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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026

(Arising out of Special Leave Petition No. 26731 of 2025)

STATE OF HIMACHAL PRADESH & ORS. **...APPELLANTS**

VERSUS

M/S KUNDLAS LOH UDYOG **...RESPONDENT**

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:-

INDEX

1. Leave Granted.

2. This appeal arises from the judgment and order dated 07.05.2025 passed by the High Court of Himachal Pradesh in Civil Writ Petition No. 1667 of 2021 preferred by the respondent herein by which the High Court directed the appellants herein to issue the enabling notification in terms of the incentives under the Clause 16(A) of the Himachal Pradesh Industrial Policy, 2019 ("**Industrial Policy of 2019**") with effect from the date of commercial *qua* the respondent company, and set aside Clause 5B of Industrial Policy of 2019 as well as Rules 4(B) and 4(F) respectively of the Rules regarding grant of incentives, concessions, facilities for investment promotion in Himachal Pradesh, 2019 ("**2019 Rules**") to the extent of their inconsistency with the Industrial Policy, 2019.

A. PARTIES TO THE APPEAL

3. The appellant no. 1 is the State of Himachal Pradesh through its Director, Department of Industries. The Department of Industries is responsible for the implementation of various industrial development policies and other Governmental policies. Under the Industrial Policy of 2019 and the corollary 2019 Rules respectively, the Department of Industries *inter alia* aims at assisting projects by providing grants, issuing commencement of commercial production certificate ("**COP Certificate**") and is responsible for receiving reimbursement claims.

4. The appellant no. 2 is the State of Himachal Pradesh through its Additional Chief Secretary, Department of MPP & Power. The Department of MP & Power mainly handles energy policy, planning,

and hydro-power development in the State of Himachal Pradesh. Under the Industrial Policy of 2019, the Department of MP & Power is tasked with issuing an enabling notification for concessions in electricity.

5. The appellant no. 3 is the State of Himachal Pradesh through its Chief Secretary, Shimla.

6. The appellant no. 4 is the Himachal Pradesh State Electricity Board (HPEB). The appellant no. 4 was constituted in accordance with the provisions of the Electricity Act, 1948, and is responsible for promoting coordinated development of power potential, generation, transmission, and distribution of electricity within the State of Himachal Pradesh. Under the Industrial Policy of 2019, the appellant no. 4 notifies the incentives of a concessional rate of electricity charges in the Schedule of Tariff for Himachal Pradesh on a year-to-year basis.

7. The respondent is a manufacturer engaged in industrial metal processing and stamping. The respondent has undertaken a substantial investment in 2020.

B. FACTUAL MATRIX

8. The appellant no. 1 *vide* its notification dated 16.08.2019, notified the Industrial Policy of 2019 in the State of Himachal Pradesh, along with the said Rules, with an intent to make available the incentives, subsidies, and infrastructure to industrialists and to attract industrial investment in the State. The policy objectives *inter alia* aimed to create a congenial investment climate, to attract further investment and boost employment in the State.

9. Clause 5 of the Industrial Policy of 2019 provides for eligible enterprises that may avail the incentives under the policy. As per Clause 5(A), all new industrial enterprises (except a few industries as listed in the policy) and all existing industrial enterprises undertaking substantial expansion (except a few industries as listed in the policy) will be eligible for the incentives, concessions, and facilities announced under the Industrial Policy of 2019, subject to the following conditions:

(i) Fulfilment of the eligibility criteria and conditions as stated in the 2019 Rules;
(ii) Employment of a minimum of 80% bonafide Himachalis out of the additional employment generated due to the substantial expansion

10. As per Clause 5(B), the incentives provided under the Industrial Policy of 2019 will be admissible from the date of commencement of the commercial production or from the date on which the respective administrative department issues an enabling notification to operationalise the incentives notified in the policy, whichever is later.

11. Clause 16 of the Industrial Policy of 2019 deals with the concessional rate of electricity charges. As per Clause 16(a), the eligible enterprises were to receive a 15% discount on the approved energy charges for the respective category for a period of 3 years. Whereas, according to Clause 16(b), for the existing industrial consumers, a rebate of 15% on energy charges was applicable for additional power consumption beyond the level of the preceding financial year (FY). However, it was further provided that the

incentives for concessional rate of electricity charges would be notified by the issuance of a tariff order on a year-to-year basis by appellant no. 4 and that it would not be binding upon the appellant no. 1 during the applicability of the policy. The relevant clauses of the Industrial Policy of 2019, including its vision statement and objectives, read thus:

> *"**1. Introduction***
>
> *[…] The severe climatic conditions, topographical and geographical severities throw challenges in the process of industrialization. In such a scenario, the benefits made available in the form of incentives and subsidies, as well as the creation of appropriate infrastructure, become the main instruments to attract industrial investment in the State. With substantial investment in infrastructural facilities, the State has been able to offset the location and geographical disadvantages to a considerable extent. Factors like low cost quality power, harmonious industrial relations, low cost of land and clean environment, investor friendly administration, attractive incentives and tax concessions, accessibility to Northern markets - all contribute towards creating a healthy investment climate in our State […]*
>
> ***2. Vision Statement***
>
> *To create an enabling ecosystem to enhance the scale of economic development & employment opportunities; ensure sustainable development & balanced growth of industrial & service sectors to make Himachal as one of the preferred destination for investment*
>
> ***3. Objectives***
> *This policy aims to:-*
>
> *i) serve as a guideline to create a congenial investment climate for existing industries to grow as well as to attract further investment in the State for creating employment opportunities for local youth and to ensure development of Industrial & Service Sector throughout the State.*
>
> *xxx xxx xxx*

vii) recognize and encourage the role of large investment to enhance the scale of economic development, employment opportunities, ancilliarisation, revenue generation and remunerative prices to local resources.

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5. Eligible Enterprises for availing incentives under this Policy:-

(A) *All "New Industrial Enterprises" except Industrial Enterprises engaged in manufacturing activities specified in the "Negative List" annexed with this policy;*

AND

New Enterprises engaged in "Specified Category of Service Activities" annexed with this policy;

AND

All Existing Industrial Enterprises undertaking Substantial Expansion except Industrial activities as specified in the Negative List;

AND

All Existing Service Enterprises engaged in Specified Category of Service Activities undertaking Substantial Expansion:

will be eligible for incentives, concessions and facilities announced under this Policy, subject to:-

- *fulfilment of the eligibility criteria & conditions as defined under the 'Rules regarding Grant of Incentives, Concessions & Facilities to Industrial & Service Enterprises in Himachal Pradesh-2019'.*
- *employment of minimum 80% Bonafide Himachalies, at all levels, directly on regular, contractual, daily basis, etc. or through contractor or outsourcing agencies at the time of commencement of commercial production/operation as well as for the time period it remains in commercial production/operation in the State by the New Enterprise set up under this Policy. In case of Existing Enterprises undertaking substantial expansion, out of additional employment generated due to Substantial Expansion employment to atleast 80% of Bonafide.*

(B) *Incentives provided under this policy will be admissible from the date of commencement of commercial production/operation or from the date on which respective*

administrative department issues enabling notification under the relevant statute/law to operationalize incentives notified under this policy, whichever is later.

