

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No.163 of 2009 (M/S)

M/s OM ISPAT, through its Partner
Shri Jitendra Kumar Kuchhal
Campus Iqbalpur Sugar Mills, Iqbalpur,
Roorkee, District Haridwar ... Petitioner

Versus

Secretary, Industrial Department,
Government of Uttarakhand, Dehradun
and others ... Respondents

Dated:- 04th August, 2011

**Coram: Hon. Tarun Agarwala, J.
Hon. Prafulla C. Pant, J.
Hon. B. S. Verma, J.**

Per :- Hon'ble Tarun Agarwala, J.

1. The Division Bench finding itself unable to agree with the decision of another co-ordinate bench has referred the matter to a larger bench and that is how the matter has come up before us.

2. The brief facts leading to the filing of the writ petition is, that the Government of India, Ministry of Commerce & Industry (Department of Industrial Policy & Promotion) issued a New Industrial Policy dated 07.01.2003 providing fiscal incentives to new industrial units and to existing units on their substantial expansion. Clause 3.1 of the Policy provided the following package, namely:

“3.1 Fiscal Incentives to new Industrial Units and to existing units on their substantial expansion:

(I) New industrial units and existing industrial units on their substantial expansion as defined, set up in Growth Centres, Industrial Infrastructure Development Centres (IIDCs), Industrial Estates, Export Processing Zones, Theme, Parks (Food Processing Parks, Software Technology Parks, etc.) as stated in Annexure-I and other areas as notified from time to time by the Central Government, are entitled to:

- (a) 100% (hundred percent) outright excise duty exemption for a period of 10 years from the date of commencement of commercial production.
 - (b) 100% income tax exemption for initial period of five years and thereafter 30% for companies and 25% for other than companies for a further period of five years for the entire state of Uttaranchal and Himachal Pradesh from the date of commencement of commercial production.
- (II) All New industries in the notified location would be eligible for capital investment subsidy @ 15% of their investment in plant and machinery, subject to a ceiling of Rs.30 lakh. The existing units will also be entitled to this subsidy on their substantial expansion, as defined.
- (III) Thrust Sector Industries as mentioned in Annexure-II are entitled to similar concessions as mentioned in para 3(I) & (II) above in the entire state of Uttaranchal and Himachal Pradesh without any area restrictions.”

3. The policy provided that new industrial units and existing industrial units on their substantial expansion which are set up in the growth centres, industrial estates, etc, as specified in Annexure–I and other areas as notified from time to time by the Central Government would be entitled to 100% excise duty exemption for 10 years, etc. Annexure-I to the policy provides the location in the Tehsil in the State of Uttarakhand where a new industrial unit or an existing industrial unit was required to be established in order to claim exemption. For facility, an extract of the relevant portion of Annexure-I to the policy is extracted hereunder:-

“Annexure-I

Locations Identified in the following Tehsil of the state of Uttranchal for excise exemption under the new Industrial Policy for the state of Uttranchal and the state of Himachal Pradesh.

| <i>Sl. No.</i> | <i>Name of Districts</i> | <i>Name of Industrial Estates / Industrial Area Existing & Proposed</i> |
|----------------|--------------------------|--------------------------------------------------------------------------------|
| 8 | Haridwar | Haridwar, BHEL, Mangalore, Narsan, Mohand, Laksar, Landora, Lalchaur, Iqbalpur |

4. Under clause 3.5 of the Policy, a nodal agency for routing the subsidies under various schemes under this policy was required to be notified separately. Subsequently, vide notification dated 06.03.2003, the State Industrial Development Corporation of Uttaranchal (SIDCUL) was notified as the nodal agency for the State of Uttaranchal for routing the said subsidies / incentives under the New Industrial Policy.

5. Pursuant to the aforesaid policy, the Central Government, in public interest, issued a notification No.50/2003 dated 10.06.2003 under Section 5A of the Central Excise Act, 1944 granting exemption of excise duty on certain kinds of goods cleared from a unit located in an area specified in Annexure-II. The relevant extract of the Notification No.50/2003 dated 10.06.2003 is quoted hereunder:-

“G.S.R. (E) – In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the goods specified in Annexure-I appended hereto, and cleared from a unit located in the Industrial Growth Centre or Industrial Park or Industrial Estate or Industrial Area or Commercial

Estate or Scheme Area, as the case may be, specified in Annexure-II appended hereto, from the whole of the duty of excise or additional duty of excise, as the case may be, leviable thereon under any of the said Acts.

