

**BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

25.05.2015

Ms. K. Chesa, learned counsel, appears for the appellants.

Mr. R Deb Nath, learned CGC, represents the respondents.

List the matter on 01.06.2015.

JUDGE

CHIEF JUSTICE

Sylvana

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR. JUSTICE S.R. SEN

25.05.2015

Dr. BP Todi, learned Addl. AG, assisted by Mr KP Bhattacharjee, learned GA, appears for the petitioners.

Mr R Deb Nath, learned CGC, represents the Union of India.

Ms M Deb, learned counsel, represents the respondent.

Issue fresh notice to State of Assam through the Chief Secretary. Service both ways.

Dr. Todi, learned Addl. AG states that he shall supply the correct and latest address of the Chief Secretary, Assam, for issuance of notice and take steps for service.

Mr R Deb Nath, learned CGC states that the Union of India through Ministry of Home Affairs does not intend to file any affidavit, as according to the Ministry, it is essentially a dispute between the States of Assam and Meghalaya. But-that-nevertheless, the respondent belongs to Indian Police Service and the Central Government through the Department of personnel and Public Grievance is the cadre controlling authority in that case. Hence, let a notice issue to the Department of Personnel and Public Grievance, in the Ministry of Personnel and Public Grievance for filing affidavit. Learned counsel for Union of India Mr R Deb Nath shall seek instruction also from the Ministry of Personnel and Public Grievance.

Let a copy of this order be issued to learned counsel for the petitioners and learned counsel for the Union of India for compliance in addition to the certified copies to be issued as per rules. List this matter on 06.07.2015.

JUDGE

CHIEF JUSTICE

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**BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

25.05.2015

Mr. N. Mozika, learned counsel, appears for the applicants.

Mr. H.G. Baruah, learned counsel, represents the respondent.

We have heard learned counsel for parties and perused the pleadings of writ appeal. As there is no reason provided for issuing directions, much less to say, any law point has been discussed, we think it proper to grant indulgence. But-that-nevertheless, the appellant department also has not given a detailed explanation for condonation of delay. Thus, the application also appears to be scanty. Hence, the department may file a detailed affidavit in support of condonation of delay. List the matter with affidavit on 08.06.2015.

JUDGE

CHIEF JUSTICE

Sylvana

WP(C) No. 9/2015
 With WP(C) No. 23/2015
 WP(C) No. 16/2014
 WP(C) No. 17/2014
 WP(C) No. 18/2014
 WP(C) No. 19/2014
 WP(C) No. 20/2014
 WP(C) No. 203/2012
 WP(C) No. 94/2013
 WP(C) No. 117/2013
 WP(C) No. 385/2013
 WP(C) No. 386/2013
 WP(C) No. 387/2013
 WP(C) No. 388/2013
 WP(C) No. 123/2008
 WP(C) No. 124/2008
 WP(C) No. 126/2008
 WP(C) No. 133/2008
 WP(C) No. 86/2013
 WP(C) No. 87/2013
 WP(C) No. 88/2013

BEFORE
 THE HON'BLE MR. JUSTICE UMA NATH SINGH,
 CHIEF JUSTICE
 THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

25.05.2015

Dr. A. Saraf, learned senior counsel, assisted by Mr. G.N. Sahewalla, learned counsel and Mr. D. Senapati, learned counsel, appears for the petitioner.

Mr. R. Deb Nath, learned CGC, represents the respondents.

In continuation of the argument advanced by learned senior counsel, Dr A Saraf, dated 25th March, 2015, he took us to a judgment passed by a learned single Judge of Gauhati High Court in ***Herbo Foundation (P) Ltd v. Union of India and Ors reported in (2011) 1 GLR 781*** to clarify the position further.

