



M/s. JSW Steel Limited Vs. Managing Director M.S.E.D.C.L and ors.

WP NO.12477 OF 2015 a/w

WP NO.13941 of 2016.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12477 OF 2015

M/s. JSW Steel Limited

Formerly Known as Ispat Industries Ltd.
A Company Incorporated under
The Provisions of Companies Act,
1956, having its registered address
at Geetapuram, Dolavi Village,
Taluka Pen, District Raigad – 402 107.

...PETITIONER

~ VERSUS ~

1. Electricity Inspector – Inspection Zone– I,
11th Road, Wagle Estate, Thane (W) – 400
604.
2. Managing Director, MSEDCL,
Prakashgad, Anant Kane Marg, Bandra
(E), Mumbai – 400 071.
3. The State of Maharashtra
Through Principal Secretary (Energy)
Industries, Energy & Labour
Department, Mantralay, Mumbai.

...RESPONDENTS

M/s. JSW Steel Limited Vs. Managing Director M.S.E.D.C.L and ors.

WP NO.12477 OF 2015 a/w

WP NO.13941 of 2016.

WITH

WRIT PETITION NO. 13941 OF 2016

WITH

INTERIM APPLICATION (ST) NO.40287 OF 2025

M/s. JSW Steel Limited

A Company Incorporated under
The Provisions of Companies Act,
1956, having its registered address
at Geetapuram, Dolavi Village,
Taluka Pen, District Raigad – 402107.

...PETITIONER

~ VERSUS ~

- 1. Managing Director**
M.S.E.D.C.L., Prakashgad,
Anant Kane Marg, Bandra (E),
Mumbai – 400 071.
- 2. Chief Engineer (Commercial),**
M.S.E.D.C.L., Prakashgad,
Anant Kane Marg, Bandra (E),
Mumbai – 400 071.
- 3. The State of Maharashtra**
Through Principal Secretary (Energy)
Industries, Energy & Labour
Department, Mantralay, Mumbai.

...RESPONDENTS

APPEARANCES:

for the Petitioner

Mr. Janak Dwarkadas a/w. Chirag Kamdar
a/w. Vineet Unnikrishnan a/w. Ms. Sonu Bhasi
a/w. Veena Hari a/w. Karthika Sanjay i/b. Cyril
Amarchand Mangaldas, Advocates for the Petitioner
in both Writ Petitions and Applicant in
LA(ST)/40287/2025.

for the Respondent

***Ms. Shruti D. Vyas, Additional
Government Pleader*** a/w. Mr. M.M. Pabale,
AGP for State/Respondent in both Wps/LA.

Mr. Harinder Toor i/b. M/s. Expletus Legal
for Respondent Nos. 1 & 2 in WP/13941/2016
& LA.

Mr. Uddhav Dahiphale, Joint Secretary Energy
Department – Present in Court.

Mr. Sandip Patil, Chief Electrical Inspector,
And

Ms. Kirti Deshmukh, Deputy Director,
Industries Department, Government of Maharashtra
– Present In Court.

**CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

RESERVED ON : 23rd December, 2025.

PRONOUNCED ON : 2nd April 2026.

JUDGMENT (Per Amit Satyavan Jamsandekar J.):-

1. By the present petitions, the Petitioner has challenged the acts and decisions of the Respondents by which the Respondents have denied the Petitioner the exemption from payment of electricity duty. It is the case of the Petitioner that the Petitioner is entitled to exemption from payment of electricity duty for the period beginning from 6th August 2012 up to 5th August 2019. This exemption from payment of electricity duty is sought by the Petitioner by virtue of Notification dated 29th December 1999 (***the Notification***) issued by the State of Maharashtra (***the State***) in exercise of its powers under Section 5A of the *Bombay Electricity Duty Act, 1958* (***the BEDA, 1958***).
2. Rule. The service is waived by Ms. Vyas, the Learned AGP, on behalf of the State and Mr. Toor, the Learned Counsel, on behalf of the 1st and 2nd Respondents. The pleadings in the proceedings are complete. With the consent of parties, Rule is made returnable forthwith and heard finally.
3. The above captioned two Writ Petitions are in respect of the same subject matter. However, the subsequently filed Writ Petition No.13941 of 2016 covers all subsequent facts, circumstances, and actions of the Respondents arising from their

decision to deny the Petitioner the benefit of exemption from payment of electricity duty. The decision in Writ Petition No.13941 of 2016 would cover the entire subject matter in dispute. Therefore, Writ Petition No.13941 of 2016 is taken up for hearing first, by consent of the Learned Counsels appearing for the parties.

4. Before we proceed to decide the rival contentions of the parties, it would be apposite to set out the undisputed facts and the sequence of events.

i) In 1964, the State, through its Industries, Energy and Labour Department, implemented a *Package of Incentive Scheme*. The intention behind the scheme was to disperse industries outside the Bombay, Thane and Pune area of the State and to attract industry to the underdeveloped areas of the State. The scheme has been amended from time to time since the year 1964. The amendment, which took effect in the year 1988, was operative from 1st October 1988 to 30th September 1993. Thereafter, by its Resolution dated 7th May 1993, the State modified the said scheme and extended it with effect from 1st October 1993 (*the Scheme*). Under this extension, the unit holding an Eligibility Certificate issued by the implementing agency was entitled to claim the facilities in accordance with the guidelines laid down therein. The Scheme was further amended by the State by its Resolution dated 20th June

1997. As per the said Resolution, the projects having a fixed capital investment of a minimum of ₹1000 Crores were called 'Mega Projects'. By this amendment, 'Mega Projects' were held to be eligible to avail certain incentives for a period of 14 years, with the option to extend the said period for a further seven years. It is undisputed that the Petitioner was eligible as a 'Mega Unit'. Therefore, it applied under the Scheme and on 3rd August 1998, and an Eligibility Certificate under the Scheme was issued to the Petitioner. The validity of the Eligibility Certificate issued to the Petitioner on 3rd August 1998 was from 6th August 1998 to 5th August 2012 (i.e. for a period of 14 years).