2. The exemption contained in this notification shall apply only to the following kinds of units, namely:-

(a) new industrial units which have commenced their commercial production on or after the 7th day of January, 2003;

(b) industrial units existing before the 7th day of January, 2003, but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty five per cent, on or after the 7th day of January, 2003.

3. The exemption contained in this notification shall apply to any of the said units for a period not exceeding ten years from the date of publication of this notification in the Official Gazette or from the date of commencement of commercial production, whichever is later.”

6. The aforesaid notification clearly indicates that new units which has commenced commercial production on or after 07.01.2003 would be entitled for exemption from excise duty on such goods as specified in the 1st Schedule and 2nd Schedule to the Central Excise Tariff Act, 1985 and cleared from a unit located in such areas as specified in Annexure-II.

7. Annexure-II gives details of the industrial area, the village, Khasra No. and the tehsil in a particular District in Uttarakhand where a new unit or an existing unit is required to be established for the purpose of claiming exemption of excise duty. The relevant portion of Annexure-II is extracted hereunder:-

“Annexure-II

1. State of Uttaranchal

(5) District Haridwar

| (C) Industrial Activity in Non-Industrial Area (to be notified alongwith extension) | | | | |
|--------------------------------------------------------------------------------------------|----------------------------------------------|--------------------------------------------------------|-------------------------------------|---------|
| Sl. No. | Name of the industrial Estate / Area/ Region | Name of the villages coming in Industrial Estate/Areas | Khasra Nos. | Tehsil |
| 17 | | Behedeki | 54, 271, 328, 329, 331 to 333, 331M | Roorkee |

8. The petitioner is a partnership firm engaged in the manufacture of MS Ingots, MS Runner and Riser falling under Central Excise Tariff heading 2706.90. In order to take advantage of the Policy of the Central Government dated 07.01.2003 and the notification dated 10.06.2003, the petitioner informed the Deputy Commissioner, Customs & Central Excise, Dehradun vide letter dated 11.02.2004 about their intention to set up a new manufacturing unit at Khasra No.54 in village Behedeki, Tehsil Roorkee in District Haridwar.

9. As per Annexure-I to the policy dated 07.01.2003 and Annexure-II to the notification dated 10.06.2003, the petitioner's unit was located in the Khasra, Tehsil and village in the District of Haridwar and, after setting up the unit and, upon commencing commercial production, the petitioner filed a declaration with the Deputy Commissioner, Customs and Central Excise vide letter dated 19.11.2004 in order to claim incentives as provided in the notification dated 10.06.2003.

10. It transpires that the Deputy Commissioner, Central Excise wrote a letter dated 21.02.2005 to the Managing Director of State Industrial Development Corporation of Uttarakhand (SIDCUL), which is the Nodal Agency for routing the subsidies / incentives under the policy, seeking clarification with regard to the exemption being granted under the notification No.50/2003 dated 10.06.2003. In response to the said letter, SIDCUL replied vide letter dated 03.03.2005 indicating that the category

“Industrial Activity in Non-Industrial Area” and “Industrial Activity in Non-Industrial Area (to be notified alongwith extension)” refers to existing industrial units only and that the benefit of exemption in the aforesaid two categories would accrue only to an existing industry which goes in for a substantial expansion.

11. The Deputy Commissioner Central Excise on the basis of the clarification given by SIDCUL, informed the petitioner by its letter dated 18/21.03.2005 that exemption from Central Excise is to be given in Khasra No.54 in village Behedeki to existing units only and since the petitioner’s unit is a new unit, the benefit of exemption under the notification dated 10.06.2003 cannot be granted.

12. The petitioner, being aggrieved by the clarification given by the SIDCUL represented by its letter dated 24.03.2005 indicating that the notification No.50/2003 dated 10.06.2003 applied to new units as well as to existing units and that no distinction has been provided in the said notification. The petitioner accordingly requested SIDCUL to issue another clarification so that the benefit of exemption is passed by the Central Excise Department, on to the petitioner.

13. Since no response came forward from the respondents, the petitioner has filed the writ petition praying for the quashing of the order dated 18/21.03.2005 written by the Deputy Commissioner Central Excise directing the petitioner to pay the central excise duty on the goods cleared from its unit.

14. During the pendency of the writ petition, the Central Government issued another notification No.27/2005 dated 19.05.2005 amending the earlier notification No.50/2003 dated 10.06.2003, wherein, in Annexure-II, under the heading State of Uttaranchal, in Category (C), the heading, namely, “Industrial

Activity in Non-Industrial Area (to be notified alongwith extension)” was substituted by the heading “Existing Industrial Activity in Non-Industrial Area.”