According to Dr Saraf, in view of the continuing backwardness of North East region, the Government of India felt it necessary to come out with a new synergetic incentive package to promote industrial development in the area so that industrial investments were attracted from all over. Therefore, the then Prime Minister of India, on 27.10.1996 at Guwahati, made a statement that new incentives would be announced for industrial development in the area. As a result, by a Notification dated 24.12.1997, Government of India announced a new Industrial Policy Resolution

(for short, 1997 IPR), containing a package of incentives and concessions for the investors in the area. As a major fiscal incentive, the Government also approved the conversion of growth centres into total tax free zones for a period of ten (10) years. All industrial activities under the 1997 IPR became free from payment of income tax and excise duty for a period of ten (10) years from the date of production and the State Governments were to be requested to grant exemption in respect of payment of sales and municipal taxes. In 1997 IPR, it was also announced that the Ministry of Finance, Government of India would be moved to amend the existing Rules/Notifications for giving effect to the decisions taken vide the IPR 1997. Apart from total tax holiday for ten (10) years, the 1997 IPR also provided several other incentives and concessions like capital investment subsidy, interest subsidy, assistance in obtaining term loan as well as working capital, etc. Consequently, various Notifications for granting benefits were issued by the Departments of Central Government. Thus, Ministry of Finance, Department of Revenue, Government of India, issued Notifications No.32/99-CE and 33/99-CE dated 8.7.99 granting exemptions from payment of central excise in respect of goods specified therein produced by industrial units situated in growth centre or integrated infrastructure-development centre or export promotion industrial park or industrial estates or industrial area or commercial estate, as the case may be. Exemption from payment of excise or additional excise meant refund of equivalent to the amount of duty paid by the manufacturer of goods on the accounts maintained under Rule 9 read with Rule 173G of the Central Excise Rules, 1944. The said Rules, on reproduction, would read as :

“9. Time and manner of payment of duty (1) No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Commissioner in this behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon is determined and indicated on each application in the proper form or on each gate pass, as the case may be, presented to the proper officer at such place and in such manner as is prescribed in these rules or as the Commissioner may require:

Provided that such goods may be deposited without payment of duty in a store-room or other place of storage approved by the Commissioner under rule 27 or rule 47 or in a warehouse appointed or registered under rule 140 or may be exported under bond as provided in rule 13 :

Provided further that the molasses produced in a khandsari sugar factory may be removed without payment of duty leviable thereon and the duty of excise leviable on such molasses shall be paid by the procurer, as if such molasses has been manufactured by such procurer, on the date of receipt of such molasses in his factory:

Provided also that the goods falling under Chapter 62 of the First Schedule to Central Excise Tariff Act, 1985 (5 of 1986) produced or manufactured by a job worker may be removed without payment of duty leviable thereon and the duty of excise leviable on such goods shall be paid by the person referred to in rule 7AA, as if such goods have been produced or manufactured by him, on the date of removal of such goods from his premises registered under rule 174:

Explanation-It is hereby clarified that where such person has authorized the job worker to pay the duty leviable on such goods under rule 7AA, such duty shall be paid by the job worker on the date of removal of such goods from his registered premises:

Provided also that such goods may be removed without payment or on part-payment of duty leviable thereon if the Central Government, by notification in the Official Gazette, allow the goods to be so removed under rule 49:

Provided also that the manufactures shall maintain an account current at such place or premises specified in this behalf or at a storeroom or warehouse duly approved, appointed or registered, by the Commissioner, and shall discharge the duty liability debiting such account current.

(1A) Where a person keeping an account-current under the third proviso to sub-rule (1) makes an application to the Commissioner for withdrawing an amount from such account-current, the Commissioner may, for reasons to be recorded in writing, permit such person to withdraw the amount in accordance with such procedure as the Commissioner may specify in this behalf."

"173G. ...(1)(a) Every manufacturer, other than a manufacturer who is availing of the exemption under a notification based on the value of clearances in a financial year, shall discharge his duty liability in respect of clearances of excisable goods from the place or premises specified under rule 9 or from a store room or other place of storage approved by the Commissioner under rule 47 made :

- i. During the first fortnight of the month, by the twentieth day of that month;**
- ii. During the second fortnight of the month, other than the month of March, by the fifth day of the succeeding month, and**
- iii. During the second fortnight of March, by the 31st day of the said March;**

(aa) Every manufacturer availing of the exemption under a notification based on the value of clearances in the financial year shall discharge his duty liability in respect of clearances made during a calendar month, by the 15th day of the succeeding month.