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***16. Concessional rate of electricity charges**: (excluding any surcharge, peak load exemption charge, winter charge, fuel adjustment charge, service charge, GST or any other charge under any name in the Tariff Schedule):-*

*(a) **Eligible enterprises** would be charged energy charges 15% lower than the approved energy charges for the respective category for a period of 3 years.*

(b) Existing industrial consumers, a rebate of 15% on energy charges shall be applicable for additional power consumption beyond the level of the preceding financial year.

Incentives for concessional rate of electricity charges would be notified in the Schedule of Tariff for Himachal Pradesh on a year to year basis by the HP State Electricity Board and that it would not be binding upon the State Government during the applicability of this Policy."

(Emphasis Supplied)

12. Furthermore, in order to complement the Industrial Policy of 2019, the appellant no. 1 had also notified the 2019 Rules. Rule 4 therein dealt with the provisions of eligibility of industrial enterprises for the purpose of availing the incentives under the Industrial Policy of 2019. Rule 4(B) provided that all existing industrial enterprises undertaking substantial expansion (except a few industries as stated in the policy) will be eligible for incentives, concessions, and facilities under the 2019 Rules, subject *inter alia* to the following conditions:

(i) Fulfilment of such requirements as specified under Clause 4;

(ii) The incentive provided under the 2019 Rules would be admissible from the date of undertaking substantial expansion

taken on record by the Department of Industries or from the date on which the respective administrative department issued enabling notification under the relevant statute/law to operationalize incentives notified under this policy, whichever was later. In case of an existing enterprise having undertaken subsequent expansions after the first substantial expansion, the same would be taken on record for the purpose of incentives, concessions, and facilities provided under the 2019 Rules for additional investment;

(iii) In the case of employment generated due to substantial expansion, it would have to employ 80% bonafide Himachalis;

(iv) The incentives, concessions, and facilities under the 2019 Rules were to be provided under the discretionary powers of the appellant no. 1, and would not create any claim/right against them and are not enforceable in any court of law. The appellant no. 1 was empowered in its wisdom to decide to amend, alter, delete or revise any or all of the incentives notified under the 2019 Rules and no claim on account of such a decision would be entertained.

13. The relevant provisions of the 2019 Rules read thus:

> ***"4. Eligibility:-***
>
> *xxx xxx xxx*
>
> *B) All Existing Industrial Enterprises undertaking substantial Expansion (except Industrial activities specified in the Negative List) and Existing Service Enterprises undertaking substantial Expansion will be eligible for incentives, concessions and facilities under these Rules, subject to:*
> *a) Fulfilment of such requirements as specified under clause 4A (a to f).*

b) Condition that incentive provided under these Rules will be admissible from the date of undertaking Substantial Expansion taken on record by the Department or from the date on which respective administrative department issues enabling notification(s) under the relevant statute/law to operationalize incentives announced under these Rules, whichever is later. In case existing enterprise undertakes subsequent expansion(s) after first Substantial Expansion, same would be taken on record for the purpose of incentives, concession & facilities provided under these Rules for additional investment.

c) Condition that in case employment is generated due to Substantial Expansion, it will employ 80% Bonafide Himachal directly or regular contractual, daily basis etc. or through contractor or outsourcing agencies.

C) Eligible MSME Enterprises fullfilling the Eligibility Criteria would be entitled to avail incentives and concessions provided under these Rules.

D) Eligible Large Enterprises fulfilling the Eligibility Criteria would be entitled to avail incentives and concessions provided under these Rules.

E) Eligible Anchor Enterprises fulfilling the Eligibility Criteria would be entitled to avail incentives and concessions provided under these Rules.

F) Incentives, concession & facilities under these Rules are provided under the discretionary powers of the State Government, do not create any claim /right against the Government and are not enforceable in any court of law. The Government in its wisdom may decide to amend, alter, delete or revise any or all of the incentives notified under these rules and no claim on account of such a decision will be entertained.

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16(i) ***Concessional rate of electricity charges:*** *(excluding any surcharge, peak load exemption charge, winter charge, fuel adjustment charge, service charge, GST or any other charge under any name in the Tariff Schedule):-*

a) ***Eligible enterprises*** *would be charged energy charges 15% lower than the approved energy charges for the respective category for a period of 3 years*

b) Existing industrial consumers, a rebate of 15% on energy charges shall be applicable for additional power consumption beyond the level of preceding financial year.

Incentives of concessional rate of electricity charges would be notified in the Schedule of Tariff for Himachal Pradesh on year to year basis by the H.P. State Electricity Board and it would not be binding upon the State Government during the applicability of Policy.

(Emphasis Supplied)

14. Upon the introduction of the Industrial Policy of 2019, the appellant no. 4 – Himachal Pradesh State Electricity Board, passed the tariff order for the FY 2019-20, *inter alia,* with the following conditions:

    (i) For the existing industrial consumer, a rebate of 15% on energy charges shall be applicable for the additional power consumption beyond the level of FY 2018-19, and

    (ii) For new industries coming into production after 01.07.2019, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years.

15. Pursuant to the introduction of the Industrial Policy of 2019 and tariff order for FY 2019-20, the respondent company, on 01.06.2020, applied for the expansion of its manufacturing unit *vide* application bearing no. 16562 addressed to the appellant no. 1 authority.

16. On 06.06.2020, the appellant no. 4 passed the tariff order for FY 2020-21, *inter alia*, with the following conditions:

    (i) For existing industries that have undergone expansion in the FY 2018-19 onwards and/or shall be undergoing expansion in the FY 2020-21, energy charges shall be 10% lower than the approved energy charges corresponding to the respective

category for a period of 3 years for the quantum of energy consumption corresponding to a proportionate increase in contract demand. Provided that such expansion is undertaken during 1.07.2019 to 31.05.2020, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years for the quantum of energy consumption corresponding to a proportionate increase in contract demand.

(ii) For new industries coming into production after 01.06.2020, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of 3 years.

17. The respondent company addressed a letter dated 11.06.2020 to the Chief Minister of the State of Himachal Pradesh for the redressal of its grievances with respect to the incentives promised under the Industrial Policy of 2019. In this letter, the respondent company highlighted that the tariff fixed under the tariff order for FY 2020-21 for the existing industrial enterprises undergoing expansion was not in consonance with the incentives as assured in the Industrial Policy of 2019 in as much as for the existing industries that were undergoing expansion in the FY 2018-19 onwards, the energy charges were fixed at 10% lower than the approved energy charges, whereas as per the Industrial Policy of 2019, it should have been 15% lower than the approved energy charges.

