BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 193(C) OF 2006-07

(Arising out of order of the learned ACST, Sundargarh Range,
Rourkela in First Appeal Case No. AA. 14 (RLIC)/2006-07,
disposed of on dated 26.08.2006)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattnaik, Accounts Member-III

M/S. Rajatraj Enterprises,
P.H. Road, Rourkela, Dist. Sundargarh ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Respondent

For the Appellant : Sri Damodar Pati, Advocate
For the Respondent : Sri M.S. Raman, Additional S.C. (CT)

Date of hearing: 29.05.2020 ***** Date of order: 16.06.2020

O R D E R

'Veniro contra factum proprium' means 'no one may set himself in contradiction to his own previous conduct' is the fundamental principle of estoppel. In fact, the doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes representation to another on the faith of which, the latter acts to his prejudice, the former cannot recant the representation. However, estoppel has no application to law. For instance, a representation vis-a-vis fundamental rights conferred upon by Constitution cannot be bartered away. A concession made even under a mistake of

law or otherwise, cannot estop a person, as enforcing estoppel would defeat the purpose of Constitution.

2. The State, while dismantling the claim of the appellant, advanced a similar contention to the effect that an act done in violation of a mandatory provision of a statute cannot be a foundation for invoking the rule of promissory/equitable estoppel, inasmuch as, a rule cannot be pleaded to defeat the provisions of law,. In other words, according to the respondent State, the sanctity of law and of the mandatory requirements of law cannot be allowed to be defeated resorting to rules of estoppel basing upon the ruling of the Hon'ble Apex Court delivered in the case of ITC Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P and Others reported in (1998) 110 STC 590 (SC) so as to negate the demand of unconditional concession advanced by the appellant, who assailed the impugned order dated 26.08.2006 promulgated in First Appeal Case No. AA – 14(RLIC)/2006-07 by the learned Assistant Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'FAA') which confirmed the assessment dated 27.03.2006 for the period 2002-03 passed by the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'AA'). Applying the rule of estoppel and on such other grounds, the respondent State said to have opposed the instant appeal, which is based on a demand for a concessional rate of tax respecting a period between 01.04.2002 and 31.03.2003 on the ground that such a position, in view of notification dated 16.09.1994 of the Finance Department, Government of Odisha, existed till 13.10.2003 notwithstanding amendment to Section 8(5) of the Central

Sales Tax Act, 1956 (in short, 'the Act') introduced vide Finance Act 2002 and assented to 11.05.2002.

3. According to the appellant, till the notification dated 13.10.2003 which followed the amendment to Section 8(5) of the Act, the unconditional concessional rate of tax vis-a-vis the scheduled goods is said to have continued and that apart irrespective of change brought in the law vide Finance Act, 2002, granting of concession/exemption/rebate with or without condition(s) imposed and its withdrawal/revocation exclusively remained within the domain and jurisdiction of the State Government.

4. As a counter measure, the learned Counsel for the appellant cited a decision of the Hon'ble Apex Court of Shree Sidhbali Steels Ltd. and Others Vs. State of U.P. and Others reported in (2011) 3 SCC 193 and a ruling reported in (2017) 97 VST 186 (Gujarat) in the case of Kataria Automobiles Ltd. Vs. State of Gujarat. Besides, a copy of an order carrying the view of the Tribunal expressed in the case of M/s. Rashi Steels, Vedvyas, Rourkela Vs. State of Odisha in S.A. No. 49(C) of 2009-10 disposed of on 23.12.2011 was cited contending that power to rescind/revoke/ withdraw of a concession lies with the State Government and therefore, since an exemption by virtue of notification dated 16.09.1994 had not been withdrawn till 13.10.2003, it was entitled to the concession without furnishing declaration 'C' form, a condition which was incorporated by way of amendment to Section 8(5) of the Act w.e.f. 11.05.2002. So to speak, the appellant claims exemption in production of 'C' form during the period interregnum post

amendment to Section 8(5) of the Act and the notification dated 13.10.2003 of Finance Department, Government of Odisha.

