicate it.

58. This does not mean that every application which remains unanswered must automatically be treated as approved, irrespective of the nature of the application or the governing statutory provisions. The consequence of deemed approval can arise only if the application is covered by Section 11, the prescribed procedure has been followed and the relevant period has expired without the required decision. The applicability of the provision must, therefore, be determined on the facts of each case and with reference to the procedure prescribed under the Operational Guidelines.

59. Clause 4.2 of IPR 2015 provides the relevant connection between the policy and the statutory facilitation framework. The Operational Guidelines for Grant of Priority Sector Status prescribe the procedure by which an application is to be examined and processed. Clauses 6.1, 6.2, 7.1 and 8.1, read together, contemplate scrutiny by the RIC, forwarding of the application to the Director of Industries, issuance of the certificate within the prescribed time and communication of rejection within the stipulated period. The process is thus subject to defined timelines and does not contemplate that an application may remain pending indefinitely without a decision.

60. The record shows that the petitioners submitted their application on 16.8.2017 and that it was acknowledged on 21.8.2017. The unit was inspected on 22.8.2017. Thereafter, on 22.9.2017, the RIC forwarded the application to the Director of Industries along with its inspection report

and certificate of verification. The application had, therefore, progressed beyond the stage of initial receipt and had undergone inspection and verification by the authority entrusted with scrutiny.

61. The contents of the RIC's verification are also relevant. The report recorded (a) the date of the first investment, (b)examined whether the unit fell within the Negative List and (c) recommended provisional Priority Sector status. The petitioners are not relying merely upon an acknowledgment of receipt or an unverified assertion of eligibility. They rely upon the inspection undertaken and the recommendation made by the authority after examining the relevant particulars. The application was thereafter forwarded to the Director of Industries, who was required to act in accordance with the applicable guidelines.

62. No order rejecting the application within the prescribed period has been shown to have been communicated to the petitioners. The State relies upon a communication dated 27.5.2020, which stated that the application had been forwarded to the Director of Industries, it remained under consideration and some further documents were sought. The communication does not, on its terms, constitute a rejection of the application. It instead indicates that the application remained pending for more than three years after it had been forwarded by the RIC.

63. The request for additional documents in May 2020 cannot, by itself, be treated as a timely rejection of an application submitted in August 2017. If the authorities considered the application deficient or the unit ineligible, it was incumbent upon them to take an appropriate decision

in accordance with the applicable procedure. Nor does the material referred to by the State demonstrate that the earlier application was rejected before the communication dated 27.5.2020.

64. The State's contention that the RIC's recommendation did not itself constitute a final certificate is correct to the limited extent that a recommendation and a certificate are distinct administrative acts. The petitioners' case, however, does not rest solely upon treating the recommendation as equivalent to a final certificate. It rests upon the statutory consequence claimed to have arisen because the application was submitted in accordance with the prescribed procedure, was inspected and forwarded to the competent authority, and was not rejected within the prescribed period. The absence of a final certificate must be examined in that context.

65. If the requirement of a formal certificate were treated as conclusive in every case, notwithstanding the expiry of the prescribed period, the protection afforded by the deemed-approval provision could be rendered nugatory. An authority could avoid the consequence of its default simply by withholding the formal certificate indefinitely. Such an interpretation would be difficult to reconcile with the object of the Facilitation Act, which seeks to ensure that industrial projects are not left indefinitely awaiting action from the concerned authorities. The provision must, however, be applied only to the extent that the particular application and the clearance sought are covered by its terms.

66. The subsequent conduct of the petitioners is also consistent with their case that they continued to pursue the prescribed procedure. They participated in the inspection, their application was forwarded with the verification report, and they informed the RIC of the commencement of commercial production by communication dated 27.7.2020. The chronology does not disclose an abandonment of the earlier application or a failure to invoke the prescribed procedure on the part of the petitioners.

67. At the same time, deemed approval of the application for provisional Priority Sector status does not dispense with every requirement governing the subsequent grant and quantification of reimbursement. The conditions relating to the commencement of production, the relevant investment, the applicable period and ceiling, and the other requirements of IPR 2015 continue to govern the incentive. The statutory consequence claimed by the petitioners addresses the failure to decide the provisional-status application within time; it does not, by itself, determine the amount of SGST reimbursement payable.

68. In the present case, on the material placed before this Court, the petitioners have made out a case for application of the statutory consequence under Section 11 of the Facilitation Act, read with Clause 4.2 of IPR 2015 and the applicable Operational Guidelines.

69. This Court is, therefore, of the view that the petitioners are entitled to the benefit of deemed approval in respect of their application dated 16.8.2017 for provisional Priority Sector status in terms of terms of Section 11 of the Facilitation Act and the relevant guidelines. This

finding concerns the provisional-status application and the consequences of the failure to decide it within the prescribed period.

C. **The Negative List and consequential entitlement to SGST reimbursement:**

70. The State has further contended that the petitioners' unit falls within the Negative List and is, therefore, not entitled to the incentive. The petitioners dispute this position and rely upon the relevant entry in the Negative List, the nature of their manufacturing activity and the RIC's verification report. This issue must be examined independently, since neither the retrospective invalidity of the amendment nor the consequence of deemed approval can confer an incentive upon an industrial unit which is otherwise excluded by the applicable policy.

