



AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPC No. 1864 of 2016**

1. M/s Indra Powergen Pvt. Limited Through Its Director, Nayanpur, Girwarganj Industrial Area, Village Keshav Nagar, Tehsil Surajpur, District Surajpur, Chhattisgarh.
2. Jagjeet Singh Arora, S/o Ishwar Singh Arora, Aged About 67 Years Director of Indra Power Gen. Pvt. Limited, Hotel Mid Town, M.G. Road, Raipur, P. S. Moudhapara, Raipur, Chhattisgarh.

---- **Petitioners**

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. State of Chhattisgarh, Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
3. The Chief Electrical Inspector, State of Chhattisgarh, Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh.
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh.
5. Chhattisgarh State Renewable Energy Development Agency CREDA, Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh.
6. The Appellate Officer And Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G.E. Road, Raipur, Chhattisgarh 492001.

---- **Respondents**

**WPC No. 448 of 2021**

M/s Kalindi Power And Steel Limited A Duly Registered Company Under The Indian Companies Act, 1956, Having Its Registered Office At 35-36, First Floor Millennium Plaza, G.E. Road, Beside Coffee House, Raipur Chhattisgarh. Through Its Authorized Representative, Mr. Sanjay Agrawal S/o Late Shri Ramavtar Agrawal, Aged About 65 Years, R/o 9th South Avenue, Chobey Colony, Raipur Chhattisgarh. P.S. Sarawati Nagar.

---- **Petitioner**

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Mantralaya Mahanadi Bhawan, Naya Raipur Chhattisgarh.
2. State of Chhattisgarh Through Its Secretary, Department of Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.
3. The Chief Electrical Inspector, State of Chhattisgarh, B Block 2nd Floor, Inrawati Bhawan, Naya Raipur Atal Nagar, Chhattisgarh



4. Chhattisgarh State Power Distribution Company Limited Through Its Executive Director (Commercial), 4th Floor, Vidyut Sewa Bhawan, Dangania, Raipur Chhattisgarh
5. Chhattisgarh State Renewable Energy Development Agency (Creda) Through Its Managing Director, 2nd Floor, Cserc Building, Shanti Nagar, Raipur Chhattisgarh
6. Chhattisgarh State Electricity Regulatory Commission Through Its Secretary, Having Its Registered Office At Civil Lines, G.E. Road, Raipur Chhattisgarh 492001

---- Respondents

**WPC No. 1621 of 2016**

1. Chhattisgarh Biomass Energy Developers Association Through Its Secretary, C/o Shivalik Power And Steel Pvt. Ltd. C-33, 3rd Floor, Ashoka Millennium, Ring Road No. 1, Raipur, P. S. Mowa, Raipur Chhattisgarh
2. Sudha Bio Power Pvt. Limited, Formerly Sudha Agro Oil And Chemical Industries Ltd., Through The Authorized Signatory, Mohatarai, Bilaspur, P.S. Koni, Bilaspur, Ratanpur Road, Bilaspur, Chhattisgarh.
3. Neeraj Power Pvt. Limited, Through Its Director 58, Gandhi Chowk, Post Neora, District Raipur, P. S. Tilda Neora, Chhattisgarh.
4. Real Power Pvt. Limited, Formerly NRI Power Pvt. Limited Through Its Authorized Signatory, Vrindawan, Civil Lines, Raipur, P.S. Civil Lines, District Raipur, Chhattisgarh.
5. Rukmani Power And Steel Limited, Through Its Director, Agrawal Gudakhu Factory Campus, Ganesh Nagar, Bilaspur, P.S. Tarbahar, District Bilaspur, Chhattisgarh.
6. Balaji Power Pvt. Limited, Formerly Shivalik Power And Steel Pvt. Limited, Through Its Authorized Signatory Plot No. 567-B, 568, Urla Industrial Complex, Raipur, Chhattisgarh.
7. Agrawal Vidyut, Through Its Director, Kharora Road, Village Tulsi, Post Neora, District Raipur Chhattisgarh

---- Petitioners

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
3. The Chief Electrical Inspector, State of Chhattisgarh, Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4<sup>th</sup> Floor, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh.
5. Chhattisgarh State Renewable Energy Development Agency CREDA, Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh.
6. The Appellate Officer And Secretary, Department of Energy, Naya



Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.

7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G.E. Road, Raipur, Chhattisgarh 492001.

