REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2773 OF 2020
(Arising out of SLP(Civil) No. 2252 of 2019)

M/S. ULTRATECH CEMENT LTD. & ANR. ….APPELLANT(S)

VERSUS

STATE OF RAJASTHAN & ORS. ….RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

PRELIMINARY AND BRIEF OUTLINE

Leave granted.

2. This appeal is directed against the judgment and order dated 11.01.2019 passed in D.B. Civil Writ Petition No. 9090 of 2018, whereby the High Court of Judicature for Rajasthan, Bench at Jaipur, dismissed the writ petition filed by the appellants while upholding the order of revision dated 12.03.2018 as passed by the Additional Chief Secretary, Finance, Government of Rajasthan, Jaipur[1] in revision proceedings under Clause 13 of the Rajasthan Investment Promotion Scheme-2003[2].

1 'ACS' for short
2 Hereinafter also referred to as 'RIPS-2003' or simply 'the Scheme'.

2.1. The appellant No.1, M/s Ultratech Cement Limited (Unit-Kotputli Cement Works), is a public limited company registered under the Companies Act, 1956 and engaged in the business of manufacturing and marketing of cement and allied products. It may be noted that previously, the appellant was carrying on its business in the name of M/s Grasim Industries Limited[3], a company of the Aditya Birla Group, which was engaged in manufacturing staple fiber, cement, textiles, sponge iron, aluminum etc. The company originally had two cement plants, one situated in Chittorgarh District and another in Jodhpur District in the State of Rajasthan. The appellant No.2 is said to be the Senior General Manager of the said Kotputli Unit of the appellant No.1. The matter in issue in the present case essentially relates to the extent to which the appellant No.1 company was entitled, under RIPS-2003, to avail the Capital Investment Subsidy[4] in relation to its Kotputli Unit.[5]

2.2. The respondent No.1 herein is the State of Rajasthan and respondent Nos.2 to 5 are its officers related with respective departments whereas respondent No.6 is the State Level Screening Committee, who was the prescribed authority for determining eligibility for subsidy under the Scheme in question.[6]

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3 The company's name was changed to M/s Ultratech Cement Limited w.e.f. 01.08.2010.
4 Hereinafter also referred to as 'the subsidy'.
5 For continuity of discussion, we shall refer only to the appellant No.1 as 'the appellant' or 'the company'.
6 For continuity of discussion, we shall refer to the respondents collectively and shall refer to the particular respondent only when necessary in the context.

2.3. By the aforesaid order of revision dated 12.03.2018, the ACS held that the Kotputli Unit of the company was entitled to Capital Investment Subsidy only to the extent of 50% of the payable and deposited Sales Tax/VAT and not to the extent of 75%, as availed by it pursuant to the Entitlement Certificates dated 29.04.2011 and 24.11.2011 erroneously issued by the State Level Screening Committee[7]. The SLSC was directed to issue a new Entitlement Certificate for subsidy to the limit of 50% of total tax to the said Kotputli Unit of the company; and the company was directed to refund the amount of subsidy availed in excess of 50% of the payable and deposited tax together with interest at the rate of 18% per annum.

3. Put in a nutshell, case of the appellant is that the subsidy in question, to the extent of 75% of tax payable and deposited, was availed by it under the Rajasthan Investment Promotion Scheme-2003 only in terms of and pursuant to: (a) the decision taken by the high-powered Board of Infrastructure Development and Investment Institution[8] on 01.04.2006; (b) the Memorandum of Understanding[9] entered with the State Government on 30.11.2007; and (c) the Entitlement Certificates issued by SLSC on 29.04.2011 and 24.11.2011. Therefore, according to the appellant, there was no occasion for the ACS to invoke Clause 13 of the Scheme; and the appellant can neither be forced to repay the amount of subsidy already availed of nor could any interest be charged. *Per contra*, stand of the respondents is that the decision of BIDI

7 'SLSC' for short.
8 "BIDI" for short.
9 "MoU" for short.

dated 01.04.2006 is of no good for the appellant because the package referred therein was withdrawn and the corresponding provisions in the Scheme were deleted on 28.04.2006; and the benefits under the deleted provisions could have been granted only until the date of their deletion, i.e., 28.04.2006. Thus, according to the respondents, understanding of the State Government with the company had only been to extend the benefit of incentive in terms of subsidy to the extent permissible under the Scheme and not beyond. The respondents would assert that the aforesaid Entitlement Certificates were erroneously issued by SLSC and the matter being related to public exchequer, the appellant is not entitled to claim any relief contrary to the applicable provisions/stipulations.

4. The factual aspects of the matter are not of much controversy but, for what has been noticed hereinabove and for what has been contended on behalf of the parties before us, the major questions involved in this matter, including those relating to the effect of the decision of BIDI as also the MoU entered into between the parties, revolve around the terms and stipulations of the Rajasthan Investment Promotion Scheme-2003. Hence, at the outset, it shall be apposite to take note of the relevant Clauses of this Scheme having bearing on the case.

Rajasthan Investment Promotion Scheme-2003: Relevant Clauses and their amendments/revisions up to 05.08.2010

5. Rajasthan Investment Promotion Scheme-2003, with which we are concerned in this case, had been a non-statutory Scheme announced by the

Government of Rajasthan through its Finance Department Order dated 28.07.2003[10]. It is apparent from the material placed before us that this Scheme had undergone umpteen number of amendments/revisions from time to time. We may refer to the relevant Clauses as also their important amendments/revisions as *infra*.[11]

5.1. As per the Preamble, the Scheme was introduced by the State Government with a view to *'provide investors an attractive opportunity to invest in the State of Rajasthan'*. As per its revised Clause 2, the Scheme was to come into operation w.e.f. 01.07.2003 and was to remain in force up to 31.03.2011[12]. The applicability of the Scheme, in its amended form, had been specified as follows:-

> "**3. APPLICABILITY OF THE SCHEME**
> The Scheme shall be applicable to all new investments and investments made by existing units and enterprises for Modernization/Expansion/Diversification, including the units/ enterprise, covered under policy for promotion of Agro-processing and Agri-business, 2010 subject to the condition that such units shall commence commercial production/operations owing to such investment during the operative period of the Scheme."

5.2. Some of the expressions and phrases used in the text of the Scheme had been defined in Clause 4 thereof. Then, the eligibility for availing Capital Investment Subsidy had been provided in Clause 5 of the Scheme as follows[13]:-

> "**5. ELIGIBILITY:**

10 'Finance Department' has appeared in short form 'FD' in some of the expressions.
11 A copy of this Scheme, as amended upto 05.08.2010, has been placed on record as Annexure P-1 and another copy of this Scheme, as amended upto 25.01.2010, has been placed for perusal in compilation by the respondents. The extractions herein are from the copy of Scheme as amended upto 05.08.2010.
12 As per amendment dated 06.08.2008
13 Clause 5A, dealing with eligibility in case of Sick Industrial Units and Clause 5B, dealing with eligibility in case of Biotechnology Units, are not relevant in the present case.

The benefits Capital Investment subsidy as per Clause 7 and exemptions as per Clause 8 under the Scheme shall be available to all units, other than those covered in the list of ineligible units, subject to the fulfilment of the following conditions:

(i) the term loan sanctioned by the State/Central financial institution(s)/International Financial Institution/Corporation and/or Scheduled Commercial Bank(s) including co-operative Bank(s), has been sanctioned and utilized during the operative period of the Scheme;
Provided that this condition shall not apply for the benefits pertaining to purchase/use of land.

(ii) the unit shall have a minimum borrowing for investment of Rs. 10 lacs or having an investment of at least Rs. 10 lacs in land and /or building calculated on the basis of DLC/RIICO rate for land, and Rs. 3228/- per sq. metre (Rs. 300/- per sq. ft.) for building, during the operative period;
provided that the above limit of Rs. 10 lacs shall be Rs. 5 lacs in case of Small Scale Industries.

(iii) to claim Capital Investment Subsidy (Wage component) the unit shall provide:
  (a) direct employment to at least ten persons in case of a new unit; and
  (b) twenty five percent additional direct employment subject to a minimum of ten persons in case of diversification, modernization or expansion.

(iv) the unit shall be eligible for Capital Investment Subsidy (Interest component) and/or Capital Investment Subsidy (Wage component) only if it commences first commercial production/operation during the operative period of the Scheme;

(v) there has been no default in repayment of dues against term loan of the concerned financial institution(s) and/or Bank(s); and

(vi) the applications as required under this Scheme are presented with full particulars and supporting documents, as required, before the appropriate authority within 90 days of commencement of commercial production/operation of the project in respect of which the Capital Investment Subsidy (Wage component)/Capital Investment Subsidy (Interest component) is sought. Such commercial production/operation should however commence *during* the operative period of the Scheme, i.e., on or before March 31st 2011.

5.3. The provisions relating to the prescribed authority for granting benefits under the Scheme and the prescribed authority to recommend grant

of customized incentive package, as contained in Clauses 6 and 6A had been as follows[14]:-

"6. AUTHORITY TO GRANT BENEFITS UNDER THE SCHEME:

The prescribed authority for determining the eligibility, except for exemption from stamp duty and/ or conversion charges, under this Scheme shall be the following Screening Committees, whose decisions, subject to other provisions of the Scheme, shall be final:

S.N.	***Investment amount***	***Prescribed Authority***	***Status***
1.	Investment above Rs. 10.00 crores	State Level Screening Committee (SLSC) consisting of the following:	
		a) Pr. Secretary, Industries	Chairman
		b) Secretary, Finance (Rev.) or his representative not below the rank of Deputy Secretary	Member
		c) Commissioner, Commercial Taxes or his representative not below the rank of Additional commissioner.	Member
		d) CMD, RFC or his Representative, not below the rank of ED	Member
		e) MD, RIICO or his Representative, not below the rank of ED	Member
		f) Commissioner, Industries	member-Secretary
2.	Investment up to Rs. 10.00 cores	District Level Screening Committee (DLSC) consisting of the following:	
		a) District Collector	Chairman
		b) Concerned Branch Manager of RFC in the District	Member
		c) Concerned Senior Regional Manager/ Regional Manager of RIICO in the District.	Member
		d) Deputy/ Asstt. Commissioner, Commercial Taxes/ Commercial Taxes	Member

14 Clause 6B, dealing with incentives for quality and standards upgradation, is also not relevant in the present case.

		Officer (CTO)	
		e) General Manager DIC	Member-Secretary

"6A. Authority to recommend grant of customized incentive package:
Notwithstanding anything contained under any clause/(s) of the scheme, the following committee shall examine individual cases of investment and may recommend for sanction of the Customized Incentive Package through BIP or BIDI.

S.N.	***Investment amount***	***Prescribed officers***	***Status***
1	*2*	*3*	*4*
1.	More than 500 crores	Principal Secretary, Finance or his representative not below the rank of Secretary	Member
2.		Principal Secretary, Industries/ Secretary Industries.	*Member*
3.		Commissioner, Commercial Taxes.	*Member*
4.		Commissioner (Investment & NRI)	*Convenor* "

5.4. The extent and limit of Capital Investment Subsidy under the Rajasthan Investment Promotion Scheme-2003 was specified in Clause 7 of this Scheme, which had undergone a vast number of amendments/revisions over the course of time. In fact, the amendments/revisions of this Clause with insertion of sub-clauses (vi) and (vii) (with effect from 02.12.2005) and their deletion (with effect from 28.04.2006) form the bone of contention in this case. We may take note of the entire Clause 7 with its sub-clauses (i) to (v) as amended/revised from time to time while also pointing out the dates of relevant amendments/revisions, which have bearing on the present case as follows[15]:-

15 Sub-clause (va), providing for additional direct employment based subsidy, inserted by FD order dated 05.08.2010, is omitted for being not relevant in the present case.

"**7. Capital Investment Subsidy:**

(i) (a) In case of new investments made, the sum total of Capital Investment Subsidy (Interest component) and Capital Investment Subsidy (wage component) would be subject to a maximum limit of fifty percent of the tax payable and deposited under the Rajasthan Sales Tax Act, 1994, the Central Sales Tax Act, 1956 and Rajasthan Value Added Tax Act, 2003

(b) "In case of investment made in Modernization/ Expansion, the amount of Capital Investment Subsidy shall be subject to maximum of fifty percent of the amount of the Central Sales Tax and VAT payable or deposited by the unit on its additional capacity, so created over and above the installed capacity before Expansion/Modernization.

illustration:- Installed capacity of unit 'A' before expansion/Modernization was 100 tons and after expansion it becomes 150 tons but the unit 'A' produce 140 tons. Tax paid on (140 tons – 100 tons) = 40 tons shall qualify for calculation of Capital Investment Subsidy.

For diversification the amount of Capital Investment subsidy shall be subject to a maximum of fifty percent of the amount of Central Sales Tax and VAT payable or deposited by the unit over and above the highest tax payable or deposited whichever is higher, in any of the three immediately preceding years."

provided that the maximum limit of fifty percent prescribed under clause 7(i)(a) and clause 7(i)(b) may be raised by the BIDI (Board of Infrastructure Development & Investment Promotion, Government or Rajasthan) to sixty percent in such cases where the investment exceed Rs. 100 crores but are less than or equal to Rs. 200 cores; and this maximum limit may be raised further to seventy five percent in cases where the investments exceed Rs. 200 crores[16].

and provided further that the maximum limit of 50% prescribed under clause 7 (i) a and clause 7 (i) b shall be raised up to 75% for the Biotechnology Unit established in terms of the Biotechnology Policy, 2004.

provided also that for the new investment in textile sector, the maximum limit of 50% prescribed under clause 7(i)(b) shall stand raised to, sixty percent in such cases where such investment exceeds Rs. 50 crores but is less than or equal to Rs. 100 crores and to seventy five percent in cases where such investment exceeds Rs. 100 crores.

(ii) Subject to clause (i) Capital Investment Subsidy (Interest component) shall be 5% (percentage points). An additional

16 This proviso amended by FD order dated 22.10.2003.

Capital Investment Subsidy (Interest component) of one percent shall be available to Schedule Caste/Schedule Tribe entrepreneurs. In case the documented rate of interest is less than 5% or less than 6% in case of SC/ST entrepreneurs, the entitlement of the Capital Investment Subsidy (Interest component) will be limited to the documented rate of interest and the amount actually paid as interest but shall not include penal interest.

(iii) The Capital Investment Subsidy shall be available to the investors for seven years from the date of first repayment of interest in case of Capital Investment Subsidy (Interest component) and first payment of wages/employment in case of Capital Investment Subsidy (wage component). In case of Expansion/Modernizing the unit shall be eligible for Capital Investment Subsidy under the scheme from the date of payment of tax deposited on their additional production after Expansion/ Modernization and for diversification, the amount in excess of the Central Sales Tax and VAT deposited by the unit over and above the highest tax payable or deposited whichever is higher, in any of the three immediately preceding years.

Provided that for the first cement plant, having minimum capacity of 3 million tons per annum and minimum investment of Rs. 1000 crores, to be established in Jaisalmer district, the Capital Investment Subsidy shall be available to the investor for 12 years from the date of first repayment of interest in case of Capital Investment Subsidy (Interest component) and first payment of wage/employment in case of Capital Investment Subsidy (wage component) if the 25% of its manpower is local.

Provided that for the new investments in the units being established in Special Economic Zones located entirely in backward and rural areas (as may be specified by the State Government by an order), the period of seven years shall stand raised to ten years.

Provided further that the investment made or committed before 22.05.2008 or under MOU signed during Resurgent Rajasthan Summit for both new cement unit or under expansion, having capacity more than 200 tons per day, shall be eligible for Capital Investment Subsidy under this clause on the condition that such unit shall start commercial production by 31.03.2011.[17]

Captive Power Plant: The existing unit under expansion/ modernization, investing in captive power plant shall qualify for Capital Investment Subsidy under this clause.

(iv) Where a unit has claimed and/or is availing benefit of the Capital Investment Subsidy (Interest component) the Capital Investment Subsidy (Wage component), shall be available to the extent of twenty five percent of wages/salary paid by the

17 This proviso inserted by FD order dated 30.09.2008.

investors to workers for whom the employee and employers are both contributing in the approved provident funds. However, in case of the unit is not claiming or availing Capital Investment Subsidy (Interest component), the amount of Capital Investment Subsidy (Wage component) shall be thirty percent of the wages/salary paid to the workers for whom the employee and the employer are both contributing in the approved provident funds,

provided however that notwithstanding anything contained in this clause, Capital Investment Subsidy (Wage component) in the case of diversification/expansion of modernization shall be available only with respect to additional numbers of such workers engaged for whom the employee and the employer are both contributing in the approved provident funds,

and provided further that such additional number of workers in the case of diversification, modernisation or expansion is at least twenty five percent of the existing direct employment subject to a minimum of ten additional persons as already provided under Clause 5(iii)(a)(b) of this Scheme.