Explanation – For removal of doubts, it is hereby clarified that the duty liability under clause (a) or clause (aa) shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the date specified.

b. the manufacturer shall maintain an account current with the Commissioner and shall discharge his duty liability by debiting such account-current or by utilizing CENVAT credit, in the following manner :

- i. the manufacturer shall assess the duty due on the excisable goods intended to be removed, for each consignment and shall enter the particulars of such consignments in daily stock account maintained under rule 53;***
- ii. the manufacturer shall indicate on each invoice, issued under rule 52A, the amount of duty payable.***
- iii. At the end of each fortnight, the manufacturer shall determine the total amount of excise duty payable on the excisable goods removed during the fortnight, and he shall discharge the total duty liability so payable by making debit entry in the account current or by utilizing CENVAT credit, as the case may be***

c. The duty of excise shall be deemed to have been paid, for the purpose of these rules, on excisable goods removed in the manner prescribed in this sub-rule, and credit of such duty, as may be prescribed, under any rule, will be permissible.

d. If the manufacturer fails to pay the amount of duty payable by the due date, he shall be liable to pay the outstanding amount along with interest at the rate of twenty four per cent. Per annum on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

e. If the manufacturer defaults on account of any of the following reasons, namely:-

- i. Full payment of any one installment is discharged beyond a period of thirty days from the date on which the installment was due in a financial year, or***
- ii. The due date on which full payment of installments are to be made is violated for the third time in a financial whether in succession or otherwise,***

then the manufacturer shall forfeit the facility to pay the dues in installments under this sub-rule for a period of two months, starting from the date of communication of an order passed by the proper officer in this regard or till such date on which all the dues are paid, whichever is later and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in clause (b) and in the event of any such failure it will be deemed as if such goods have been cleared without payment of duty and the consequences and penalties as provided in the Central Excise Rules shall follow.

(1A) Where an assessee keeping an account-current under sub-rule(1) makes an application to the Commissioner for withdrawing an amount from such account-current, the Commissioner may, for reasons to be recorded in writing, permit such assessee to withdraw the amount in accordance

with such procedure as the Commissioner may specify in this behalf.

(2) Notwithstanding the provisions of sub-rule (1) of rule 224 but subject to the other provisions of that rule and the provisions of rule 173FF, every assessee shall except as otherwise expressly provided in these rules, forthwith remove the goods on which duty has been determined and paid; every such removal shall take place under an invoice or invoices in accordance with the provisions of rule 52A but without the proper officer's counter-signature, and such invoice or invoices shall also show the rate and the amount of duty paid on such goods and the time of actual removal of the goods from the factory:

Provided that –

- (i) A single invoice may be issued at the end of the factory day to cover removal of goods consumed within the factory in a continuous process;*
- (ii) The Commissioner may, having regard to the nature of the goods manufactured or frequency of removals permit an assessee or a class of assesses not to enter the rate and/or the amount of duty on the invoices under which such goods are removed from the factory;*
- (iii) [Omitted]*
- (iv) In respect of removal of any excisable goods between appointed time and 12.00 (midnight) on the appointed date, the provisions of sub-rule (1) of rule 224 shall apply;*
- (v) [Omitted]*
- (vi) Where any correction, other than one relating to the date or the time of removal of goods or to the description of the goods (including the variety of goods, the number and description of packages and the identification marks thereon), becomes necessary in any invoice before removal of the goods, such correction may be made by the assessee provided this is done neatly and over his date signature in all copies of the invoice; and*
- (vii) Where the assessee, after he has debited the duty due on the goods in the account-current referred to in sub-rule(1), finds it necessary to cancel any invoice, he shall send an intimation thereof in writing to the proper officer not later than the working day next following the day on which such invoice is cancelled, and may thereupon take credit of the duty in that account.*

(2A) Every assessee shall file with the proper officer the triplicate copies of the invoices or like documents issued,

- (a) During first ten days of a month, on or before the twelfth day of the same month;*
- (b) During the next ten days of the month, on or before the twenty-second day of the same month; and*
- (c) During the remaining days of that month, on or before the fifth day of the following month,*

Alongwith a covering list showing the serial number of such invoices as well as opening balance, credit, debit and closing

balance in his account-current and in his account maintained in form R.G.23A, Part I I and form R.G. 23C Part II.

