

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5275 OF 2013

EON Kharadi Infrastructure Pvt. Ltd.

...Petitioner

Versus

The State of Maharashtra
and others

...Respondents

Mr. Sriram Sridharan, Advocate a/w. Shanmugi Dev for the Petitioner.

Smt.Neha S. Bhide, Government Pleader a/w. R.M. Shinde, AGP and Apurva Thipsay,
'B' Panel Advocate for the Respondent Nos.1, 2 and 5.

Mr. A.A. Kumbhakoni, Senior Advocate a/w. R.S. Khadapkar for the Respondent
Nos.3 and 4.

Ms. Shenaz Bharucha, Advocate a/w Madhubala Kajle for the Respondent No.6.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

**RESERVED ON : 12th MARCH, 2026
PRONOUNCED ON : 07th APRIL, 2026**

JUDGMENT: [Per Sarang V. Kotwal, J.]

1. We have heard Mr. Sriram Sridharan, learned counsel for the Petitioner, Smt.Neha Bhide, learned Government Pleader for the Respondent Nos.1, 2 & 5, Mr. A.A. Kumbhakoni, learned Senior Counsel for the Respondent Nos.3 & 4 and Ms. Shenaz Bharucha, learned counsel for the Respondent No.6.

2. Rule. Rule is made returnable forthwith.

3. The Petitioner Company was granted approval by the Central Government for setting up of an IT & ITES Sector Specific Special Economic Zone [SEZ] at Kharadi, Pune. The Government

of Maharashtra had also recommended that such approval be granted to the Petitioner Company. The State Government's policy regarding setting up of Special Economic Zones in Maharashtra issued on 12.10.2001 specifically provided that the developers of the SEZs and Industrial Units and other establishments within the SEZ would be exempted from all States and local taxes and levies including Octroi. The Petitioner Company had paid octroi between 2005-2011 to the Pune Municipal Corporation [hereinafter referred to 'PMC'] under protest. They demanded refund of the octroi as per the policy of the State Government. The Petitioner pursued the issue of exemption of octroi with the PMC, but, vide letter dated 21.7.2012, the Petitioner Company was informed that the PMC was not giving any exemption from paying octroi. The Petitioner company was directed to import the goods only after paying the octroi.

4. The Petitioner has challenged this communication. There are other prayers in the Petition for directions to frame appropriate rules and for granting exemption from payment of octroi. One of the prayers is for directions to grant refund of octroi duty amounting to Rs.6,69,91,584/- along with interest @ 18% per

annum in view of the State SEZ Policy dated 12.10.2001 for the period from 2005 to 2011.

5. The brief facts leading to filing of the Petition are as follows :

6. The Petitioner was a company duly registered under the Companies Act, 1956. Earlier the company was registered in the name of Panchshil Premises Private Limited. The Registrar of Companies issued a fresh incorporation certificate to the Petitioner vide certificate dated 15.9.2005 sanctioning the change in the name of the Petitioner from Panchshil Premises Private Limited to the present name i.e. EON Kharadi Infrastructure Private Limited. The Petitioner Company has its registered address at Dr. Gopal Rao Deshmukh Marg and has its administrative office at Bund Garden Road, Pune.

7. The Respondent No.1 is the State of Maharashtra, the Respondent No.2 is the Principal Secretary, Urban Development Department, State of Maharashtra, the Respondent No.3 is the Pune Municipal Corporation, the Respondent No.4 is the Municipal Commissioner of Pune Municipal Corporation, the Respondent No.5 is the Secretary, Industries, Energy & Labour Department,

State of Maharashtra and the Respondent No.6 is the Union of India.

