

**SC: Argument of promissory estoppel not valid in limiting erstwhile Area based exemption upto 58% under GST**

The Hon'ble Supreme Court of India in *M/S Hero Motocorp Ltd. v. Union of India & ors. [Civil Appeal No. 7405 of 2022]* held that the assessee established its units in North Eastern and the Himalayan States based on the Office Memorandum of 2003 and it was not any kind of promise that was done by the Central government during the pre-GST regime. Therefore, a 100% exemption cannot be granted to the assessee based on this memorandum. Moreover, the Apex Court also suggested that the assessee can approach the respective state government and GST council for representing this matter.

**Facts:**

During the pre-GST regime, the Government of India issued an offering memorandum of 2003 ("**O.M**") which provided that new industrial units and existing industrial units on their substantial expansion in the States of Uttaranchal and Himachal Pradesh, would be entitled to exemption of 100% outright central excise duty for 10 years from the date of commencement of commercial production. Further, the said O.M. also provided that there shall be a 100% income tax exemption for such units initially for five years and thereafter 30% for companies and 25% for other companies for a further period of five years, from the date of commencement of commercial production.

M/S Hero Motocorp Ltd ("**the Appellant**") established a new industrial unit for the manufacture of motorcycles at Haridwar, Uttarakhand, and commenced commercial production dated April 07, 2008, therefore, the Appellant had this exemption till the year 2018. But, since the GST regime came into the picture, they availed the exemption only up to July 01, 2017. Thereafter, the benefit enjoyed by the Appellant was reduced to 58% through the Budgetary Support Policy vide *Notification no. 10(1) 2017-DBA-II/ NER dated October 05, 2017*. Under this scheme, it is provided that the reimbursement will be done of the Central

share of Central Goods and Services Tax (“**CGST**”) and Integrated Goods and Services Tax (“**IGST**”) to the affected eligible industrial units for the residual period in the North Eastern and the Himalayan States. The Central share was determined at 58% of CGST and 29% of IGST.

Aggrieved by this Notification, the Appellant filed a writ petition in the Delhi High Court with a prayer that they must be granted 100% of tax exemption as they were given in the pre-GST regime which was applicable up to 10 years from the date of commencement of production.

The Delhi High Court dismissed the petition in its order dated March 02, 2020 (“**the Impugned order**”).

Therefore, being aggrieved by the Impugned order, the Appellant approached the Supreme Court with the present appeal.

**Issue:**

Whether the Central Government is liable to grant 100% exemption under the Budgetary support scheme to the Appellant or not?

**Held:**

The Hon’ble Supreme Court of India in ***Civil Appeal No. 7405 of 2022*** held as under:

- The appeal cannot be allowed in favor of the Appellant as the discretion vested in the Central Government, is to be exercised on the recommendations of the GST Council. It was also observed by the Court that the Central Government was not bound to continue with a representation made by it in 2003 in view of the change of law by the enactment of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”). However, in order to partly honor the representation made by it, it has decided to refund 58% of the CGST paid in cash by the Appellant.

- Observed that this Court cannot interfere in policy matters of the Government unless the policy is found to be palpably arbitrary and irrational. Therefore, the claim of the Appellant based on promissory estoppel on the basis of Section 11 of the CGST Act is not of any substance.
- Dismissed the appeal stating that the Appellant is permitted to make representations to the respective State Governments as well as to the GST Council in respect of this issue, and the State Governments as well as to the GST Council are also directed to consider such representations of the Appellant.

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