---- Respondents

**WPC No. 1677 of 2015**

M/s R.R. Energy Limited A Company Duly Incorporated Under The Provisions of The Companies Act, 1956, Through Its Director Shri Ashok Agrawal, S/o Late Shri Jagmohan Das Agrawal, Aged About 48 Years, Having Its Plant At Village And P. O. Garh Umaria, Orissa Road, P. S. Kotra Road, Raigarh, District Raigarh, Chhattisgarh.

---- Petitioner

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Mantralaya, Raipur, Chhattisgarh.
2. The Chief Electrical Inspector, State of Chhattisgarh, 36/437, 1st Floor, Bairon Bazar, Raipur, Chhattisgarh
3. The Tehsildar, Tehsil Pusaur, District Raigarh, Chhattisgarh.

---- Respondents

**WPC No. 1715 of 2016**

M/s ISA Power Private Limited A Private Limited Company Having Its Registered Office At Plot No 1071, Road No 44, Jubilee Hills, Hyderabad, 500033 And Site Office At village Banjare, Tahsil Kurud, Revenue And Civil District Dhamtari, (C.G.) Through its authorised signatory Mr. P. Krishna Rao Aged About 46 Years, S/o Shri P. Sanyasi Rao.

---- Petitioner

**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Energy, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh.
2. State of Chhattisgarh Through The Secretary, Department of Industries, Mahanadi Bhawan, Mantralaya, Naya Raipur Chhattisgarh
3. Superintending Engineer And Chief Electrical Inspector Government of Chhattisgarh B. Block, Second Floor, Indravati Bhawan, Naya Raipur, Chhattisgarh
4. Chhattisgarh State Power Distribution Company Ltd. Through Its Chief Executive Director (Commercial) 4th Floor Vidyut Sev Bhawan, Dangania, Raipur Chhattisgarh
5. Chhattisgarh State Renewable Energy Development Agency C.R.E.D.A., Through Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh
6. Chhattisgarh State Electricity Regulatory, Commission, Through Its Secretary, Having Its Registered Office At Civil Lines, G.E. Road, Raipur Chhattisgarh

---- Respondents





**WPC No. 1716 of 2016**

M/s Ecofren Power And Projects Private Limited A Private Limited Company Having Its Registered Office At Plot No 1071, Road No 44, Jubilee Hills, Hyderabad, 500033 And Site Office At Chandkhuri Tehsil Revenue And Civil District Durg Chhattisgarh Through Manager H.R. And IR and authorised signatory Mr. P. Krishna Rao Aged About 46 Years, S/o Shri P. Sanyasi Rao

---- **Petitioner**

**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Energy, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. State of Chhattisgarh Through The Secretary, Department of Industries, Mahanadi Bhawan, Mantralaya, Naya Raipur Chhattisgarh
3. Superintending Engineer And Chief Electrical Inspector Government of Chhattisgarh B. Block, Second Floor, Indravati Bhawan, Naya Raipur, Chhattisgarh
4. Chhattisgarh State Power Distribution Company Ltd. Through Its Chief Executive Director (Commercial) 4th Floor Vidyut Sev Bhawan, Dangania, Raipur Chhattisgarh
5. Chhattisgarh State Renewable Energy Development Agency C.R.E.D.A., Through Managing Director, 2nd Floor, C.S.E.R.C. Building, Shanti Nagar, Raipur, Chhattisgarh
6. Chhattisgarh State Electricity Regulatory, Commission, Through Its Secretary, Having Its Registered Office At Civil Lines, G.E. Road, Raipur Chhattisgarh
7. Executive Engineer, E.S. And Divisional Electrical Inspector Government of Chhattisgarh Rajnandgaon Division Office At Sahdev Nagar, Bhadauria Chowk G.E. Road, Rajnandgaon Chhattisgarh

---- **Respondents**

**WPC No. 1743 of 2016**

1. Neeraj Power Pvt. Ltd. Through Its Director Sunil Kumar Agrawal, 58, Gandhi Chowk, Post Neora, District Raipur, P.S. Tilda Neora, Chhattisgarh
2. Sunil Kumar Agrawal, S/o Shri Prem Chand Agrawal, Aged About 37 Years Director And Shareholder of Neeraj Power Pvt. Limited, R/o H- 20, Anupam Nagar, Raipur, District Raipur Chhattisgarh

---- **Petitioners**

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
3. The Chief Electrical Inspector, State of Chhattisgarh, Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor, Vidyut Seva Bhawan,