8. In April, 2000, the Government of India announced Special Economic Zones Scheme. On 12.10.2001, the Government of Maharashtra vide Resolution No.SEZ2001/(152)/IND-2 of Industries, Energy & Labour Department issued the State Government's policy regarding setting up of Special Economic Zones in Maharashtra. There was reference to exemption of State and Local taxes and there was specific reference to exemption from octroi. On 23.6.2005, the Special Economic Zones Act, 2005 (for short, 'SEZ Act') was brought into force after it was enacted by the Parliament with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones included making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth. Section 3 of the SEZ Act provided for procedure for making proposal to establish Special Economic Zones. Section 4 provided for establishment of

Special Economic Zones and granting approval and authorisation to operate it to the developers. Section 50 provided for the powers of the State Government to grant exemption. It was brought into force w.e.f. 10.2.2006. Section 51 gave over-riding effect of this Act to any other law for the time being in force.

9. On 10.2.2006, the Special Economic Zones Rules, 2006 (hereinafter referred to as 'the SEZ Rules') were brought into force. Rule 5 thereof provided for the requirements for establishment of SEZ and sub-rule (5) thereof referred to exemption from the State and Local taxes which the State Government was expected to make available in the State to the proposed SEZ Units and developers.

10. The Petitioner Company sent a proposal for setting up of SEZ in the Private Sector a product specific IT & ITES at Kharadi MIDC Knowledge Park, Pune. The proposal was for over forty-five acres of land. Vide letter dated 29.9.2005 issued by the Joint Secretary to the Government of Maharashtra, Industries, Energy & Labour Department and addressed to the Additional Secretary, Department of Commerce, Ministry of Commerce and Industry, Government of India, the State Government gave no objection for approval of the Petitioner's proposal in principle.

11. Exhibit-D annexed to the Petition indicates that the Petitioner Company was granted approval for setting up an IT/ITES Sector specific SEZ at Kharadi, Pune vide letter dated 27.1.2006. During this process, the name of the Petitioner Company was changed from Panchshil Premises Private Limited to the present name and noting this development, the Government of Maharashtra vide letter dated 9.6.2006 addressed to the Deputy Secretary of Commerce, Ministry of Commerce and Industries, Government of India, reiterated the State's no objection in favour of the Petitioner Company for setting up the SEZ.

12. Vide letter dated 17.7.2006, the Government of India, Ministry of Commerce and Industries, Department of Commerce (SEZ Section) granted formal approval to the Petitioner's proposal for development, operation of the sector specific Special Economic Zone, IT/ITES Sector at MIDC Knowledge Park, Kharadi, Pune, Maharashtra over an area of 18.21 hectares under the conditions mentioned in that approval. The said letter is annexed at Exhibit-G to the Petition. A notification to that effect was issued by the Central Government on 28.9.2006 which is at Exhibit-I to the Petition.

13. Vide letter dated 26.10.2006 issued under the signature of Deputy Development Commissioner, SEEPZ, SEZ issued from the office of the Development Commissioner, Government of India, Ministry of Commerce and Industries, it was mentioned that the Petitioner Company was eligible for exemption from payment of Customs and Central Excise duties, Service Tax, Central Sales Tax and various exemptions offered by the State Government and Local bodies from time to time in connection with the authorized operations in the Special Economic Zones. A copy of the said letter is annexed at Exhibit-L to the Petition.

14. The Petitioner then pursued this matter of exemption with the State Government and entered into correspondence with the Principal Secretary, Urban Development Department, Government of Maharashtra through the letters dated 31.5.2007 and 22.12.2007. The Petitioner had also entered into correspondence with the PMC for such exemption from payment of octroi.

15. The Desk Officer, Urban Development Department, Government of Maharashtra, addressed a letter dated 18.7.2007 to the Municipal Commissioner, PMC asking them to send a proposal

for amendment in the Rules for levying octroi under the Maharashtra Municipal Corporation Act, 1949 (old Bombay Provincial Municipal Corporation Act, 1949) (hereinafter referred to as 'the MMC Act').

16. However, there was no amendment to the Octroi Rules under the MMC Act. No steps were taken either by the PMC or the State Government in that behalf; and finally, vide the impugned communication dated 21.7.2012 the Petitioner was informed by the Pune Municipal Corporation that the Petitioner was not given any exemption from octroi and that he had to pay octroi for bringing the goods. In this background, the Petitioner has approached this Court for the reliefs mentioned hereinabove.