- ii) Thereafter, the State issued a Notification by exercising its powers under Section 5A of the *Bombay Electricity Duty Act, 1958 (BEDA, 1958)*. By this Notification, the State granted exemption of energy utilized by the 'Mega Project' to which an Eligibility Certificate had been granted under the Scheme. By this Notification, the payment of the whole of the electricity duty payable under Part F of the Schedule to the BEDA, 1958 for the period of eligibility of the said project, as mentioned in the Eligibility Certificate, came to be exempted. Thereafter, on 15th October 2001, the State amended the earlier Notification dated 29th December 1999 issued under Section 5A

of the BEDA, 1958 and also extended the exemption from the payment of electricity duty payable under Clause (b) of Part G of the Schedule to the BEDA, 1958. Consequently, on 25th May 2000, the Electricity Inspector directed the Chief Engineer (Electricity) to take note of the fact that the Petitioner has been exempted from payment of electricity duty under the exemption Scheme.

- iii) On 18th November 2011, the Directorate of Industries, by Addenda II, amended the Eligibility Certificate issued in favour of the Petitioner. By this Addenda, the details regarding raw material, capital cost of the project, and the maximum limit of sales-tax incentives were amended. Thereafter, on 6th October 2012, the Director of Industries, by Addenda III, further amended the Eligibility Certificate dated 3rd August 1998 issued to the Petitioner. By the said amendment, the validity period of the Eligibility Certificate was extended for a further period of 7 years i.e. up to 5th August 2019.
- iv) On 19th October 2012, the Petitioner informed the Deputy Secretary, Industries, Energy and Labour Department, of the subsequent developments and the extension of the Eligibility Certificate. A request was made by the Petitioner to issue necessary instructions to the concerned

officials not to levy and/or demand electricity duty from the Petitioner in view of the extension granted to the Petitioner by Addenda III issued by the Director of Industries on 6th October 2012.

- v) Similarly, on 30th July 2015, the Petitioner addressed a letter to the Principal Secretary, Energy, Industries and Labour Departments and requested that necessary directions be issued regarding the exemption from the payment of electricity duty to the Petitioner.
- vi) On 12th August 2015, the Department of Industry, Energy and Labour, by its letter informed the Deputy Secretary (Industries) that the Petitioner is eligible for exemption from payment of electricity duty and requested to take the decision at a higher level.
- vii) Consequently, the Deputy Secretary (Energy) Industries, Energy and Labour Department, by its order dated 26th August 2015, clarified that the Petitioner is eligible for exemption from the payment of electricity duty for a period up to 5th August 2019.
- viii) Thereafter, on 14th October 2015, the Desk Officer at the Industries, Energy and Labour Department addressed a letter to the Chief Electricity Inspector informing that the order dated 26th August 2015 passed by the Deputy

Secretary (Energy) Industries, Energy and Labour Department, has been suspended. In view of the letter dated 14th October 2015, directions were issued to the Petitioner to make payment of the arrears of electricity duty for the period from August 2012 to June 2015. This action of the Respondents was challenged by the Petitioner by filing the Writ Petition No. 12477 of 2015 (the 1st Writ Petition).

- ix) Subsequently, the State enacted the Maharashtra Electricity Duty Act 2016, which came into force with effect from 1st September 2016. This Act introduced a new tariff category of consumers i.e. Open Access under Schedule C. The Petitioner also consumes electricity through open access and, therefore, became subject to an additional electricity duty at a rate of 9.3% of the consumption charges for open access.
- x) Accordingly, the Respondents made the demands, and the Petitioner was called upon to pay the electricity duty. Correspondences were exchanged between the Petitioner and the Respondents. Considering the threat given by the Respondent to disconnect the electricity connection of the Petitioner, the Petitioner made payment of the electricity duty as demanded by the Respondents under protest. The demand from the Respondent continued even after the interim orders passed in Writ Petition No. 12477 of 2015, as

well as the interim orders passed in Writ Petition No. 13941 of 2016 (the 2nd Writ Petition). In view thereof, Writ Petition No. 13941 of 2016 was amended to bring on record subsequent facts and circumstances.

xi) The Petitioner has so far paid a sum of Rs. 47,47,61,492/- towards the electricity duty with effect from 6th August 2012. This payment is made by the Petitioner under protest.

5. In this factual backdrop, Mr. Dwarkadas, the Learned Senior Counsel appearing on behalf of the Petitioner, submitted that considering the object of the Scheme, and considering the fact that relying on the promise of the State, the Petitioner has invested a tremendous amount of money in its project, and hence, the denial of exemption from payment of electricity duty on the part of the Respondents is most arbitrary and unfair. He submitted that the Petitioner is entitled to the benefit of the exemption from payment of electricity duty by virtue of the Eligibility Certificate, and its subsequent extension.

6. He further submitted that it is not in dispute that the validity of the Eligibility Certificate was extended up to 5th August 2019, and the Petitioner has availed the benefit of sales tax incentives by virtue of the extension of the Eligibility Certificate. It is submitted that the language of the Addenda III, as well as the fact that the

Eligibility Certificate is linked to the Notification [issued under Section 5A of BEDA, 1958], itself clearly establishes that the promise on behalf of the State was that the benefit of exemption from payment of electricity duty will be provided to the Petitioner during the lifetime of the Eligibility Certificate. He further submitted that in fact, the State and all its Departments have acted accordingly. Therefore, after the extension of the Eligibility Certificate on 6th October 2012 the Department of Industry, Energy and Labour informed the Deputy Secretary (Industries) that the Petitioner is eligible for exemption from the payment of electricity duty and requested that the decision be taken at a higher level. It is in this light that an order was issued on 26th August 2015 by the Deputy Secretary, (Energy) Industries, Energy and Labour Department, clarifying that the Petitioner is eligible for exemption from payment of electricity duty for a period up to 5th August 2019.