18. In response to the letter referred to above, the Additional Chief Secretary to the appellant no. 1 addressed a communication dated 11.06.2020 to the respondent *inter alia* stating that the enabling

notification related to the tariff incentive was to be notified by appellant no. 2 and that the same was being processed.

19. On 13.07.2020, the application for expansion submitted by the respondent was approved by the State Single Window Clearance & Monitoring Authority in its 13th Meeting.

20. The appellants thereafter amended the Industrial Policy of 2019 and also the 2019 Rules respectively on 07.10.2020 to insert the provisions relating to the duration of the Industrial Policy of 2019 by inserting *inter alia* Clause 5(C) therein, which stated that incentives under the Industrial Policy of 2019 will remain in force for existing enterprises undertaking substantial expansion which start commercial production on or before 31.12.2025. Clause 5(C) reads as under:

> *"5(C) Duration:- Incentive provided under this Policy will remain in force for new enterprises which commence commercial production/ operation on or before 31.12.2025. Incentive provided under this Policy will remain in force for existing enterprises undertaking substantial expansion which start commercial production/ operation after expansion on or before 31.12.2025."*
>
> (Emphasis Supplied)

21. On 12.02.2021, the appellant no. 1 issued a certificate of substantial expansion certifying that the respondent expanded its unit. The COP Certificate stated as follows:

(a) The respondent unit had commenced the commercial production on 11.04.2006;

(b) The respondent was registered with appellant no. 1 on a permanent basis as a Small Enterprise since 17.11.2008;

(c) The expansion proposal of the respondent was approved by the State Single Window Clearance & Monitoring Authority in its 13th Meeting dated 13.07.2020;

(d) The respondent unit implemented the expansion proposal and was promoted to a Large & Medium Scale unit;

(e) The certificate will be subject to the eligibility of the respondent unit regarding any incentives as per the guidelines, rules, regulation of the concerned department.

22. On 17.02.2021, the respondent sent a communication to the appellant no. 3 wherein it was informed that the respondent and similarly situated persons were feeling cheated by the State, as the State Government failed to notify the incentive of concessional rates of electricity charges as given to eligible enterprises under the Industrial Policy of 2019. The respondent stated in the said communication that the appellant no. 4 had orally communicated to it that they would not be in position to grant the said incentive in the respondent's favour, as no communication or direction to implement the said incentive had been received from the State Government.

23. The respondent, thereafter on 15.03.2021, filed a Writ Petition before the High Court *inter alia* seeking the issuance of an enabling notification for the incentive of a concessional rate of electricity charges in terms of Clause 16(a) of the Industrial Policy of 2019. The respondent also prayed for the quashing of Clause 5B of the Industrial Policy of 2019, along with Rules 4B(b) and 4F of the 2019 Rules respectively.

24. Post the aforesaid, the appellant no. 4 on two occasions, i.e. on 31.05.2021 and 06.06.2020, passed the tariff order for FY 2021-22 and FY 2022-23 respectively, *inter alia*, with the conditions that the existing enterprises which have undergone expansion during 01.04.2018 to 30.06.2019 and/or during 01.06.2020 to 31.05.2021, the energy charges will be 10% lower than the approved energy charges corresponding to the respective category for a period of three years for the quantum of energy consumption corresponding to the proportionate increase in contract demand. Provided that, such expansion, if undertaken during 1.07.2019 to 31.05.2020 and/or shall be undergoing expansion on or after 01.06 2021, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years for the quantum of energy consumption corresponding to the proportionate increase in contract demand.

25. During the pendency of the proceedings before the High Court, the appellant State, on 29.04.2022, amended the Industrial Policy of 2019 along with the 2019 Rules. Among various amendments, Clauses 16 of the Industrial Policy of 2019 and 2019 Rules were also amended, wherein the expression *"eligible enterprises"* was changed to *"new enterprises"* in Clause 16(a) and Rule 16(i)(a). It is argued by the appellants that this amendment in Clause 16(a) and Rule 16(i)(a) was clarificatory in nature and thus applied retrospectively. As per Clause 4 of the amendment notification, the amended provisions in the amendment notification were to be enforced with immediate effect. The amended Clause 16 and Rule 16 are stated as under:

> *"**16.** Concessional rate of electricity charges: (excluding any surcharge, peak, load exemption charge, winter charge, fuel*

adjustment charge, service charge, GST or any other charge under any name in the Tariff Schedule):

***a) <u>New enterprises</u>** <u>would be charged energy charges 15% lower than the approved energy charges for the respective category for a period of 03 years</u>,*

***b) <u>Existing industrial consumers undertaking substantial expansion</u>** <u>as per these Rules</u> would be eligible for a rebate of 15% on energy charges for additional power consumption beyond the level of preceding financial year for a period of 03 years […]*

xxx xxx xxx

***16(i)** Concessional rate of electricity charges: (excluding any surcharge, peak load exemption charge, winter charge, fuel adjustment, charge, service charge, GST or any other charge under any name in the Tariff Schedule):-*

***a) <u>New enterprises</u>** <u>would be charged energy charges 15% lower than the approved energy charges for the respective category for a period of 03 years</u>.*

***b) <u>Existing industrial consumers undertaking substantial expansion</u>** <u>as per these Rules</u> would be eligible for a rebate of 15% on energy charges for additional power consumption beyond the level of the preceding financial year for a period of 03 years. […]"*

(Emphasis Supplied)

26. Pursuant to the above, the High Court passed the impugned judgment and directed the appellants to issue the enabling notification in terms of the incentive under Clause 16(a) of the Industrial Policy of 2019 to the respondent and simultaneously set aside Clause 5B, along with Rules 4(B)(b) and 4F of the 2019 Rules respectively.