17. The Respondent No.3 referred to the correspondence made by them with the State Government and referred to the communication sent by the State Government asking to send proposal for amendment in the MMC Act. In response, the General Body of PMC on 23.4.2008 resolved to direct to place the submission before it through the Law Committee the independent proposal for modification of Octroi Rules. The Chief of Octroi, PMC by his submission recommended the modification of the Octroi

Rules. The Municipal Commissioner submitted the docket dated 10.7.2008 to the Municipal Corporation soliciting approval of the General Body through the Law Committee.

18. The Law Committee by its resolution dated 13.8.2008 recommended to the General Body for the suitable amendment/modification of the Octroi Rules. The said subject was listed before the General Body on 20.11.2008, on 20.1.2009 and then in April, 2009. The General Body ultimately in the meeting dated 23.6.2009 deleted that subject and hence there was no amendment to the Rules. The State Government was informed vide letter dated 14.3.2017 that the PMC was not agreeable to grant exemption in respect of the State SEZ Policy dated 12.10.2001.

19. In the present Petition, the Petitioner had relied on various provisions under the MMC Act and contended that the State Government ought to have taken steps to amend the Rules for Octroi under the MMC Act and ought to have ensured that the Petitioner could avail all the exemptions from paying octroi.

20. The Respondent Nos.3 & 4 opposed grant of relief in

this Petition by filing their affidavit-in-reply.

21. The affidavit of PMC further pointed out that w.e.f. 1.4.2013 levying of the octroi was stopped and the local body tax was being levied after that.

22. The Respondent Nos.1 & 2 filed their own affidavits-in-reply. They filed two affidavits – first is dated 6.4.2017 and the second is dated 27.11.2017. In the first affidavit, the stand taken by the Respondent Nos.1 & 2 was that, at present the Octroi Regulations did not exist. Therefore, it was not possible to make amendment in the Octroi Regulations with retrospective effect. It will cause huge financial losses to the PMC and, therefore, it was not appropriate to give directions for exemption from the point of view of comprehensive public interest and if directions of exemption of octroi is given in the present matter then requests for giving such exemptions may be made in other matters as well. The affidavit categorically stated that it was not possible for the State Government to give any fund or financial help in this matter to the PMC. In other words, the octroi levied by the PMC could not be refunded through the aid of the State Government.

23. The State Government filed the second affidavit dated

27.11.2017. In that affidavit, it was specifically admitted that as per the provisions made in the State Policy dated 12.10.2001 the Petitioner Company was entitled to octroi exemption. However, the octroi exemption came under the Urban Development Department and in the present case the PMC would be the implementing agency for the same.

24. During the course of arguments, the Respondent Nos.1 & 2 filed one more affidavit-in-reply dated 9.3.2026. The stand taken in this affidavit was that the amount which the Petitioner was claiming to be reimbursed was collected by the PMC and it was utilized by the PMC. They were the PMC's independent funds and, therefore, the State Government was not liable to reimburse the same to the Petitioner. The octroi payment by the Petitioner was never remitted or transferred to the State Government by the PMC and, therefore, the State Government was not liable to reimburse the same to the Petitioner. The PMC never informed the State Government about the non-approval of the proposed amendment in the Octroi Rules in the present case and, therefore, in the absence of any resolution, the State Government could not have exercised its power under Section 451 of the MMC Act. As of today,

the octroi is discontinued in the State of Maharashtra. The local body tax was made applicable subsequently and, therefore, it would be futile to seek amendment to the Octroi Rules with retrospective effect. The State Government was not in receipt of any correspondence from the PMC seeking financial assistance for refund of octroi to the Petitioner.

25. Learned counsel for the Petitioner made the following submissions :

- i. The State Government had promised exemption from local taxes and in particular exemption of octroi. Once that promise was made it was the duty of the State Government to have fulfilled the same. The Petitioner acted on the promise made by the State Government in the policy dated 12.10.2001 and invested huge amount. The principle of promissory estoppel would squarely apply in this case and the State Government cannot be allowed to resile from their promise to grant exemption from levying of the octroi. Learned Counsel relied on the observations of the Hon'ble Supreme Court in the case of **Manuelsons Hotels Private Limited Vs. State of Kerala and others**¹.