5. On the other hand, the learned Additional Standing Counsel (CT) contended that no estoppel stands against law as enunciated in ITC Bhadrachalam's case (supra) and that apart, once amendment was brought into force w.e.f. 11.05.2002, it was mandatory for the dealers to claim concessional rate of tax only upon fulfilment of the condition introduced by the amendment to Section 8(5) of the Act. While advancing such an argument, the learned Additional Standing Counsel (CT) explained the evolutionary change in law and consequential amendment to Section 8(5) of the Act probably prompted later to the judgment of the Hon'ble Apex Court rendered in Shree Digvijay Cement Co. Ltd. Vs. State of Rajasthan reported in (2000) 117 STC 395 (SC) and further relied upon the decisions of the Hon'ble Apex Court in CTO Vs. A Infrastructure Ltd.: (2016) 97 VST 190 (SC) which analysed the scheme of the Act besides the ruling in ITC Bhadrachalam's case apart from the following decisions in Yamaha Motor Escorts Ltd. Vs. State of U.P.: (2011) 38 VST 116 (All.) again referred to in Adeshwar Granites Pvt. Ltd. Vs. Additional Commissioner reported in 2012 (73) KLJ 435 which are concerning Sections 8(5) of the Act vis-a-vis the exemption from tax or liability of tax at a lower rate by a notification thereunder confining it to the sales made against Form 'C' or 'D'.

6. Admittedly, the notification of Finance Department (No. 14891-CTA-52/91(Pt)-F) vide SRO No. 192/91 allowed exemption from tax payable by a dealer in respect of the sales effected by him to registered dealers of other States in

course of inter-State trade or commerce from such place of business of iron and steel as specified in Section 14(iv) of the Act with the conditions including furnishing declaration in Form 'C' or 'D' as prescribed under CST (Registration & Turnover) Rules, 1957) where after vide notification No. 32492-CTA-20/94 (Pt.)-F of the Finance Department, Government of Odisha, the condition with regard to 'C' and 'D' form was dispensed with. Later on, notification dated 13.10.2003 (No. 43857-CTA-62/2002-F) surfaced which reintroduced the condition and made production of Form 'C' or 'D' for the dealers to comply, while claiming tax exemption. However, as earlier described, amendment to Section 8(5) of the Act came into being vide Finance Act 2002 (No. 20 of 2002) which made it a requirement to furnish Form 'C' or 'D' by the dealers while demanding for exemption. The sole question is, whether, the appellant can still apply for exemption without 'C' form when the amendment to Section 8(5) had been enforced w.e.f. 11.05.2002 on the ground that the dispensing with of the condition was in vogue and survived till 13.10.2003?

7. The scheme of Section 8(5) of the Act can verily be ascertained referring to the ruling of the Hon'ble Apex Court reported in (2016) 97 VST 190 (SC) (supra) which lucidly explained the concepts of taxation and warned that unless the finer distinctions elaborated therein are properly understood, it may lead to serious error in construction and application of taxing law. It seems that to overcome the judgment of Hon'ble Apex Court in Shree Digvijay Cement Co. Ltd. case (supra), as rightly pointed out by the Additional Standing Counsel (CT), the legislature amended Section 8(5) of the Act requiring furnishing of 'C' form, as specified in

sub-section (4) thereof. In the said case, the earlier decision of 1997 concerning the same company which declared exemption and reduction in rate of tax to be violative of Article(s) 301 and 303(1) of the Constitution was overruled by the Hon'ble Apex Court in its later decision of 2000 (supra). The learned Counsel for the appellant cited the ruling of Shree Sidhbali Steels Ltd. (ibid) and advanced an argument that the unconditional concession which was allowed vide notification of 1994 can only be revoked or withdrawn by the State Government and till that time, the dealers are entitled to receive the benefit, notwithstanding amendment to Section 8(5) of the Act vide Finance Act 2002. The aforesaid decision is inapplicable and clearly distinguishable for the fact that the concession which was allowed by the State of U.P. vide a notification of 1996 which granted rebate to industries on electricity bill was subsequently withdrawn in 2000, where, the challenge was demolished holding that promissory estoppel to be inapplicable against delegated legislation and that apart, such withdrawal or revocation by a notification with respect to the grant of rebate was held to be implied in the provision itself by referring to Sections 14 and 21 of the General Clauses Act, 1897. The learned Counsel for the appellant placing reliance on the decision (supra) laid emphasis with regard to the revocation power of the State Government and the survival of the notification of 1994 even after amendment to Section 8(5) of the Act came into force. The analogy which is sought to be made by citing the aforesaid decision is wholly misplaced. In the instant case, the amendment to Section 8(5) of the Act vide Finance Act 2002 is with regard to the condition as to furnishing 'C' form, while seeking exemption from tax, but it has not affected or abridged upon the