(v) For Capital Investment Subsidy (Interest component) the interest actually being paid on the additional capital borrowed shall be the only basis for computation of Capital Investment Subsidy. In case of Capital Investment Subsidy (Wage component) the wages/salary paid for the additional employment generated shall be the basis for the computation of Capital Investment Subsidy (Wage component)."

5.4.1. As observed, sub-clauses (vi) and (vii) were inserted to the aforesaid Clause 7 of the Scheme on 02.12.2005 and were deleted on 28.04.2006; but these sub-clauses (vi) and (vii) of Clause 7 form the core of issues involved in this matter and hence, for ready reference, are extracted as under :-

"(vi) Notwithstanding anything contained in sub clauses (i) to (v) above, in case of new cement unit having investment exceeding Rs.400 crores and with a minimum regular employment of 200 persons, the amount of subsidy shall be subject to a maximum limit of 75% of the tax payable or deposited under Rajasthan Sales Tax, 1994 or Value Added Tax Act(as and when introduced in the State) and Central Sales Tax Act, 1956 for a period of 7 years from the date of the commencement of production, subject to the following conditions, namely-

1. The investor shall submit an option to the Member Secretary, SLSC to avail benefit under this scheme within 180 days of this amendment;

2. The unit shall start commercial production within 5 years of filing of application for option; and

3. The sum total of 75% subsidy shall be calculated in the following manner:-

(a) Subsidy of 45% of the Rajasthan Sales Tax or Value Added Tax and Central Sales Tax shall be allowed upfront on the basis of actual tax liability; and

(b) The remaining subsidy to the extent of 30% of Rajasthan Sales Tax or Value Added Tax and Central Sales Tax liability shall be allowed in form of interest subsidy, wage/employment subsidy out of which interest subsidy shall be limited to 5% of the documented rate of interest and the amount actually paid as interest shall not include penal interest, and wage/ employment subsidy. A unit not claiming any interest subsidy can claim wage/ employment subsidy to the extent of 30%, subject to other conditions under this amendment.

4. The claim of subsidy shall be as per the provisions of this Scheme.

(vii) Notwithstanding anything contained in sub clause(i) to (v) above, in case of investments for expansion of existing cement unit having investment exceeding Rs.200 crores and with a minimum regular employment of 100 persons, the amount of subsidy shall be subject to a maximum limit of 75% of the additional tax(calculated by taking the average of last 3 years) payable or deposited under Rajasthan Sales Tax Act, 1994 or Value Added Tax Act(as and when introduced in the State) and Central Sales Tax Act, 1956 for a period of 7 years from the date of commencement of production, subject to the following conditions, namely-

1. The investor shall submit an option to the Member Secretary, SLSC to avail benefit under this scheme within 180 days of this amendment;

2. The unit shall start commercial production within 5 years of filing of application for option; and

3. The sum total of 75% subsidy shall be calculated in the following manner:-

(a) Subsidy of 45% of the Rajasthan Sales Tax or Value Added Tax and Central Sales Tax shall be allowed upfront on the basis of actual tax liability; and

(b) The remaining subsidy to the extent of 30% of the Rajasthan Sales Tax or Value Added Tax and Central Sales Tax liability shall be allowed in form of interest subsidy, wage/ employment subsidy out of which interest subsidy

shall be limited to 5% of the documented rate of interest and the amount actually paid as interest shall not include penal interest, and wage/ employment subsidy. A unit not claiming any interest subsidy can claim wage/ employment subsidy to the extent of 30% subject to other conditions under this amendment.

4. The claim of subsidy shall be as per the provisions of this Scheme."

5.4.2. A few material aspects concerning the amendments/revisions of Clause 7 of the Scheme had been that by way of Notification bearing No. F.12(20) FD/Tax/2005 dated 22.05.2008, the Government of Rajasthan proceeded to issue clarification to resolve the ambiguity relating to admissibility of subsidy with regard to cement industry in the wake of aforesaid amendment dated 28.04.2006, deleting sub-clauses (vi) and (vii) of Clause 7. In the said Notification dated 22.05.2008, the State Government clarified, in specific terms and by way of illustrations, that none of the benefits under the deleted sub-clauses (vi) and (vii) of Clause 7 of RIPS-2003 would be available on and after 28.04.2006 as follows:-

"State Government hereby clarifies that the benefits under the deleted provision cannot be granted on and after 28.04.2006, that is to reiterate that none of the types enumerated at Sl. No. 1 to 6 below, quality for benefits under deleted sub-clause (vi) and (vii) of clause 7 of RIPS-2003 on or after 28.04.2006.

1. Where the option was submitted before 28.04.2006 and benefits were also granted by SLSC before 28.04.2006.
2. Where the option was submitted before 28.04.2006 and benefits were granted by SLSC after 27.04.2006.
3. Where the option was submitted before 28.04.2006 and benefits had not been granted by SLSC,
4. Where the option was submitted after 27.04.2006 but within 180 days of 02.12.2005 and the benefits had not been granted by SLSC,
5.Where the option was submitted after 27.04.2006 but within 180 days of 02.12.2005 and the case has not been considered by SLSC, and

6. Where the option was submitted after 27.04.2006 but within 180 days of 02.12.2005 and the unit has still not applied for the benefits."

5.4.3. The aforementioned clarification was followed by the amendment bearing No. F.12(20)FD/Tax/2005-Pt dated 30.09.2008 whereby, the Government of Rajasthan inserted proviso to sub-clause (iii) of Clause 7 of RIPS 2003 to the effect that the investment made or committed before 22.05.2008 or under the MOU, for both a new cement unit or under expansion, having capacity of more than 200 tons per day, shall be eligible for subsidy on the condition that the commercial production shall commence by 31.03.2011. Similar proviso was also inserted to Clause 8 of the Scheme.

5.5. Clause 8 of the Scheme related to various exemptions for the eligible beneficiary, in addition to the subsidies. Then, the procedure for claim of incentives under the Scheme was specified in Clause 9 and its sub-clause (B) may be usefully taken note of as under:-

"**9. PROCEDURES:**
(A) CLAIM OF EXEMPTIONS OF STAMP DUTY AND CONVERSION CHARGES:

*** *** ***

(B) CLAIM OF CAPITAL INVESTMENT SUBSIDY:

(i) A unit entitled to claim Capital Investment Subsidy under this Scheme should submit duly completed application in prescribed Form, to the Member Secretary of the appropriate Screening Committee (SLSC/DLSC). Such application shall be accompanied with the following documents, as may be applicable,-

(a) Loan sanction letter issued by the term lending institution(s)/bank(s);
(b) Proof of investment in case of self finance and
(c) Approved Provident Fund deposit receipt.

(ii) The Member Secretary shall complete the formalities for placing the completed application before the appropriate Screening Committees within fifteen days from the receipt of

the application. Where an application has not been completed within 15 days such cases shall separately be placed before the committee with reasons.

Note: the District Level Screening Committee or the State Level Screening Committee, as the case may be, on being satisfied may condone the delay not exceeding 180 days in filing of the application from the prescribed date of application.

(iii) The Screening Committee shall dispose of the application within fifteen days of its presentation by the Member Secretary. If the Committee approves the case, the Member Secretary shall issue Entitlement Certificate in the prescribed format, within three days of such decision and convey the decision to all concerned Departments, financial institutions, Banks, Assistant Commissioner/ Commercial Taxes Officer of the Circle where the dealer is registered under the RST/ CST/ VAT provisions, for necessary compliance.

(iv) In case the Committee rejects the application, the same shall be communicated to the applicant within a week of the date of such decision.

(v) The Assistant Commissioner/ Commercial Taxes Officer of the area where the eligible unit is registered shall be the Nodal Officer to give effect to the decision of the Screening Committee.

(vi) The units declared eligible for availing Capital Investment Subsidy under the Scheme, shall submit an application to the Assistant Commissioner/ Commercial Taxes Officer for claiming the Capital Investment Subsidy who shall provide the Capital Investment Subsidy as per the order of the Government issued in this regard.

(vii) The payment of Capital Investment Subsidy (Interest component) shall be made only for the period for which the unit deposits State and/or Central sales tax and/or and makes regular repayment of loan and interest due to the financial institution(s). Capital Investment Subsidy shall be disallowed for the period the unit defaults in depositing sales tax or defaults in regular repayment of loan or interest. It shall be restored on the recommendation of the Assistant Commissioner/ Commercial Taxes Officer from the Commercial Taxes Department and the concerned Financial Institution in case such unit clears all its over dues, and starts making regular repayment of sales tax and the term loan/interest.

(viii) "**Rectification of mistake**", With a view to rectify mistake apparent on the record, subsidy sanctioned by the assessing authority of the Commercial Taxes Department, under this scheme may rectify suo moto or otherwise any order passed

by him as per the provision of section 33 of the Rajasthan Value Added Tax Act-2003."

(ix) The periodicity for computation of subsidy under the scheme will be on quarterly basis."

5.6. The State Government extended the incentives under this Scheme subject to the terms and conditions stipulated in Clause 10 thereof. This Clause also carries its own bearing on the questions involved in this matter including the question of interest sought to be claimed by the respondents. Clause 11 specified the authorities for implementation/interpretation of the Scheme; and Clause 12 provided for review and appeal by the authorities concerned as also by the aggrieved party. Clause 13 of this Scheme, which has been invoked for passing the impugned order dated 12.03.2018, provided for revision by the State Government in its Finance Department, *suo motu* or otherwise, where any order was found to be erroneous and prejudicial to the interest of the State revenue. Lastly, Clause 14 provided for the general power of the State Government to review or modify the Scheme as and when needed in public interest. These Clauses 10 to 14 may also be reproduced as under:-

"**10. TERMS & CONDITIONS:**

The Capital Investment Subsidy (Interest component) and/or Capital Investment Subsidy (Wage component) sanctioned and paid under the Scheme and the exemption of luxury tax, electricity duty, mandi tax, entertainment tax, stamp duty, conversion charges and other benefits availed under the Scheme shall be subject to the following conditions. Breach of any of these conditions shall make the Capital Investment Subsidy/ exemption amount liable to be recovered as Tax or arrears of land revenue/alongwith interest @ 18% per annum from the date from which the Capital Investment Subsidy was provided.

(a) The unit availing Capital Investment Subsidy (Interest component) and/or Capital Investment Subsidy (Wage component) and availing exemption of luxury tax, electricity duty, mandi tax, entertainment tax, stamp duty, conversion charges and other benefits under the Scheme shall comply

with all statutory laws and regulations. Non-compliance may result in cancellation/withdrawal of the benefits under the Scheme.

(b) The unit availing Capital Investment Subsidy (Interest component) and/or Capital Investment Subsidy (Wage component) and availing exemption of luxury tax, electricity duty, mandi tax, entertainment tax, stamp duty, conversion charges and other benefits under the Scheme shall be subject to the conditions, procedures, instructions, clarifications, or amendments issued from time to time under the Scheme.

(c) If any subsidy under any other scheme of Government of India or Government of Rajasthan is received by the unit in respect of interest payment, or as a wage/employment subsidy then the total Capital Investment Subsidy payable under the scheme shall be reduced to the extent of subsidy so received.

Provided, that if a unit is availing interest subsidy benefit under Technology Upgradation Fund" (TUF) scheme of Government of India, for textile sector, then it would be eligible to avail the benefit up to 2.5% of Capital Investment Subsidy (Interest component) under this scheme in addition to the interest subsidy availed under the TUF Scheme."

This benefit would be available with prospective effect from the date of issue of this order.

Note: Interest @ 5 percent per annum would be payable to investor in case the payment of Capital Investment Subsidy is delayed for a period of more than 30 days once the Capital Investment Subsidy release order is issued.

11. AUTHORITY FOR IMPLEMENTATION/ INTERPRETATION:

All the related departments shall implement the scheme. The Industries Department shall act as the nodal coordinating, monitoring and implementing department. Any matter pertaining to interpretation of any Clause of the Scheme shall be referred to the Government of Rajasthan in the Finance Department whose decision shall be final in such a matter.

12. REVIEWS AND APPEAL:

The State Level Screening Committee and District Level Screening Committee described under clause 6 and clause 6C of this Scheme, shall also be empowered to review their decision. The State Level Screening Committee shall hear and decide appeals against the orders of District Level Screening Committee. Provided that the aggrieved party has filed review application or the appeal within the period of 60 days from the date of communication of the decision of the committee.

13. REVISION BY THE STATE GOVERNMENT:

(a) The State Government in Finance Department may suo motu or otherwise revise an order passed by any Screening

Committee wherever it is found to be erroneous and prejudicial to the interest of the State revenue, after affording an opportunity of being heard to the beneficiary industrial unit.

(b) No order under the sub-clause (a) shall be passed by the State Government after the expiry of a period five years after the date by which the benefits under this scheme are fully availed of.

14. REVIEW OR MODIFICATION OF SCHEME:

The State Government in the Finance Department reserves the right to review or modify the Scheme as and when needed in public interest."

BIDI: Composition and Mandate

6. Having taken note of salient features as also the relevant provisions of the Scheme i.e., RIPS-2003 and their amendments, we may also take note of a few facts relating to BIDI, whose decision carries a material bearing on the questions involved in this case.

6.1. The restructuring of BIDI and its mandate was specified by the State Government in its Administrative Reforms (Gr.3) Department by the order dated 15.01.2005 in the following terms:-

"In superannuation of department's Order No. F.6(51)AR/Gr.3/96 dated 26th January, 1999, the Governor is pleased to re-structure the BOARD OF INFRASTRUCTURE DEVELOPMENT AND INVESTMENT INSTITUTION (BIDI) to the following members:-

1.	Chief Minister	-	Chairman
2.	Industry Minister	-	Vice-Chairman
3.	Planner Minister	-	Member
4.	Energy Minister	-	Member
5.	UDH Minister	-	Member
6.	Chief Secretary	-	Member-Secretary

*** *** ***

1. To consider and review schemes and provide directions for accelerating investment in to the State.

2. To consider these matters relating to investment, which have not been disposed off by the concerned Departments/ Corporation/ Authorities within the time schedule prescribed by the State Government.

3. To make amendments in investment policies and procedure to accelerate economic development of the State.

4. To decide policy matters bearing direct/ indirect impact on investment promotion.

5. To give projects pertaining to investment involving Rs. 25.00 Crores and above.

6. To approve a customized package of incentives where the Board feels that the investment would catalyze employment and/ or further investments into the State.

7. To consider and dispose off, inter-departmental issues pertaining to investment proposals.

8. To give any other directions which the Board considers to encourage investment."

6.2. One of the significant and relevant aspect emerging from the material placed on record is that in supersession of the aforesaid order dated 15.01.2005 of reconstitution of BIDI, the State Government, in its Administrative Reforms Department, by way of order No.F.6(51)AR/Gr.3/96 dated 08.06.2009, constituted another body in the name of Rajasthan Investment Promotion Board. Hence, BIDI was not in existence after 07.06.2009 for having been disbanded.

Relevant factual and background aspects

7. Keeping the aforesaid provisions and features of Rajasthan Investment Promotion Scheme-2003 as also BIDI in view, we may now take note of the relevant factual and background aspects of this case in their feasible chronology.

7.1. As noticed at the outset, the appellant M/s Ultratech Cement Limited (Unit-Kotputli Cement Works), is a public limited company engaged in the business of manufacturing and marketing of cement and allied products; previously, the appellant was carrying on its business in the name of M/s Grasim Industries Limited and acquired the present name from 01.08.2010. The company originally had two cement plants, one situated in Chittorgarh District and another in Jodhpur District in the State of Rajasthan.

7.2. It appears from the material placed on record that the company (then carrying the name M/s Grasim Industries Limited), proposed to put up a cement plant with installed capacity of 3 MTPA[18] at Kotputli, District Jaipur in the State of Rajasthan and pursuant to a decision taken in BIDI meeting dated 10.01.2002, the mining lease for an area measuring 5.02 sq. kms. was transferred to the company at the cost of Rs. 46.50 lakhs with the condition that the company shall put up the cement plant within a period of three years. However, this task of putting up the cement plant at Kotputli could not be accomplished within the expected time, perhaps due to various pending litigations. Be that as it may, after the aforesaid sub-clauses (vi) and (vii) were added to Clause 7 of the Scheme w.e.f. 02.12.2005, the company made a request for grant of incentives; and this request was duly considered in 11th Pre-BIDI meeting held on 28.03.2006.