27. In such circumstances referred to above, the appellants are here before us with the present appeal.

C. SUBMISSIONS OF THE APPELLANTS

28. Mr. P Chidambaram, Mr. Kapil Sibal, and Mr. Anup Rattan, the learned senior counsel, along with Mr. Vaibhav Srivastava, the learned AAG, appeared for the appellants. They submitted that in the Industrial Policy of 2019 and 2019 Rules respectively, the *"eligible enterprises"* were classified into (i) new industrial enterprises and (ii) existing industrial enterprises. The policy granted several benefits to each of them, one of which is a concessional rate of electricity charges. As per Clause 16 of the unamended Industrial Policy of 2019, in sub-clause (a), the *eligible* enterprises were to be charged energy charges 15% lower than the approved energy charges for a period of 3 years, and in sub-clause (b), the existing industrial consumers were to be provided a rebate of 15% on energy charges for additional consumption beyond the level of the preceding financial year. It also provided that incentives of concessional rate of electricity charges would be notified in the schedule of tariff for the State of Himachal Pradesh on a year to year basis by the appellant no. 4. In this background, the learned counsel submitted that the word *"eligible"* in Clause 16(a) was a drafting error. Rather, the same should have been replaced with the word *"new"*. The same error occurred in Rule 16(i)(a) of the 2019 Rules as well. Another error occurred in Rule 16(i)(b) of the 2019 Rules, where the words *"substantial expansion"* were inadvertently omitted. These errors were corrected *vide* the amendment notification dated 29.04.2022 wherein the word *"eligible"* in Clause 16(a) of the industrial policy of 2019 was replaced with the word *"new"* and the phrase *"substantial expansion"* was inserted in Rule 16(i)(b) of the 2019 Rules. Thus,

the amended language of Rule 16 stated that in the case of new industrial enterprises, energy charges will be levied 15% lower than the approved energy charges for 3 years and that in the case of existing industrial enterprises undergoing expansion, a rebate of 15% would be given on energy charges for additional power consumption beyond the level of preceding financial year for 3 years.

29. On the basis of this, the learned counsel argued that the respondent was an existing industry being set up in 2005 itself. A substantial expansion was carried out by the respondent by making an application dated 01.06.2020, approval by the Single Window System on 13.07.2020, and issuance of the COP Certificate on 12.02.2021, respectively. The total cost of additions was Rs. 807.80 Lakh. Thus, admittedly, the respondent is an existing industry, and for this reason, it cannot be given incentives that were meant for the new industry.

30. The learned counsel argued that the respondent's claim that it is both *"existing"* as well as *"eligible"* in terms of Clause 16 is illogical. The learned counsel argued that the amendment notification was merely clarificatory and, thus, would apply retrospectively.

31. The learned counsel further argued that the respondent has already been duly given the rebate incentive of 15% on the energy charges for additional power consumption as per Clause 16(b) of the Industrial Policy of 2019, and Rule 16(i)(b) of the 2019 Rules. Thus, having received the rebate incentive as an existing industrial enterprise undertaking substantial expansion under Clause 16(b) of the policy, the respondent now cannot claim further benefit under Clause 16(a) as it will amount to double benefit.

D. SUBMISSIONS OF THE RESPONDENT

32. Mr. Navin Pahwa, the learned senior counsel, appeared for the respondent, wherein he submitted that the appellants are bound by the doctrine of promissory estoppel as in terms of the Industrial Policy of 2019, the respondent had acted upon and undertook substantial expansion in the plant & machinery to the extent of 88.69%, far exceeding the minimum requirement of 25% mandate prescribed under the Industrial Policy of 2019. He further argued that the respondent, having altered its position based on the representations and assurances made by the appellants in the policy and in communications, became entitled to the incentive under the Industrial Policy of 2019 on 12.02.2021 when the respondent was issued the COP Certificate by the appellant State. He argued that till the date of issuance of the certificate, i.e. 12.02.2021, no amendment in Clause 16 was effectuated. Further, he submitted that the subsequent modification of Clause 16(a) *vide* amendment notification dated 29.04.2022, wherein the words *"eligible enterprise"* were substituted with *"new enterprises",* is inconsequential as Clause 4 of the amendment notification expressly states that the amended provisions shall come into force with *"immediate effect"* of the notification, thus, providing for prospective operation for the amended Clauses. Thus, the amended Clause 16(a) of the Industrial Policy of 2019 would not affect the entitlement of the respondent, as the respondent's rights stood crystallised on 12.02.2021 when the appellant issued the COP Certificate.

33. The learned counsel further submitted that, without prejudice to the above submission, the amendment notification dated

29.04.2022 has no bearing on the issue involved in the present *lis* as the respondent's entitlement to concession stood crystallised on 12.02.2021, much before the amendment notification, when the respondent was issued the COP Certificate by the appellant State.

E. ISSUES FOR THE DETERMINATION

34. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the questions that fall for our consideration are as follows:

(I). Whether the incentive in the form of concessional rate of electricity charges under Clause 16(a) of the Industrial Policy of 2019, read with Rule 16(i)(a) of the 2019 Rules, was ever intended to be provided to the existing industrial enterprises undergoing substantial expansion, and what effect the amendment notification dated 29.04.2022 has on the applicability of the said provisions?

(II). Whether the doctrine of promissory estoppel apply in favour of the respondent company?

F. ANALYSIS

(I). Whether the incentive in the form of concessional rate of electricity charges under Clause 16(a) of the Industrial Policy of 2019, read with Rule 16(i)(a) of the 2019 Rules, was ever intended to be provided to the existing industrial enterprises undergoing substantial expansion, and what effect the amendment notification dated 29.04.2022 has on the applicability of the said clauses?

35. As discussed above, Clause 5 of the Industrial Policy of 2019 is the eligibility clause, which provides various categories of eligible enterprises that may avail the incentives under the policy. According to Clause 5(A), all new industrial enterprises and all *existing industrial enterprises undertaking substantial expansion*, respectively (except a few industries as listed in the policy itself), are eligible for the incentives, concessions, and facilities announced under the Industrial Policy of 2019, subject to the fulfilment of two conditions, i.e. (i) meeting the eligibility criteria and conditions as stated in the 2019 Rules and (ii) ensuring employment of a minimum of 80% bonafide Himachalis out of the additional employment generated due to the substantial expansion.

36. According to Clause 16(a) of the Industrial Policy of 2019, which deals with the concessional rate of electricity charges, the *eligible enterprises* were to receive a 15% discount on the approved energy charges for the respective category for a period of 3 years. Whereas, according to Clause 16(b), the *existing industrial consumers* are given a rebate of 15% on energy charges for additional power consumption in comparison to the consumption of the preceding year. Under Clause 16, the appellant no. 4 was obliged to notify the incentives for concessional rate of electricity by the issuance of a tariff order on a year-to-year basis.