Dangania, Raipur, Chhattisgarh

5. Chhattisgarh State Renewable Energy Development Agency CREDA, Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh
6. The Appellate Officer And Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G.E. Road, Raipur, Chhattisgarh 492001

---- Respondents

**WPC No. 1745 of 2016**

1. Real Power Pvt. Limited, Formerly NRI Power Pvt. Limited Through Its Director, Vrindawan, Civil Lines, Raipur, P. S. Civil Lines, District Raipur, Chhattisgarh
2. Shri Shesh Narayan Agrawal, S/o Shri Mohan Lal Agrawal, Aged About 34 Years, Director And Shareholder of Real Power Pvt. Limited, R/o Anita Book Depo Kaiyastha Para, Purani Basti, Raipur, District Raipur, Chhattisgarh

---- Petitioners

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
3. The Chief Electrical Inspector, State of Chhattisgarh, Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh
5. Chhattisgarh State Renewable Energy Development Agency CREDA, Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh.
6. The Appellate Officer And Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G.E. Road, Raipur, Chhattisgarh 492001

---- Respondents

**WPC No. 1773 of 2016**

1. Rukmani Power And Steel Limited Through Its Director, Agrawal Gudakhu Factory Campus, Ganesh Nagar, Bilaspur, P.S. Tarbahar, District Bilaspur, Chhattisgarh.
2. Bajrang Lal Agrawal, S/o Late Lakhi Ram Agrawal, Aged About 45 Years



Director And Shareholder of Rukmani Power And Steel Limited, R/o Ganesh Nagar, Bilaspur, P. S. Tarbahar, District Bilaspur, Chhattisgarh

---- Petitioners

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. State of Chhattisgarh, Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
3. The Chief Electrical Inspector, State of Chhattisgarh, Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh.
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh.
5. Chhattisgarh State Renewable Energy Development Agency CREDA, Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh
6. The Appellate Officer And Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G. E. Road, Raipur, Chhattisgarh 492001

---- Respondents

**WPC No. 1775 of 2016**

1. Balaji Power A Unit of Hira Ferro Alloys Limited Through Its Director, Plot No. 567- B, 568, Urla Industrial Complex, Raipur, Chhattisgarh.
2. Shri Y. C. Rao, S/o Late Y. Mandali, Aged About 49 Years Director And Shareholder of Balaji Power, R/o Green Orchid, Mowa, Raipur Chhattisgarh.

---- Petitioners

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. State of Chhattisgarh, Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
3. The Chief Electrical Inspector, State of Chhattisgarh, Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh.
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh.
5. Chhattisgarh State Renewable Energy Development Agency CREDA, Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh.
6. The Appellate Officer And Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.



7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G. E. Road, Raipur, Chhattisgarh 492001

---- Respondents

**WPC No. 1776 of 2016**

1. Agrawal Viduyt, A Division of Agrawal Oil Extraction Limited, Through Its Director, Kharora Road, Village Tusli, Post Neora, District Raipur, P.S. Tilda Neora, Chhattisgarh
2. Amit Agrawal, S/o Shri Om Prakash Agrawal, Aged About 39 Years Director And Shareholder of Agrawal Vidyut, R/o J. B. Bhawan, Gandhi Chowk, Post Neora, District Raipur, Chhattisgarh

---- Petitioners

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. State of Chhattisgarh, Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
3. The Chief Electrical Inspector, State of Chhattisgarh, Indrawati Bhawan, Naya Raipur, Raipur, Chhattisgarh.
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh.
5. Chhattisgarh State Renewable Energy Development Agency CREDA, Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur, Chhattisgarh.
6. The Appellate Officer And Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G.E. Road, Raipur, Chhattisgarh 492001

---- Respondents

**WPC No. 1829 of 2016**

1. M/s Shri Shyam Ware Housing And Power Pvt. Ltd. Through Its Director Village Banari Naila District Janjgir Champa Chhattisgarh
2. Ramesh Kumar Agrawal S/o Late Hariram Agrawal, Aged About 53 Years Director of Shri Shyam Ware Housing And Power Pvt. Ltd. Village Banari Naila, District Janjgir Champa, Chhattisgarh

---- Petitioners

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh
2. State of Chhattisgarh. Through Its Secretary, Department of Industries, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh
3. The Chief Electrical Inspector, State of Chhattisgarh Indrawati Bhawan,



