

HC: Dismiss 100% Budgetary support for area based exemption in post GST regime

The Hon'ble HC, Delhi in the matter of **M/s Hero Motocorp Ltd. v. Union of India & Ors. [W.P.(C) 505/2020 & CM APPL. 1328/2020 dated March 2, 2020]** dismissed the writ petition seeking complete exemption by way of reimbursement of the amount of Central Goods and Service Tax ("**CGST**") and/or Integrated Goods and Service Tax ("**IGST**"), for the residual period of 10 years of area-based exemption Notification No. 50/2003- C.E. dated June 10, 2003 ("**Exemption Notification**").

Facts:

M/s Hero Motocorp Ltd. ("**the Petitioner**") is engaged in the business of manufacturing of two wheelers in the State of Uttarakhand.

In the year 2002, special packages of incentives were announced to promote industrial development in the State of Uttarakhand. In pursuance thereto, Office Memorandum Order dated January 7, 2003, was issued, detailing the package of incentives. The fiscal incentive provided under the memorandum included 100% *ab inito* Central Excise Duty Exemption to new industrial units for a period of 10 years from the date of commencement of commercial production.

Thereafter, **Exemption Notification** was issued providing exemption to industrial units for a period not exceeding 10 years from the date of publication of notification in the Official Gazette or from the date of commencement of commercial production, whichever is later.

Since the Petitioner's unit qualified for exemption under the Exemption Notification, it established a new industrial unit for manufacture of motor vehicles at Haridwar, Uttarakhand and commenced commercial production in its industrial unit from April 7, 2008 and continued to avail the benefits of the exemption notification till July 1, 2017.

With the implementation of GST, vide Notification No. 21/2017-C.E. (NT) dated June 30, 2017 various area-based exemption notifications, including the Exemption Notification were rescind w.e.f. July 1, 2017. Due to the rescission of the Exemption Notification, the beneficial incentives granted to the Petitioner, ceased to continue w.e.f. July 1, 2017.

Since the withdrawal of the Exemption Notifications caused financial hardships, the GST Council decided that it would provide budgetary support to the eligible units for the residual exemption period by way of part reimbursement of GST, paid by the unit, limited to the Central Government's share of CGST and/or IGST retained after devolution of a part of these taxes to the States. Accordingly, the Central Government notified the Budgetary Support Scheme providing reimbursements of Central Government's share of the cash component of CGST and IGST i.e. 58% of CGST and 29% of IGST, in lieu of exemption provided under the Exemption Notification.

Issue:

The Petitioner filed writ petition to seek a direction to Union of India (“Respondent”) to grant “complete exemption by way of reimbursement of the amount of CGST and IGST for the residual period of Exemption Notification”.

Held:

The Hon’ble HC, Delhi in *W.P.(C) 505/2020 & CM APPL. 1328/2020 dated March 2, 2020* held as under:

- The Court observed that the Petitioners have not acquired vested right in terms of the policy. The fiscal benefits promised in return for making investments in the State of Uttarakhand were privileges which were granted under law that no longer holds the field. The rights and the obligations that were flowing under the tax regime originated from the tax structure that existed when the policy was framed. Such obligations cannot stay alive, if the legislation itself has undergone a complete overhaul by advent of introduction of GST legislations. Therefore, the Budgetary Support Scheme cannot be said to be in contravention of the fiscal incentive policies or promise made by Respondent at the time of introducing area-based exemptions. In the previous tax regime, taxes were being levied on different incidents, such as ‘manufacturing’ in the case of the levy of excise duty. GST is a destination-based tax, the area based exemptions, under the GST regime have entirely different dimensions and therefore, for this reason, there are no area-based exemptions envisaged under the GST regime. The Government has, instead, provided the necessary support to the industry for its economic development and has grandfathered the incentive Scheme.
- There is no irrationality or arbitrariness with respect to partial tax budgetary support. Firstly, the Budgetary Support is not an exemption. The rationale of providing support to the extent of Central Government’s share of CGST and the IGST is also based on the reasoning which cannot be questioned by the Petitioner. Article 279A of the Constitution provides that the GST Council shall make recommendations to the Union and States, inter alia, on issues relating to special provision with respect to the States of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand. The GST Council in its meeting held on September 30, 2016, left it to the discretion of the Central Government and State Government to notify schemes of Budgetary Support to units where the erstwhile schemes were in operation on July 1, 2017. Accordingly, the Central Government provided the Budgetary Support to eligible units for the residual period by way of part re-imburement of GST paid by the unit, limited to Central Government’s share of CGST and IGST retained after devolution of part of these taxes to the States.

- The plea of promissory estoppel cannot be enforced against an act done in accordance with the statutory provisions of law. Under Section 174(2)(c) of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”), express provision has been made by the Parliament to provide that any tax exemption granted as an incentive against investment through a notification under, inter alia, the erstwhile Central Excise Act, 1994 shall not continue as a privilege if the said notification is rescinded, and in the present case, the exemption notification was rescinded. Thus, in the absence of any challenge by the Petitioner to the rescission of the exemption notification which granted exemption or to the vires of the proviso to Section 174(2)(c) of the CGST Act, no plea of promissory estoppel is maintainable. The language used in the proviso to Section 174(2)(c) of the CGST Act is clear and unequivocal and leaves no room for a different interpretation.
- Dismissed the petition.

Relevant provisions:

Section 174 (2) (c) of the CGST Act

“Repeal and saving.

174. (2) *The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994.) (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-*

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or”

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