7.2.1. The relevant agenda proposal of the said 11th Pre-BIDI meeting[19] fairly gives insight into the nature of request made by the company, the views of the

18 'MTPA' stands for metric ton per annum
19 At pp. 175-178 of the paper-book

Finance Department as also Industries Minister and the recommendations of Pre-BIDI. Therefore, the same is reproduced *in extenso* as under:-

"**Request of the Company**:

The Company has requested for a customized package of incentives on the ground that this a Mega Project with an investment of more than Rs. 1000 crores. Details of the concessions/incentives sought by the Company are as follows:-

Sl. No.	Company's request	Existing Policy	Financial implications given by the company
1.	Interest subsidy @ 7.75% per annum for a period of 15 years on the total investment. Wage subsidy @ 25% per annum for a period of 15 years.	RIPS 2003, provides that in the case of new cement units having investment exceeding Rs. 400 crore with a minimum regular employment to 200 persons, interest subsidy and wage/employment subsidy will be subject to a maximum limit of 75% of the tax payable and deposited under RST/CST/VAT. Out of this 75% subsidy, 45% subsidy shall be allowed upfront on the basis of actual tax liability and balance subsidy to the extent of 30% shall be allowed in the form of interest subsidy and wage/employment subsidy of which interest subsidy shall be limited to 5% of the documented rate of interest. These subsidies are admissible for a period of 7 years.	If the Company's request is accepted, total financial implication will be Rs. 1102.50 crores over a period of 15 years whereas the financial implication as per RIPS 2003 will be Rs. 448 crores over a period of 7 years. In correspondence with the company, they had indicated that the company is self sufficient and no appraisal by a financial institution was envisaged the concession on interest subsidy has been asked on total investment.

2.	Waiver of Entry Tax for a period 15 years	No such policy exists. However, BIDI has granted 50% exemption from entry tax of raw materials, processing materials, consumables and packaging material in the case of RAS Cement Limited vide notification No. F.4(10)FD/Tax Div/02-197 dated 21st Feb, 2003.	Total financial implication on plant & machinery would be Rs. 10 crores.
3.	Waiver of Royalty on lime stone for a period 15 years	No such policy exists	The total financial implication over a period of 15 years will be Rs. 290.70 crores.
4.	100% exemption of Electricity duty for a period of 15 years	As per RIPS-2003, 50% exemption from Electricity duty is available for seven years. Furthermore, for new investment exceeding Rs. 400 crores, 100% exemption from Electricity duty is admissible on self generated energy in respect of investment in Captive power plant.	If power is purchased from Grid (DISCOMs), the total financial implication over a period of 15 years will be Rs. 30.90 crores.
5.	Subsidies will be subject to a maximum the total investment in the project i.e. Rs. 1200 crores.	No such policy exists.	In that case, the company is asking the total benefit up to the extent of Rs. 1200 crores.

Views of the Finance Department

The value of the enhanced incentives/exemptions will be approximately Rs. 1130 crores which would be almost equal to the cost of the plant being set up by the company (at a cost of Rs. 1200 crores). Finance Department is of the view that incentives/exemptions beyond RIPS-2003 should not be given. If further incentives/exemptions are granted, the 18 other companies

which are operating within the State will face competitive price disadvantage. It would also be contrary to the declared policy of providing level playing field for all.

Further, department has added that in the VAT regime, the concessions may not be possible in any case. Therefore, limiting benefit to RIPS in future reinforced (*sic*).

Views of the Industry Minister

If RIPS-2003 would have been good enough, investment would have flown. Moreover, expansion and setting up has to be differentiated. An expansion process costs around 250 to 400 crores. Now, new plants with 2 MT capacity single kiln is one factor, which is putting Koria, China, ahead of all other players. The matter must be taken to BIDI for discussions and decision.

Pre-BIDI recommendation

The Pre-BIDI recommended that the Cement Package as announced recently and RIPS-2003 should be applicable to the company.

Proposed decision

BIDI may take a view."

7.3. The said proposal was considered under Agenda item No. 13 in the 21st Meeting of BIDI held on 01.04.2006 under the chairmanship of the then Chief Minister and it was resolved that '*the recently announced cement package and RIPS 2003 will be applicable on the company';* and that *'any changes post VAT regime will also be available to other units'.* The relevant contents of the minutes of the said 21st Meeting of BIDI dated 01.04.2006 read as under:

"Agenda No. 13

Grasim Industries Limited

BIDI directed that the recently announced cement package and RIPS 2003 will be applicable on the company. Any changes post VAT regime will also be available to other units."

7.4. Thereafter, the company addressed a letter dated 26.04.2006 to the Commissioner of Industries, seeking registration in terms of sub-clause (vii) of

Clause 7 of RIPS-2003 (as inserted by way of amendment dated 02.12.2005) for a new cement plant/captive power plant, intended to be established at Kotputli. The relevant contents of this letter dated 26.04.2006 could also be usefully extracted as under:-

> "This is in reference to the Notification No. F 4(18)FD/Tax-Div/2001 amended on 2.12.05. Kindly note that our group has intention to set up a new plant for manufacturing of 3.5 million tons/annum cement plant at Kotputli along with a 2 X 23 MW Captive Power Plant. Details are as under :
>
> Proposed total cost : Rs. 1,100 crore
> Total Capacity : 3.5 million ton/annum
> Minimum Employment : 250
> Expected Date of Completion : March 2008
>
> We request you to register the above in Rajasthan Investment Promotion Policy 2003 Scheme of sub clause (vii) of clause 7 vide Notification No. F.12(20)FD/Tax/05-Pt dated 2/12/2005.
>
> We also request that in case any special package of incentives is approved for any other similar cement plant, then the same may be granted to our aforesaid plant also."

7.5. However, before any decision was taken on the aforementioned application dated 26.04.2006, the State Government proceeded to delete the aforesaid sub-clauses (vi) and (vii) of Clause 7 of RIPS-2003 by way of its amendment Notification No. F.12(63)FD/Tax/05 dated 28.04.2006.

7.6. The company felt distressed with the aforesaid amendment dated 28.04.2006 and deletion of sub-clauses (vi) and (vii) of Clause 7 of the Scheme and hence, on 26.05.2006, its Group Executive President made a representation to the Chief Minister of Rajasthan, stating the steps taken by the company after submitting the option for availing benefit under the Notification dated 02.12.2005; and the setback likely to be caused to the investment plans of the company upon withdrawal of 45% upfront subsidy.

While pointing out that the company had, in fact, represented to the Government for customized package of incentives, it was prayed in this representation that the Notification dated 28.04.2006 may be withdrawn. The relevant contents of this representation dated 26.05.2006 read as under:-

> "This has reference to above-mentioned notification, vide which Sub-clause (vi) and (vii) of clause 7 of the Rajasthan Investment Promotion Policy 2003 have been deleted. Clause 7 was added to the aforesaid policy vide notification no. F.4(18)FD/Tax Div/2001 dt. 02nd December 2005.
>
> After the above notification dated 28th April 2006, the benefit of 45% upfront subsidy of the actual tax liability in VAT and CST will not be allowed.
>
> We would like to mention that based on 2nd December 2005 Notification number F.4(18)FD/Tax/Div/2001 our company has decided to set up 2 cement plants of 3.5 million tons per annum capacity each at Grasim Cement – Kotputli , District Jaipur & Aditya Cement – Shambhupura Dist. Chittorgarh involving total investment of above Rs. 2200/- crores.
>
> The withdrawal of 45% upfront subsidy would have major set back to company's investment plan in Rajasthan. The cement plants are capital intensive plants and most of the states are offering subsidy/incentives in one form or the other form and in previous cases Government of Rajasthan has announced specific schemes for specific companies i.e. incentives even up to 75% exemption of Tax up to 11 years by issuing separate notifications on case to case basis.
>
> We have already submitted option to avail the benefit under notification dated 2nd December 2005 as provided in Para 7 (vi) (1) of the afforsaid scheme and our intention is to commence commercial production in both these plants by March 2008 i.e. within 5 years of filing of the option as provided in the scheme. We have taken the effective seps like placement of orders for major items of plant & machineries on the basis of incentives/subsidy offered vide notification dated 2nd December 2005.
>
> We are distressed to know about the withdrawals of incentives provided to cement industry within 5-6 months of notification, which will make our proposed plants unviable. In fact we had represented to the Government of Rajasthan for customized package of incentives as provided under the Rajasthan Investment Policy 2003 for investment of Rs 1000 crores and above.
>
> Both the above proposed plants are expected to contribute over Rs. 225 crores each to the exchequer & substantial part of which will be shared by the State Government.

> In the present high growth environment of Indian economy, cement industry being one of the prominent infrastructure industry is providing support to other industries & such retrogatory steps may affect the growth of the cement industry & ultimately overall growth of the Indian economy.
>
> We sincerely request your goodself to reconsider & withdraw the above notification dated 28th April 2006 which will also be in the natural justice as we have planned investments based on the notification dated 02nd December 2005.
>
> We hope that our request shall be considered favourably enabling us to take further steps for implementation of the proposed plants in a time bound manner."

7.6.1. It appears that the request so made by the company evoked only a pithily tight response from the State Government in the form of letter No. BIP/IP/DGM(NS)/61 dated 17.06.2006 of the Bureau of Investment Promotion, Rajasthan[20], stating that '*company would be eligible for concessions as contained in RIPS-2003'.*

7.7. On the other hand, during the summit named 'Resurgent Rajasthan', the company entered into an MoU with the State Government on 30.11.2007, proposing to set up new Cement Plants at Kotputli and Nawalgarh as also to expand the existing plant at Shambhupura with the projection of generating direct employment of 1000 persons and significant multiplier impact on local economy and consequent indirect employment. As against this proposal, the State undertook to extend support in the form of providing incentives as permissible under RIPS-2003 together with additional support as per the prevalent policy apart from facilitating the approvals etc., by offering a 'single window service'. This MoU was to remain valid for the initial period of five

20 Hereinafter referred as 'BIP'

years and upon considering the progress made, its term was extendable for such period as mutually agreed upon.

7.8. It had been the case of the appellant that pursuant to BIDI's decision dated 01.04.2006 and the MoU dated 30.11.2007, the company made investment to the tune of Rs.1661.88 crores on its Kotputli Unit; provided employment to 254 persons as on 31.12.2009; and availed the loan facility amounting to Rs.798.82 crores from various financial institutions and banks. Thus, according to the appellant, all the required conditions stipulated under RIPS-2003 stood fulfilled.

7.9. With reference to the aforementioned facts and with the assertion that commercial production in the said Kotputli Unit commenced on 20.01.2010, the company made an application, on or about 21.02.2010, to the Member Secretary SLSC for grant of Entitlement Certificate under RIPS-2003[21]. Several aspects related with the contents of this application and its accompanying form, affidavit and annexures do form the areas of conflict and divergence of the parties and, therefore, appropriate it could be to take note of their relevant features too.

7.9.1. In the aforesaid application, the company, after stating that it had commenced commercial production on 20.01.2010 and had made investment of a sum of Rs.1661.88 crores, also referred to the fact that it had filed the option on 26.04.2006 pursuant to the notification dated 02.12.2005[22]. The

21 A copy of this application is placed on record as Annexure P-11 that bears the date 04.02.2010 but its contents and annexures carry the later dates too, like VAT deposit dated 05.02.2010 and Chartered Accountant's certificate dated 16.02.2010. It appears from the receipt endorsement that the application was submitted on 21.02.2010 and hence, we have taken this to be the date of application.
22 Whereby the aforesaid sub-clauses (vi) and (vii) were added to Clause 7 of RIPS-2003.

aforesaid decision of BIDI dated 01.04.2006, the letter of BIP dated 17.06.2006, and the amendment dated 30.09.2008 of sub-clause (iii) of Clause 7 of the Scheme were also referred and then, the applicant submitted as under:-

> "6….In accordance with above amendment the Applicant Company is eligible for subsidy as investments have already been made of significant amount of Rs.1184.47 crores upto 30th April, 2008 (before 22.05.2008) and also signed the MOU during Resurgent Rajasthan Summit on dated 30th November, 2007 for setting up the 40 Lac MT/annum cement plants at Mohanpura, Tehsil Kotputli, Distt. Jaipur and the copy of the Memorandum of Understanding is enclosed herewith as Annexure – 6. We are also enclosing herewith the certificate of Chartered Accountants certifying the investment of Rs.1184.47 crores up to 30th April, 2008 in Grasim Cement – Kotputli as Annexure – 7.
>
> 7. That we have already filed the option under the notification dated 02.12.2005, within 180 days and also commenced the commercial production on 20.01.2020 i.e. within five years from the date of filing the option, investments were made of Rs.1661.88 crores i.e. more than Rs.400 crores and have given the employment to 254 persons up to 31.12.2009 i.e. more than 200 persons, hence fulfill all the conditions of the notification dated 02.12.2005 i.e. as per sub-clause (vi) of Clause 7 of the RIPS-2003.
>
> Considering the above facts, kindly grant the Entitlement Certificate and the benefits may also be allowed in terms of the notification dated 2nd December, 2005. In case you require any further information, please intimate so that the same may be furnished."

7.9.2. The application was submitted in Form 2 referable to Clause 9(B)(i) of the Scheme and therein, a request was made to '*grant 5% of the interest subsidy, and 25% of the employment/wage subsidy 45% Up-Front subsidy*' under the Scheme. The said Form 2 also carried declaration and undertaking of the Vice-President of company in the following terms:-

> "I hereby declare that I have fully understood the provisions of the Rajasthan Investment Promotion Scheme, 2003 and agree to comply with the same. In case of availing excess benefits or non

compliance with the provisions of this Scheme, I undertake to repay whole of the amount actually availed under the Scheme and shall also be liable to pay interest at the rate of 12% per annum on such amount."

7.10. The matter relating to the aforesaid application was considered by SLSC in its 29th meeting held on 17.03.2011. As noticed, by that time, the name of company had changed to that of the present appellant. In the said meeting dated 17.03.2011, the SLSC proceeded to take the decision of allowing Capital Investment Subsidy to the appellant to the extent of 75% of deposited VAT. This decision was taken by SLSC purportedly on the basis of the approval of BIDI. The relevant part of the Minutes of SLSC meeting dated 17.03.2011, in their translated version[23] read as under:-

"13….Committee after observing & examining the submitted documents by the unit & available provision in the plan & earlier decision taken by the finance department, this decision has been taken that unit has appended signatures on MoU in Rajasthan Resurgent Summit. Therefore, as per the orders of finance department dated 30/9/2008 unit is free from negativeness. Committee has also observed that although finance department has not given any consent for the amendment regarding available loan borrowing schemes, thereafter units are eligible under rule 5(i) of the plan for seeking term loan from financial institutions & local body. And earlier in many cases the State Level Screening Committee have on the basis of Capital Investment (Interest component) allowed eligibility. Therefore, in this case the unit is covered under the definition of term loan for seeking term loan from ECB & Buyers Credit then unit should be given the benefit of eligibility of interest subsidy. On the basis of advise of the representative of finance department Secretary, Finance committee has take the decision that unit is for the time being allowed for the starting from the first date of commercial production, first VAT challan deposit date 5/2/2010 for 7 years capital investment subsidy (interest component) eligibility & loan received from HDFC bank of 250 crore & axis bank 200 crores means total 450/ crore etc may be granted eligibility for term loan and already received ECB credit & Buyers matters & in consideration of earlier matters, matter may be referred to finance

23 pp.160-161 of the paper-book

> department. The eligibility certificate may be amended as per the decision of the Finance Department decision.
>
> Committee has also taken decision that unit may be allowed for Capital Investment (25 percent employment component) from 5/2/2010 the date of starting of commercial production for 7 years. Committee has also taken decision that on the basis of approval from the BIDI rule 7(i)(a) & (b) basis Capital Investment subsidy (Interest Component) of total payable and 75% of the deposited VAT will be the limit. Committee has also taken the decision that the eligibility for rebate in electricity for 50% will be from commercial production date 5/2/2010 for 7 years."

7.10.1. On the basis of, and pursuant to, the decision aforesaid, the Member-Secretary, SLSC proceeded to issue the necessary Entitlement Certificate to the appellant on 29.04.2011.

7.11. Thereafter, the matter relating to the appellant company was re-examined in the SLSC meeting dated 17.10.2011, particularly with reference to the quantum of investment and borrowings; and the decision finally taken by SLSC reads, in its translated version, as follows[24]:-

> "The committee under the plan has after the completion & on the basis of desirable eligibility terms by the unit & guidelines of finance department dated 11-7-2011 & in the series of guidelines of the committee dated 17-3-2011, the decision taken by the committee, accordingly the committee, & information received from the unit ECB credit of 216.25 crore has also been added under Capital Investment Plan, total 666.25 crore rupees from 5-2-2010 on the basis of new unit the capital investment subsidy (5 percent interest component & 25 percent vet component) eligibility for 7 years period from 5-2-2010 taking the decision, amended eligibility certificate will be issued for the unit. The total pay ability for the unit under capital investment subsidy, the total limit of 75 percent of the vat deposit, the decision taken in the meeting dated 17-3-2011 as per the series of decision will be payable by the unit."