¹ (2016) 6 SCC 766

- ii. The PMC was bound to give effect to the State Policy of granting exemption from levying the octroi and if PMC did not take steps to amend the Rules in that behalf, the State Government always possessed legislative authority to frame the Rules for granting exemptions from levying of the octroi duty. Learned counsel for the Petitioner referred to various provisions of MMC Act and in particular referred to Section 450A of the MMC Act which authorized the State Government to issue directions to the Municipal Corporation on matters of policy. This amended Section came into force w.e.f. 2011 and issuance of such directions by the State was mandatory for the Corporation to give effect to them. Section 456 of the MMC Act also empowers the State to exercise its authority in directing the Corporation to frame the Rules concerning octroi exemptions. He also referred to Section 456A which gives special power to the State Government to make the Rules. Learned counsel referred to the objects and reasons of the SEZ Act and the preamble of the State Policy.
- iii. He submitted that the Pimpri Chinchwad Municipal

Corporation has granted exemption from payment of octroi duty to the developers of SEZs and there was no reason for the PMC not to follow the same process. He submitted that the Petitioner did not have any other efficacious remedy. The Petition is pending since 2013 and it would not be proper to relegate the Petitioner to other remedies.

26. Learned Government Pleader reiterated the stand taken by them in their three affidavits. She submitted that since the octroi is levied and used by the PMC, only the PMC was liable to pay the refund. On their part, the State had asked the PMC to send a proposal for amendment of the Rules. It was for the PMC to have amended the Rules. Failure on the part of the PMC cannot act to the detriment of the State Government.

27. Shri Kumbhakoni, learned Senior Counsel on behalf of the PMC on the other hand submitted that the levy of any tax is permissible under the statute and, therefore, it can be lifted, suspended or withdrawn only by the statute and only in the manner prescribed by the statute. In the present case, there was no amendment to the statute or to the Rules for granting exemption of octroi which was paid by the Petitioner and, therefore, in the

absence of any provision granting exemption of octroi specifically mentioned in the statute it was not possible to direct the PMC to refund the octroi paid by the Petitioner. He submitted that where the power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other modes of performance are necessarily prohibited. In the absence of any specific statutory provisions granting exemption of octroi, only on the basis of the State Policy, the exemption claimed by the Petitioner cannot be granted. It would cause financial burden on the PMC which the State Government specifically refused to compensate. The SEZ Act came into force in 2005. The Rules came in force in 2006 and the Octroi Rules for PMC were framed on 6.5.2008 which were made effective from 5.6.2008 but they did not contain any provision for grant of exemption envisaged by the State Policy. Rules 25 & 26 of the Octroi Rules applicable to PMC contain provisions for grant of exemption from payment of octroi to certain categories and certain matters. However, the SEZ was not included in those entities. The SEZ Act itself did not contain any specific provision for grant of exemption from payment of octroi. Section 50 of the SEZ Act is only the enabling provision to take

suitable steps but in the present case the State Government has not taken any steps in that behalf.

28. Shri Kumbhakoni further submitted that except for sending letter asking for proposal for amendment of the Rules for exemption from payment of octroi in the Petitioner's case, the State Government did not take this matter any further. The PMC has not modified those Rules in that behalf. The principles of promissory estoppel did not apply if there were contrary statutory provisions. Where the field is occupied by an enactment, the executive has to act in accordance with law and, therefore, granting exemption to the Petitioner from payment of octroi would be against the statutory provisions of Maharashtra Municipal Corporations Act. In any case the PMC itself has not made any promise to the Petitioner relating to the exemption from payment of the octroi. Therefore the principles of promissory estoppel will not operate against the PMC as far as the Petitioner is concerned. The Petitioner has not pleaded with adequate details as to how it altered its position to its detriment in view of the promise. He further submitted that the Petitioner has approached this Court belatedly. Shri Kumbhakoni submitted that the Hon'ble Supreme Court in the case of **Municipal**

Corporation of Greater Bombay Vs. Bombay Tyres International Ltd and others² has observed that in ascertaining what is the reasonable time for claiming refund, the Courts have often taken note of the period of limitation prescribed under the general Law of Limitation for filing suit for recovery of amount due to them.