7. Mr. Dwarkadas, relying upon the language of the Notification, the wordings of Addenda III, and the language of the Eligibility Certificate issued in favour of the Petitioner, submitted that the language of the Notification and that of Addenda III was clear and unambiguous to mean that the Petitioner is entitled to get the benefit of the exemption under the Notification issued under BEDA, 1958. Further, he submitted that the entire Scheme was framed by the State to disperse industries

outside the Bombay, Thane and Pune area of the State, and to attract industries to the underdeveloped areas of the State. The Petitioner invested its money in an underdeveloped area on the State's promise that it would be provided with incentives. The Notification was issued to fulfil the promise and assurance given by the State to the Industry. In these facts and circumstances, the Petitioner is entitled to get the benefit of the exemption from payment of electricity duty, so long as the Eligibility Certificate is valid. The language of Addenda III, the Notification read with the object of the Scheme, cannot be interpreted in a narrow manner. It was further submitted that the Scheme is intended for a beneficial purpose and that the Petitioner has invested more than a sum of Rs.7000 crores in in the project, relying on the State's promise. Therefore, the Scheme, the Eligibility Certificate and the Notifications issued under the Scheme ought to be read and interpreted in favour of the Petitioner and not against it. He further submitted that the acts and decisions of the State are most arbitrary and unfair, and are, in fact, contrary to the object of the Scheme itself. He further submitted that the acts of the State are contrary to the principles of legitimate expectation and promissory estoppel and hence inequitable.

8. Mr. Dwarkadas in support of his submissions, cited judgments of the Hon'ble Supreme Court in ***Star Industries v. Commissioner of Customs (Imports), Raigad, (2016) 2 SCC 362 [Para. 34]***; ***State of Haryana v. Bharti Teletch Ltd.,***

(2014) 3 SCC 556 [Paras. 14, 17, 20, 22 to 25]; *CST v. Industrial Coal Enterprises*, (1999) 2 SCC 607 [Paras. 4, 6, 10 and 12]; *Bajaj Tempo Ltd. v. CIT*, (1992) 3 SCC 78 [Paras. 4, 5, 9]; *Government of Kerala and Another v. Mother Superior Adoration Convent*, (2021) 5 SCC 602 [Paras. 19-26]; *State of Punjab v. Nestle India Limited*, (2004) 6 SCC 465 [Paras. 44 to 47]; and *The State of Jharkhand v. Brahmputra Metallics Ltd., Ranchi and Anr.*, 2020 SCC OnLine SC 968 [Paras. 29, 30, 35, 41, 49, 50 and 52].

9. On the other hand, Ms. Vyas, the Learned Additional Government Pleader, on behalf of the State, submitted that the entire controversy in the present petitions revolves around the interpretation of the Notification and the Eligibility Certificate read with Addenda III dated 6th October 2012. She submitted that the Petitioner does not have any inherent right to claim continuation of the benefit of exemption from payment of electricity duty granted to the Petitioner by virtue of the Notification. She further submitted that exemption notifications are to be strictly interpreted. The plain and the literal meaning of the Notification has to be seen. According to Ms. Vyas, the language of the Notification is clear and unambiguous. There is no scope for any interpretation. The benefit is available to “Mega Projects” for the period of eligibility specified in the Eligibility Certificate. According to Ms.

Vyas, the period of 'eligibility' and the period of 'validity' are separately provided in the Certificate.

10. She further submitted that the electricity duty exemption is not a part of the Package Incentive Scheme. Therefore, any extension of exemption from payment of sales tax granted under the Scheme cannot automatically include exemption from payment of electricity duty as well. The Scheme contemplates a refund of the electricity duty, and not exemption from the payment of electricity duty. It is the contention of the State that in the present case, there is no further Notification issued by the State by which the period of exemption from the payment of electricity duty beyond the period of 14 years (as mentioned in the Eligibility Certificate) has been extended by issuing a fresh Notification under Section 5A of the BEDA, 1958. In fact, the State has taken a conscious decision not to extend the exemption benefit in respect of the electricity duty.

11. Ms. Vyas submitted that the Petitioner is seeking to take advantage of the Notification, which is no longer applicable to them. The electricity duty exemption is granted by the State by issuing a Notification under Section 5A of the BEDA, 1958, and not under the Scheme. Therefore, the extension of the period granted to the benefit for availing the balance of sales tax incentives under the Scheme, as

mentioned in the Eligibility Certificate, cannot be extended for the grant of exemption of electricity duty. Further, she submitted that the extension given under the Scheme would not lead to an automatic extension to the period of benefit under the Notification issued under Section 5A of BEDA, 1958. In view of the fact that there is no Notification issued under Section 5A of the BEDA, 1958 by which the period of exemption has been extended, means that the Petitioner is not entitled to claim any such exemption from the payment of electricity duty. It is the case of the State that Addenda III merely extends the period of sales tax incentives under the Scheme; it does not extend the period of exemption under the notification issued under Section 5A of the BEDA 1958. Addenda III only extends the period of validity of the Eligibility Certificate. In any case it is submitted that by virtue of the provisions of the Maharashtra Electricity Duty Act 2016, the Petitioner is not entitled to get any benefit of exemption of electricity duty. No separate notification has been issued under the Maharashtra Electricity Duty Act, 2016.