7.12. Pursuant to the aforesaid decision of SLSC dated 17.10.2011, the Office of the Commissioner Industries, Rajasthan issued a revised Entitlement

24 pp.165-166 of the paper-book

Certificate to the appellant company on 24.11.2011, superseding the earlier Certificate dated 29.04.2011 and certifying the entitlement of the appellant to Capital Investment Subsidy in the following terms:-

"8.	Capital Investment subsidy:	
	(i) Interest Component	@ 5% from 05.02.2010 (Interest Comp. eligibility available on Rs.450 crs. Term loan and 216.25 crs. ECB Credit Total 666.25 crs. only)
	(ii) Wage & Emp. Component	@ 25% from 05.02.2010

Note:

1. In case of new units, the maximum amount of interest and wage/ employment subsidy shall not exceed 75% of the State Sales Tax/ VAT and the Central Sales Tax paid by the applicant dealer.
2. This certificate is liable to amendment/suspension/revocation, if obtained on misrepresentation or concealment of facts or by fraud or on breach of any of the terms and conditions, mentioned in the relevant notification.
3. This certificate shall be valid for a period of seven years from 05.02.2010.
4. This certificate may be revoked by the issuing authority in case the applicant violates any of the conditions of the Scheme or the certificate.
5. **This Revised Entitlement Certificate is being issued superseding earlier Entitlement Certificate issued being No. 02/190 on 29.04.2011.** "

(bold as in original)

7.13. It is not a matter of much dispute that the appellant fully availed the benefit of 75% subsidy in terms of the Entitlement Certificate dated 24.11.2011 from the month of February 2010 and until the month of February 2017.

8. The foregoing narration of facts relating to the propositions of the appellant company as also the decisions taken by the authorities concerned

at different stages depicts only one part of the spectrum of this case. For comprehension of the overall scenario, several other equally significant aspects also need to be taken note of.

8.1. As noticed, one of the significant aspects had been that after 07.06.2009, BIDI ceased to exist for having been disbanded by the State Government with constitution of another body in the name of Rajasthan Investment Promotion Board w.e.f. 08.06.2009.

8.2. Another remarkable aspect had been that upon receipt of the Minutes of SLSC meeting dated 17.03.2011, the Finance Department of the State Government sent a letter dated 17.11.2011 to the Member-Secretary, SLSC raising doubts on the correctness of the decision of SLSC with reference to the decision of BIDI, particularly when it was not clear as to when did BIDI issue the order for increasing maximum limit of subsidy from 50% to 75% in the cases pertaining to the units the appellant. The contents of this letter dated 17.11.2011 have been reproduced *in extenso* in the impugned order of ACS dated 12.03.2018 and the relevant passage therefrom could be usefully extracted as under[25]:-

> "In both the matters of M/s. UltraTech Cement grant of benefit up to 75% limit of VAT has been referred while as per proviso to clause 7(1)(a) and (b) of the Scheme 50% maximum limit can be extended only by Board of Infrastructure Development and Investment Promotion. (BIDI)
>
> BIDI was reconstituted by the Administrative Reforms Department by its Order No. F.6 (51) / AR / Gr.3 / 96 dated 15.1.2005. In supersession of the said Order dated 15.1.2005 the Administrative Reforms Department by its Order No. F.6 (51) AR / Gr.3 / 96 dated 8.6.2009 constituted Rajasthan Investment Promotion Board (RIPB). As such after 7.6.2009 BIDI has not

25 pp. 462-464 of paper-book.

been in existence. In these cases Applications under RIPS-2003 has been filed on 23.2.2010 and 19.6.2009 respectively and it is not clear from the available information that when BIDI issued order for increasing maximum limit from 50% to 75% of capital investment subsidy in these cases.

In regard to promotion sanctioned under RIPS-2003 all the relevant facts remained available in the file of Finance Department, therefore with regard to the order issued by the BIDI for increasing maximum limit of capital investment subsidy from 50% to 75% in these matters the requisite factual comments may be forwarded to the Finance Department at the earliest possible."

8.3. It appears that the aforesaid communication and its reminders from the Finance Department to the Industries Department remained unanswered for a long length of time.[26] Ultimately, a reply dated 09.02.2017 was forwarded by the Member-Secretary, SLSC, which too was carrying certain typographical errors and hence, another reply was sent by the said Member-Secretary on 17.02.2017, seeking to furnish '*factual comments in respect of grant of capital investment subsidy upto 75%*' to the appellant in the Meeting dated 17.03.2011. Therein, the said Member-Secretary stated, *inter alia*, that "perhaps" the benefit was given on the basis of decision taken by BIDI. This communication dated 17.02.2017 has also been reproduced in the impugned order dated 12.03.2018 and the relevant passage thereof may be reproduced for ready reference as under[27]:-

"Notably, in clause 7(vi) of the Scheme provision was for cement units to give capital investment subsidy up to 75% of payability/

26 During the course of submissions, the facts have also been placed before us that the Industries Department did not send reply to the aforesaid letter dated 17.11.2011 despite repeated reminders dated 18.05.2012, 20.05.2013, 17.06.2013, 29.07.2013 and 12.09.2013. In regard to these aspects of wanton avoidance and in regard to the sanction made in favour of the appellant, a departmental inquiry for major penalty was also proposed against the then Additional Director, Industries, who was working at the relevant time as the Functional Officer under RIPS-2003. It has been pointed out that the inquiry could not proceed further for the said officer having retired and inquiry having gone time barred under the Rajasthan Civil Services (Pension) Rules, 1996.

27 pp.470-472 of paper-book

deposition of VAT subject to providing employment to minimum 200 persons and investment of Rs.400 Crore. Later the said provision was deleted and Clause 7(1)(b) of the Scheme remained as it is according to which upon recommendation of BIDI the unit invested more than Rs.100 Crore but below Rs.200.00 Crore could have granted subsidy up to 60% of the payable / deposit tax/VAT and more than 200 Crore Rupees it could have increased up to 75% of the payable / deposit tax /VAT. Perhaps benefit to the unit was given on the basis of decision taken in the BIDI meeting dated 1.1.2006 (*sic*) under the aforesaid clause. Besides, no other record is available in this office. Hence in this regard it is requested to the Finance Department to examine the matter at its own and take decision."

8.4. After having received the aforesaid reply dated 17.02.2017, the Finance Department of the State Government expressed its reservations on the decision taken by SLSC in the purported reference to the directions of BIDI and sent its communication dated 03.04.2017 to the Industries Department, expecting appropriate action in the matter while observing, *inter alia*, as under:-

> "In this regard from the information and documents received from Finance Department it is appeared that in respect of M/s. UltraTech Shambhupura District Chittorgarh (Unit Aditya Cement Works-II) matter of grant of 75% subsidy as per proviso of clause 7(i)(a) and (b) of RIPS 2003 was not placed before BIDI therefore no approval by the BIDI was found to be done. In 21st Meeting of BIDI dated 1.4.2006 under Agenda Item No. 13 matter of Kotputli Cement plant of Grasim Industries was placed before BIDI in regard to which BIDI passed following orders:-
>
> > "BIDI directed that the recently announced cement package and RIPS-2003 will be applicable on the company. Any changes post VAT regime will also be available on other units"
>
> As such it is clear that no approval was made by BIDI for grant of subsidy 75% as per proviso to clause 7(i)(a) and (b) of RIPS 2003 in the matter of M/s. Utratech Cement Limited (Unit – Kotputli Cement Works).
>
> In respect of M/s. UltraTech Shambhupura District Chittorgarh (Unit Aditya Cement Works-II) and M/s. Utratech Cement Limited (Unit – Kotputli Cement Works) Brief Notes (Note-A and Note-B) are being enclosed which concludes that in Agenda Notes placed

being SLSC being shown approval of 75% capital investment subsidy to these matters by the BIDI the SLSC has taken defective decision. In these matters decision of SLSC is defective and contrary to the revenue interest therefore it is necessary to again place the matters along with all facts and documents before SLSC.

By the even number Letter dated 17.11.2011 of the Finance Department on seeking information of the order pertaining to extending subsidy limit up to 75% by BIDI your office has replied after lapse of more than 5 years. Need of fixing responsibility for such delay is also appeared. (*sic*)

Take action accordingly and up date to the Finance Department."

9. In the above-noted background, the SLSC proceeded to re-examine the matter in its 20th meeting held on 22.05.2017. In the Minutes of this meeting dated 22.05.2017, the SLSC underscored the very same doubts as raised by the Finance Department on the purport and effect of the decision of BIDI and suggested for appropriate action under Clause 13 of RIPS-2003. The relevant part of this resolution of SLSC dated 22.05.2017 could also be usefully extracted as under[28]:-

"This is not clear from the action detail letter dated 17- 5-2006 of BIP that what should be meaning in which it was said that according RIPS-2003 provision these units are eligible for the benefit. Likewise it has been observed from the meeting of BIDI dated 01-04-2006 its agenda item no.13 that discussions were made only for the Kotputli plant & the matter for Shambhupura district Chittorgarh plant has not been placed before BIDI for discussion. The meeting dated 1-4-2006 of the BIDI on detailed action in agenda no. 13 the following has been mentioned –
BIDI directed that the recently announced cement package and RIPS-2003 will be applicable on the company. Any changes post VAT regime will also be available to other units.
Possibly, BIP in its letter dated 17-6-2006 has written on BIDI decisions for its as it is implementation. This is also mentioned that the said package is for cement units, this has been withdrawn & this is not applicable for these units.
Prima facie, it has been clear that the matter of Shambhupura (District-Chittorgarh) was not put up before BIDI. Whereas the matter of Kotputli (District-Jaipur) plant, the consent for

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enhancement of investment subsidy limit of 75% of the deposited tax limit is not clear.

Attention is invited of the committee on the following legal provisions regarding expected action by the Finance Department –

(i) According to rule 12 of the plan provision if the State level screening committee a letter has been received within 60 days of its decision, then the committee will review its decision.

(ii) (ii) Under rule 13 there is a provision that on the basis of Finance Department suo motto or information received from any other source may review the decision of the screening committee. If the decision is against the interest of Govt. Although before the changing the decision, the beneficiaries units will be given opportunity for hearing. For this purpose the time limit after 5 years of the complete benefits.

The eligibility certificate was issued on 29-4-2011 in favour of unit. The time limit was 6 months which has already been exhausted. But the given benefit time period was for 7 years, possibly, still it is continuing. Therefore, under rule 13, the time limit for action by Finance Department has not been exhausted. Therefore, it has been decided that in this matter under rule 13 recommendation may be sent to Finance Department and for fixing the responsibility action may be taken on file.

In the last, thanks given to President & the meeting is closed."

Revision proceeding under Clause 13 of RIPS-2003: impugned order dated 12.03.2018

10. Following the aforesaid recommendation of SLSC, a notice bearing No. P12 (55) Fin/tax/2017-Part-I dated 10.07.2017 was issued to the appellant by the State Government informing about the proposed action of the Finance Department under Clause 13 of RIPS-2003, because the decision taken by SLSC on 17.03.2011 was found to be erroneous and against the interest of revenue. The appellant was called upon to enter into defence with relevant documents and evidences.

10.1. Having received the aforesaid notice dated 10.07.2017 from the State Government, the appellant made an application under the Right to Information Act to obtain a copy of agenda note regarding item No. 13 in the minutes of

meeting dated 01.04.2006 of BIDI and minutes of Pre-BIDI meeting dated 28.03.2006. After obtaining necessary documents, the appellant submitted its objections and reply to the show cause notice, *inter alia,* to the effect that it had availed the benefit under RIPS-2003 with effect from 05.10.2010 on the basis of the Entitlement Certificate granted to it and the period of seven years having been completed, the availed benefit cannot be withdrawn. It was also submitted that the earlier decision by SLSC had been a *bonafide* and reasonable decision, being that of permissible interpretation; and if more than one interpretation was possible, the interpretation in favour of the assessee ought to be accepted. The appellant also submitted that it had made a huge investment to the tune of Rs. 1661.88 crores on the basis of Notification dated 02.12.2005 and invoked the principles of promissory estopple. It was also contended that SLSC had no *locus standi* to refer the matter for revision by the State Government. On behalf of the Department, reply to the objections of the appellant were filed contending, *inter alia,* that the matter of appellant's unit was not approved by BIDI and the benefit availed were much beyond the permissible limit under RIPS-2003. It was also contended that the power of the State Government under Clause 13 was wide enough to revise any order granting undue benefits which was erroneous and prejudicial to the interest of revenue. The appellant filed a detailed rejoinder with the submissions, *inter alia*, that the subsidy was granted not under sub-clauses (vi) and (vii) of Clause 7 of RIPS-2003 but that had been on the basis of the MoU entered into

with the State Government and under the proviso to Clause 7(i)(a) of RIPS-2003.

11. The learned Additional Chief Secretary examined the entire record and took note of all the objections of the appellants and then, in his elaborate order dated 12.03.2018, held that the SLSC had erroneously issued the aforesaid Entitlement Certificates dated 29.04.2006 and 24.11.2011; and that the appellant was not entitled to the subsidy beyond 50% of the tax payable and deposited. The relevant observations and findings in the impugned order dated 12.03.2018 read as under :-

> "27. In light of conclusion derive on the aforesaid each point under consideration as stated above overall conclusion is drawn as under:-
>
> i) The decision taken under Agenda No. 13 of Meeting dated 17.03.2011 of State Level Screening Committee (SLSC) is erroneous because while considering the matter the Committee presumed that increasing of capital investment subsidy of deposited tax from 50% limit to 75% limit as per first proviso to clause 7(i)(a) and 7(i)(b) of the Rajasthan Investment Promotion Scheme, 2003 (RIPS-2003) has been approved by the Board of Infrastructure Development and Investment Promotion (BIDI) in its meeting dated 01.04.20016 *(sic)* whereas no such order was passed by the Board of Infrastructure Development and Investment Promotion (BIDI) for increasing available capital investment subsidy from 50% limit to 75% of payable and deposited tax in view of provision of clause 7(i)(a) and 7(i)(b) of Rajasthan Investment Promotion Scheme 2003 (RIPS-2003).
> ii) In furtherance to the decision taken under Agenda No. 13 of Meeting dated 17.3.2011 of State Level Screening Committee (SLSC) under Agenda No. 18 of in next meeting dated 17.10.2011 of State Level Screening Committee (SLSC) reference of capital investment subsidy up to 75% of total payable tax is also erroneous.
> iii) Decision taken under Agenda No. 13 of Meeting dated 17.3.2011 of State Level Screening Committee (SLSC) and in furtherance thereto reference of capital investment subsidy of 75% of total payable tax under Agenda No. 18 of in next meeting dated 17.10.2011 of State Level Screening Committee (SLSC) is prejudicial to the interest of the State revenue

because for investment made in the unit capital investment subsidy was available up to 50% of payable and deposited tax only as per clause 7(i)(a) of Rajasthan Investment promotion Scheme, 2003 (RIPS-2003) but State Level Screening Committee (SLSC) has taken decision to increase it up to 75% of payable and deposited tax. As such, the company has received amount from the State treasury in excess of capital investment subsidy payable under Rajasthan Investment Promotion Scheme, 2003 (RIPS-2003).

iv) As stated above Decision taken under Agenda No. 13 of Meeting dated 17.3.2011 of State Level Screening Committee (SLSC) and in furtherance thereto reference of capital investment subsidy of 75% of total payable tax under Agenda No. 18 of in next meeting dated 17.10.2011 of State Level Screening Committee (SLSC) is erroneous and prejudicial to the interest of the State Revenue therefore amendment in decision dated 17.3.2011 of the State Level Screening Committee (SLSC) under clause 13 of the rajasthan Investment Promotion Scheme, 2003 (RIPS-2003) in revision proceeding by the Finance Department is needed and lawful.

v) On proposal of revising of decision dated 17.3.2011 of State Level Screening Committee (SLSC) adequate opportunity of hearing as per provision has been given to the beneficiary industrial unit. Preliminary objections, Objections and Arguments advanced by the Beneficiary Industrial Unit has been discussed in detail.

vi) The decision dated 17.3.2011 of State Level Screening Committee (SLSC) is revising within limitation prescribed in clause 13(b) of Rajasthan Investment Promotion Scheme, 2003 (RIPS-2003).