Provided that an assessee availing of the exemption under a notification based on the value or quantity of clearances in a financial year, shall file with the proper officer the triplicate copies of the invoices or like documents issued during a quarter, on or before the fifth day of the following quarter along with a covering list showing the said number of such invoices as well as opening balance, credit, debit and closing balance in his account current and in his account maintained in Form RG 23A Part II and Form RG 23C Part-11.

(3) Within ten days after the close of each month every assessee shall, in lieu of the returns prescribed under rule 54, file with the proper officer in quintuplicate a monthly return in the proper Form showing the quantity of excisable goods manufactured or received under bond during the month, the quantity (if any) used within the factory for the manufacture or another commodity, the quantity removed on payment of duty from the place or premises specified under rule 9 or from the store-room or other place of storage approved by the Commissioner under rule 47, duty paid on such quantity, particulars of invoices or like documents under which such quantity was removed, the quantity removed without payment of duty for export or otherwise and such other particulars as may be elsewhere prescribed or as the Commissioner may, by general or special order, require, and where so required by the Commissioner, by written notice, shall submit a similar return in the proper Form showing all the other produced manufactured in and issued from the factory during the same month. Every such return in respect of excisable goods shall be accompanied by –

(a) [Omitted]

(b) receipted treasury challans which which deposits in the account-current were made by payment into the Government treasury; and

(c) original and duplicate copies of the account-current and also of the account in form RG 23, and RG 23C, as the case may be, maintained by the assessee during the period covered by the return;

(d) any other document or documents as the Commissioner may require;

And if there was no stock, production and removal of excisable goods during the said period the assessee shall file with the proper officer a nil return, unless otherwise directed by the Commissioner:

Provided that the Commissioner may, having regard to the nature, variety and extent of production or manufacture or frequency of removals –

- (i) Fix in relation to any assessee or class of assesses a period shorter than one month for filing the aforesaid return;**
- (ii) Permit that the aforesaid return may be filed by the assessee within a period not exceeding 21 days after the close of each month.**

(4)(a) Every assessee shall maintain such accounts, as the Commissioner may from time to time require 'or' permit, subject to such conditions as may be specified by him of the production, manufacture, storage, delivery or disposal of the goods, including the materials received for or consumed in the manufacture of excisable goods or other goods, the goods and materials in stock with him and duty determined and paid by him.

(b) Unless specially exempted by the Commissioner by order in writing, all books of accounts maintained under clause (a) shall be sent by him, before these are brought into use, for authentication by the proper officer in such manner and at such time as the Commissioner may direct.

(c) In respect of any assessee, or class of assesses, the Commissioner may direct that all books of accounts maintained under clause (a), subject to what has been stated in clause (b), shall be deemed to be the proper form for the respective purpose.

(5)(a) Every assessee shall furnish to the proper officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods.

Explanation – For the purposes of this rule, -

- (i) The expression 'records' shall include account, agreement, invoice, price-list, return, statement or any other source document, whether in writing or in any other form;**
- (ii) The expression source documents means all documents which form the basis of accounting of transactions and include sales invoice, purchase invoice, journal voucher, delivery challan and debit or credit note.**

(b) Where an assessee maintains or generates such records by using computer, such assessee shall submit the following information to the proper officer, namely :-

- (i) documentation including policy and procedure manuals, instructions to record the flow and treatment of transactions through accounting system, from the stage of initiation to closure and storage;**
- (ii) account of the audit trail and inter-linkages including the source document, whether paper or electronic, and the financial accounts; and**
- (iii) record layout, data dictionary and explanation for codes used and total number of records in each field along with sample copies of documents.**

Whenever changes are made in the systems adopted by the assessee, he shall inform the proper officer and submit the relevant document.

(c) The assessee shall be responsible for keeping, maintaining, retaining, and safeguarding records.

(6)(a) Every assessee shall, on demand make available to the Central Excise Officer or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India,-

- (i) the records maintained or prepared by him in terms of clause (a) of sub-rule (5);**
- (ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956; and**
- (iii) the Income-tax audit report, if any, under section 44AB of Income-tax Act, 1961, for the scrutiny of the officer or audit party, as the case may be.**

(b) Every assessee who is having more than one factory and maintains separate records in respect of every factory for the purpose of audit then, he shall produce the said records for audit purposes.

