

# *GST CAFÉ*

*Delhi HC quashes petition for equivalent continuation of pre-GST tax incentives  
(Judgment dt. 02.03.2020)*

## BACKGROUND

Under the erstwhile indirect tax regime, the Centre and many States had announced and facilitated area-based incentives in the form of duty exemptions for a certain promised period of time to encourage industrial presence in certain underdeveloped regions. On account of introduction of the Goods and Services Tax (“GST”), many such incentives were subjected to a blanket withdrawal. In many cases, these incentives have not found complete reimbursement.

The Centre had introduced Notification Nos. 49/2003–C.E. 50/2003–C.E dated 10<sup>th</sup> June, 2003 granting upfront exemptions from central excise duty for a period of 10 years from the date of commencement of operations to certain industrial units (“Eligible Units”) set up within certain regions of the States of Uttarakhand and Himachal Pradesh. These incentives were withdrawn by Notification No. 21/2017–C.E. dated 18<sup>th</sup> July, 2017. Thereafter, the Centre introduced the Scheme of Budgetary Support by way of DIPP Notification dated 5<sup>th</sup> October, 2017 bearing F. No. 10(1)/2017-DBA-II/NER for reimbursement of 58% and 29% of CGST and IGST, respectively, paid by the Eligible Units in cash.

## WRIT PETITION BEFORE DELHI HC

M/s Hero MotoCorp Ltd. filed W.P.(C) 505/2020 before the Delhi High Court challenging only partial reimbursement granted to Eligible Units *vide* the SBS. The Delhi HC *vide* order dated 02.03.2020 dismissed the petition, holding that the Centre is not bound to continue any pre-GST incentives introduced by it.

## PETITIONER'S SUBMISSIONS

- i. The promise to continue duty exemption for a certain period confers a **vested right** upon the Petitioner;
- ii. The revocation of incentive goes **against the policy of promoting industrial development** within the State;
- iii. The **Centre is bound by the principle of promissory estoppel** where the promise represented by it has been acted upon by the Petitioner;
- iv. Partial **reimbursement on the basis of the formula of devolution of taxes by the Union to the States is arbitrary** and complete reimbursement should be made available to the Petitioner;
- v. The exemption per the excise notifications to be granted *"for a period not exceeding 10 years"* is not to be understood as implying unilateral revocation at any time prior to completion of 10 years.

## RESPONDENT'S SUBMISSIONS

- i. The term “*for a period not exceeding 10 years*” confirms that there is no bar in suspending the exemption before a period of 10 years has expired in respect of a particular beneficiary;
- ii. The principle of promissory estoppel cannot be invoked *qua* a legislative act.

## HC JUDGMENT

The Delhi HC dismissed the writ petition *vide* its judgment order dated 02.03.2020, observing as under:

- i. It was observed that the central excise law has undergone a complete change and the notification granting duty exemption has, likewise, lost force. The HC noted that the notification rescinding the incentive is issued in accordance with the law, under the repeal and savings clause under section 174(2)(c) of the Central GST Act, 2017.

The HC distinguishes the decision in Manuelsons Hotels v. State of Kerala & Ors. [(2016) 6 SCC 766] since the same applies the doctrine of promissory estoppel to an executive action. Its application to legislative action has been rejected by the HC in the present case.

## [CONTD.] HC JUDGMENT

- ii. The HC, on the issue of only partial reimbursement of tax, holds that **the ratio sanctioned under the SBS is in line with the recommendations on devolution of taxes from the Union to the States by the 14<sup>th</sup> Finance Commission**. It is observed that reimbursement of the entire amount would amount to the Centre bearing the burden of such duty twice (once in reimbursement to eligible units and once again in devolution to the States).
- iii. The HC observes that consolidation of taxes under one head under the GST structure has provided for **free availability of input tax credit (“ITC”)** which was not the case under the previous regime and thus, the incentive has to be understood in terms of this change.
- iv. The SBS is further held to not be in lieu of previous exemptions. **It is introduced as a measure of goodwill and does not vest any right in favour of the Petitioner** and accordingly, reimbursement of balance amount of CGST and IGST cannot be enforced by the Petitioner against the government.

## VA COMMENTS

The Delhi HC has adopted a very narrow view of the matter at hand. The position of law on the doctrine of promissory estoppel against the Government has oscillated through the years. However, it is comprehensively dealt with by the Supreme Court in Manuelsons Hotels (*supra*) in 2016. The applicability of the doctrine to the legislative sphere is also well-established by precedent.

Additionally, the factual matrix in respect of devolution of Union revenue to the States as per the 14<sup>th</sup> Finance Commission Report has not been captured in the order. The balance 42% of CGST and 21% of IGST, having internally been distributed by the Centre to all the States of the Union, remains elusive to any claim by the Eligible Units. The logistical restrictions of this mechanism has not found consideration by the Delhi HC. It is expected that the Supreme Court would delve into these issues being faced across industries due to revocation of multiple pre-GST tax incentives and be better inclined to appreciate the same.

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