right to grant concession which still remained with the State Government. In respect of which scheduled goods or classes of goods or dealers or classes of dealers, as the case may be, a concession would be made applicable is still a part of Section 8(5) of the Act and what was sought to be introduced therein is confined to a conditional requirement regarding submission of 'C' form. Having said that, the conclusion of the Tribunal is, the ruling of the Hon'ble Apex Court in Shree Sidhbali Steels Ltd. case does not render any assistance to the appellant as it is completely distinguishable. The learned Counsel for the appellant further cited a ruling of Hon'ble Gujarat High Court in Kataria Automobiles Ltd. case (supra) to contend that the State Government did have the authority to provide the unconditional concession to the dealers even after amendment to Section 8(5) of the Act. With all respect and humility, the Tribunal holds that the decision (ibid) is again inapplicable to the case in hand. If the said decision is read and understood in its proper perspective, it would unerringly suggest that amendment to Section 8(5) of the Act is unlikely to affect Section 8(2) since it is in relation to Section 8(1) thereof and in that context, the benefit under a notification vis-a-vis the rebate in tax was held to be force. In other words, it was held that an amendment to Section 8 making concessional rate of tax under sub-section (1) thereof conditional upon production of 'C' form does not affect sales governed by Section 8(2) of the Act. So, in the considered opinion of the Tribunal, the ratio of the decision (supra) is of no help to the appellant. An earlier decision of the Tribunal in S.A. No. 49(C) of 2009-10 was cited in juxtaposition to a contrary view expressed in S.A. No. 4(C) of 2010-11, as in the former, the concession was allowed for a period post amendment

2002 till 31.03.2003, however, in the latter, it was declined on the ground that the position was simply clarified and what was implicit in the notification dated 23.09.1992 was made explicit in the notification dated 13.10.2003. So far as the present case is concerned, in the humble view of the Tribunal, the amendment to Section 8(5) of the Act came into force which made a condition, such as, production of 'C' form universally applicable and in so far the State Government is concerned, it simply attuned itself to bring it in conformity with law and to clarify the position that earlier there was an exemption, which by virtue of amendment to Section 8(5) of the Act was deleted, which means, non-production of 'C' form which was previously allowed was no more available making it mandatory for the dealers to comply Section 8(4) of the Act. A law which has been enforced by an amendment and later on, a rebate which was granted earlier, if sought to be enforced, notwithstanding the fact that it stood omitted, it would lead to a chaos. Originally, the Act delegated an authority to State Government without any condition, either to exempt tax or levy a tax at a lower rate, but then vide notification of 1991, some conditions were brought forth for claiming the benefit under Section 8(5) of the Act and one of the conditions was to furnish 'C' form which was subsequently omitted in 1994 by a notification and that very condition was incorporated therein vide Finance Act 2002 and that under such circumstances, there is no escape from the conclusion that such a condition shall have to be mandatorily complied with by all the dealers who are involved in selling of goods in course of inter-State trade or commerce. It is also to be concluded that the concessional rate of tax in respect of goods or classes of goods or persons or

classes of persons and to what extent and manner still is the prerogative of the State Government, which has not been taken away on account of the amendment to Section 8(5) of the Act. So, the contention that even after Section 8(5) was amended in 2002, the appellant was entitled to exemption without furnishing 'C' form till 13.10.2003 is totally unacceptable. The latter notification of 2003 is just a confirmation to the change in law so as to bring it in harmony vis-a-vis Section 8(5) of the Act with the condition and compliance of sub-section (4) thereof and according to the Tribunal, the compliance is mandatory and it is with effect from 11.05.2002. In the instant case, the appellant submitted some 'C' forms before the authorities below and at the same time, attempted to evade it taking a plea that such compliance is not to be insisted upon since the notification was brought in October, 2003 which deserves no consideration. Furthermore, the decisions so relied upon by the learned Additional Standing Counsel (CT) do concur the conclusion of the Tribunal.

8. As to the source of power for the State Government to grant concession or allow tax at a concessional rate, it is derived from the Act itself. Such exercise of authority under Section 8(5) of the Act granting concessions in tax with respect to goods or classes of goods and/or for persons or classes of persons cannot be independent of the conditions emanating therefrom. In other words, exercise of power allowing concessions in terms of Section 8(5) is always subject to the conditions of the Act. Being a Central Act, power to amend it always lies with the Government of India. In exercise of such power, the Government of India introduced the Finance Act 2002 in order to amend certain provisions of the Act

which included Section 8(5). According to the Tribunal, later to the amendment to the Act under the Finance Act 2002, the State Government is duty bound to follow the conditions and exercise the power consistent with it and not in derogation thereof. In fact, the power so delegated to the State Government is always subject to the condition appearing in Section 8(5) of the Act. The State Government cannot go behind or override the Act which imposes conditions for fulfilling the tax liability. Any such attempt to do is certainly to make the amended law nugatory. To the extent, it can be said that the State Government cannot overlook the change in law and act in contrast and for that matter, certainly lacked or is denuded of its competence to dispense with the condition incorporated in Section 8(5) of the Act. In view of the discussion above, it has to be held that the condition to furnish 'C' form in accordance with Section 8(5) of the Act is, clearly and in unequivocal term, mandatory and by no stretch of imagination, the same can be dispensed with not even by an act of the State Government. It is stated that grant of concessions or otherwise is always be the prerogative of the State Government, but then, such an authority is subject to the provisions of the Act and not divorced thereof.