(c) Where the Commissioner or the Comptroller and Auditor General of India decide to undertake the audit of the records of any assessee, the said assessee shall be given notice thereof at least fifteen days before the commencement of such audit. The audit party deputed for the purpose shall also call for in writing the records, which are required to be produced by the assessee, either before or during the course of audit.

(d) Every assessee, who maintains or generates his records by using computer, shall provide the required records in the form of tapes or floppies or cartridges or compact disk or any other media in an electronically readable format as prescribed by the Commissioner at the time of audit. The copies of records, so furnished, shall be duly authenticated by the assessee.

(e) All records submitted to audit party in electronic format shall be used only for verification of payment of duties of excise or for verification of compliance of the provisions of the Central Excise Act, 1944 or the rules made thereunder and shall not be used for any other purpose without the written consent of the assessee.

(7) Notwithstanding the provisions of sub-rules (1) and (3), an assessee manufacturing excisable goods specified in this behalf by the Central Government by notification in the Official Gazette, whose duty liability in the preceding financial year did not exceed five hundred rupees or who being a new assessee does not expect to be liable to pay more than five hundred rupees as duty in the relevant financial year, may, after informing the proper officer in writing, pay duty in respect of each separate consignment at the time of removal instead of keeping an account-current with the Commissioner, and may also file the return prescribed in sub-rule (3) for a quarter within seven days after the close of every quarter instead of filing the monthly return.

(8) In respect of a manufacturer availing of the exemption under a notification based on the value or quantity of clearances in a financial year, the provisions of this rule shall have effect in that financial year as if for the word "month", wherever it occurs, the word "quarter", and for the word "monthly", wherever it occurs, the word "quarterly" were substituted.

(9)Every assessee shall preserve the records including book of accounts, and source documents and data in any electronic media, where any document is generated on computer, for five financial years immediately after the financial year to which the records pertain.”

The exemption so granted as contained in the Notifications of 1999 was made applicable to new industrial units, which commenced their commercial production on or after 24.12.1997. The exemption also applied to industrial units which existed prior to the date of 1997 IPR namely, 24.12.1997 and which had substantially expanded the production capacity not below 25%. The period of tax holiday/exemption as mentioned hereinabove, was for ten (10) years from the date of publication of the Notification in the official gazette or from the date of commencement or from the date of commencement of commercial production, whichever was earlier. In the instant case, the industrial unit did not fall in the latter category namely, a unit existing prior to 24.12.1997 which substantially expanded the installed capacity of the unit, say, by not less than 25% on or after 24.12.1997.

The 1997 Notifications in due course underwent several amendments but the industrial units which were granted benefits have always maintained that, irrespective of amendment notifications, they are entitled to get exemptions to the extent and in terms of the 1999 Notification. Under the 1999 Notification, a new industrial unit was entitled to seek refund of excise duty equivalent to the amount to the duty paid by the manufacturer for the finished goods from the account currently maintained under Rule 9 read with Rule 173G of the Central Excise Rules, 1944. Thereafter, in 2001, the Cenvat Credit Rules were framed which simplified the credit provisions and procedure for availing credit of the duty paid on any input and capital goods used, whether directly or indirectly, or, in respect of manufacture of final products. The credit of the duty so allowed could be used for payment of excise duty leviable on the finished goods subject to the conditions laid down in the relevant Rules. The Rules so framed were designed to collect the excise duty only on the finished goods and to enable the manufacturer of the finished goods to take credit of the duty paid on the inputs or the capital goods used in the manufacture of finished products and could utilize the said credit for payment of excise duty on the final finished products.

The Cenvat Credit Rules, 2001, thus provided for utilization of Cenvat credit towards payment of excise duty on the inputs first and to receive the refund of only such amount of excise duty which were paid after utilization of the Cenvat credit. Thereafter, Notification of 1999 was amended by a Notification No.61/2002-CE dated 23.12.2002 and amendment Notification dated 6.8.2003. However, during the life span of the 1997 IPR which was up to 2007, the Government of India announced a new Industrial Policy Resolution by a Memorandum dated 1.4.2007 called, North-East Industrial and Investment Promotion Policy, 2007, (for short, NEIIPP), (to be called the 2007 IPR). Under this policy also, a package of fiscal and other concessions, apart from incentives, were promised.