37. Rule 2(XII) of the 2019 Rules defines the term *"eligible enterprise"* as an enterprise that fulfils the eligibility criteria as per Rule 4 of the 2019 Rules. The extract of the relevant definition is as under:

> *"2(XII) "Eligible Enterprise" means an enterprise fulfilling the eligibility criteria as per the provisions made under para 5 [sic] of these Rules."*

38. Further, Rule 2(XIII) of the 2019 Rules defines the term *"existing industrial enterprise"* as an industrial enterprise engaged in the manufacturing of goods and registered/acknowledged/taken on record by the Department of Industries as such and has commenced the commercial production before the appointed date. The *"appointed date"* is defined in Rule 2(IV) to mean the date on which the 2019 Rules have come into force, i.e., 16.08.2019. Rule 2(XXXIX) also defines the term *"substantial expansion"* to mean an increase of at least 25% in the value of plant and machinery by an existing enterprise for the purpose of expansion of capacity or modernisation, or diversification, and taken on record by the Department of Industries. The extracts of the relevant definitions are as under:

> *"2(IV) "Appointed date" means date on which these Rules come into force.*
>
> *xxx xxx xxx*
>
> *2(XIII) "Existing Industrial Enterprise" means an Industrial Enterprise engaged in manufacturing of goods and registered/acknowledged/taken on record by the Department and has commenced commercial production before the Appointed Date.*
>
> *xxx xxx xxx*
>
> *2(XXXIX) "Substantial Expansion" means an increase by not less than 25% in the value of Plant and Machinery by Existing and new Enterprise for the purpose of expansion of capacity or modernization diversification, and taken on record by the department."*
>
> (Emphasis Supplied)

39. It is pertinent to note that the respondent was established in the year 2006, and it commenced commercial production on 11.04.2006, i.e. well before the appointed date, which is 16.08.2019. Additionally, the respondent had been registered with

the Department of Industries on a permanent basis as a Small Scale Enterprise since 17.11.2008. The expansion proposal was approved by the Single Window Clearance Agency of the Department of Industries on 13.07.2020, post which the respondent was granted the status of Large Scale Enterprise. Thus, there is no doubt that the respondent company is an existing industrial enterprise within the definition as provided in Rule 2(XIII) of the 2019 Rules. Further, a bare perusal of the COP Certificate would indicate that the respondent had undertaken expansion in plant and machinery to the extent of overall 88.69%, which by far exceeds the required threshold of a minimum 25% as provided in Rule 2(XXXIX) of the 2019 Rule to qualify as undergoing substantial extension and that the additional employment is generated to the tune of 80% by employing additional 21 persons, out of which 17 are Himachalis. Further, the total employment provided by the respondent is also to the tune of 80%, wherein a total of 342 persons have been so far employed, out of which 275 are bona fide Himachalis. Thus, on conjoint reading of unamended Clause 5(A) along with Rule 2(XIII) and 2(XXXIX) respectively, there is no doubt that the respondent, for purposes of the Industrial Policy of 2019, would be an *"eligible enterprise"* having undertaken a substantial expansion.

40. In the present case, a considerable part of the controversy centres around the true scope, scheme, and interplay of Clauses 16(a) and 16(b) of the Industrial Policy of 2019, read with Rule 16(i) of the 2019 Rules. The principal question that arises for our consideration is whether Clause 16(a), as it originally stood prior to the amendment dated 29.04.2022, was intended to extend the benefit of concessional energy charges to all eligible enterprises,

including existing industrial enterprises undertaking substantial expansion, or whether the said clause was always intended to operate exclusively in respect of new industrial enterprises, with enterprises undergoing substantial expansion being confined to the distinct rebate benefit contemplated under Clause 16(b). Since the respondent admittedly falls within the category of an existing industrial enterprise undertaking substantial expansion and has already availed the benefit contemplated under Clause 16(b), it becomes necessary to closely examine the structure of Clause 16, the nature of the incentives contemplated under Clauses 16(a) and 16(b), the contemporaneous tariff orders issued by the appellant no. 4, and the effect of the amendment notification dated 29.04.2022. It is only upon such an examination that the true intent underlying the Industrial Policy of 2019 and the validity of the respondent's claim for concessional energy charges under Clause 16(a) can be properly determined.

41. With respect to Clause 16, it is pertinent to note that under the Industrial Policy of 2019, incentives of a concessional rate of electricity charges were to be notified by the appellant no. 4 by issuing tariff orders on an annual basis. The respondent, being a large industrial unit, fell within the tariff category of *"Large Industry Power Supply (LIPS)"*.

42. It is significant to note that various tariff orders and schedules of rates issued by the appellant no. 4 for the large industrial consumers till the year 2017 only provided for the benefit of night-time concessions, i.e. a concession on night-time consumption of energy from 10:00 PM to 06:00 AM. However, for FY 2018-19, the appellant no. 4 issued a tariff order consisting of (i) a benefit of 10%

rebate on additional power consumption beyond the level of FY 2017-18 for existing industrial consumers; (ii) a benefit of 10% lower energy charges than the approved energy charges for new industries coming into production after 01.04.2018; and (iii) night-time concessions for consumption of energy at night. Thereafter, for FY 2019-20, the appellant no. 4 issued a tariff order consisting of (i) an incentive of 15% rebate on additional power consumption beyond the level of FY 2018-19 for existing industrial consumers; (ii) an incentive of 10% lower energy charges than the approved energy charges for new industrial consumers coming into production after 30.06.2019 and an incentive of 15% lower energy charges than the approved energy charges for new industrial consumers coming into production after 01.07.2019; and (iii) same night-time concession as above. The tariff orders for FY 2018-19 and FY 2019-20 were applicable from 01.04.2018 and 01.07.2019.

43. Following the above, the Industrial Policy of 2019 was introduced on 16.08.2019 (i.e. after the issuance of the above-mentioned tariff orders), wherein Clause 16 was inserted carrying the verbatim language of the benefits as was provided in the tariff order for FY 2018-19 and FY 2019-20, but with an inadvertent error of stating a benefit that was meant for new industries in the tariff order now inadvertently employed for both new industrial enterprises as well as existing industrial enterprises in Clause 16(a) and Rule 16(i)(a). Thereafter, the appellant no. 4 issued the tariff order for FY 2020-21, consisting of (i) *For existing industries which have undergone expansion* in the FY 2018-19 and FY 2020-21, energy charges shall be 10% lower for 3 years on the increased contract demand from the previous year; (ii) *For existing industries which have undergone expansion* in the FY 2019-20 i.e., between 01.07.2019 to

31.05.2020, energy charges shall be 15% lower for 3 years on the increased contract demand from the previous year; (iii) For new industries coming into production after 01.06.2020, energy charges shall be 10% lower for 3 years; and (iv) same night-time concession as above. The said tariff order for FY 2020-21 was applicable from 01.06.2020.

44. It is also significant to note that the Industrial Policy of 2019 introduced a wide range of incentives, concessions, subsidies, and fiscal facilities primarily for two distinct categories of enterprises as recognised under Clause 5 thereof, namely: (i) new industrial enterprises, and (ii) existing industrial enterprises undertaking substantial expansion. The entire structure of the policy appears to proceed on the basis of this clear classification. On a conjoint reading of Clause 16 along with the contemporaneous tariff orders issued by the appellant no. 4, it becomes evident that Clause 16(a) was intended to operate in respect of new industrial enterprises alone, under which such enterprises were to be granted the benefit of energy charges at rates 15% lower than the approved energy charges for a period of three years from the commencement of production.