Naya Raipur Raipur Chhattisgarh

4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor Vidyut Sev Bhawan, Dangania, Raipur Chhattisgarh
5. Chhattisgarh State Renewable Energy Development Agency Creda Through Its Managing Director, 2nd Floor, CSERC Building, Shanti Nagar, Raipur Chhattisgarh,
6. The Appellate Officer And Secretary, Department of Energy, Naya Mantralaya, Mahanadi Bhawan Naya Raipur, Raipur Chhattisgarh
7. Chhattisgarh State Electricity Regulatory Commission, Through Its Secretary, Having Its Regd. Office At Civil Lines, G.E. Road, Raipur, Chhattisgarh 492001

---- Respondents

**WPC No. 2632 of 2016**

M/s K.V.K. Bio Energy Private Limited A Company Duly Incorporated Under The Provisions of The Companies Act 1956, Having Its Registered Office At 6-3-110/A-1 3rd Floor, Navbharat Chambers, Raj Bhawan Road, Somajiguda, Hyderabad, Telengana And Having Its Plant At N.H. 49, Village Amartal, Post Tilai, Distirct Janjgir Champa, Chhattisgarh, Through Its Authorized Signatory Shri Sai Ram Tata.

---- Petitioner

**Versus**

1. State of Chhattisgarh Through Its Secretary Department of Energy, Naya Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh
2. State of Chhattisgarh Through Its Secretary, Department of Industries, Naya Mantralaya Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh
3. The Chief Electrical Inspector, State of Chhattisgarh Indrawati Bhawan, Naya Raipur, Raipur Chhattisgarh
4. Chhattisgarh State Power Distribution Company Limited, Through Its Executive Director (Commercial) 4th Floor, Vidyut Seva Bhawan, Dangania, Raipur Chhattisgarh

---- Respondents

**WPC No. 3685 of 2021**

M/s Jagdamba Power And Alloy Limited A Company Duly Incorporated Under The Provisions of The Companies Act, 1956, Through Its Director Shri Arun Poddar, S/o Late Shri Hariram Poddar, Aged About 52 Years, Having Its Registered Office At G-16, Hira Arcade, Pandri, Raipur, P.S. Civil Lines, Raipur, District Raipur Chhattisgarh

---- Petitioner

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh
2. The Chief Electrical Inspector, State of Chhattisgarh, B Block, 2nd Floor, Indrawati Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh



3. The Director, Directorate of Industry, Udyog Bhavan, Ring Road, Amlidih, Raipur, Chhattisgarh
4. State of Chhattisgarh Through Its Secretary, Department of Industries, Mahanadi Bhavan, Atal Nagar, District Raipur Chhattisgarh

--- Respondents

(Cause Title taken from Case Information System)

---

For Petitioners	:	Mr. Amit S. Agrawal, senior counsel, Mr. V.V.S.Moorthy, senior counsel, assisted by Mr. Shantanu Kumar, Mr. Ankit Singhal, Mr. Akhil Kumar Samantray, Mr. Abhijeet Mishra
For Respondent - State of Chhattisgarh	:	Mr. Satish Chandra Verma, Advocate General, assisted by Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.
For Respondent - Chhattisgarh State Renewable Energy Development Agency	:	Mr. Devershi Thakur and Mr. Anway Tiwari, Advocates.
For Respondent - Chhattisgarh State Electricity Regulatory Commission	:	Mr. Anumeh Shrivastava, Advocate.
For Respondent-CSPDCL	:	Mr. Apurv Goyal
Dates of Hearing	:	12.09.2022, 14.09.2022 and 15.09.2022
Date of Judgment	:	03.11.2022

---

**Hon'ble Mr. Arup Kumar Goswami, Chief Justice**

**Hon'ble Mr. Deepak Kumar Tiwari, Judge**

**CAV Judgment**

**Per Arup Kumar Goswami, Chief Justice**

In this batch of petitions, essentially, the notification dated 12.11.2014 issued under Section 3-B of the Chhattisgarh Electricity Duty Act, 1949 (for short, the Act) is challenged and therefore, as submitted by learned counsel for the parties, the writ petitions which have been listed together, have been heard analogously and are being disposed of by this



common order.

2. Mr. Amit S. Agrawal, learned senior counsel, appearing for the petitioner in WPC No. 1621/2016 has made the lead argument. Mr. V.V.S.Moorthy, learned senior counsel, assisted by Mr. Shantanu Kumar, as well as Mr. Ankit Singhal, Mr. Akhil Kumar Samantray, Mr. Abhijeet Mishra, learned counsel, appearing for the petitioners have endorsed the submissions of Mr. Agrawal and they submit that for the purpose of disposal of the writ petition, reference may be made to the pleadings in WPC No. 1621/2016.