15. In the light of the aforesaid, the submission of the learned counsel for the petitioner is, that as per the policy dated 07.01.2003 and the notification dated 10.06.2003, the petitioner established a new industrial unit in the area specified in Annexure-II and was entitled for central excise exemption on the goods cleared from its unit. The petitioner further submitted that no further notification was required and the petitioner was entitled for the exemption under the notification No.50/2003 dated 10.06.2003. The contention of the petitioner that the categorization made in Annexure-II under District Haridwar would make no difference since the notification dated 10.06.2003 did not make any such distinction between a new unit and an existing unit and that the exemption under the said notification as specified in Annexure-II was applicable not only to new industrial units, but also to the existing units which had undertaken a substantial expansion. It was further submitted that the refusal to grant exemption by the Deputy Commissioner was patently illegal and against the notification dated 10.06.2003. Further, the clarification issued by SIDCUL, which was only a nodal agency, was wholly illegal and without jurisdiction. The learned counsel for the petitioner further submitted that SIDCUL had no authority or power to interpret the notification in its own fashion.

16. It was also urged that the subsequent notification dated 19.05.2005 amending the earlier notification dated 10.06.2003 would not make any difference in so far as the grant of exemption to the petitioner’s unit was concerned. In the alternative, it was urged that the notification dated 19.05.2005 was only prospective

in nature and did not affect the petitioner in claiming exemption of central excise duty. In the end, the petitioner submitted that there was a legitimate expectation to avail central excise exemption under the notification dated 10.06.2003 and the respondents are bound by the principle of promissory estoppel. In support of the contention, the petitioner has placed reliance upon several case laws, which will be considered at the appropriate place.

17. The stand of the Central Excise Department is, that as per the policy dated 07.01.2003 and the notification dated 10.06.2003, the petitioner's unit was not located in an industrial area specified in Annexure-II to the notification and, consequently, was not entitled for exemption. The contention of the respondents is, that under Haridwar District, the petitioner's unit was located in category 'C' under the heading "Industrial Activity in Non-Industrial Area (to be notified alongwith extension)", which would apply only to existing industries as clarified by the nodal agency SIDCUL. It was further submitted that the notification dated 19.05.2005 which amended the earlier notification dated 10.06.2003, wherein the category, "Industrial Activity in Non-Industrial Area (to be notified alongwith extension)" was substituted by "Existing Industrial Activity in Non-Industrial Area", makes it apparently clear that the exemption under category 'C' for Haridwar District was only applicable to the existing units on their substantial expansion.

18. The submission of the respondents is that as per Annexure-II, various categories have been given namely, (A) Existing Industrial Estates, (B) Proposed Industrial Area / Estates, (C) Industrial Activity in Non-Industrial Area (to be notified alongwith extension) and, (D) Expansion of Existing Estates. According to the respondents, these categories indicate where a

new unit could be located and where an existing unit could be located in order to avail exemption. The contention of the respondents, is that the area where the petitioner's unit is located had been earmarked for existing units only and, since the petitioner's unit is a new unit, the petitioner was consequently not liable for any exemption under the notification.

19. The State Government has also filed a counter affidavit contending that under category 'C' for Haridwar District in Annexure-II, units established in non-industrial areas would be entitled for exemption of central excise on their substantial expansion and since the petitioner is a new unit it is not entitled for exemption under the notification.

20. SIDCUL has also filed a counter affidavit indicating that the petitioner's unit is not located in a designated industrial area and that the area is required to be notified by the State Government which has not been done so far. It was further contended that the heading under category 'C' in District Haridwar, namely, "Industrial Activity in Non-Industrial Area (to be notified alongwith extension)" had wrongly been incorporated in the notification by a typographical error while sending the details of the Khasra numbers to the Government of India and that a letter has been sent to the Government for necessary correction. The submission of SIDCUL is, that category 'C' in District Haridwar applies only to existing industrial units only.

21. In the light of the aforesaid submissions, we have heard Mr. Sharad Sharma, the learned senior counsel assisted by Mr. Gajendra Tripathi, the learned counsel for the petitioner, Mr. B. K. Gupta, the learned Additional Advocate General for the respondent nos.1 & 2, Mr. Vipul Sharma, the learned counsel assisted by Mr. H. M. Bhatia, the learned counsel for the

respondent no.3 and Mr. Arvind Vashisht, the learned counsel for the respondent no.6.

22. The sole question which is required to be considered is whether the petitioner is entitled for central excise exemption under the notification No.50/2003 dated 10.06.2003.