45. Clause 16(b), on the other hand, was intended to incentivise existing industrial enterprises undertaking substantial expansion by granting a rebate of 15% on additional power consumption over and above the consumption level of the previous year. Thus, while Clause 16(a) contemplated a general concessional tariff structure for newly established industries, Clause 16(b) contemplated an incremental consumption-linked rebate for already existing units expanding their production capacity.

46. If the contention of the respondent were to be accepted, namely, that the expression *"eligible industrial enterprises"* occurring in Clause 16(a) included not only new industrial enterprises but also existing industrial enterprises undergoing substantial expansion, then such expanding units would become entitled to claim both the concessional energy charges under Clause 16(a) as well as the rebate on additional consumption under Clause 16(b). Such an interpretation would necessarily result in a situation where the same class of industrial enterprises undergoing substantial expansion would receive a dual or overlapping benefit in respect of electricity charges. In our considered view, neither the scheme of the Industrial Policy of 2019 nor the contemporaneous tariff orders indicates that the State ever intended to confer such double benefits upon the same category of enterprises.

47. Such an interpretation would also lead to an anomalous consequence whereby a benefit specifically intended for new industrial enterprises, i.e., concessional lower energy charges for a period of 3 years aimed at encouraging the establishment of fresh industrial units within the State, would stand extended even to existing industrial enterprises merely because they had undertaken expansion. The very object underlying the distinction between new industrial enterprises and existing industrial enterprises undergoing substantial expansion would thereby stand obliterated. The Policy consciously contemplated separate categories of incentives for distinct classes of industries depending upon their nature and stage of industrial activity. While new industrial enterprises were sought to be incentivised by concessional energy charges so as to attract fresh industrial investment into the State, existing industrial enterprises

undertaking substantial expansion were separately incentivised through a rebate on incremental consumption so as to encourage improvement of existing industrial capacity.

48. Accepting the interpretation canvassed by the respondent would therefore not only disturb the internal scheme and classification underlying Clause 16, but would also result in an unintended fiscal burden upon the State by permitting overlapping concessions in favour of one class of enterprises. Such a construction, in our opinion, would run contrary to the larger public interest underlying the Policy, which was to ensure balanced and rational distribution of incentives, concessions, facilities amongst different categories of industrial enterprises, and not to disproportionately enrich one category by extending cumulative benefits never contemplated in the Policy itself. In our view, it is precisely to preserve this distinction and remove the ambiguity created by the inadvertent use of the expression *"eligible enterprises"* in Clause 16(a) and Rule 16(i)(a) that the amendment dated 29.04.2022 came to be issued.

49. Having examined the scope of the provisions of the Policy, it now becomes necessary to consider the effect of the amendment notification dated 29.04.2022, which the appellants rely upon in support of their contention. According to the appellants, the amendment to Clause 16 was merely clarificatory and, therefore, retrospective in nature, with the result that the respondent would stand disentitled from claiming the concession under Clause 16(a). The respondent, on the other hand, contends that the amendment has a prospective operation as Clause 4 of the amendment notification dated 29.04.2022, expressly stipulated that the amended provisions shall come into force with *"immediate effect"*.

50. For this, it is important to understand that the amendment notification was issued clarifying the inadvertent error wherein the word *"eligible"* in Clause 16(a) and Rule 16(i)(a) was replaced with the word *"new"* and the phrase *"substantial expansion"* was inserted in Clause 16(b) and Rule 16(i)(b). Since various other Clauses and Rules were amended by the said amendment notification, the appellants inserted a *'Note'* therein stating that *"provisions amended have been highlighted as Italic and Underlined"*. It is pertinent to mention that none of the amendments clarified in Clause 16 and Rule 16 *vide* amendment notification was italicised or underlined which further indicates that the amendment to Clause 16 and Rule 16 was regarded by the appellants as clarificatory in nature as the benefits therein were always intended to be made available to two classes of industries i.e., new industrial enterprise and existing industrial enterprise undergoing expansion, respectively. At this juncture, it becomes equally important to notice that one amendment, which was in fact introduced substantively for the first time, namely, the stipulation limiting the duration of the benefit under Clause 16(b) and Rule 16(i)(b) to a period of three years, was specifically italicised and underlined in the amendment notification.

51. Therefore, there can be no manner of doubt that although several amended provisions introduced by the amendment notification dated 29.04.2022 may have prospective application by virtue of Clause 4 thereof, which stipulated that the amended provisions shall come into force with *"immediate effect"*, the amendments carried out in Clause 16 and Rule 16, except to the limited extent whereby the duration of the benefit under Clause 16(b) and Rule

16(i)(b) was prescribed for the first time, were merely clarificatory in nature. The substitution of the word *"eligible"* with the word *"new"* in Clause 16(a) and Rule 16(i)(a), and the insertion of the expression *"substantial expansion"* in Clause 16(b) and Rule 16(i)(b), did not introduce any new class of beneficiaries, nor did it create or extinguish any substantive right. Rather, the amendment merely clarified what was always intended by the appellants, namely, that the concessional lower energy charges contemplated under Clause 16(a) were confined to new industrial enterprises, whereas the rebate on additional power consumption under Clause 16(b) was intended for existing industrial enterprises undergoing substantial expansion. Being clarificatory in character, the amendment would necessarily relate back to and operate as part of the original policy.

(II). <u>Whether the doctrine of promissory estoppel applies in favour of the respondent company?</u>

52. The respondent has contended that even assuming that the amendment notification dated 22.09.2022 was held applicable, the appellants would nevertheless be precluded from denying the benefit under Clause 16(a) by virtue of the doctrine of promissory estoppel. According to the respondent, the appellants held out a clear and unequivocal representation to the respondent that eligible enterprises would be entitled to the promised incentives, and acting upon such representation, the respondent altered its position by making substantial investments and commencing commercial production. The respondent further argues that the appellants had approved its proposal for expansion on 13.07.2020, and issued the COP Certificate dated 12.02.2021 in favour of the

respondent. The appellants, on the other hand, argued that Rule 4(F) of the 2019 Rules specifically provided that incentives, concessions, and facilities under these Rules were provided under the discretionary powers of the State Government and that they could, in their wisdom, decide to amend, alter, delete or revise any or all of the incentives notified under the Policy and Rules. The appellants contended that privileges under the policy can be withdrawn by the State Government at any time, considering the measures of fiscal policy.

53. Although we have come to the conclusion that the concessional benefit contemplated under Clause 16(a) of the Industrial Policy of 2019, read with Rule 16(i)(a) of the 2019 Rules, was always intended exclusively for new industrial enterprises and not for existing industrial enterprises undergoing substantial expansion, and that the amendment notification dated 29.04.2022, insofar as Clause 16 and Rule 16 are concerned, was merely clarificatory in nature, we nevertheless deem it appropriate to examine the law relating to the doctrine of promissory estoppel, particularly with a view to doing complete justice between the parties and for the definitive settlement of all questions arising in the present *lis*.