11.1. In view of the above, the learned Additional Chief Secretary issued directions to the appellant as also to SLSC in the following terms:-

> 28. Hence, in this revision proceeding proposal is accepted in context of points referred to Finance Department for revising under clause 13 of Rajasthan Investment Promotion Scheme, 2003 (RIPS-2003) the decision taken by the State Level Screening Committee (SLSC) in its meeting dated 17.03.2011 as decided in meeting dated 22.05.2017 by the State Level Screening committee (SLSC) this order is issued in this revision proceeding that-
>
> i) Kotputli Cement Works Unit of the Company would be able to get capital investment subsidy as per provision of clause 7(i)(a) of Rajasthan Investment Promotion Scheme, 2003 (RIPS-2003) to the extent of 50% of payable and deposited tax because no order has been passed by Board of Infrastructure Development and Investment Promotion (BIDI) for increasing capital investment

subsidy as per provision of clause 7(i)(a) and 7(i)(b) of Rajasthan Investment Promotion Scheme, 2003 (RIPS-2003) from 50% to 75% of the payable and deposited tax.

ii) The Entitlement Certificate dated 29.04.2011 issued in furtherance to State Level Screening Committee (SLSC) Meeting dated 17.03.2011 and also Revised Entitlement Certificate dated 24.11.2011 issued in furtherance to Meeting dated 17.10.2011 of State Level Screening Committee (SLSC) are hereby cancelled and it is ordered to State Level Screening Committee (SLSC) to issue new Entitlement Certificate for investment subsidy up to 50% limit of total tax to Kotputli Cement Works Unit of the Company.

iii) Disbursement officers of the Capital Investment Subsidy (Assessing Authority) is directed to calculate payable capital investment subsidy as per New Entitlement Certificate to be issued by the State Level Screening Committee (SLSC) in reference to this revision order and in case the company in the context of this unit has already received excess benefit then payable capital investment subsidy under this revision Order then to recover the said excess amount from the company.

iv) Under provisions of Rajasthan Investment Promotion Scheme, 2003 (RIPS-2003) interest @ 18% on available excess benefits is chargeable. The company has given Undertaking in Form-2 for repayment of availing excess benefits with 18% hence on availing excess benefits interest @ 18% is chargeable which may be recovered from the company.

v) The company is ordered that to refund the benefits of capital investment subsidy availed in excess from 50% of payable and deposited tax under erroneous order of State Level screening committee (SLSC) together with 18% interest to the to the State Government."

12. Pursuant to the aforesaid order of ACS dated 12.03.2018, a meeting of SLSC was held on 28.03.2018 wherein, it was decided that the entitlement certificate issued in favour of the appellant on 24.11.2011 be cancelled and in its place, a revised entitlement certificate be issued allowing Capital Investment Subsidy to the extent of 50% in place of 75% of deposited Sales Tax/Value Added Tax/Goods and Services Tax. Accordingly, Re-revised Entitlement Certificate dated 02.04.2018 was issued to the effect that '*the maximum amount of interest and wage/employment subsidy shall not exceed*

50% of the State Sales tax/VAT and the Central Sales Tax paid by the applicant dealer.'

12.1. In sequel to the above, an order dated 04.04.2018 was issued by the ACS wherein, the total tax and excess subsidy availed by the company were calculated for the period from 05.02.2010 to 31.12.2016 and whereby, the appellant was directed to refund the amount of excess availed subsidy together with interest in the following terms:-

> "Hence you are directed to deposit excess availed capital investment subsidy amount Rs. 15,96,37,794/- together with interest Rs. 17,18,33,816/- payable thereon totaling to Rs. 33,14,71,610/- till 3.5.2008 through E-Grass under Budget Head (VAT-OTHER MISC PAYMENTS) in the State treasury and submit evidence thereof before the undersigned. Please note that undertaking in Form No.2 for payment of 18% interest in case of availing excess benefits has already been given by the company.
>
> It is also informed that in case the aforesaid amount of Rs. 33,14,71,610/- is not deposited till 31.05.2018 under the provisions of the Rajasthan Investment Promotion Scheme 2003 then the said amount shall be recovered from the company as land revenue dues."

The writ petition before the High Court: impugned order dated 11.01.2019

13. Aggrieved by the order dated 12.03.2018 as passed by the ACS in revision proceedings under Clause 13 of RIPS-2003; issuance of the Re-revised Entitlement Certificate; and the order dated 04.04.2018 of the ACS demanding the excess subsidy amounting to Rs. 15,96,37,794/- together with interest amount of Rs. 17,18,33,816/-, the appellant preferred the writ petition, being W.P. No. 9090 of 2018, before the High Court of Judicature for Rajasthan, Bench at Jaipur, challenging Clause 13 of RIPS-2003 as being arbitrary and unconstitutional as also seeking the relief of quashing the orders

dated 12.03.2018, 02.04.2018 and 28.03.2018 amongst other prayers. The High Court has dismissed the writ petition by the impugned order dated 11.01.2019. Having regard to the subject-matter and the questions involved, we may also take note of the reasons that prevailed with the High Court in rejecting the case of the appellant.

13.1. The High Court in the first place rejected the contention of appellant that if there was any mistake in granting subsidy, that could have been rectified with reference to Clause 9(B)(vii) only within a period of four years, as prescribed by Section 33 of the Rajasthan Value Added Tax Act, 2003 while pointing out that the said provision was intended to be applied by the Assessing Officer of the Commercial Taxes Department and was of no impediment for the action under Clause 13 of RIPS-2003.

13.2. Thereafter, the High Court minutely analysed Clause 7 of RIPS-2003 while also taking note of its various amendments/revisions, as described hereinbefore. The High Court also referred to the dealings of parties including the application made by the company directly to BIDI; the minutes of Pre-BIDI meeting dated 28.03.2006; the minutes of BIDI meeting dated 01.04.2006; the other application made by the company on 26.04.2006; and the representation made by the company on 26.05.2006. Having thus examined the relevant material on record, the High Court observed that though the company prayed for the benefits under newly inserted sub-clause (vii) of Clause 7 by way of the application dated 26.04.2006 but, both sub-clauses (vi) and (vii) of Clause 7 were deleted by the Government on 28.04.2006. The High Court also

observed that the company was fully conscious of the fact that it would not receive the tax subsidy under deleted sub-clause (vii) of Clause 7, which was also borne out from the representation made by it on 26.05.2006, stating that the withdrawal of 45% upfront subsidy of actual tax liability was a major setback to the company's investment plan; and making a request that the newly inserted clauses under Notification dated 28.04.2006 be reconsidered. The High Court also observed that BIP in its communication dated 17.06.2006, with regard to the request for customized package, merely stated that *'the company will be eligible for concessions as contained in RIPS-2003';* and even in the MoU dated 30.11.2007, '*all that stated was that the State will extend to the project incentives permissible to the project under the RIPS-2003 as amended from time to time'*.

13.3. The High Court further took note of the aforementioned clarification dated 22.05.2008 whereby the State Government made it clear that *'on deletion of sub-clauses (vi) and (vii) of Clause 7 of the RIPS-2003 w.e.f. 28.04.2006, none of the types enumerated at Serial No. 1 to 6 in the clarification will qualify for benefits under the deleted sub-clauses'*. The High Court also referred to the amendment dated 30.09.2008, whereby another proviso was added after sub-clause (iii) of Clause 7 to the effect that the investment made or committed before 22.05.2008 or under MoU signed during Resurgent Rajasthan Summit, for both new cement unit or unit under expansion having capacity of more than 200 tons per day, shall be eligible for

subsidy under Clause 7 on the condition that the unit shall start commercial production by 31.03.2011.

13.4. Having thus traversed through the whole gamut of Clause 7 of RIPS-2003 with its amendments/revisions as also the background aspects relating to the propositions of the company, the High Court took note of the application[29] made by the company for issuance of entitlement certificate and for benefits under the amendment dated 02.12.2005 and pointed out the fundamental flaw therein that the amendment dated 02.12.2005 had already been deleted on 28.04.2006. The High Court also took note of the decision of SLSC dated 17.03.2011 and pointed out the basic error therein that the decision of BIDI dated 01.04.2006 was utterly misconstrued. The High Court further took note of the corrective decision taken by SLSC on 22.05.2017 and observed as follows:

> "…..The petitioners however submitted an application on 04.02.2010 for issuance of entitlement certificate and benefits under the notification dated 02.12.2005 whereas the amendments made under that notification were already deleted on 28.04.2006. It was at that stage that the SLSC considered this application of the petitioners in its meeting dated 17.03.2011 and directed for granting the subsidy to it upto the limit of 75% under proviso to Clause 7(i)(a) and (b) in view of the approval allegedly granted by the BIDI**. A careful examination of the minutes of 21st meeting of the BIDI held on 01.04.2006 does not reveal any such decision on the part of the BIDI. The BIDI simply directed that recently announced cement package in RIPS-2003 shall be applicable on the company.** The SLSC further considered the matter in its meeting dated 17.10.2011 for revision of the entitlement certificate. Consequently, the entitlement certificate issued on 29.04.2011 was revised on 24.11.2011. The petitioners accordingly availed the subsidy. However, the SLSC in its meeting dated 22.05.2017 considered the issue on the letter received from the department, which found that the BIDI never approved raising

29 This application bears the date 04.02.2010 but was filed on 21.02.2010, vide paragraph 7.9.1 and footnote 21 hereinbefore.

> of the subsidy upto 75% and accordingly recommended to the Government for proceeding under Clause 13 of the RIPS-2003."
>
> (emphasis in bold supplied)

13.5. The invocation of the doctrine of *Contemporanea Expositio* on behalf of the appellant for the submission that SLSC, consisting mostly of the officers from the Finance Department of the State, was in the best position to construe the decision of BIDI was also negated by the High Court in the following words:-

> "The argument that the SLSC which consisted of the officers mostly from the Finance Department of the State by virtue of doctrine of Contemporanea Expositio was in the best position to consider decision of the BIDI is noted to be rejected firstly because there is no ambiguity whatsoever in the decision of the BIDI and secondly, such decision has to be read in context of the facts. The BIDI never explained its understanding subsequently on 01.04.2006. The SLSC thus misunderstood the decision of the BIDI. The RIPS-2003 also does not provide any clarification for such a decision. In the cited judgments on this aspect, it has been indicated **that such interpretation by a particular authority has by no means a controlling effect upon the courts and if occasion arises, has to be disregarded for cogent and perspective reason and in a clear case of error, the court would without hesitation refuse to follow such construction**…."
>
> (emphasis in bold supplied)

13.6. Another line of submissions on behalf of the appellant that tax incentives cannot be withdrawn retrospectively was also rejected by the High Court with reference to the nature of benefits availed by the appellant. The High Court, *inter alia*, observed as follows:-

> "…..Cited judgments arose out of the matters where the beneficiary having not collected tax by virtue of acceptance of exemption by the Government could not be saddled with liability retrospectively. In the present case, the situation is entirely different in that the petitioners availed undue advantage at the time when it established the plant, which is being sought to be recovered after its full establishment in business. **It is not a case where the petitioners did not recover taxes and did not**

> **deposit due to exemption.** The cited judgments are therefore not applicable and are only the expression of the doctrine of impossibility and are based on reasons of equity which are not applicable in this case. Clause 13 of the RIPS-2003 clearly indicates that the benefit wrongly given can be withdrawn after its being fully availed and the petitioners availed the benefits with open eyes and full knowledge. Such was not the position in the judgments cited on behalf of the petitioners."
>
> (emphasis in bold supplied)

13.7. The High Court further examined the amendment dated 30.09.2008 and found the same to be of no avail to the appellant; and pointed out the root cause of error in the decision of SLSC dated 17.03.2011 where it had proceeded beyond the ambit of its power and authority in the following words:-

> "As regards the contention that amendment made in Clause 7(iii) of RIPS-2003 vide notification dated 30.09.2008 protected investments made under MOU signed during Resurgent Rajasthan Summit, provided commercial production started by 31.03.2011 also does not improve the case of the petitioners. Even though Clause 7(iii) had protected MOUs signed during Resurgent Rajasthan Summit but this amendment does not in any manner confer any additional power on the SLSC to grant more subsidy than what it otherwise wielded. On the date of aforesaid amendment, the SLSC was competent to grant subsidy to the extent of 50% and no more than that. The SLSC, however, wrongly accepted the application of the petitioner-company under the proviso to Clause 7(i)(a) by incorrectly relying upon the decision of the BIDI dated 01.04.2006 in raising the limit of subsidy upto 75%. **The SLSC at the maximum could have granted the tax subsidy to the extent of 50% and could have, till the BIDI was in existence, referred the case of the petitioner-company for extending the limit of tax subsidy from 50% to 75%. Since the BIDI was disbanded on 07.06.2009, therefore, it was not in existence when the SLSC took up the case of the petitioner for consideration in its meeting held on 17.03.2011. Thus obviously, it could not have granted tax subsidy beyond 50%.**"
>
> (emphasis in bold supplied)

13.8. Proceeding further, the High Court dealt with the submission made on behalf of the appellant that the respondents were bound by the principles of promissory estopple and rejected the same with two-fold observations: one

that there could be no estopple against the statute; and secondly, that there was no such representation held out to the appellant by BIDI or SLSC as alleged. The High Court observed and held as under:-

> "The argument that impugned revisional order constituted breach of the promise held out to the petitioner company which was binding on the respondents **by doctrine of promissory estoppel and equitable estoppel cannot be countenanced for the simple reason that there could be no estoppel against the statute.** The BIDI did not direct the SLSC to grant 75% tax subsidy to the petitioner-company. It merely directed that "the recently announced cement package and RIPS-2003 shall be applicable on the company." When the BIDI had itself not taken the decision and directed for extending the recently announced cement package as per RIPS-2003, that would mean that the provisions contained in RIPS-2003 would have to be adhered to and the case of the petitioner-company would be dealt with in accordance therewith. The two provisions under which the petitioner-company could have availed tax subsidy upto 75% were the sub-clauses namely Sub-clause (vi) and (vii) of Clause 7 inserted vide notification dated 02.12.2005 but both these sub-clauses were deleted vide notification dated 28.04.2006, merely two days after the petitioner-company submitted option for availing benefit thereunder on 26.04.2006. Another provision under which the petitioner-company could have availed tax incentive of 75% was proviso to Clause 7(i)(a) and 7(i)(b) in which case the petitioner-company was required to make an application to SLSC whereupon the SLSC could have referred it to the BIDI. The BIDI remained in existence till 07.06.2009 and till that time, no such reference was made by the SLSC to it. **There is therefore hardly any justification to contend that any representation was held out to the petitioner-company by the BIDI or the SLSC**."
>
> (emphasis in bold supplied)

13.9. The High Court also referred to the Constitution Bench decision in the case of ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co. and Ors:*** **(2018) 9 SCC 1** to point out that where there is ambiguity in an exemption notification or exemption clause, the benefit of such ambiguity cannot be extended to the assessee; and the question whether assessee falls

within the exemption clause, has to be strictly construed. The High Court referred to the nature of benefit obtained by the appellant and reiterated the fact that case of the appellant had not even been considered by BIDI. The High Court said,-

> "…In the present matter, case of the petitioners has not even been considered by the BIDI which merely relegated it to SLSC, as such the provisions of the RIPS-2003 are to be strictly adhered to. Unlike the exemption schemes where the assessee is not collecting the taxes from the customer/purchaser, here in the present case of subsidy, the tax is collected from the customers/purchasers and after depositing the same with the department, the amount to the extent of 50% or 75%, as per the entitlement certificate, is refunded to the assessee."

13.10. The High Court also reiterated the basic flaw in the approach of SLSC where it had misconstrued the decision of BIDI and observed that the view taken by SLSC in extending unwarranted benefit to the appellant under the non-existing sub-clauses (vi) and (vii) of Clause 7 of RIPS-2003 was not at all a possible view of the matter; and that the appellant '*fully understood this situation'*, which was evident from its representation made on 26.05.2006.

13.11. Yet further, the High Court examined the contention on behalf of the appellant that every loss of revenue as a consequence of an order of the subordinate authority cannot be treated as prejudicial to the interest of the revenue and also referred to the cited decision in the case of ***Malabar Industrial Co. Ltd. v. Commissioner of Income Tax, Kerala State*** **: (2000) 2 SCC 718** while pointing out that the phrase "prejudicial to the interest of revenue" is of wide import and not confined to loss of tax alone. After extracting relevant passages from the cited decision, the High Court applied the principles to the case at hand as follows:-

> "Applying the ratio of the aforesaid judgment on the facts of the present case, it has to be accepted that due to erroneous reading of the order of the BIDI, which did not by itself direct for grant of 75% tax subsidy but merely directed that "the recently announced cement package and the RIPS-2003 shall be applicable on the company", the SLSC could have extended only such tax subsidy which it was competent to do. The SLSC by erroneously misconstruing the aforesaid decision of the BIDI extended the benefit of sub- clause (vii) whereas the said clause stood deleted only two days after the option was exercised by the petitioner-company. **Order of the SLSC was therefore certainly "prejudicial to interest of the revenue" in the sense this phrase has been used in Clause 13 of the RIPS-2003. Although in a different way, allowing the petitioners to retain 25% differential amount would tantamount to loss of Revenue and gain of the petitioner-company at the cost of State exchequer which is after all public money.** The petitioner-company was entitled to grant of 50% tax subsidy only as on the date on which the SLSC met to consider its case and resolved to grant subsidy of 75%, it was not competent for that. Money from coffers of the State has been undersevely paid to the petitioner-company even though it was not entitled to receive the same."
>
> (emphasis in bold supplied)

13.12. As regards the challenge to Clause 13 of RIPS-2003, the High Court observed that the appellant was very much aware of the provisions envisaged therein at the time of filing its application and it was not the case of the appellant that the Government did not have the authority to provide such a Clause in the Scheme or frame the policy in question nor was it demonstrated that Clause 13 violated any fundamental right or otherwise.

