



Bombay High Court, Nagpur Bench rules on the Continuity of
Erstwhile Incentives under the GST Regime

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Introduction

With the introduction of the GST, it was perceived by certain industries that the incentives offered by the government to incentivize industries and promote development in backward areas may have been curtailed. In this regard the decision of the Nagpur Bench of the Bombay High Court in the case of K. M. Refineries & Infraspace Pvt Ltd. is a welcome decision on the continuity of the erstwhile incentives in the GST regime. The decision directs the state authorities to implement the incentive scheme as amended up-to-date with a discretion to modify the scheme to bring it in line with the new tax structure under the General Sales Tax scheme, but without reducing or restricting the benefits as conferred.

In this update we have discussed the key takeaways of the decision of the Bombay High Court.

Facts

The Petitioner, K. M. Refineries & Infraspace Pvt Ltd., set up a factory unit at village Dabha, Tahil Nandgaon Khandeshwar, District Amravati in view of the incentives offered under the state government scheme intending to have industries at disperse places all over Maharashtra under the "New Package Scheme of Incentives, 1993" (Incentive Scheme). The Incentive Scheme would offset the increased cost of production and the Petitioner would be able to compete with other similar industries in marketing its products at affordable rates, without causing any loss to the Petitioner. Under the Incentive Scheme, monetary and other incentives in the nature of tax subsidy or tax exemption at the rates prescribed in the scheme and other benefits were given. On introduction of the GST, the benefits under the scheme were claimed to have been curtailed and the government stated that the benefits would be available in terms of the Government Resolution dated 12.06.2018. This was challenged by the Petitioner inter alia invoking doctrine of promissory estoppel.

Ruling of the Bombay High Court

The High Court on analysis of the Scheme and the law has held:-

(a) The scheme had the object of making an effort to ensure the even distribution of industrial units across the state of Maharashtra so that employment is provided to larger sections of the society and there occurs equal distribution of wealth and means of production, to the common benefit of inhabitants of state.

(b) A promise is given by the state to the industries that, if the industries come out of their secure shells in Mumbai-Thane-Pune industrial belt and set up their industrial units in diffused virgin pastures of the state, spread out in rural and remote areas, the industrial units would be eligible for various incentives offered in the Incentive Scheme. These incentives are meant for offsetting the additional investment and increase in cost of production of the industrial units so that the goods and services could be produced at competitive rates and without incurring any losses.

(c) The Petitioner having changed its position and having made investments, has forged a legal relation with the state, and therefore, now the state would be bound by the promise that it gave to the Petitioner through the Incentive Scheme.

(d) The doctrine of promissory estoppel clearly applies here and would forbid the government from taking any decision of not completely implementing the Incentive Scheme or reducing the incentives to the detriment of the Petitioner and to that extent the decision would have to be held as illegal.

(e) The object and purpose of the Incentive Scheme is in consonance with the ideals held aloft by the directive principles of State policy contained in Part – IV of the Constitution of India, in particular, Article 39(c) which provides that that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Taking away or reducing the benefits of the Scheme would be contrary to the object and purpose of the Directive Principles of State Policy.

The High Court held that the reduction under the Incentive Scheme in the name of new policy of GST is clearly not permissible and the Incentive Scheme that was in operation on the date of issuance of Eligibility Certificate would have to be enforced against the state. The state would modify the Incentive Scheme in such a way that it is consistent with the new tax structure and at the same time it also does not result in reducing or restricting the benefits which have been conferred upon an industrial unit like that of the Petitioner under the Incentive Scheme.

Conclusion

The decision invokes both the principles of promissory estoppel and the Directive Principles of State policy to hold the state good to its promise when the assessee has acted on such a promise. The decision resonates the principles laid down by the Hon'ble Supreme Court in *Manuelsons Hotels Private Limited v. State of Kerela* ((2016) 6 SCC 766) on application on doctrine of promissory estoppel.

The principles laid down would apply to other states and to the area based incentives offered under the erstwhile central excise law, where upon finding curtailment in the promised incentives/benefits assesseees may consider approaching respective High Courts to claim continuity of such promised incentives / benefits even under the GST regime.

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