12. The State further submits that the departments involved in the subject matter have given different opinions on the subject matter. Ms. Vyas submitted that the Energy Department agreed that the proposal of the Petitioner should be accepted and the electricity exemption should be extended to the Petitioner by linking it to the Petitioner's overall incentive package. The Finance Department took a different

view, stating that the Petitioner's proposal cannot be accepted because the policy should be interpreted strictly. Therefore, the opinion of the Finance Department was finalized, and the exemption was not granted to the Petitioner. Further, no decision has been taken by the State under Section 5A of the BEDA, 1958 or the Maharashtra Electricity Duty Act, 2016 to approve the extension of the exemption from electricity duty to the Petitioner.

13. In this background, it is submitted on behalf of the State that it is a settled position of law that a Taxing Statute is to be strictly interpreted. In case of any ambiguity in the charging section of a Taxing Statute, it should be interpreted in favour of Assessee. Further, an Exemption Notification is also required to be strictly interpreted. However, if there is any ambiguity in an Exemption Notification, the interpretation that favours the Revenue must be preferred. Ms. Vyas relied upon the judgment of the Hon'ble Supreme Court in ***Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs, Surat*** (1968) SCC OnLine SC 50; ***Commissioner of Customs v. Dilip Kumar & Co.*** (2018) 9 SCC Para 52–54). By citing the judgment in the case of ***Kasinka Trading v. Union of India*** (1995) 1 SCC 274 (Para 21) of the Hon'ble Supreme Court, Ms. Vyas submitted that an exemption notification issued under Section 5A of the BEDA, 1958 is in the nature of a concession or incentive which can be withdrawn at any

time by the Government in public interest. In the public interest, the State may withdraw the exemption granted as held in *Shrijee Sales Corporation v. Union of India* (1997) 3 SCC 398 (Para 7) and *Unicorn Industries v. Union of India* (2019) 10 SCC 575. She further submitted that as held in *Eagle Flask Industries Ltd. v. Commissioner of Central Excise* (2004) 7 SCC 377 (Para 8), the exemption notification has to be interpreted on the basis of the wording used therein, and not on any intendment. Consequently, she submitted that there was no merit in the above Writ Petitions and the same be dismissed.

14. Mr. Toor, the Learned Counsel appearing for the 1st and 2nd Respondents, submitted that the Petitioner is seeking the exemption beyond the scope and period expressly provided under the Eligibility Certificate and the statutory notifications issued under the *Maharashtra Electricity Duty Act, 2016* (for short **the 2016 Act**), the Act which came into force on 1st September 2016. He submitted that the electricity duty exemption derives exclusively from notifications issued by the Energy Department, not from the Package Scheme of Incentives administered by the Industries Department. In the absence of any corresponding notification by the Energy Department post 5th August 2012, no Electricity Duty exemption could lawfully subsist beyond 5th August 2012. Mr. Toor further submitted that the Petitioner's challenge, in effect, seeks to prevent the 1st and 2nd Respondents from

discharging their statutory obligation under the Electricity Duty Act, which is impermissible in law.

15. We have heard the Learned Counsel for the parties at length, and have perused the paper and proceedings. We have also considered the written submissions filed on behalf of the parties.

16. After considering the rival submissions advanced by the parties, we find that two issues arise for our consideration. They are:

- i) Whether the language of the Notification issued by the State under Section 5A of the Bombay Electricity Duty Act, 1958, is linked to the Eligibility Certificate issued to the Petitioner?**
- ii) If the answer to issue (i) above is in the affirmative, would the Petitioner be entitled to get the benefit of exemption from payment of electricity duty even after the introduction of the Maharashtra Electricity Duty Act, 2016, and in the absence of a separate Notification under Section 4 of the 2016 Act extending the benefit to the Petitioner?**

17. The Package Incentive Scheme was introduced on 7th May 1993 by the State through the Department of Industries, Energy and Labour. The said Scheme,

interalia, provided that eligible industrial units that fulfil the conditions of the Scheme are entitled to an exemption/ deferral from the payment of sales tax, during the period of eligibility. This Scheme was amended on 20th June 1997 to specifically include Mega Projects such as that of the Petitioner. Paragraph C of the 1997 amended Scheme provides for the benefit of sales tax incentives and reads as:

*“...in the form of exemption or deferral for a period of 14 years and without any monetary limit. If during this period, the eligible sales tax incentives availed are less than the maximum limit, the sales tax incentives upto the above maximum limit can be availed after the 14th year also. **However, the period for availing the balance of such incentives shall be limited to maximum 7 years.**”*

(emphasis supplied)

18. The Petitioner had applied for and was issued an Eligibility Certificate on 3rd August 1998. The validity period of this 1998 Eligibility Certificate was for a period of 14 years from 6th August 1998 to 5th August 2012.

19. Clause 12 of the Eligibility Certificate provided a validity of 14 years, viz., from 6th August 1998 to 5th August 2012. This Clause, however further provided as follows:

*“The above period **shall be extended** if the amount mentioned at (11) above is not fully availed during this period. However, the period for availing the*

*balance of such incentives shall be extended **for maximum seven years or till the entitlement amount is exhausted whichever is earlier.***

(emphasis supplied)

20. Thus, above quoted Clause 12 of the Eligibility Certificate is in consonance with Paragraph C of the Scheme, giving an option of an extension for a maximum period of seven years or till the exhaustion of the entitlement amount, whichever is earlier.
21. Thereafter, the State exercised its power under Section 5A of the BEDA, 1958, and on 29th December 1999 issued a Notification. By this Notification, the State granted an exemption from payment of electricity duty on energy utilised by Mega Projects to which an Eligibility Certificate had been granted under the Package Incentive Scheme. The exemption granted by the Notification was in respect of the payment of the whole of the electricity duty payable under Part F of the Schedule to the BEDA, 1958. On 15th October 2001, the Notification was amended. By this amendment, the benefits of exemption from the payment of electricity duty was extended by the State to Clause (b) of Part G of the Schedule to the BEDA, 1958 as well.