Reasons and conclusions:

29. We have considered the submissions made before us by all the learned Counsel. The most important document in this case is the State Government's Policy regarding setting up of the Special Economic Zones in Maharashtra. The policy was issued on 12.10.2001 by the State Government vide Resolution No.SEZ2001/(152)/IND-2. The preamble of the said Policy refers to the concept of Special Economic Zones introduced by the Government of India in the year 2000 through a revision in the Export-Import policy 1997-2002. The preamble of the Policy mentions that the SEZs were specifically delineated duty-free enclaves treated as a foreign territory for the purpose of industrial, service and trade operations, with exemption from customs duties and a more liberal regime in respect of other levies, foreign investment and other transactions. The domestic regulations

² (1998) 4 SCC 100

restrictions and infrastructure inadequacies are sought to be eliminated in the SEZs for creating a hassle-free environment. The scheme sought to create a simple and transparent system and procedures for enhancing productivity and the ease of doing business in Maharashtra. It was expected that exploiting the full potential of the concept of SEZs would bring large dividends to Maharashtra in terms of economic and industrial development and the generation of new employment opportunities. It was decided that the said policy would apply to the specific places mentioned in the policy and also to any other SEZ in Maharashtra subject to the framework for SEZs determined by the Government of India from time to time.

Thus, the object was to create a system which would bring economic and industrial development and also would generate new employment opportunities. The policy thereafter elaborated how this objective was to be achieved by simplifying the procedure and giving incentives to the developers of the SEZs. Various incentives were promised. Clause (6) of the Policy is the crux of the matter in this Petition which reads thus :

“6) Developers of SEZs, and industrial units and other

establishments within the SEZs will be **exempted** from all State and local taxes and levies, including Sales Tax, Purchase Tax, **Octroi**. Cess, etc. in respect of all transactions made between units/establishments within the SEZs, and in respect of the supply of goods and services from the Domestic Tariff Area to units/establishments. If due to tax system constraints, it is not advisable to grant direct exemption to the transactions, the State taxes paid would be fully reimbursed.” (*Emphasis supplied*)

. Thus, the State Government had clearly mentioned in the policy that the developers of the SEZs will be exempted from all State and local taxes including octroi in respect of all transactions made between the Units within the SEZs and in respect of supply of goods and services from the domestic tariff area. It was further mentioned that if due to tax system constrains it was not advisable to grant direct exemption to the transactions, those taxes paid would be fully reimbursed. Learned Government Pleader tried to argue that this particular clause specifically refers to the refund of only the State taxes which were paid. Since in that context, the octroi was not mentioned, in the present case the octroi could not be refunded to the Petitioner. We are unable to agree with this submission. Reference to the refund of state taxes was made when

it was not advisable to grant direct exemption because of tax system constrains. There was no such tax system constrains as far as octroi was concerned and the rules and regulations in that behalf provided under the Maharashtra Municipal Corporations Act could have been easily amended to bring them in consonance with clause (6) of this policy. This particular clause makes a definite promise that the developers will be exempted from octroi. This clause is in furtherance with the objective of this policy mentioned in the preamble and, therefore, it was the duty of the State Government to ensure that the Petitioner, who was an approved developer of the SEZ got benefit of exemption from levying the octroi. We are informed that as of today, the same policy is in existence in relation to all the SEZs in Maharashtra.

30. The Special Economic Zones Act, 2005 was brought into force from 10.02.2006. The Statement of Objects and Reasons of the said Act referred to the then prevailing system which did not lend enough confidence for the investors to commit substantial funds for creation of infrastructure for exports of goods and services. In order to give a stable and predictable policy regime and to provide an expeditious and single window clearance mechanism,

enactment of the SEZ Act, 2005 was found to be necessary.