13.13. As regards validity of the action taken under Clause 13 of RIPS-2003, the High Court observed that in the case at hand, the appellant started availing the benefit of 75% subsidy from the month of February 2010 and availed the same until the month of February 2017; and as the show cause notice was sent within six months from February 2017, it was well within the limitation

period of five years, as provided under Clause 13. The High Court held and concluded as follows:-

> "…Admittedly, in the present case, the petitioners started availing benefits of the subsidy from February, 2010 and fully availed the benefits of subsidy to the extent of 75% up to February, 2017. Show cause notice for revising the order under Clause 13 of the RIPS-2003 was issued to the petitioner-company by the Government on 10.07.2017, which was well within the period of five years, given in Clause 13(b) of the RIPS-2003. In fact, the show cause notice was issued/received within six months from February, 2017, up to which time, subsidy was fully availed by the petitioner-company. Therefore, the argument that exercise of power of revision within five years after the expiry of seven years during which benefit was availed by the petitioner-company, makes the said provision as unreasonable, arbitrary, oppressive and violative of fundamental rights of the petitioners, has no merit."

14. The order so passed by the High Court dismissing the writ petition and the action of the respondents recalling 25% part of the subsidy have been questioned in this appeal.

Rival Contentions

The Appellants

15. Assailing the orders passed by the High Court as also the Additional Chief Secretary, learned senior counsel for the appellants has painstakingly taken us through the facts of the case and has made elaborate submissions that grant of 75% subsidy to the appellant company had been valid in law and justified on facts.

15.1. The learned senior counsel would submit that the company had applied to BIDI for a customized package of incentives for the proposed cement plant at Kotputli; and this application was disposed of by BIDI on 01.04.2006, where it was directed that the recently announced package be

granted to the company and also the RIPS-2003 benefits. While pointing out that this package, providing for 75% Sales Tax subsidy to newly established or substantially expanded cement undertaking, was introduced on 02.12.2005 with insertion of sub-clauses (vi) and (vii) to Clause 7 of RIPS-2003 and these sub-clauses were deleted on 28.04.2006, the learned senior counsel has argued that BIDI had the authority to grant subsidy to the extent of 75%, of the tax payable and deposited, to any industrial undertaking with an investment of over Rs. 400 crores under the proviso to Clauses 7(i)(a) and 7(i)(b) of the Scheme; and such a decision of BIDI in relation to the appellant company had rightly been implemented by SLSC.

15.1.1. The learned counsel would also submit that subsidy under Clauses 7(vi) and 7(vii) consisted of 45% upfront subsidy, which was payable straightaway without being dependant on the wages and interest amounts spent by the undertaking; and the balance 30% subsidy consisted of wage and interest subsidy but, in contrast, the subsidy granted to the appellant did not include any upfront subsidy; rather it only consisted of 75% wage and interest subsidy and hence, it remains beyond the cavil that the subsidy so granted to the appellant had been under the proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003, particularly when it did not include any upfront subsidy and only consisted of 75% wage and interest subsidy. According to the learned counsel, the Minutes of SLSC meeting dated 17.03.2011 make it crystal clear that the decision to grant 75% subsidy was the decision of BIDI and not that of SLSC.

15.2. The learned senior counsel has also invoked the principles of *Contemporanea Expositio* with the submissions that in all the exchanges at the relevant time, it was plainly and clearly understood by the authorities concerned that the appellant company was entitled to subsidy to the extent of 75% in the true interpretation of the provisions of the Scheme and on their correct application to the facts of the case; and, therefore, the respondents are not entitled to alter their stand at the later stage. The learned counsel has argued, while placing reliance on the decision of this Court in ***Spentex Industries Ltd v. C.C.E.:*** **(2016) 1SCC 780,** that SLSC's understanding of the record and the factual position deserves to be accepted by the Court on the doctrine of *Contemporanea Expositio*.

15.2.1. The learned senior counsel has further submitted that though it was expressly admitted in the Show Cause Notice dated 10.07.2017 that BIDI did take a decision on 01.04.2006, but it was alleged that BIDI did not expressly grant 75% subsidy; and the same view is reflected in the revisional order, which has been approved by the High Court. However, according to the learned counsel, this view would render the words '*recently announced cement package*' in BIDI's decision dated 01.04.2006 completely meaningless; and this view is also contrary to the contemporaneous understanding of the SLSC, as set out in the Minutes of its meeting dated 17.03.2011. The learned counsel would maintain that the words of BIDI, giving '*recently announced cement package*' to the company, could only mean granting of 75% subsidy,

though it was not under or in terms of Clauses 7(vi) or 7(vii) but, was relatable to the proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003.

15.3. It has also been submitted by the learned counsel that the appellant made its entire investment of over Rs.1,600 crores on its Kotputli plant only after the decision of BIDI dated 01.04.2006 and after entering into the MoU dated 30.11.2007 in Resurgent Rajasthan Summit under which, the respondent State Government gave a commitment to extend all concessions and benefits which were available under RIPS-2003. The learned counsel would argue that the decision of BIDI dated 01.04.2006 and commitment of the State Government dated 30.112007 clearly attracted the doctrine of promissory estoppel against the respondents but the High Court has rejected this contention only on the ground that promissory estoppel is of no avail against a statute, which is a patent error on part of the High Court because RIPS-2003 has been a totally non-statutory Scheme. According to the learned counsel, the appellant is entitled to succeed on the ground of promissory estoppel alone; and the respondents cannot deny the entitlement of appellant to avail subsidy to the extent of 75% of the Sales Tax/VAT payable and deposited, as rightly allowed and rightfully availed.

15.4. It has further been submitted by the learned senior counsel that BIDI was a high-powered body presided over by the Chief Minister and its decision could not have been revised under Clause 13 of RIPS-2003. According to the learned counsel, only the decision of SLSC could be revised under Clause 13 of RIPS-2003 but, in the present case, SLSC only implemented BIDI's decision

dated 01.04.2006 and did not take any decision on its own to grant subsidy and hence, SLSC's directions dated 17.03.2011 were not open to revision under Clause 13. The learned senior counsel would submit that the certificates in question had rightly been issued by the SLSC acting in terms of the decision of BIDI, which remains binding on the respondents and, therefore, the respondents are not entitled to suggest any different interpretation after the subsidy in question had already been availed of.

15.5. In regard to the scope of such powers of revision, the learned senior counsel has referred to the decision of this Court in the case of ***Malabar Industries Co. Ltd. v. Commissioner of Income Tax, Kerala State.:*** **(2002) 2 SCC 718** and has submitted that Clause 13 of RIPS-2003, which confers power on the State Government to revise SLSC's orders, is identical to Section 263 of the Income Tax Act, 1961, which has been interpreted by this Court in the manner that if the adjudication order constitutes one of the possible views, then no revision would lie. According to the learned counsel, the view taken by SLSC, as set out in its Minutes of the meeting dated 17.03.2011, had certainly been a possible view and, therefore, in any event, no proceedings for revision under Clause 13 of RIPS-2003 were maintainable against this decision of SLSC.

15.6. The learned senior counsel has also argued, while relying on various decisions, including that of this Court in ***Birla Jute & Industries Ltd. v. State of M.P.:*** **119 STC 14 (S.C.)** and that of Rajasthan High Court in ***Commissioner, Commercial Taxes, Rajasthan, Jaipur and Anr. v.***

Rajasthan Taxation Tribunal and Ors.: **38 Tax Up-date 131,** that when the incentives granted to the assessee had been fully availed of and the incentive period had already been completed, the incentives cannot thereafter be revoked or recalled with retrospective effect.

15.7. The learned senior counsel has also questioned the levy of interest with the submissions that the grant of 25% subsidy has been revoked not because of any default committed by the appellant but only because of a sudden change of opinion by the respondents after about eight years. In this fact situation, according to the learned counsel, Clause 10 of RIPS-2003, authorising levy of interest, has no application at all. With reference to the decisions in ***India Carbon Ltd. & Ors. v. State of Assam.:*** **(1997) 6 SCC 479,** ***Maruti Wire Industries Pvt. Ltd. v. Sales Tax Officer.: (*****2001) 3 SCC 735** and ***J.K. Synthetics Ltd. v. C.T.O.:*** **(1994) 4 SCC 276**, the learned counsel has contended that a provision for charge of interest has to be construed strictly like the charging provision for levy of a tax; and unless the conditions of the provision for levy of interest are strictly fulfilled, no interest can be charged. The conditions being not fulfilled, the learned counsel would urge, interest cannot be charged in the present case.

The Respondents

16. The learned Additional Advocate General, appearing for the respondents, has vehemently countered the submissions made on behalf of the appellants while maintaining that the appellant company was entitled to subsidy only to the extent of 50% of Sales Tax/VAT payable and deposited;

and the appellant is bound to refund the excess subsidy to the tune of 25% that had been wrongfully obtained under the erroneous decisions of SLSC.

16.1. In an equally detailed reference to the chronicle of facts, the learned AAG has submitted that the special cement package announced on 02.12.2005 came to be incorporated in RIPS-2003 by insertion of sub-clauses (vi) and (vii) to Clause 7; and this was the position obtainable on 01.04.2006 when BIDI took the decision on the prayer made by the company; and hence, the decision of BIDI dated 01.04.2006 to grant subsidy could only have been with respect to the said sub-clauses (vi) and (vii) of Clause 7 because the specific provision always overrides the general one, as explained in ***J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.*** **: (1961) 3 SCR 185**. Thus, according to the learned AAG, the appellants herein could have sought, if at all, the relief flowing from the said sub-clauses (vi) and (vii) of Clause 7 but, those sub-clauses were consciously deleted by the State Government on 28.04.2006; and being aware of this position, the appellants have abandoned their plea of claiming relief under those sub-clauses (vi) and (vii) and have started relying on the proviso to Clauses 7(i)(a) and 7(i)(b) of the Scheme.

16.1.1. While refuting the claim of the appellant, as based on the proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003, the learned AAG has contended that the general powers under the said proviso could not have been exercised by BIDI on 01.04.2006, because on that date, the said sub-clauses (vi) and (vii) of Clause 7 were in existence and they co-related with cement units alone. The

learned AAG would submit that the appellant company is a cement unit and the contemporaneous correspondence amply demonstrates that even the appellants construed at the relevant point of time that the subsidy was given under the said sub-clauses (vi) and (vii) of Clause 7 of RIPS-2003; and only in order to circumvent the deletion of the said sub-clauses (vi) and (vii), the appellants started to claim subsidy under proviso to Clause 7(i)(a) and 7(i)(b) of RIPS-2003. According to the learned AAG, the claim so made by the appellant had only been an afterthought and cannot be countenanced, for it would result in conferring a benefit that had ceased to exist post 28.04.2006. With repeat reference to the Minutes of BIDI meeting dated 01.04.2006, the learned AAG has submitted that not a single document existed at the relevant point of time, i.e., around 01.04.2006, which could even remotely suggest that the subsidy was granted in terms of proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003.

16.2. While countering other parts of submissions, the learned AAG has submitted that the doctrine of *Contemporaneous Expositio* applies to ancient statutes and has no application to the present case. The learned AAG would further submit that even if this doctrine is held applicable to current statutes, it would only apply if one particular view has been taken by the executive and there is ambiguity in the construction of the clauses in question but, in the present case, there is no ambiguity with regard to construction of the Scheme. The learned AAG would yet further argue that this doctrine would not apply when an administrative body had granted exemption on an erroneous view of

the matter because the competent administrative body is entitled to revoke such a decision after being apprised of the correct facts.

16.3. The learned AAG has further submitted that the MoU signed on 30.11.2007 clearly stated about grant of the incentives under RIPS-2003 as available from time to time and, for the said sub-clauses (vi) and (vii) of Clause 7 having been withdrawn, the understanding could not have gone beyond allowing 50% subsidy, as available under the Scheme on that date. Thus, according to the learned AAG, even the principles of promissory estopple are not applicable to the present case inasmuch as 75% subsidy under the proviso to Clauses 7(i)(a) and 7(i)(b) was neither stipulated in the MoU nor was granted in the BIDI meeting dated 01.04.2006.

16.4. The learned AAG would lay emphasis on submissions that the State Government has rightly exercised the power of revision to set aside the order of SLSC, which had erroneously granted 75% subsidy, even though the related provisions in the Scheme stood withdrawn on 28.04.2006; and that the grant of subsidy by SLSC will not create any issue of estoppel because it was a wrongful grant and the same was corrected in exercise of revisional powers reserved under the Scheme.

16.4.1. It has also been argued that the revisional authority has clearly exercised the power under Clause 13 of RIPS-2003 within the period of five years prescribed therein from the last date of availing the benefit. According to the learned AAG, the last date of availing the benefit by the appellant company being in the month of February 2017, the revisional order passed on

12.03.2018 remains well within the stipulated period under Clause 13(b) of RIPS-2003.

16.5. Levy of interest has also been justified on behalf of the respondents with reference to the terms and conditions of RIPS-2003 and with the submissions that the appellant company is bound to refund the amount wrongfully received while also compensating the Government in terms of interest stipulated in the Scheme or at least as agreed to in the undertaking submitted to the Government.

16.5.1. It has been argued by the learned AAG that the subsidy was in the form of a contract between the State Government and the appellant company and hence, the appellant is bound by the undertaking that if any excess benefit is availed, the same shall be returned with 12% per annum interest. The learned AAG has submitted that even on the principles embodied in Section 72 of the Indian Contract Act, any benefit received by mistake must be returned with interest so as to avoid unjust enrichment.

Points for determination

17. For what has been noticed hereinabove, the basic point arising for determination in this case is the extent to which the appellant company was entitled to Sales Tax/VAT subsidy under RIPS-2003 i.e., as to whether the company was entitled to the subsidy to the extent of 75% of tax payable and deposited or was entitled only to 50%? For effectual determination of this basic and principal point, we need to examine the purport and effect of the decision of BIDI dated 01.04.2006. The other equally relevant points arising for

determination are: as to whether the view taken by SLSC in its initial decisions to grant 75% subsidy to the appellant on the basis of the decision of BIDI had been a possible view of the matter; as to whether the doctrine of *Contemporanea Expositio* applies to this case and inures to the benefit of appellant; as to whether the respondent cannot recall 25% subsidy on the principles of promissory estopple; as to whether the State Government was entitled to exercise the powers of revision under Clause 13 of RIPS-2003 and has rightly exercised such powers; and what is the effect of the fact that 75% subsidy had already been availed by the appellant before the decision in that regard was sought to be questioned and re-opened by the respondents. Lastly, if the decision of State Government to recall 25% component of availed subsidy is upheld, the point still requiring consideration would be as to whether the State is justified in seeking to recover interest @ 18% per annum?

18. We have given anxious consideration to the points so arising in this case with reference to the rival submissions and the law applicable; and have scanned through the entire record.

Entitlement of the Appellant to Capital Investment Subsidy : The extent thereof : effect of the decision of BIDI

19. For what has been noticed hereinabove, the main plank of submissions on behalf of the appellant is that granting of subsidy to the extent of 75% was permissible under the proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003 and the BIDI could have and indeed granted such sanction in its favour. According to the appellant, the decision to grant 75% subsidy was

taken by BIDI on 01.04.2006 while SLSC only implemented the same. It has also been suggested that the company applied for a customised package of incentives and the decision of BIDI ought to be equally viewed in the light of the provision authorising grant of customised package. In our view, these submissions suffer from several shortcomings, where a fine but well-defined line of separation between the resolution/decision of BIDI dated 01.04.2006 and the decision of SLSC dated 17.3.2011, is ignored.