22. Thereafter, on 11th May 2006, the Petitioner applied for, and was granted, a revised Eligibility Certificate bearing the same reference number as the Eligibility Certificate granted to the Petitioner on 3rd August 1998 to provide, in Clause 11, for part deferral of the sales tax incentives, from 1st May 2006 onwards. The validity period was from 6th August 1998 to 5th August 2012. Paragraph 12 thereof further provides that the period of validity could be extended if the maximum entitlement of sales tax incentives is not fully availed within the stipulated 14-year period; however, such extension would be for a maximum of 7 years. The Eligibility Certificate came to be amended on three occasions by three separate Addenda's, the third of which – Addenda III dated 6th October 2012 is relevant. Since the Petitioner admittedly had not exhausted the entire sales tax incentives that it was entitled to within the 14-year period originally contemplated in the Eligibility Certificate, the Petitioner sought the seven-year extension contemplated in Clause 12 thereof.

23. Clause 12, as revised by Addenda III to the Eligibility Certificate reads as follows:

*“In the Eligibility Certificate No. FINC[I] 1993/DEFERRAL/EC-3741, dated 11/05/2006 and subsequent addenda dt. 10/08/2011 & 18/11/2011 granted under the 1993 Package Scheme of Incentives to M/s. JSW Ispat Steel Ltd. for their unit located at Village Dolvi, Tal. Pen, Dist. Raigad, stands **amended** as follows:*

<i>Ref. No. of Eligibility</i>	<i>As per EC No. 3741, dated</i>	<i>As now revised</i>
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<p>Certificate, Addenda I and Addenda II</p>	<p>03/08/1998, Addenda I dated 10/08/2011 and Addenda II dated 18/11/2011</p>	
<p>Page No. 2 Sr. No. 12 – Validity Period of 14 years</p>	<p><u>From</u> 06/08/1998 <u>To</u> 05/08/2012 The above period shall be extended if the amount mentioned at [11] above is not fully availed during this period. However, the period for availing the balance of such incentives shall be extended for maximum seven years or till the entitlement amount is exhausted whichever is earlier.</p>	<p><u>From</u> 06/08/1998 <u>To</u> 05/08/2019 [As per the provisions of clause No. 1 [C] of G. R. dt. 11/08/1998, the period for availing the balance of such incentives mentioned at Page No. 2 Sr. 11 of the EC & addends dt. 18/11/2011 has been extended for further 7 years i.e. up to 05/08/2019 or till the entitlement amount is exhausted, whichever is earlier].</p>

2] The addenda **shall be kept attached to** the Eligibility Certificate FINC[I] 1993/DEFERRAL/EC-3741, dated 11/05/2006, Addenda -1 No. DI/PSI-1993/Addenda-I/EC-3741/Deferral/2011/B-15928, dated 10/08//2011 and Addenda-II No, DI/PSI-1993/Addenda-I/EC-

*3741/Deferral 2011/C-11706, dated 18/11/2011 **and shall be read with it.***

*3] **Save and except for the aforesaid changes, the contents, terms & conditions of the Eligibility Certificate remains unchanged.***

(emphasis supplied)

24. Thus, admittedly, by virtue of the Addenda III and the Notification, the Petitioner enjoyed the benefit of both the sales tax incentive as well as the electricity duty exemption upto 5th August 2012. By Addenda III dated 6th October 2012, the validity period of the Eligibility Certificate was extended up to 5th August 2019, and admittedly, the Petitioner has availed the benefits of the sales tax incentive up to 5th August 2019. The dispute only pertains to the application of the Notification upto 5th August 2019. In this background, we have considered the issues as narrated in paragraph 16 above.

25. i) Whether the language of the Notification issued by the State under Section 5A of the Bombay Electricity Duty Act, 1958, is linked to the Eligibility Certificate issued to the Petitioner?

26. As mentioned earlier, the State, by exercising powers under Section 5A of BEDA, 1958 issued a Notification dated 29th December 1999, which was amended on 15th October 2001. Section 5A of the BEDA 1958 reads as follows:

*“Subject to such conditions as it may impose, the State Government may, if it considers it **necessary in the public interest** so to do, by notification in the Official Gazette, exempt whether prospectively or retrospectively, the consumption of energy in the whole or any part of the State, **in the respect of any class of premises or purposes or in respect of energy consumed upto a specified limit**, from payment of the whole or any part of the electricity duty payable under Part A, Part B or Part F or Part G of the Schedule to this Act.”*

(emphasis supplied)

27. Section 5A begins with the wording ‘**Subject to such conditions as it may impose**’. Therefore, by virtue of the provisions of Section 5A of the BEDA Act, 1958 the State has wide powers to impose any conditions while granting the exemption from the payment of electricity duty. The conditions stipulated by Section 5A are in the public interest because the State exercises its powers under Section 5A only in public interest. The exemption from the payment of electricity duty can be prospective or retrospective and it can be in respect of any class of premises or purpose. It can be upto a specified limit, and it can also be from payment of the whole or any part of the electricity duty payable under Part A, Part

B or Part F or Part G of the Schedule to the BEDA Act, 1958. Depending on the nature of public interest, the conditions for exemption of electricity duty can be imposed by the State by virtue of the provisions of Section 5A of the BEDA Act, 1958.