31. The SEZ Act itself provides for procedure for making proposal to establish Special Economic Zone and the guidelines for notifying the SEZ. Section 50 of the SEZ Act gives power to the State Government to grant exemption for the purpose of giving effect to the provisions of the SEZ Act, 2005 and said section enabled the State Government to take suitable steps for granting exemption from levies and duties. Section 51 provides that SEZ Act, 2005 had over-riding effect to any other law which was inconsistent with the SEZ Act, 2005. Section 55 empowers the Central Government to make Rules for carrying out the provisions of this Act. Accordingly the Special Economic Zones Rules, 2006 were notified. Rule 5(5)(a) was important which reads thus :

“5. Requirements for establishment of a Special Economic Zone.--

XXXXX

XXXXX

XXXXX

(5) Before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavor that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely: -

(a) exemption from the State and local taxes, [State Goods and Services Tax] levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorized operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods procured from domestic tariff area and sold as it is;" (*Emphasis supplied*)

This Rule enjoins duty on the State Government to make endeavour that the exemption from the local tax and the tax levied by the local bodies on goods required for authorized operations by a developer were exempted.

32. Thus, in all these provisions under the SEZ Act, 2005 and under the Policy, the duty of the State Government was specifically highlighted to ensure that exemption from octroi was made available to the developers; which in this case is the Petitioner. As can be seen from the Petition, the State Government has not complied with this requirement. Its inaction in fact is contrary to the object not only of the SEZ Act, 2005; but of the object mentioned in the preamble of the State Government policy itself. Therefore, it was the duty of the State Government to ensure that the Petitioner got such exemption regarding payment of octroi.

33. Interestingly the affidavit dated 27.11.2017 affirmed by

the Deputy Director (Industries), the Directorate of Industries categorically admits in paragraph-4 as follows :

“4. I state that as per the above provision made in the State Policy dtd. 12.10.2001, the Applicant EON Kharadi Infrastructure Pvt.Ltd., is entitled to Octroi exemption.”
(*Emphasis supplied*)

This averment, in turn, accepts that the Petitioner is entitled for such exemption and thus meaning thereby the Petitioner is entitled to get relief in this behalf in this Petition. The question is who shall pay the amount claimed by the Petitioner which was paid as octroi duties.

34. Shri Kumbhakoni, learned Senior Counsel appearing for the Pune Municipal Corporation vehemently argued that in the absence of modification to the MMC Act and to the Rules made thereunder, there was no provision under which the octroi paid by the Petitioner could be refunded. We find merit in this submission because there is no such amendment made under that Act. Unless there are specific Rules granting exemption from payment of octroi with reference to the Petitioner's SEZ, it is not possible to direct the PMC to refund the octroi paid by the Petitioner.

35. However, the same concession cannot be given to the

State of Maharashtra. The Petitioner has brought to their notice that the exemption was necessary and all that was done by the State of Maharashtra, was sending the letter dated 18.7.2007 addressed to the Commissioner of Pune Municipal Corporation under the signature of the Desk Officer, Maharashtra State asking them to send proposal for amendment in the Maharashtra Municipal Corporations Act with reference to the octroi rules. We have already narrated as to what happened after this letter was received by the Pune Municipal Corporation. In short, no such amendments to the provisions of the Act or to the Rules under the said Act were made and the State Government did not take any further steps. No follow up action was taken and from 2007 onwards no steps were taken.

36. Learned counsel for the Petitioner referred to various provisions of the Maharashtra Municipal Corporations Act. The relevant provisions can be summarized briefly as follows :

. Section 127 (2) of the MMC Act as it stood at the relevant time enabled the Municipal Corporation to impose octroi. Section 149(1) gave power to the Municipal Corporation to modify the Rules and procedure in respect of levying of tax and exemption

therefrom. It referred to Section 127(2) which in turn referred to the octroi as it then existed. The proviso mentions that it was necessary that the State Government had first given the provisional approval for modification of such tax. Section 450A gave power to State Government to issue instructions or directions as to matters of policy to be followed by the Corporation in respect of its duties and functions in the larger public interest or for implementation of the policy of the Central Government or the State Government. As per the proviso to that Section, the State Government was required to give an opportunity to the Corporation to make representation.