3. WPC No. 1621/2016 is filed by Chhattisgarh Biomass Energy Developers Association, through its Secretary, as petitioner No. 1, and Sudha Bio Power Pvt. Ltd. (formerly Sudha Agro Oil & Chemical Industries Ltd.), Neeraj Power Pvt. Ltd., Real Power Pvt. Ltd., Rukmani Power & Steel Ltd, Balaji Power Pvt. Ltd. (formerly known as Shivalik Power & Steel Pvt. Ltd) and Agrawal Vidyut, as petitioners No. 2, 3, 4, 5, 6 and 7. However, by an order dated 28.06.2016, the writ petition was treated to be filed only by Sudha Bio Power Pvt. Ltd. and the other five writ petitioners were directed to file separate and independent writ petitions.

4. Accordingly, Neeraj Power Pvt. Ltd., Real Power Pvt. Ltd., Rukmani Power & Steel Ltd., Balaji Power Pvt. Ltd. And Agrawal Vidyut had also filed independent writ petitions being WPC No. 1743/2016, 1745/2016, 1773/2016, 1775/2016 and 1776/2016, respectively.

5. Petitioner No. 1 is a registered association of which the petitioners No. 2 to 7 are its members. The petitioners No. 2 to 7 are engaged in business of generating power from bio-mass based power plants and have



their plants at different places in the State of Chhattisgarh.

6. The case of the petitioners, as presented in the writ petition, is that the State Government of Chhattisgarh had formulated and notified its first industrial policy 2001-2006 by notification dated 03.12.2001, published in the State Gazette dated 25.01.2002. Under the said Industrial Policy, total exemption was granted to all new industries set up in the State, from payment of electricity duty under the provisions of the Act, for a period of 15 years from the date of commencement of commercial production. Subsequently, the State Government of Chhattisgarh framed industrial policy 2004-2009. Apart from others, the industrial policy provides for total exemption from payment of electricity duty.

7. It is stated that in view of the representation being made in Industrial Policy 2004-2009 of the State, the members of the petitioner association altered their position by acting on the said representation and promise and made huge investment to set up and establish industries in different places in the State of Chhattisgarh to generate power from non conventional sources and started their production from 2006-2008. It is also pleaded that notification dated 03.11.2005, 05.04.2006 and 09.07.2008 were issued to effectuate the commitment made in the Industrial Policy.

8. However, the Chief Electrical Inspector (respondent No. 3) started issuing demand notices to the members of the petitioner association for payment of electricity duty on the electrical units sold by the petitioners to the Chhattisgarh State Power Distribution Company Limited (for short, the CSPDCL) on the ground that the companies are entitled to exemption from



payment of electricity duty only on the electricity duty which is used for self consumption and not on sale to the Electricity Board. Some members of the petitioner association had preferred writ petitions and this Court had directed the State Government and the Chief Electrical Inspector to decide the claim of the petitioners for exemption from payment of electricity duty in accordance with law and providing that until the claim of the petitioners is decided, no coercive steps shall be taken to recover the electricity duty under demand notice. It is stated that though representations were filed before the Chief Electrical Inspector, the same are still pending consideration.

9. it is pleaded that by the impugned notification dated 12.11.2014, the respondent No.1, in exercise of its power conferred by Section 3-B of the Act and in supersession of the earlier notifications with respect to exemption from payment of electricity duty under the Industrial Policy 2004-2009, exempted the eligible new industries (except expansion projects of existing industrial units) of various categories, from the date of commercial production, from payment of electricity duty payable only on the electrical units consumed for its own use for the specified period indicated therein thereby illegally withdrawing the benefit that had vested in favour of the petitioner and had continued to subsist by virtue of the Industrial Policy and the notifications issued thereunder and thus, the notification is violative of the doctrines of legitimate expectation and promissory estoppel.