28. By exercising its powers under Section 5A, the State issued the Notification on 29th December 1999 which reads as follows:

*“... the Government of Maharashtra having satisfied that it is necessary in the public interest so to do, **hereby exempts, the consumption of energy** by Mega Project to which an E eligibility Certificate has been granted by SICOM Limited under the Package Scheme of Incentives, 1993, **from payment of whole of the Electricity Duty payable under Part F of the Schedule to the said Act, for the period of Eligibility of the said project as mentioned in the Eligibility Certificate.***

Explanation – For the purpose of this notification, Mega Project does not include Mega Project situated in the Pune Metropolitan Region and Mumbai Metropolitan Region.

(emphasis supplied)

29. A plain reading of the Notification issued by the State, in public interest, is made applicable to the Mega Project to which *an Eligibility Certificate has been granted* by SICOM Limited under the Scheme. The exemption is *from payment of the whole of the Electricity Duty payable under Part F* of the Schedule to

the BEDA, 1958. The application of the Notification was further extended by an amendment dated 15th October 2001 and was made applicable even to Clause (b) of Part G of the Schedule to the Act. More importantly, the Notification in no uncertain words was made applicable ***for the period of Eligibility of the said project as mentioned in the Eligibility Certificate.*** Initially, the Eligibility Certificate issued to the Petitioner was valid for a period up to 5th August 2012. Admittedly, the Eligibility Certificate was amended by virtue of Addenda III, and its validity was extended up to 5th August 2019. The plain language of the Notification, read with the language of the Addenda III and the language of the Eligibility Certificate, leaves no doubt that the exemption granted under Section 5A of the BEDA,1958 [by issuing the Notification], is directly linked to the Eligibility Certificate. In fact, the language of the Notification clearly suggests that the intention of the State was to directly link the benefit of the exemption under the Act with the Eligibility Certificate granted under the Scheme. Therefore, so long as the Eligibility Certificate was valid (***the period of Eligibility of the said project as mentioned in the Eligibility Certificate***), the Notification was to operate. If that were not the case, as the State now seeks to argue, the language of the Notification would have been entirely different. The Notification would have clearly stated that the exemption from payment of electricity duty would be available upto a particular

date. It was within the powers of the State by virtue of the provisions of Section 5A to limit the benefit of the Notification only upto a specific date i.e. 5th August 2012. The State chose not to put any other condition, which the State could have done by virtue of the provision of Section 5A. Instead, the State chose to use the language '*for the period of Eligibility of the said project as mentioned in the Eligibility Certificate*' in the Notification.

30. The Hon'ble Supreme Court in *Star Industries v. Commissioner of Customs (Imports), Raigad, [(2016) 2 SCC 362]* in Paragraph 34, has held that the eligibility criteria laid down for the exemption notification are required to be construed strictly, and once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. Further, it is settled law that there can be cases where strict interpretation or understanding in respect of the exemption notification/clause would be permissible, but where the party plainly falls within the eligibility criteria, then the courts should adopt a liberal/purposive interpretation to the benefit of the party who claims the benefit under the exemption notification/clause. See *State of Haryana v. Bharti Teletech Ltd., [(2014) 3 SCC 556]* – Paras. 14, 17, 20, 22 to 25, *CST v. Industrial Coal*

Enterprises, [(1999) 2 SCC 607] – Paras. 4, 6, 10 and 12, Bajaj Tempo Ltd. v. CIT, [(1992) 3 SCC 78] – Paras. 4, 5, 9.

31. We do not find any ambiguity in the language of the Notification. The language is plain and simple, and it does not require any interpretation. A simple reading of the Notification, along with the provisions of Section 5A of the BEDA Act, 1958 makes it abundantly clear that the benefit of the Notification is extended so long as the Eligibility Certificate remains valid. If we accept the argument made on behalf of the Respondents that there is no linkage between the Eligibility Certificate and the Notification, then we have to read the Notification by deleting the words '**for the period of Eligibility of the said project as mentioned in the Eligibility Certificate**'. This is not permissible. The only condition the State chose to impose under Section 5A was that the exemption would be available only for the project's eligibility period, as mentioned in the Eligibility Certificate. We find that there is no ambiguity in the language of the Notification and therefore the judgments cited by Ms. Vyas of the Hon'ble Supreme Court in **Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs, Surat [(1969) 2 SCR 253]; Commissioner of Customs v. Dilip Kumar & Co. [(2018) 9 SCC]** (Para 52–54) are not applicable to the facts and circumstances of the present case.

32. The Notification was issued for a beneficial purpose, and therefore, it requires a liberal interpretation in favour of the exemptee/grantee as held by the Hon'ble Supreme Court in the case of ***Government of Kerala and Another v. Mother Superior Adoration Convent***, [(2021) 5 SCC 602] (Paras. 19-26). Therefore, the provisions of Section 5A and the language used in the Notification will also have to be read in consonance with the object of the Scheme and the object of the provisions of Section 5A. The provisions of Section 5A can only be invoked by the State in public interest. By issuing the Notification, the State served the public interest by providing the benefit of an exemption from payment of electricity duty only to Mega Projects that have an Eligibility Certificate under the Scheme. After the Addenda III dated 6th October 2012, by which the Petitioner's Eligibility Certificate came to be extended for a period of seven years, i.e. till 5th August 2019, the State could have limited the application of the Notification by amending the Notification by exercising its powers under Section 5A. However, that was not done by the State. Therefore, the Eligibility Certificate granted to the Petitioner remains valid by virtue of Addenda III and consequently also the Notification. Therefore, the judgments ***Shrijee Sales Corporation v. Union of India*** [(1997) 3 SCC 398] (Para 7) and ***Unicorn Industries v. Union of India*** [(2019) 10 SCC 575], cited by Ms. Vyas in support of her submission that the State may withdraw the exemption

granted at any time in the public interest, are not applicable to the facts and circumstances of the present case. The State has not issued any Notification withdrawing the benefits extended under the Notification dated 29th December 1999 read with the Notification dated 15th October 2001. In fact, it's the case of the State that these Notifications were valid only during the initial period of the Eligibility Certificate, namely, till 5th August 2012 and not thereafter. Hence, we fail to understand the logic of the argument of Ms. Vyas that the State has the power to withdraw the exemption granted at any time in the public interest. It indeed does. But that's not what the State has done in the present case, and nor is it the case of the State that in public interest they have withdrawn the Notifications issued under Section 5A of the BEDA, 1958.