19.1. As noticed, the application earlier made by the company was considered in the Pre-BIDI meeting dated 28.03.2006 and the recommendations therein had only been to the effect that the cement package recently announced and RIPS-2003 should be applicable to the company. The decision of BIDI in its meeting dated 01.04.2006 had also been specifically in line of the Pre-BIDI recommendations where it was directed that '*the recently announced cement package and RIPS-2003 will be applicable on the company*'. At the given stage of Pre-BIDI recommendations dated 28.03.2006 and the decision of BIDI dated 01.04.2006, the aforesaid sub-clauses (vi) and (vii) of Clause 7 of RIPS-2003 were in existence and, in fact, the phrase *"recently announced cement package*" precisely referred to the said provisions of sub-clauses (vi) and (vii), which had been inserted to Clause 7 of RIPS-2003 on 02.12.2005. Moreover, even when BIDI stated that '*recently announced cement package*' would be applicable to the company, it was coupled with the requirement of applicability of the Scheme, i.e., RIPS-2003. After the aforesaid decision of BIDI dated 01.04.2006, the company, in its letter dated 26.04.2006 to the Commissioner of Industries, sought registration in terms of sub-clause (vii) of Clause 7 of RIPS-2003 for a new cement plant/captive power plant, intended to be established at Kotputli. However, there had been significant developments/revisions in relation to RIPS-2003 after the said decision of BIDI dated 01.04.2006 and the application of the company dated 26.04.2006, where the said sub-clauses (vi) and (vii) of Clause 7 were specifically deleted from the Scheme on 28.04.2006.

Noticeably, no decision had been taken by SLSC to grant subsidy to the company in terms of the then existing sub-clauses (vi) and (vii) of Clause 7 until 28.04.2006. The application later made by the company on 21.02.2010 and the decision thereupon taken by SLSC on 17.03.2011 do not and cannot co-relate with the decision of BIDI dated 01.04.2006 whose initial part, i.e., '*recently announced cement package*' became redundant with the aforesaid amendment of Clause 7 of RIPS-2003 and deletion of its sub-clauses (vi) and (vii).

19.2. Apart from the above, it is also significant to notice that the competent authority, to sanction subsidy under RIPS-2003, had only been SLSC in terms of Clause 6 thereof. Though it has been strenuously argued by the learned senior counsel for the appellant that BIDI was a high-powered body with the Chief Minister being its Chairperson and it has also been asserted that the Secretary Finance had equally been a Member of BIDI as also SLSC, but, we are afraid, these submissions do not advance the cause of the appellant in any manner. Even if BIDI had been a high-powered body, its resolutions or even directives could have only been read in conformity with the provisions applicable to any particular proposition; and the fact that one of the Secretary had been a member of both BIDI and SLSC, the resolution of BIDI could not have been imported into the decision making process of SLSC beyond what was permissible under the Scheme.

20. The other limb of submissions that BIDI had granted 75% subsidy under proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003 remains unacceptable for a variety of reasons. It is apparent on the face of the record that neither in Pre-BIDI's recommendation dated 28.03.2006 nor in the final decision of BIDI dated 01.04.2006, there had at all been any proposition for invocation and application of the said proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003. The application made on behalf of the company had precisely been with reference to the contents of the said sub-clauses (vi) and (vii) of Clause 7 seeking 75% subsidy, 45% being allowable upfront and remaining

30% in the form of interest and wage/employment subsidy, with cap of interest subsidy to the extent of 5% of the documented rate of interest. There had never been any proposal before BIDI in the case of the appellant company to invoke the said proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003 so as to increase the maximum limit of subsidy to 75%. Proceeding ahead of the decision of BIDI dated 01.04.2006, the fact that the company was consciously seeking the benefit under sub-clause (vii) of Clause 7 of RIPS-2003 is again evident on the face of the record on a bare look at the contents of its application dated 26.04.2006. No decision on this application was taken; and within two days of making of this application, the State Government amended RIPS-2003 and deleted the aforesaid sub-clauses (vi) and (vii) of Clause 7. The company made a desperate attempt to persuade the State Government to withdraw such amendment of deletion of sub-clauses (vi) and (vii) of Clause 7 of the Scheme and to grant benefit of those deleted provisions by way of its representation dated 26.05.2006 but, the communication thereafter sent on 17.06.2006 to the company by BIP was again to the effect that the '*company would be eligible for the concessions as contained in RIPS-2003*'. Even in the MoU dated 30.11.2007, what the State Government undertook was to extend support in the form of providing incentives as permissible under RIPS-2003 together with additional support as per the prevalent policy.

20.1. In our view, whether each of the aforesaid background aspects is seen in isolation or whether all these aspects are put together, it cannot be deduced, by any stretch of imagination, that a conscious decision was ever

taken by BIDI at any stage that the appellant company would be extended any differential and advantageous treatment by allowing 75% subsidy in place of the ordinarily allowable 50%.

20.2. Invocation of proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003 seems to have only been a creation of SLSC in its meeting dated 17.03.2011 while dealing with the application made by the appellant on 21.02.2010. Significantly, even in the said application, what the appellant claimed had only been the concession in terms of sub-clause (vi) of Clause 7 of RIPS-2003. The claim precisely was that the benefits may be allowed in terms of the said notification dated 02.12.2005. The SLSC, while taking up the said application, on its own, connected the prayer of the appellant to the decision of BIDI and, for that matter, read as if BIDI's decision had been to grant subsidy to the extent of 75% in terms of the said proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003. We are unable to find any rationale and any logic that SLSC, in its meeting dated 17.03.2011, imported the said proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003 into the decision of BIDI dated 01.04.2006 and then, applied such incorrect reading of BIDI's order in its decision making process so as to grant 75% subsidy. The SLSC, who had the power to grant subsidy upto 50% could not have granted beyond this limit by unwarranted application of the decision of BIDI dated 01.04.2006 and that too with its misconstruction; by reading into it such powers, which had neither been invoked nor exercised by BIDI. The decision of SLSC dated 17.03.2011 and its repeat decision dated 24.11.2011, turn out to be wholly perverse and could only be disapproved.

21. Taking up the question if the decision of BIDI is relatable to the grant of a customised package, the answer would be in the negative without requiring much discussion because such grant of customised incentive package for any particular company or establishment was governed by Clause 6-A of RIPS-2003 that had an entirely different prescribed authority in the form of a Committee, who was supposed to examine individual cases and could have made recommendation for sanction of the customised incentive package through BIDI. In the entire length of dealings in this matter, we are unable to find any such decision by the Committee referred to in Clause 6-A and any recommendation for customised incentive package in relation to the appellant. The decision of BIDI dated 01.04.2006 also does not refer to nor is relatable with any customised package meant for the appellant company.

22. In an overall conspectus of the record and various amendments/revisions of RIPS-2003, it appears that though at one stage (i.e., on 02.12.2005), the State Government thought it proper to announce an entirely different treatment to cement units by extending 75% subsidy to them with a different methodology and hence, inserted sub-clauses (vi) and (vii) to Clause 7 of RIPS-2003 but, it did not continue with that policy and deleted the said sub-clauses on 28.04.2006. It remains trite that extending of any incentive in the form of exemption, rebate, concession or subsidy is a matter of the policy of the Government and for that matter, fiscal policy. Ordinarily, such framing of the policy remains within the domain of the Government; and the Government is entitled to frame a particular policy and to alter the same, as deemed fit and proper. As to whether the cement industry was to be granted 75% subsidy under RIPS-2003 or not was definitely a matter of the policy of the Government; and when such a policy was not in existence at the time of consideration of the application of the appellant, no benefit could have been claimed under a non-existent policy.

23. In the given set of facts and circumstances, in our view, the Additional Chief Secretary has rightly held that SLSC's decision dated 17.03.2011 and its repeat decision dated 24.11.2011 had been erroneous on the very

fundamentals where it was assumed as if BIDI had already sanctioned 75% subsidy to the company. The High Court has also independently examined the entire matter in requisite details and we are unable to find any infirmity when the High Court has held that the appellant company was only entitled to subsidy to the extent of 50% of the tax payable and deposited and not to the extent of 75%.

SLSC's decision of granting 75% subsidy to the appellant: whether a possible view of the matter

24. The suggestion on behalf of the appellant company, that if two views were possible and the SLSC in its earlier decision had taken one of the views, then the same could not have been interfered with, has its own shortcomings.

24.1. In the first place, the possibility of so called other view (the wrong one) could arise only if SLSC is held entitled to simply turn itself away from the applicable provisions of the Scheme while ignoring the fact that sub-clauses (vi) and (vii) of Clause 7 had already been deleted; and is simultaneously conferred with dubious discretion to interpret the decision of BIDI in whatever manner it would chose to. Obviously, such arbitrary authority or unfettered discretion is not available to any decision taking body; and could least be countenanced for a responsible body of the Government, like SLSC, who deals with public exchequer. Having examined the record in its totality, we have not an iota of doubt that the initial decision of SLSC had not only been erroneous but had been highly perverse, reaching the level of absurdity. The view of SLSC cannot be regarded as a possible view of the matter from any standpoint or any angle.

24.2. Apart from the above, even if it be assumed for the sake of argument that there was any ambiguity in the applicable provisions of RIPS-2003 or the decision of BIDI, we are clearly of the view that the benefit of any such ambiguity could not have been extended to the appellant company. If at all

there had been any ambiguity, the benefit thereof would have only gone in favour of revenue for the simple reason that under the provisions in question, the State had agreed, by way of incentive, to part with a portion of its revenue. Such provisions, whether in the statute or in the non-statutory document, by their very nature, are subject to strict interpretation so far as their applicability is concerned. The principles of law in this regard are well settled with the Constitution Bench decision of this Court in the case of ***Dilip Kumar & Co.*** (supra). Recently, in the case of ***Ramnath & Co. v. Commissioner of Income Tax:*** **Civil Appeal Nos.2506-2509 of 2020** decided on **05.06.2020**, while dealing with an incentive provision contained in Section 80-O of the Income Tax Act, 1961[30], this Court has taken note of the principles laid down in ***Dilip Kumar & Co.*** and has held*, inter alia*, as under :-

> "17.3. In view of above and with reference to several other decisions, in ***Dilip Kumar & Co.***, the Constitution Bench summed up the principles as follows:-
>
> > **"66.** To sum up, we answer the reference holding as under:
> >
> > **66.1. Exemption notification should be interpreted strictly**; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
> >
> > **66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue. 66.3. The ratio in *Sun Export case* is not correct and all the decisions which took similar view as in *Sun Export case* stand overruled**."
> >
> > (emphasis in bold supplied)
>
> 17.4. Obviously, the generalised, rather sweeping, proposition stated in the case of ***Sun Export Corporation*** (supra) as also in other cases that in the matters of taxation, when two views are

30 Hereinafter referred to as 'the Act of 1961'

possible, the one favourable to assessee has to be preferred, stands specifically disapproved by the Constitution Bench in ***Dilip Kumar & Co.*** (supra). It has been laid down by the Constitution Bench in no uncertain terms that exemption notification has to be interpreted strictly; the burden of proving its applicability is on the assessee; and in case of any ambiguity, the benefit thereof cannot be claimed by the subject/assessee, rather it would be interpreted in favour of the revenue.

*** *** ***

19. Without expanding unnecessarily on variegated provisions dealing with different incentives, suffice would be to notice that the proposition that incentive provisions must receive "*liberal interpretation*" or to say, leaning in favour of grant of relief to the assessee is not an approach countenanced by this Court. The law declared by the Constitution Bench in relation to exemption notification, *proprio vigore*, would apply to the interpretation and application of any akin proposition in the taxing statutes for exemption, deduction, rebate *et al.*, which all are essentially the form of tax incentives given by the Government to incite or encourage or support any particular activity……"

24.3. In view of the above, contention on the part of the appellant about existence of any ambiguity in the matter and extending the benefit of ambiguity to itself could only be, and is, rejected.

Doctrine of *Contemporanea Expositio*: if applicable?

25. The learned senior counsel for the appellant has endeavoured to persuade us that SLSC's understanding of the record and factual position deserves to be accepted on the doctrine *of Contemporanea Expositio*. In our view, neither this doctrine could be invoked in the present case nor the principles related therewith could be applied.

25.1. The referred doctrine is embodied in the maxim '*Contemporanea exposition est optima et fortissimo in lege'* which means that the best way to construe a document is to read it as it would have read when made. The doctrine has been tersely explained by this Court in the case of ***Desh Bandhu Gupta v. Delhi Stock Exchange Association Ltd.*****: AIR 1979 SC 1049** in the following terms (at p. 1054) :

"… The principle of contemporanea exposition (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the

same will not always be decisive of the question of construction. (Maxwell 12th Edn. p. 268). In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393-395) it has been stated that administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight; it is highly persuasive. In Baleshwar Bagarti v. Bhagirathi Dass I.L.R. 35 Cal. 713 the principle, which was reiterated in Mathura Mohan Sana v. Ram Kumar Saha I.L.R. 43 Cal. 790 has been stated by Mukerjee J. thus:

> It is a well-settled principle of construction that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction."

25.2. Some of the basic features of this doctrine *of Contemporanea Expositio* and its applicability as also non-applicability, as explained with reference to the decided cases in the *Principles of Statutory Interpretation* by Justice G.P. Singh[31], could also be usefully extracted as under:-

> "Usage or practice developed under a statute is indicative of the meaning ascribed to its words by contemporary opinion and in case of an ancient statute is an admissible external aid to its construction.[32] Referring to Magna Carta, Lord Coke said: "This and the like were the forms of ancient Acts and *graunts*, and the ancient Act and *graunts* must be construed and taken as the law was holden at that time when they were made".[33] ..... The doctrine of *stare decisis* may also be applied when the law is settled in a State for over 100 years by considered view of the High Court of that State.[34]
>
> .....Even if the persons who dealt with the Act understood it in a particular manner, that does not prevent the court in giving to the Act its true construction.[35]...The Supreme Court has refused to apply

31 14th Edition, pp.375-376

32 *Optimus legume interpres est consuetudo; Contemporanea exposition est Optima et fortissimo in lege*

33 *Senior Electric Inspector v. Laxminarayan Chopra,* AIR 1962 SC 159, p. 162 : 1962 (3) SCR 146

34 *Ram Adhar Singh v. Bansi*, (1987) 2 SCC 482, p. 485 : AIR 1987 SC 987

35 *Punjab Traders v. State of Punjab*, AIR 1990 SC 2300, p. 2304 : 1991 (1) SCC 86

> the principle of *Contemporanea Expositio* to the Telegraph Act, 1885[36] and the Evidence Act, 1872.[37] Further, an interpretation to a statute received from contemporary authority is not binding upon the Courts and may have to be disregarded if such interpretation is clearly wrong…."

25.3. Suffice it to observe for the present purpose that in essence, the doctrine of *Contemporanea Expositio* is applied as a guide to the interpretation of a statute or even document by referring to the exposition that the same had received from competent authority at the relevant point of time. This doctrine is also relatable to the doctrine of *stare decisis* whereunder, an exposition standing for a long length of time, is considered to be a law settled and is applied as such. As regards the contemporaneous construction placed by the administrative or executive officers charged with executing statute, the Courts lean in favour of attaching considerable weight to the same but, it cannot be laid down that understanding of a particular administrative or executing authority is always *fait accompli* and has to be applied even if erroneous. The true principle is just to the contrary: that is, if a construction placed by the contemporary authority is found to be clearly wrong or erroneous, the same deserves to be disregarded.

25.4. In the case of ***Spentex Industries*** (supra), the question was as to whether the manufacturer/exporter was entitled to rebate of excise duty paid both on the inputs and on the manufactured product, when the excise duty was paid on the manufactured product and also on the input, which had gone into manufacturing and the manufactured product was exported. It was in the context of the aforesaid question that this Court, in the process of interpretation of the relevant Central Excise Rules, 2002 and the notification thereunder, referred to *Contemporanea Expositio* in regard to the notifications issued by the Government in giving effect to the Rule in question; and it was observed that when the Centre, who had framed the Rules as also issued notifications, had been of the opinion that rebate was to be allowed on both forms of excise duty, the Government was bound thereby. This decision does not even remotely apply to the case at hand and the erroneous decisions of SLSC are

36 *Senior Electric Inspector v. Laxminarayan Chopra*, AIR 1962 SC 159, pp. 162, 163 : 1962 (3) SCR 146.

37 *Raja Ram Jaiswal v. State of Bihar*, AIR 1964 SC 828, p. 836: 1964 (2) SCR 752

not *fait accompli* merely because SLSC chose to put a wrong construction on the decision of BIDI. On the facts and in the circumstances of the present case, invocation of the doctrine of *Contemporanea Expositio* on behalf the appellant remains entirely inapt and the contentions in that regard could only be rejected.

25.5. That the doctrine of *Contemporanea Expositio* cannot be invoked in the case of present nature would also be clear by visualising the result, if at all this doctrine is applied. It is not far to seek that if at all this doctrine is applied, the consequence would be that howsoever erroneous a decision by the executive or administrative authority may be, once it emanates from the understanding of some of the officers or authorities, the same would acquire immunity from scrutiny for all time to come. Such has never been the intent of the doctrine of *Contemporanea Expositio* nor could such a result be countenanced.

Whether principles of Promissory Estoppel apply?