The grievance of the petitioner herein is that, during the tax holiday period of concession/exemption benefits, by issuing the Notification No.17/08 dated 27.3.2008, the Ministry of Finance, Department of Revenue, restricted the benefits of 100% exemption from payment of excise duty to the maximum limit as per rates provided in the table appended to the Notification. Thus, there is a complete change in the scenario by reducing the promised limit of exemption which was earlier available to the extent of 100%, whereas, by the impugned Notification of 2008, it has been restricted to certain percentage as provided in the appendix. What prompted the Central Government to issue the Notification of 2008 appears to be the complaints of showing bogus production by mere issuance of sale invoices without actual production of goods and supply, clearance of excisable goods. That caused availment of cenvat credit by buyers of such excisable goods in other parts of the country without actual production being carried out and in absence of actual receipt of goods.

According to Dr Saraf, learned senior counsel, under the Notification of 2008, not only the benefits of 100% exemption have been restricted to the rates provided in the table appended thereto, but also the rates of exemption benefits differ from case to case. The second submission of Dr Saraf is that, the Notification of 2008 was issued beyond the pale of its competence by the authority because the industrial policy, whereunder, the petitioner company was granted 100% exemption was not amended before issuance of such Notification. Dr. A. Saraf, learned senior counsel, cited two judgments in support of his arguments. In the first judgment under reference namely, ***State of Jharkhand & Ors. Vs. Tata Cummins***

Ltd. & Anr, reported in (2006) 4 SCC 57, he laid stress on Para 16 which reads as under :

“ 16. Before analyzing the above policy read with the notifications, it is important to bear in mind the connotation of the word “tax”. A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly. However, when an assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute.”

While citing the second one, i.e. *State of Bihar Vs. Suprabhat Steel Ltd*, reported in *(1999) 1 SCC 31*, Dr Saraf, in particular, highlighted para 7 which is also reproduced as :

“7. Coming to the second question, namely, the issuance of notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. The industrial incentive policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification issued to carry out the objectives and the policy decisions taken in the industrial policy itself. In this view of the matter, any notification issued by government order in exercise of power under Section 7 of the Bihar Finance Act, if it is found to be repugnant to the industrial policy declared in a government resolution, then the said notification must be held to be bad to that extent. In the case in hand, the notification issued by the State Government on 4-4-1994 has been examined by the High Court and has been found, rightly, to be contrary to the Industrial Incentive Policy, more particularly, the policy engrafted in clause 10 (4)(i)(b). Consequently, the High Court was fully justified in striking down that part of the notification which is

repugnant to sub-clause (b) of clause 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a notification in exercise of power under Section 7 of the Bihar Finance Act, which may override the incentive policy itself. In our considered opinion, the expression “such conditions and restrictions as it may impose” in sub-section (3) of Section 7 of the Bihar Finance Act will not authorize the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general policy resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the notification dated 4-4-1994.”

However, during the course of hearing, on being asked a question as to the sanction of law behind the issuance of North East Industrial Policy (file No. EA/1/2/96-IPD, Government of India, Ministry of Industry, Department of Industrial Policy and Promotion), we could get no answer. Unless a policy is issued under the authority of law, it may sound to be in conflict with the basic tenet of the parliamentary democracy namely, the rule of law. In that view of the matter, as we could get no answer, it would be appropriate to ask the Central Government, Ministry of Industry to clarify the position. Hence, we direct the Secretary, Ministry of Industry, Government of India, Department of Industrial Policy and Promotion to file affidavit clarifying the position within a period of 2 (two) weeks as to whether the policy in question has been formulated in exercise of powers under Article 73 of the Constitution of India or by way of amendment in the Statute.

The third limb of argument of Dr. A. Saraf, learned senior counsel, is that in order to promote the object of the North East Industrial Policy, a notification was issued in 1999 whereunder, certain rights, benefits, privileges were granted where the same have been taken by amending that Notification by the 2008 Notification which is not permissible under Section 38 (A) of the Central Excise Act, 1944.

Thus, on joint request, the matter is adjourned to
16.06.2015.

List the matter accordingly.

JUDGE

CHIEF JUSTICE

Sylvana