71. The contention of the Opposite Parties that the Petitioners' unit falls within Sl. No. 36 of the Negative List under IPR 2015 cannot be accepted on the material placed before this Court. The said entry excludes size reducing, size separating, grinding and mixing units having investment in plant and machinery of less than ₹10 crore, while expressly excepting the manufacture of cement with clinker. The entry must be applied having regard to both the nature of the industrial activity and the investment threshold prescribed therein.

72. In the present case, the Petitioners show that the investment made in plant and machinery exceeds the prescribed threshold and that the manufacturing process involves the use of clinker, fly ash and blast furnace slag as principal raw materials. They further rely upon Clause 15.18 of IPR 2015, under which their industrial activity is stated to fall

within the Priority Sector. These circumstances are material to the determination of whether the unit is covered by the exclusion contained in Sl. No. 36.

73. Significantly, the certificate of verification issued by the RIC records that the first fixed capital investment was made on 31.7.2017, that the unit does not fall within the Negative List under IPR 2015, and that it may be declared a Priority Sector industrial unit for which provisional status may be granted. The verification was undertaken by the authority entrusted with the initial scrutiny of the application. While the recommendation of the RIC is not, by itself, conclusive of the Petitioners' ultimate entitlement to the incentive, its findings cannot be brushed aside without examining the nature of the manufacturing activity, the investment in plant and machinery and the terms of the relevant entry.

74. In these circumstances, the Opposite Parties were required to demonstrate, with reference to the applicable entry and the particulars of the Petitioners' unit, the basis on which the exclusion was sought to be applied. A mere reference to the fact that the Petitioners' unit is engaged in cement manufacturing or grinding does not, by itself, establish that it falls within Sl. No. 36.

75. On the material placed before this Court, no sufficient basis has been demonstrated for disregarding the RIC's verification and treating the unit as categorically excluded from the benefit of IPR 2015. The objection founded upon the Negative List, therefore, cannot be sustained as a ground for denying consideration of the Petitioners'

claim for Priority Sector status and consequential reimbursement, subject to fulfilment of the other applicable conditions.

76. The findings on the retrospective amendment and deemed approval must now be considered together. The amendment dated 18.8.2020 cannot be applied retrospectively to exclude the petitioners' unit from the incentive for the period preceding the date of the Resolution. Further, the petitioners' application for provisional Priority Sector status attracts the consequence of deemed approval on the facts and material discussed above. The State cannot, therefore, rely upon the retrospective exclusion or the absence of a formal provisional certificate to deny consideration of the subsequent application and the claim arising therefrom.

77. Clause 5.4.5(a) of IPR 2015 and the applicable Operational Guidelines prescribe the nature and extent of the incentive. The benefit available to eligible industrial units in the Priority Sector is subject to the specified period, the ceiling linked to the cost of plant and machinery and the other conditions contained in the policy. The amount payable must accordingly be determined by reference to the net SGST eligible for reimbursement and the limits prescribed under the applicable provisions.

78. The petitioners have also invoked Articles 14, 19(1)(g) and 300A of the Constitution. In view of the conclusions reached on the retrospective operation of the amendment, the application of Section 11 of the Facilitation Act and the objection founded upon the Negative List. From the aforesaid discussion it is clear that the arbitrary exclusion of

cement manufacturing and grinding units is arbitrary and unconstitutional. The consequential claim must be dealt with under the applicable policy, taking account of the findings recorded above.

79. Accordingly, the petitioners are entitled to consideration of their claim for reimbursement of net SGST under IPR 2015, subject to verification of the amount actually payable and compliance with the applicable conditions governing the incentive. The authorities shall not reopen the question of deemed provisional status or deny the claim solely on the ground that no formal certificate was issued before the amendment dated 18.8.2020.

V. **CONCLUSION**:

80. For all of the aforementioned reasons, the Writ Petition is accordingly allowed. The petitioners shall be treated as having obtained deemed approval of their application dated 16.8.2017 in line with the terms of the applicable policy and the findings recorded in this judgment

81. The Petitioner's claims with regard to SGST reimbursement under Clause 5.4.5 (a) of IPR 2015 stood accrued and crystallized. The amendment Resolution dated 18.08.2020 insofar as it prescribes retrospective exclusion of cement manufacturing and grinding units from SGST reimbursement w.e.f. 1.07.2017 is held to be arbitrary, unconstitutional and contrary to the doctrine of promissory estoppel and legitimate expectation. Resultantly, this Court sets aside the impugned Resolution dated 18.8.2020 retrospectively amending IPR 2015.

82. This Court consequently directs that the claim of the Petitioner for reimbursement of SGST in accordance with IPR 2015 along with applicable interest shall be determined and released within four weeks.

83. Ordered accordingly. There shall be no order as to costs.

84. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Murahari Sri Raman, J.- I agree

(Murahari Sri Raman)
Judge

Orissa High Court, Cuttack,
Dated the 16th October, 2026/-