26. Another line of submissions on behalf of the appellant based on the principles of promissory estoppel remains equally baseless. Of course, while rejecting such a contention, the High Court observed that this doctrine cannot be invoked against a statute but, at the same time, the High Court also categorically found that in fact, no representation was held out to the appellant by BIDI or SLSC as sought to be alleged.

26.1. RIPS-2003 had admittedly been a non-statutory scheme but that hardly makes a difference looking to the nature of purport of this Scheme whereby the State was ultimately to extend the benefit by reducing its intake of the amount of Sales Tax/VAT; and such an intake is indeed governed by the statute. This apart, as noticed hereinbefore, it cannot be deduced that a conscious decision was ever taken at any stage or at any level that the appellant was to be extended any differential and advantageous treatment by

SLSC and was to be allowed 75% subsidy in place of the ordinarily allowable 50%. BIDI never issued any direction to SLSC to grant 75% subsidy to the appellant. It merely directed that "*the recently announced cement package and RIPS-2003 shall be applicable on the company*." Obviously, the case of the appellant was required to be dealt with by SLSC only in accordance with the applicable provisions contained in RIPS-2003. The provisions under which the appellant could have availed tax subsidy upto 75% i.e., the said sub-clauses (vi) and (vii) of Clause 7, were deleted on 28.04.2006, only two days after the company submitted the application dated 26.04.2006 for availing benefit thereunder. The repeat request of the company to withdraw such deletion and to allow benefit under the said deleted sub-clauses, under its representation dated 26.05.2006, did not meet with any success and the only response of the Government through BIP was to the effect that the '*company would be eligible for concessions as contained in RIPS-2003*'. Even in the MoU dated 30.11.2007, what the State undertook was only to provide incentives as permissible under RIPS-2003 together with additional support as per the prevalent policy. So far availing 75% subsidy under proviso to Clauses 7(i)(a) and 7(i)(b) is concerned, the appellant was required to make an application to SLSC for that purpose whereupon SLSC could have referred it to BIDI but, neither any such application was made by the appellant nor any such matter was ever placed before BIDI until it remained in existence i.e., 07.06.2009. In an overall view of the matter, it is difficult to find that at any stage, any such

representation was made by the State Government which led the company to alter its position.

26.2. Besides the above, when the decisions of SLSC dated 17.03.2011 and 24.04.2011 turn out to be unauthorised and not in accord with the applicable provisions of the Scheme, the principles of promissory estopple cannot be invoked for their enforcement. In this regard, reference to the following passage from the decision of this Court in the case of ***Dr. Ashok Kumar Maheshwari v. State of U.P. & Anr.*: (1998) 2 SCC 502** would suffice :-

> "**22.** Whether a promissory estoppel, which is based on a "promise" contrary to law can be invoked has already been considered by this Court in *Kasinka Trading* v. *Union of India* : (1995) 1 SCC 274 as also in *Shabi Construction Co.* v. *City & Industrial Development Corpn*.: (1995) 4 SCC 301 wherein it is laid down that the **rule of "promissory estoppel" cannot be invoked for the enforcement of a "promise" or a "declaration" which is contrary to law or outside the authority or power of the Government or the person making that promise**."
>
> (emphasis in bold supplied)

26.3. Even otherwise, when the decision of SLSC, or any decision of any authority for that matter, was subject to revision by the Government in terms of Clause 13 of the Scheme, it cannot be suggested that the said power of revision cannot be invoked. In other words, the principles of promissory estoppel cannot operate against such revisional power of the Government. Hence, this part of the contentions also deserves to be, and is, rejected.

Exercise of powers of revision by the State Government under Clause 13

27. For the self-same reasons aforesaid, the contentions urged on behalf of the appellant against the exercise of power of revision under Clause 13 of RIPS-2003 with reference to the decision of this Court in the case of ***Malabar Industrial Co.*** (supra) turn out to be totally devoid of substance.

27.1. In ***Malabar Industrial Co.*** (supra), this Court construed Section 263 of the Act of 1961 wherein too, the basis for exercise of power of revision by the Principal Commissioner or Commissioner is akin to Clause 13 of RIPS-2003 but with a little difference. Under Section 263 of the Act of 1961, the Commissioner concerned could exercise the power of revision, if he considers that the order passed by the Assessing Officer is *'erroneous insofar as it is prejudicial to the interests of the Revenue*' whereas in Clause 13 of RIPS-2003, such power could be exercised by the State Government in Finance Department in relation to an order passed by any screening committee '*wherever it is found to be erroneous and prejudicial to the interest of the State Revenue*'

27.1.1. For the construction of the aforesaid statutory provision, this Court observed in ***Malabar Industrial Co.*** (supra) that the phrase '*prejudicial to the interest of the Revenue*' has to be read in conjunction with the expression '*erroneous*' for the order passed by the Assessing Officer. In fact, such a process of interpretation is not even required in the present case because the two aspects, i.e., '*erroneous'* and '*prejudicial to the interest of Revenue*' have already been stated with the conjunction "and" in Clause 13 of the Scheme.

27.1.2. It is also noteworthy that even in the case of ***Malabar Industrial Co.*** (supra), this Court, ultimately, upheld the exercise of jurisdiction by the Commissioner under Section 263(1) of the Act of 1961, particularly when it was found that there was no material to support the view taken; and the Assessing Officer had failed to make the requisite enquiry, rather the questioned order was found to have been passed by the Assessing Officer without application of mind. This Court, *inter alia*, observed and held as under :-

> "**10.** The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the

> interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See *Rampyari Devi Saraogi* v. *CIT:* (1868) 67 ITR 84 (SC) and in *Tara Devi Aggarwal* v. *CIT:* (1973) 88 ITR 323.)
>
> **11.** In the instant case, the Commissioner noted that the Income Tax Officer passed the order of nil assessment without application of mind. Indeed, the High Court recorded the finding that the Income Tax Officer failed to apply his mind to the case in all perspective and the order passed by him was erroneous. It appears that the resolution passed by the Board of the appellant Company was not placed before the Assessing Officer. Thus, there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. He accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry. On these facts the conclusion that the order of the Income Tax Officer was erroneous is irresistible. We are, therefore, of the opinion that the High Court has rightly held that the exercise of the jurisdiction by the Commissioner under Section 263(1) was justified."

27.1.3. The observations and conclusions aforesaid, do not advance the cause of the appellant; and if at all of any application, they operate only against the case of the appellant.

27.2. In the present case, as observed hereinbefore, the initial decision of SLSC was entirely erroneous and cannot be said to be a possible view of the matter. Coupled with that, the said decision was directly prejudicial to the interest of revenue where the State exchequer was to part with extra 25% of the tax amount received or receivable from the appellant. As noticed, the learned ACS, while passing the order dated 12.03.2008 in exercise of such power of revision under Clause 13 of the Scheme, has meticulously examined the entire material and has recorded each and every finding with due regard to the dealings of the parties and the provisions of Scheme as applicable. The exercise of power of revision as per Clause 13 of the Scheme remains unexceptionable in the present case.

Effect of availing 75% subsidy for 7 years

28. It has also been submitted on behalf of the appellants that the subsidy cannot be revoked or withdrawn with retrospective effect and after having been fully availed of. Such a contention does not carry any substance for the simple reason that sub-clause (b) of Clause 13 of the Scheme specifically provides for a period of five years from the date by which benefits under the Scheme are availed of, to be the period within which the power of revision could be exercised by the State Government. Admittedly, in the present case, the appellant company had availed the benefits until the month of February 2017 and the order of revision was passed on 12.03.2018, well within the period of five years stipulated in the Scheme. In this view of the matter, reference to the decisions like that of this Court in the case of ***Birla Jute & Industries Ltd.*** (supra) remains entirely misplaced. The observations in the referred decisions are not relatable to the specific stipulation of the Scheme in question and need no further dilation.

29. It is also noteworthy that the fundamental questions on the correctness of the decision of SLSC dated 17.03.2011 were indeed raised by the Finance Department of the Government by its letter dated 17.11.2011. As noticed, the Industries Department chose not to respond to the said communication and reminders of the Finance Department for an abnormal length of time and sent a reply only in the month of February 2017. By that time, the appellant had practically availed the entire advantage under the questioned decision of the SLSC. Thereafter, the SLSC re-examined the matter only on 22.05.2017 and left it for the Finance Department to take proceedings under Clause 13 of RIPS-2013. In the given set of facts and circumstances, the suggestion that already availed benefit cannot be withdrawn turn out to be hollow and baseless because whatever was obtained by the appellant, beyond its entitlement, had only been based on an erroneous and unauthorised decision of SLSC. In any case, RIPS-2003 being a matter of concession in the form of subsidy, securing an advantage by the appellant at the cost of public exchequer could not have been allowed and, for the Scheme itself having reserved the powers in the State Government to revise the erroneous and prejudicial order within a period of five years from

the date of fully availing of the benefits, such powers have rightly been invoked and exercised by the State Government.

Summation on major points for determination

30. The discussion foregoing leads to the clear answers that BIDI, in its decision dated 01.04.2006 never directed for grant of 75% subsidy to the appellant company in terms of proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003 nor allowed any customised package to the company. The position of record is crystal clear that BIDI's decision dated 01.04.2006 had only been for allowing '*recently announced cement package*'[38] to the company and that was also coupled with the requirement of applicability of RIPS-2003. The initial part of this decision of BIDI dated 01.04.2006 and the company's prayer dated 26.04.2006 for registration in terms of sub-clause (vii) of Clause 7 of RIPS-2003 became redundant on 28.04.2006 with the amendment of Clause 7 of RIPS-2003 and deletion of sub-clauses (vi) and (vii) thereof because no decision had been taken by SLSC to grant subsidy to the company in terms of the said sub-clauses (vi) and (vii) of Clause 7 by that date i.e., 28.04.2006. Further, the view taken by SLSC in its initial decisions, to grant 75% subsidy to the appellant on the basis of the decision of BIDI, while reading as if BIDI had taken such decision under proviso to Clauses 7(i)(a) and 7(i)(b) of RIPS-2003, had been entirely perverse and unauthorised; and had not been a possible view of the matter. There had not been any ambiguity in the decision of BIDI; and if at all there was any doubt or ambiguity, the benefit thereof could not have gone to the appellant. The appellant company was entitled to subsidy under RIPS-2003 only to the extent of 50% of tax payable and deposited and not 75% as allowed by SLSC.

30.1. It is also clear that the doctrine of *Contemporanea Expositio* neither applies to this case nor inures to the benefit of appellant. The principles of promissory estopple are equally inapplicable and the State Government has rightly exercised the powers of revision under Clause 13 of RIPS-2003 to interfere with the erroneous decisions of SLSC whereby the

38 As noticed repeatedly, the said expression 'recently announced cement package' is only referable to sub-clauses (vi) and (vii) of Clause 7 of RIPS-2003.

appellant was allowed 25% extra subsidy and which was, obviously, prejudicial to the interest of revenue; and mere availing of the benefits by the appellant under the erroneous decisions of SLSC is of no effect, particularly when the State Government has exercised the powers of revision within the time stipulated in Clause 13 of RIPS-2003.

31. In view of the above, we have no hesitation in affirming the order of the High Court dated 11.01.2019 and in turn, approving the order of revision dated 12.03.2018 insofar the Additional Chief Secretary held that the Kotputli Cement Works Unit of the appellant company was entitled to Capital Investment Subsidy only to the extent of 50% of the payable and deposited tax and not to the extent of 75%, as availed by it pursuant to the Entitlement Certificates dated 29.04.2011 and 24.11.2011 erroneously issued by the State Level Screening Committee. The SLSC was rightly directed to issue the new Entitlement Certificate for subsidy to the limit of 50% of total tax to the said Kotputli Unit of the appellant company; and the company was rightly directed to refund the amount of subsidy availed in excess of 50% of payable and deposited tax.

31.1. However, in the impugned order dated 12.03.2018, the appellant was also directed to make such refund together with interest at the rate of 18% per annum. As observed hereinbefore, even if the decision of State Government to recall 25% availed subsidy is upheld, the point still requiring consideration would be as to whether the State is justified in seeking to recover interest at this rate of 18% per annum?

Levy of Interest

32. Coming to the question of levy of interest on the amount sought to be recovered, it has been contended on behalf of the appellants that Clause 10 of RIPS-2003 providing for charging of interest has no application to the present case because grant of 25% subsidy has been revoked not because of any default committed by the appellants but only because of a change of opinion by the respondents after about eight years. The respondents, on the

other hand, assert that if benefits have been received under a mistake, the same must be returned with interest so as to avoid unjust enrichment.

33. It remains undeniable that Clause 10 of RIPS-2003, providing Terms and Conditions attached to the benefits availed under the Scheme, envisaged that the '*breach'* of any of the condition would '*make the Capital Investment Subsidy/ exemption amount liable to be recovered as Tax or arrears of land revenue along with interest @ 18% per annum from the date from which the Capital Investment Subsidy was provided*'. It is not the case of the respondents that the appellant had committed breach of any of the conditions enumerated in Clause 10 of the Scheme and that the excessive amount of subsidy (25%) was being recovered because of any such breach. As noticed, entitlement of the appellant to 50% subsidy has not been questioned; and the only question had been as to whether the appellant company could have availed 75% subsidy? However, disbursement of such 75% subsidy to the appellant was only on the basis of the erroneous decisions taken and Entitlement Certificates dated 29.04.2011 and 24.11.2011 issued by SLSC.

33.1. Even when the said decisions of SLSC are found erroneous and invalid; and the appellant company is found entitled to subsidy only to the extent of 50%, it cannot be said that the excess 25% is relatable to breach of any of the conditions of the Scheme on the part of the appellant nor the appellant could be said to have availed the excessive amount of subsidy by way of any misrepresentation. The basic fault had been on the part of SLSC in taking erroneous decisions and in issuing unauthorised Entitlement Certificates dated 29.04.2011 and 24.11.2011. The respondent State took an abnormally long time in realising the mistake on the part of its functionaries and took corrective measures only after the entire benefit had already been availed of inasmuch as the proceedings for recall were initiated only in the month of July 2017 which led to the impugned order dated 12.03.2018 and then, the Re-revised Entitlement Certificate was issued only on 02.04.2018.

33.2. Apart from the above, it is also noticed that even when the Scheme envisaged interest at the rate of 18% per annum, in Form 2 filed by the appellants, undertaking was

stated to repay the amount of subsidy, in case of availing excessive benefits or non-compliance with the provisions of the Scheme, with interest at the rate of 12% per annum[39]. Both the parties had proceeded with reference to the said undertaking furnished on behalf of the appellant and the same is required to be treated as a binding term of contract between them.

33.3. Hence, when availing of subsidy to the tune of 75% (and thereby availing 25% in excess) is not referable to any misrepresentation by the appellants and there is no allegation of breach of any of the conditions of RIPS-2003 by the appellants while availing such benefit, the respondent cannot be held entitled to demand interest at the rate stipulated in Clause 10 of RIPS-2003. However, and at the same time, when the appellant company had obtained undue advantage in monetary terms by availing 25% extra subsidy; and had given undertaking to refund any excessive benefit with interest at the rate of 12% per annum, in our view, the appellant company remains liable to refund the excess amount together with interest at the rate agreed upon, i.e., 12% per annum.

33.4. In the given set of facts and circumstances of this case, reliance on the decisions of this Court in ***India Carbon Ltd.***, ***J.K. Synthetics Ltd.*** and ***Maruti Wire Industries Pvt. Ltd.*** (supra), dealing the scheme of particular taxing statutes for charging of interest, does not make out a case of total waiver of interest because the fact remains that the appellant company had indeed availed excessive 25% subsidy under the non-statutory scheme and unequivocal undertaking was stated on its behalf to refund the excess amount together with interest @ 12% per annum.

33.5. It is also noticed that as per the submissions of the appellants, by way of recovery proceedings adopted by the State after the decision of High Court, entire of the principal amount of excess subsidy, i.e., Rs.15,96,37,794/- has already been recovered. In the totality of circumstances and relevant features of this case, in our view, interest of justice shall be

39 Vide the declaration extracted in paragraph 7.9.2.

served if the respondents are allowed interest at the rate of 12% per annum from the date of availing of excessive (25%) subsidy by the appellants and until recovery/payment.

CONCLUSION

34. Accordingly, this appeal is partly allowed to the extent and in the manner indicated above. The impugned order of the High Court dated 11.01.2019, upholding the order dated 12.03.2018 passed by the Additional Chief Secretary, Finance Department, Government of Rajasthan, Jaipur is affirmed but with the modification that the respondents shall be entitled to recover interest at the rate of 12% per annum from the date of availing of excessive subsidy (25%) by the appellants until payment/recovery. In the circumstances of the case, the parties are left to bear their own costs.

…….J.
(A.M.KHANWILKAR)

…….J.
(DINESH MAHESHWARI)

New Delhi,
Dated: 17th July, 2020.