23. Clause 3.1 of the policy dated 07.01.2003 indicate that new industrial units located in growth centres, etc. as stated in Annexure-I to the policy would be entitled to exemption of central excise duty. Locations were identified in general in Annexure-I to the policy, which included Iqbalpur Tehsil in District Haridwar. Clause 3.1 of the policy dated 07.01.2003 provided that the Central Government, in addition to the areas specified in Annexure-I, could further notify other areas from time to time. The notification No.50/2003 dated 10.06.2003 notified other areas and also provided further details of the industrial estates/areas/regions, the village, khasra nos. and the tehsil where a new unit or an existing unit was required to be located. The notification dated 10.06.2003 clearly indicated that new industrial units which are located in the areas specified in Annexure-II would be entitled for exemption which have commenced their commercial production on or after 07.01.2003. Annexure-II to the notification dated 10.06.2003 indicated Khasra No.54 in Tehsil Roorkee in village Behedeki in District Haridwar.

24. The petitioner's unit is located in Khasra No.54 in village Behedeki in Tehsil Roorkee and has established a new unit and started commercial production after 07.01.2003 and consequently applied for exemption. The respondents contention that the petitioner's unit is not located in the industrial area specified in the notification dated 10.06.2003 is on account of the reasoning that category 'C' under District

Haridwar applies only to existing units and not for new units. This reasoning is based on the basis of the heading given in category 'C' namely, "Industrial Activity in Non-Industrial Area (to be notified alongwith extension)" implying that this category refers to existing industrial units.

25. In our opinion, the reasoning adopted by the respondents is patently erroneous and cannot be culled out from the categories mentioned in Annexure-II.

26. The notification dated 10.06.2003 clearly indicates that a new unit would be entitled for exemption if it commences production after 07.01.2003 established in an area specified in Annexure-II. The said categories mentioned under District Haridwar namely, (A) *Existing Industrial Estates*, (B) *Proposed Industrial Area / Estates*, (C) *Industrial Activity in Non-Industrial Area (to be notified alongwith extension)* and, (D) *Expansion of Existing Estates* does not in any manner indicate that the said categories (A), (B), (C) & (D) relates to an existing unit or to a new unit. Consequently, we are of the opinion that category 'C' does not specify that it relates to an existing unit only. The stand taken by the opposite party is patently erroneous, misconceived and cannot be accepted.

27. SIDCUL itself had clarified that the words "to be notified alongwith extension" under category 'C' was a typographical error, which in our opinion is correct and we further hold that the said words "to be notified alongwith extension" does not in any manner indicate that another notification was required to be issued under Section 5A of the Central Excise Act, 1944 to claim the benefit of exemption. The notification dated 10.06.2003 by itself was sufficient to claim the benefit of exemption.

28. In so far as the notification dated 19.05.2005 is concerned, the court is of the opinion that the said notification only removes

certain anomalies which had crept in the notification dated 10.06.2003. By the said notification, the heading under category 'C' in District Haridwar, namely, "Industrial Activity in Non-Industrial Area (to be notified alongwith extension)" was substituted by the heading "existing industrial activity in non-industrial area". This substitution, in our opinion, would not make any difference since we have held that that the categories given under District Haridwar does not make any distinction for existing units or for new units to be located in a particular category.

29. A Division Bench of this Court in **Writ Petition No.333 of 2005 (M/B) tilted as M/s S. S. Poles Vs. The Secretary, Industries Department & others** decided on 16.05.2005, held that the opinion of the Managing Director of the SIDCUL could not override the notification dated 10.06.2003 and held that the notification dated 10.06.2003 would prevail. We are in agreement with the said decision.

30. In the light of the aforesaid, it is not necessary for this Court to deal with the question of legitimate expectation and promissory estoppel raised by the learned counsel for the petitioner, nor is it necessary to discuss the case laws on the aforesaid question.

31. As a result of the aforesaid, the writ petition is allowed. The order of the Deputy Commissioner dated 21.03.2005 directing the petitioner to pay central excise duty on clearance of its goods from its unit, being patently erroneous, is quashed. The court holds that the petitioner is entitled for exemption under the notification No.50/2003 dated 10.06.2003 and, accordingly a mandamus is issued directing respondent no.2 to grant exemption to the petitioner's unit with regard to the central

excise duty under the notification No.50/2003 dated 10.06.2003.
In the circumstances of the case, parties shall bear their own cost.

(B. S. Verma, J.) (Prafulla C. Pant, J.) (Tarun Agarwala, J.)

Dated 04th August, 2011

LSR