. This power could have been exercised by the State Government for implementation of its policy in the public interest. But even that was not done. Section 457 subsection (7)(c) refers to the tax leviable under Section 127(2) of the MMC Act which, in turn, referred to octroi. Therefore, the power of the State Government under Section 456 is quite wide. Section 456 reads thus :

“456. Power of State Government to make rules.

(1) The State Government may at any time require the Corporation to make rules under section 454 in respect of any purpose or matter specified in section 457;

(2) If the Corporation fails to comply with such requisition within such reasonable time as may be

fixed by the State Government, the State Government may after previous publication made such rules and the rules so made shall, on final publication in the Official Gazette, have effect as if enacted in this Act.”

37. Therefore, the State Government could have taken steps under these powers to ensure that their own policy that included exemption from paying octroi was properly implemented by granting exemption from octroi as far as the Petitioner was concerned. Section 456-A gives special powers to the State Government to make Rules consistent with the provisions of the Act.

38. In the present case, as per the policy of the State Government, the SEZ was formed with special objective. One of the objectives was to bring employment that indirectly would have helped Pune Municipal Corporation as well. In any case, it was the duty of the State Government to fulfill its promise.

39. Learned counsel for the Petitioner referred to the judgment of the Hon’ble Supreme Court in the case of **Manuelsons Hotels Private Limited**. The Hon’ble Supreme Court discussed the doctrine of promissory estoppel. The Hon’ble Supreme Court referred to earlier judgments with approval by observing that if the

Government makes a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The doctrine of promissory estoppel is an equitable doctrine. It was also observed that the said doctrine must yield when with the equity so requires. The Government could show that the public interest would be prejudiced if the Government were required to carry out the promise. The Court would have to balance the public interest and the promise made to a citizen which induced him to alter his situation.

40. In the present case no such situation arises. By fulfilling the promise the public interest is not prejudiced, in fact by not fulfilling the promise, the public interest would be harmed because instead of encouraging the developers to develop the SEZs it would discourage them. It is very significant that the State Policy dated 12.10.2001 is not changed till today.

41. We also do not find that the Petitioner has approached this Court belatedly. He has been following refund of his octroi regularly and ultimately his request for exemption from octroi was

rejected by the PMC vide letter dated 21.7.2012. The Petition is pending since 2013. And, therefore, we do not consider it appropriate to relegate the Petitioner to exhaust any other alternate remedy.

42. As a result of the above discussion, we are of the opinion that the State Government was bound to fulfill its own policy and the promise made under the policy to the developers of SEZs. There is no dispute that the Petitioner was an approved developer of an SEZ. He was entitled for exemption as is admitted by the State Government in its own affidavit. In the absence of modification to the rules the Pune Municipal Corporation is not liable to refund the octroi. But in that case the State Government had to fulfill its promise and see to it that the Petitioner did not suffer because of their policy. Therefore, we are satisfied that the Petitioner is entitled to get refund of its octroi. Hence, it is held that the Petitioner is entitled for refund of its octroi but it shall be paid by the State Government. However, the exact amount which needs to be refunded will have to be determined on the basis of the record. The Petitioner will have to establish that particular figure. Since the Octroi Rules are not in existence any more, the other

reliefs cannot be granted which are for amendment to those Rules.

Hence, the following order :

:: O R D E R ::

- i. The Petitioner can make representation before the concerned Department of the Government of Maharashtra specifying the exact amount which they have paid as octroi during the period when they were appointed as developer of the said Special Economic Zone [SEZ] at Kharadi, Pune.
- ii. The State Government shall enquire into the claim only to the extent of amount which is refundable. The amount shall be refunded by the State Government at the rate of 6% per annum from the date when the Petitioner has paid that amount, till realisation.
- iii. This exercise shall be completed as early as possible and not later than six months from today.
- iv. Rule is made absolute only in the aforesaid terms. The Petition is disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

PRADIPKUMAR
PRAKASHRAO
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