54. It is a well-established principle that the Government has the power to grant, modify, alter, or withdraw fiscal benefits in the public interest. In the case of ***Shree Sidhbali Steels Ltd. v. State of U.P.***, reported in **(2011) 3 SCC 193**, the State Government, under its industrial policy dated 30.04.1990, had assured to new entrepreneurs a hill development rebate to the extent of 33.33% on the total electricity charges for a period of five years. The said benefit was thereafter extended for a further period of five years in

respect of new industrial units established up to 31.03.1997. Subsequently, by notifications dated 18.06.1998 and 25.01.1999, a uniform electricity tariff was introduced, resulting in the rebate being curtailed to 17%. Thereafter, by a further notification dated 07.08.2000, the hill development rebate came to be withdrawn altogether. A challenge to the aforesaid notifications was rejected by this Court, which held that the State Government was competent, in exercise of its statutory powers, to modify or withdraw the rebate in public interest, and that the doctrine of promissory estoppel would not prevent such withdrawal where the concession was granted under statutory authority, subject to the Government's continuing power. While considering the doctrine, this Court placed reliance upon the previous two decisions of this Court in ***State of Rajasthan v. J.K. Udaipur Udyog Ltd.***, reported in **(2004) 7 SCC 673**, and ***Arvind Industries v. State of Gujarat***, reported in **(1995) 6 SCC 53**.

55. In paragraph no. 25 of ***J.K. Udaipur Udyog Ltd.*** *(supra)*, it was observed that the recipient of a concession acquires no legally enforceable right against the Government except to avail the concession during the currency of its grant, such right being defeasible inasmuch as it may be taken away in exercise of the very power under which the exemption was conferred. However, we are of the view that this observation must necessarily be read along with paragraph no. 26 of the same decision, wherein this Court clarified that what has been granted may indeed be withdrawn in public interest, unless the Government is precluded from doing so on the ground of promissory estoppel, a doctrine which itself remains subject to considerations of equity and public interest.

56. Similarly, in ***Arvind Industries*** *(supra)*, it was claimed by the Government that the notification giving a concession did not contain any promise that the benefits given to the new industry would not be altered from time to time. While rejecting the claim of the industry as not tenable, this Court has held that the Government is entitled to grant exemption to industries having regard to the industrial policy of the Government, but it is equally free to modify its industrial policy and grant, modify or withdraw fiscal benefits from time to time. What is important to notice is that this Court has held that in such circumstances the principle of promissory estoppel would not be attracted.

57. Thus, what boils down from above is that the Government, in exercise of the very power under which an exemption, incentive or other fiscal benefit is granted, remains competent to amend, modify, or withdraw the same in public interest, and such benefits are, by their very nature, defeasible. This power, however, is not unqualified. Where a clear and unequivocal representation has been made, intended to induce action, and the promisee has, acting upon such representation, altered his position, then the Government may be precluded from resiling therefrom. In such a case, the doctrine of promissory estoppel would step in, and the statutory power to withdraw or modify must yield, unless the State is able to establish an overriding public interest or other equitable considerations warranting a departure from its earlier promise.

58. Furthermore, in a recent decision of this Court in ***IFGL Refractories Ltd. v. Orissa State Financial Corporation***, reported in **2026 SCC OnLine SC 28**, wherein one of us, J.B. Pardiwala, J., was a part of the Bench, had occasion to consider

the doctrine of promissory estoppel at considerable length. This Court in ***IFGL Refractories Ltd.*** *(supra)* considered the following authorities:

(a) ***Motilal Padampat Sugar Mills Co. Ltd. v. State of*** **U.P.**, reported in **(1979) 2 SCC 409**;
(b) ***Pawan Alloys & Casting (P) Ltd. v. U.P. State Electricity Board***, reported in **(1997) 7 SCC 251**;
(c) ***Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.***, reported in **(1983) 3 SCC 379**;
(d) ***Tata Metals and Strips Ltd. v. State of Gujarat***, reported in **1991 SCC OnLine Guj 220**;
(e) ***Camma Textile Industries v. State of Orissa***, reported in **1994 SCC OnLine Ori 207;** and
(f) ***The State of Jharkhand and Ors. v. Brahmputra Metallics Ltd, Ranchi and anr.***, reported in **(2023) 10 SCC 634**.

59. Upon a conspectus of the above authorities discussed in ***IFGL Refractories Ltd.*** *(supra)* and other cases as dealt above, the following principles governing the doctrine of promissory estoppel may be regarded as well-settled:

(i) The doctrine of promissory estoppel is a principle evolved by equity to avoid injustice. It operates not in the realm of contract, nor within the technical confines of estoppel under the law of evidence, but upon the broader considerations of fairness, justice and good conscience;
(ii) Where one party, by words or conduct, makes to another a clear, unequivocal and unambiguous promise, intended to create legal relations or affect a legal relationship to arise in

the future, knowing or intending that it would be acted upon, and it is in fact so acted upon, the promise becomes binding upon the promisor;

(iii) The doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party;

(iv) The doctrine is not merely defensive in nature. Under Indian law, it may itself furnish a cause of action and can be affirmatively enforced where equity so requires;

(v) It is not necessary, in order to attract the doctrine, that the promisee should prove actual detriment. It is sufficient that the promisee has altered his position, acting in reliance upon the promise;

(vi) The alteration of position may consist in making substantial investments, incurring liabilities, establishing industrial infrastructure, entering into agreements, or otherwise rearranging one's affairs on the faith of the representation;

(vii) The doctrine applies with full force against the State, its departments, statutory corporations and instrumentalities, including authorities falling within Article 12 of the Constitution, which cannot arbitrarily resile from a solemn representation upon which another has acted;

(viii) Where the State or its instrumentalities frame industrial or fiscal incentive schemes with the avowed object of attracting

investment and establishing industries, the representations contained therein are intended to induce entrepreneurs to act upon them, and such representations are enforceable. Once an entrepreneur, relying upon such representation, establishes an industrial unit, commences commercial production, or otherwise satisfies the eligibility conditions during the currency of the scheme, and the State agencies recognise them as being eligible, the promise crystallises, and an enforceable equity arises in its favour. Whether a benefit has accrued or not in such cases depends on the facts and circumstances of each case;

(ix) The grant of an exemption, concession or incentive under a statutory scheme is ordinarily defeasible, and the Government is competent to modify or revoke the same in exercise of the very power under which it was granted. Thus, what is granted can ordinarily be withdrawn. However, the Government may be precluded from doing so on the ground of promissory estoppel, which principle itself remains subject to considerations of equity and public interest.