33. In light of our interpretation of the exemption Notifications, All related submissions made on behalf of the Respondents on the issue cannot survive. However, we are dealing with the other submissions of the Respondents for the sake of completeness.

34. The Respondents have a contention that there is a difference between the 'validity period' of the Eligibility Certificate and the 'period of eligibility' for the sales tax incentive. This contention is made on the basis that the Eligibility Certificate dated

3rd August 1998 issued to the Petitioner deals only with the Scheme. The Notification provides for exemption from consumption of energy by a Mega Project to which an eligibility has been granted under the Scheme from the payment of the whole of electricity duty payable under Part F of the Schedule of the said Act ***for the period of eligibility of the said project as mentioned in the Eligibility Certificate.*** It is submitted on behalf of the Respondents that in the Eligibility Certificate dated 3rd August 1998, and in particular the Clause and Part-ii reads as under:-

- | | |
|---|---|
| 11. <i>MAXIMUM ENTITLEMENT OF SALES TAX INCENTIVES BY WAY OF EXEMPTION NOT TO EXCEED</i> | <i>Rs. 430679.96 lacs (Rupees four thousand three hundred six crores seventy nine lacs ninety six thousand only)</i> |
| 12. <i>VALIDITY PERIOD 14 YEARS</i> | <i>From 6/8/1998 to 5/8/2012</i> |

(The above period shall be extended if the amount mentioned at (11) above is not fully availed during this period. However, the period for availing the balance of such incentives shall be extended for maximum seven years or till the entitlement amount is exhausted whichever is earlier.)

Period of Eligibility Certificate

Date of Effect: 6/8/1998

From 6-8-1998 to 5-8-2012

(emphasis supplied)

35. On the basis of the above Clause in the Eligibility Certificate it is submitted on behalf of the State that in the Eligibility Certificate, there is a separate reference to the ***period of Eligibility*** and further, there is a reference to the ***period of validity***. It is submitted that by the Addenda-III dated 6th October 2012 only ***the validity of 12 years as mentioned from 06.08.1998 to 05.08.2012 is revised -to be read as 06.08.1998 to 05.08.2019.*** The said Addenda further records that “***save and accept the aforesaid changes the contents terms and conditions of the Eligibility of the certificate remains unchanged.***” Therefore, Ms. Vyas submitted that by way of the Addenda-III dated 6th October 2012 what is amended is ***the period of validity of the Eligibility Certificate*** and not ***the period of the Eligibility of the Certificate.***

36. We are not impressed with the arguments advanced on behalf of the Respondents on the basis of ***the period of eligibility*** and ***the period of validity***. Firstly, it is plainly contrary to the provisions of the Scheme. A perusal of Clauses 3.11, 4.2, 5.1 [II] and 6.4 of the Scheme demonstrates that the sole purpose for the issuance of the Eligibility Certificate is to entitle the Petitioner to claim Sales Tax incentives. Once the extension of the ***validity period*** to claim this incentive is accepted, which even Respondent No. 3 does accept, then it would be incomprehensible to suggest that the period of eligibility does not also stand extended. To hold this would be

destructive of the provisions of the Scheme itself. Secondly, this contention is in fact contrary to the Affidavit in Reply filed by Respondent No. 3. In the affidavit in reply dated 2nd March 2019 filed on behalf of the 3rd Respondent in Paragraph 12, it is stated that:

‘I further say and submit that thereafter, on 6th October, 2012, (Exhibit I) the Directorate of Industries issued an Addenda III to the Eligibility Certificate extending the last date of the ‘eligibility period’ from 6th August 2012 to 5th August, 2019.’

(emphasis supplied)

37. In view of the statement in the affidavit in reply, it is clear that even the Respondents understood that the Addenda III extended the period of eligibility, and there is no such distinction between the period of validity and the period of eligibility as sought to be raised now, only during the arguments. The arguments are contrary to the statements in the affidavit in reply. Further, Paragraph C of the 20th June 1997 Government Resolution always provided that the initial 14 year period of eligibility was extendable by a further period of 7 years in the event that the eligible Sales Tax Incentive was not exhausted within the initial period. The Notification dated 29th December 1999, granting exemption from payment of electricity duty, and which was issued specifically and only for Mega Projects, has

nonetheless linked the grant of such exemption to the period of eligibility as mentioned in the Eligibility Certificate and not to any other period.

38. In any case, it is not in dispute that the period of validity of the project was extended by Addenda III. The plain language of the Notification is - '***for the period of eligibility of the said project as mentioned in the Eligibility Certificate.***' Therefore, so long as the project remains eligible, the Notifications continue to operate. Therefore, we reject the contention of the Respondents that there is no extension of the period of eligibility. We, accordingly, answer issue (i) in the affirmative.

39. ii) Would the Petitioner be entitled to get the benefit of exemption of electricity duty even after the introduction of the Maharashtra Electricity Duty Act, 2016, and in the absence of a separate Notification under Section 4 of the 2016 Act extending the benefit to the Petitioner?

40. It is also the contention of the Respondents that the electricity exemption ceased on the Maharashtra Electricity Duty Act, 2016, coming into force, and there is no separate Notification issued under the Maharashtra Electricity Duty Act, 2016, after the issuance of the Addenda III.