9. The Act and some of its provisions stood amended by the Finance Act 2002 and it is prospective with immediate effect. The operation of the law cannot be suspended animation on the ground that a consequential notification to follow suit, when the State Government is at liberty to do so or otherwise. Obviously, earlier arrangement under the unamended law cannot be given effect to once the new law has come into force with a plea that the State Government is to issue a notification in respect thereof. Any such attempt either to suspend the

law or to discontinue its applicability on whatever ground, it would destroy the spirit as well as intent and purpose of the law. From any angle appreciated, the only conclusion which is deducible is that the amendment to Section 8(5) of the Act is prospective in nature and with immediate effect and not dependent on any act of the State Government.

10. The learned Additional Standing Counsel (CT) produced a copy of the Finance Bill 2002 reported in (2002) 125 STC 133 (St.) and it is contended that the necessary amendment to Section 8(5) under Clause 145 thereof was to withdraw the powers of the State Governments to waive the requirement of the 'C' form and under such circumstances, the dealers cannot escape from the rigours of law, but to comply the same without fail. In the view of the Tribunal, with a specific purpose, the Bill was introduced and ultimately, enforced as a law vide the Finance Act, 2002 in order to withdraw the powers of the State Governments to dispense with submission of 'C' forms. The concessional power of the State Government, as earlier discussed, still remains and the amendment to Section 8(5) of the Act is only to withdraw the power dispensing with requirement of 'C' forms, which means, it is an amendment to the extent indicated above. In this regard, the statement and object of the Bill can be gone into to appreciate the purpose and legislative intent vis-a-vis amendment to Section 8(5) of the Act. A condition which is purposefully withdrawn, its effect cannot be denuded by taking refuse to issuance of a notification. Any such attempt would be to demean the effectiveness of the law designed for a specific purpose on the ground that publication of a notification is awaited. If that be so, the very purpose for which the law was amended can easily

be frustrated or defeated. Even, no such intention on the part of the State Government with a plea of a notification to emerge on the anvil of amended law can even be attributed. Any such interpretation would undoubtedly to make the law totally redundant.

11. The later notification of 2003 may be held as clarificatory in nature. However, at times it is also felt that there lies no need of carrying such a view to justify the said notification. The delay in issue of notification of 2003 is albeit unexplainable, but it should not be related to the amendment of 2002 by assigning such a reason that it to be merely a clarification. Whether, a notification is published or not, in the considered opinion of the Tribunal, it is hardly to affect the enforceability of the law. It means enforceability of the Act with the amendment is not dependent on the publication of a notification at a later point of time. In that sense, an alternative argument of the Tribunal could be, there is absolutely no need for any harmonious reading, or to justify delay in publication of notification and to treat it as a clarification so as to defeat incongruity.

12. Having regard to the discussions above, it is to be held that irrespective of the notification published in 2003, the operation of Section 8(5) of the Act with the incorporated condition to submit declaration 'C' form shall be with immediate effect on and from 11.05.2002. That apart, no estoppel could lie against law. The condition appearing in Section 8(5) of the Act shall have to be held as mandatory from the date the Finance Act 2002 was enforced and it could not be said to be depending on the publication of the notification dated 13.10.2003. So, the conclusion is inevitable which is to the effect that the plea of the appellant is

wholly indefensible. The Tribunal sums it up with a logical conclusion that the contention of the appellant with regard to concessional tax without submission of 'C' form till 13.10.2003 irrespective of amendment to Section 8(5) of the Act vide the Finance Act 2002 is totally untenable and thus, liable to be outrightly rejected. The remaining grounds so raised by the appellant deserve no worthy consideration in view of the ultimate conclusion arrived at by the Tribunal.

13. Hence, it is ordered.

14. In the result, the appeal stands dismissed for the reasons indicated herein above. Consequently, the impugned order dated 26.08.2006 promulgated in First Appeal Case No. AA- 14 (RLIC)/2006-07 is hereby affirmed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(A.K.Dalbehera)
1st Judicial Member

I agree, Sd/-
(R.K. Pattnaik)
Accounts Member-III