(x) Where a specific sanction or approval of incentive, or eligibility certificate has been issued in favour of an individual enterprise, and the enterprise has acted thereon by making a substantial investment, the promisor is all the more firmly bound by its representation;

(xi) The doctrine rests upon the larger constitutional principle that State action must be fair, non-arbitrary, and consistent; governmental assurances are not empty declarations, but solemn representations on the faith of which citizens regulate their affairs; and

(xii) The ultimate object of the doctrine is to prevent manifest injustice and to ensure that a party, particularly the State, does not act inconsistently to the prejudice of one who has relied upon its promise and altered his position irretrievably.

60. Now, adverting to the facts of the present case, it is not in dispute that the respondent had undertaken a substantial expansion in its industrial unit, and was issued a COP Certificate dated 12.02.2021 by the appellants. However, the issuance of the said COP Certificate merely recognised the respondent as an existing industrial enterprise having undertaken substantial expansion within the meaning of the Industrial Policy of 2019 and the 2019 Rules. The COP Certificate, by itself, did not amount to a sanction or grant of the concessional tariff benefit contemplated under Clause 16(a) read with Rule 16(i)(a). In this regard, Rule 27 of the 2019 Rules assumes significance inasmuch as it provides that incentives, concessions and facilities under the Rules are to be sanctioned and disbursed by the Director of Industries (appellant no.1 herein) upon the recommendation of the committee notified by the State Government. Admittedly, no such sanction or approval in respect of the concessional tariff benefit under Clause 16(a) was ever granted in favour of the respondent. In our considered view, therefore, the respondent cannot contend that any vested or crystallised right accrued in its favour under Clause 16(a) merely on the basis of the issuance of the COP Certificate.

61. At best, the issuance of the COP Certificate could have only constituted a recognition by the appellants that the respondent belonged to the category of existing industrial enterprises undergoing substantial expansion and was consequently entitled

to such incentives as were otherwise lawfully available to that class of industries under the Policy and the Rules. As discussed by us hereinabove, the benefit intended for such a class of enterprises was the rebate mechanism contemplated under Clause 16(b) read with Rule 16(i)(b), and not the concessional tariff benefit under Clause 16(a), which was always intended exclusively for new industrial enterprises. We have also been apprised by the learned counsels for both parties that the respondent has already been extended the benefit contemplated under Clause 16(b) on account of its having undertaken substantial expansion.

62. Viewed thus, even assuming that the respondent was entitled to invoke the doctrine of promissory estoppel, the same could not be stretched so as to create or found an entitlement contrary to the true scope and intent of the Industrial Policy of 2019. The doctrine of promissory estoppel cannot be invoked to compel the State to grant a benefit which was never intended for the class of industry to which the respondent belonged. Once it is held that Clause 16(a) was never meant to extend the concessional tariff benefit to existing industrial enterprises undergoing substantial expansion, the very foundation of the respondent's plea substantially falls.

63. More importantly, when the respondent has already received the benefit available to its category under Clause 16(b), no case of inequity can be said to survive, warranting the invocation of the equitable doctrine of promissory estoppel. Any interpretation to the contrary would effectively result in conferring a dual benefit upon the same category of industrial enterprises, something which neither the scheme of the Policy nor the contemporaneous tariff orders ever contemplated. Such an interpretation would not only

run contrary to the true intent of the Policy, but would also operate against the larger public interest and fiscal discipline governing the grant of industrial incentives by the State. As observed in ***J.K. Udaipur Udyog Ltd.*** *(supra)* and other cases as discussed above, what is granted under an incentive scheme may ordinarily be withdrawn or regulated in public interest unless the Government is precluded from doing so on the ground of promissory estoppel. In the facts of the present case, we find no satisfactory ground of enforcing equity under promissory estoppel in favour of the respondent.

G. CONCLUSION

64. In view of the foregoing and considering the totality of the circumstances, our conclusion on each issue is as follows:

(i) Clause 16(a) of the Industrial Policy of 2019 and Rule 16(i)(a) of the 2019 Rules were always intended to apply to the *"new industrial enterprises"* and not to the *"existing industrial enterprises undergoing substantial expansion"*. The conglomeration of the contemporaneous tariff orders issued prior to and subsequent to the Industrial Policy of 2019, the overall scheme of the Policy, and the structure of Clause 16 itself clearly indicate that the concessional tariff benefit under Clause 16(a) was meant only for new industrial enterprises, whereas the rebate benefit under Clause 16(b) was intended for existing industrial enterprises undergoing substantial expansion.

(ii) The amendment notification dated 29.04.2022, insofar as Clause 16 and Rule 16 respectively are concerned, was merely clarificatory in nature and, therefore, retrospective in operation. The substitution of the word *"eligible"* with *"new"* in Clause 16(a) and Rule 16(i)(a) respectively, as also the insertion of the expression *"substantial expansion"* in Clause 16(b) and Rule 16(i)(b) respectively, did not alter the substance of the Policy but merely clarified the true intent and scope of the provisions as they always stood. However, the amendment introducing, for the first time, the limitation of duration of benefit under Clause 16(b) and Rule 16(i)(b) respectively for a period of three years was substantive in nature and therefore prospective in operation.

(iii) The respondent, being an existing industrial enterprise having undergone substantial expansion, was entitled only to the rebate benefit contemplated under Clause 16(b) read with Rule 16(i)(b) respectively, which benefit has already been indisputably extended to it by the appellants. Mere issuance of the COP Certificate dated 12.02.2021 did not confer any vested or accrued right upon the respondent to claim the concessional tariff benefit under Clause 16(a), particularly when no sanction or approval of such incentive was ever granted by the Director of Industries in accordance with Rule 27 of the 2019 Rules.

(iv) The doctrine of promissory estoppel has no application to the facts of the present case. Once it is held that Clause 16(a), properly construed, was never intended to extend the concessional tariff benefit to existing industrial enterprises undergoing substantial expansion, the respondent cannot

invoke the equitable doctrine of promissory estoppel to create an entitlement contrary to the true scope and intent of the Policy itself. More importantly, when the respondent has already received the benefit legitimately attachable to its category under Clause 16(b), no enforceable equity survives in its favour. Any interpretation to the contrary would result in conferring a double benefit upon the same category of industries, contrary to the scheme of the Policy, public interest, and fiscal discipline governing industrial incentives.

65. In view of the above, the appeal succeeds and is hereby allowed. Accordingly, the impugned judgment and order of the High Court is hereby set aside.

66. Pending applications, if any, shall stand disposed of.

..... J.
(J.B. Pardiwala)

..... J.
(K.V. Viswanathan)

New Delhi;
25th May, 2026.