41. We find that this submission of the Respondents is without any basis and we reject it because all acts, including issuance of the Notifications dated 29th December 1999 and 15th October 2001 undertaken pursuant to the BEDA, 1958 are expressly saved by the Maharashtra Electricity Duty Act, 2016 by virtue of the proviso to Section 4 (Power to exempt electricity duty) thereof. The said proviso reads thus:-

“Provided that, nothing contained in this Act shall affect any order issued in this regard before the commencement of this Act, and such order shall continue to be in force till the period mentioned therein expires, and where such period is not mentioned, any further order is issued in that respect under the provisions of this Act.”

(emphasis supplied)

42. Further, Section 16 (Repeals and Savings Clause) of the Maharashtra Electricity Duty Act, 2016 expressly saves all **notifications** issued under the BEDA Act, 1958 and also expressly saves any **right** or **privilege** acquired, accrued or incurred under the BEDA, 1958. The intent of enacting the Maharashtra Electricity Duty Act, 2016 was never to abrogate the steps taken under the BEDA Act, 1958. Since the Eligibility Certificate issued to the Petitioner under the Scheme continued to remain valid, the bringing into force of the Maharashtra Electricity Duty Act, 2016 is not

and cannot be a reason to deny the Petitioner the electricity exemption granted by the Notifications, which themselves remained valid.

43. After the issuance of Addenda III, the Notification was not required to be issued once again under Section 5A of the BEDA Act 1958 or under the Maharashtra Electricity Duty Act, 2016 because the Notification was always linked to the Eligibility Certificate. As held earlier, once the Eligibility Certificate is extended by the Addenda III, the Notification also gets extended. Therefore, we reject the Respondents' submission that the Petitioner is not entitled to get the benefit of the Notification because no separate notification was issued after Addenda III under the BEDA Act, 1958 or the Maharashtra Electricity Duty Act, 2016.

44. As set out earlier, Ms. Vyas submitted that there was a dilemma between various departments of the State and though the proposal was accepted by the Energy Department, it was rejected by the Finance Department, and therefore, the Petitioner is not entitled to get the benefit of the Notification. In view of the plain language of the Eligibility Certificate, the Addenda III and the Notification, as read by us herein above, the interpretation of the Finance Department of the State to reject the benefit to the Petitioner is untenable, arbitrary and contrary to the very object of the Scheme. Our view is also supported by the statement made on behalf

of the 3rd Respondent in paragraph 12 of the Affidavit in reply filed on 2nd March 2019 in the present proceedings.

45. In view of the factual position in the present matter and in view of the fact that the Notification is clearly linked to the Eligibility Certificate, the judgments cited on behalf of the Respondents are not of any assistance to the Respondents.

46. The language of the Notification, which is plain and without any ambiguity, was the promise and assurance given by the State to the Petitioner. The Petitioner has aligned its commercial position in accordance with the promise of the State. There is a huge investment made by the Petitioner relying on the promise of the State. Therefore, any interpretation of the Addenda III or the Notification by the Finance Department of the State not to give benefit to the Petitioner is arbitrary and not equitable. There is no justification at all for the decision of the Finance Department not to give the benefit of the Notification to the Petitioner. Therefore, it would be contrary to the well-established principles of promissory estoppel. Mr. Dwarkadas, the Learned Senior Counsel, is justified in relying on the judgments of the Hon'ble Supreme Court in the case of ***State of Punjab v. Nestle India Limited [(2004) 6 SCC 465]***; ***State of Jharkhand v. Brahmputra Mettalics Ltd., Ranchi and Anr. [2020 SCC OnLine SC 968]***.

47. Therefore, we agree with the submission of Mr. Dwarkadas, the Learned Senior Counsel, that by virtue of plain language of the Notification, the Petitioner is entitled to get the benefit of the Notification so long as the Eligibility Certificate granted to the Petitioner under the Scheme remains valid. The whole purpose of using the words '***for the period of Eligibility of the said project as mentioned in the Eligibility Certificate***' in the Notification was to link it with the Eligibility Certificate. Therefore, we reject the submissions made on behalf of the Respondents that the Notification is not linked with the Eligibility Certificate. The Petitioner is certainly entitled to the benefit of exemption from payment of electricity duty so long as the Eligibility Certificate remains valid.

48. In view thereof, the Petition succeeds in terms of the prayer Clause (a), (b) and (c) of the petition, which reads as follows:

“a. This Hon’ble Court be pleased to declare that the action of Respondents of non continuing the exemption of Petitioner in payment of electricity duty; and charging the bill for the same is illegal.

b. This Hon’ble Court be pleased to declare that in view of the Notifications dated 29.12.1999 and 15.10.2001 r/w eligibility certificate dated 3.08.1998 as amended by Addenda No.3 dated 6.10.2012, the Petitioner is entitled for exemption in the Electricity duty till 5th August, 2019.

c. This Hon'ble Court be pleased to issue the appropriate writ and/or order thereby restraining the Respondents from disconnecting the electricity supply to the Petitioner having Consumer No.032949018554."

49. The Respondents are ordered and directed jointly and severally to refund a sum of Rs.47,47,61,492/- paid by the Petitioner to the Respondents since August 2012 to August 2019 towards the electricity duty. The amount of Rs.47,47,61,492/- shall be paid by the Respondents to the Petitioner within a period of 12 weeks from uploading of the judgment.
50. Rule is made absolute in the above terms, and Writ Petition No. 13941 of 2016 as well as Writ Petition No. 12477 of 2015 are disposed of in terms thereof. However, there shall be no order as to costs.
51. Interim Application/s, if any, are disposed of in both the petitions.
52. This Order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]