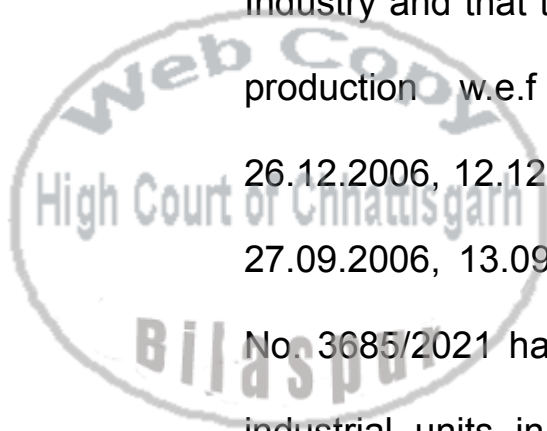
10. The petitioners had approached this Court earlier by filing WPC No. 363/2015 challenging the validity of the notification dated 12.11.2014 and this Court, by an order dated 02.03.2015, disposed of the said writ petition



directing the writ petitioners to submit a representation. Pursuant thereto, the petitioners submitted a representation dated 18.03.2015 followed by a written submission on 08.12.2015. The representation was rejected by the Secretary, Department of energy by order dated 30.04.2016 and it is in that circumstance, the present writ petition came to be field.

11. It is submitted by Mr. Amit S. Agrawal, learned senior counsel, that the petitioners in WPC No. 1621/2016, 1864/2016, 1677/2015, 1743/2016, 1745/2016, 1773/2016, 1775/2016, 1776/2016, 1829/2016, 2632/2016, 1715/2016, 1716/2016 and 448/2021 have been categorized as Special Thrust Sector Industry and petitioner in WPC No. 3685/2021, as General Industry and that they are in operation. They had commenced commercial production w.e.f 01.08.2006, 19.09.2009, 13.01.2007, 01.11.2006, 26.12.2006, 12.12.2006, 23.12.2006, 17.08.2006, 27.03.2012, 18.01.2006, 27.09.2006, 13.09.2006 and 06.09.2007, respectively. Petitioner in WPC No. 3685/2021 had commenced production on 26.03.2007. However, the industrial units in WPC No. 1715/2016, 1716/2016 and 448/2021 had closed down w.e.f. 10.04.2015, 13.04.2015 and March, 2015, respectively.

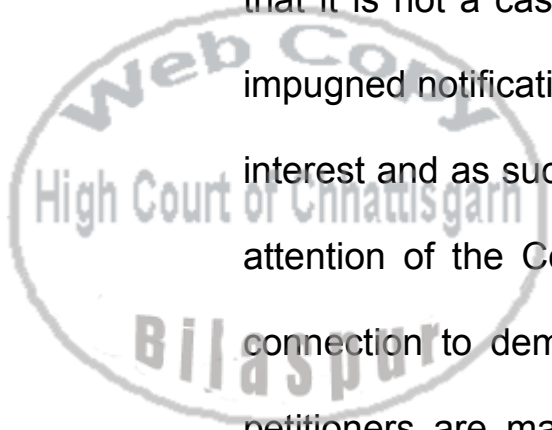
12. Mr. Agrawal submits that the representation made by the State in its industrial policy for grant of exemption from payment of electricity duty is a solemn commitment and as the petitioners had acted upon such representation and altered their position, the impugned notification dated 12.11.2014 is violative of the doctrines of legitimate expectation and promissory estoppel. Exemption from payment of electricity duty flowing from Industrial Policy of 2004-2009 was given effect to by statutory notifications on 03.11.2005, 05.04.2006, 09.07.2008 and 30.09.2013, all effective from 01.11.2004, and therefore, exemption, at any rate, could not





have been withdrawn with retrospective effect from 01.11.2004 by the impugned notification dated 12.11.2014.

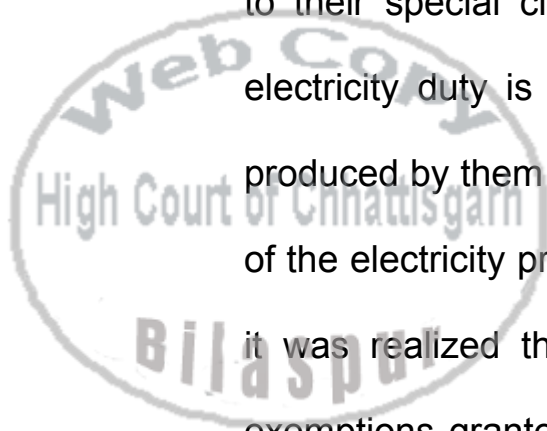
13. It is further submitted that the impugned notification withdrawing vested right of exemption from payment of electricity duty retrospectively is ultra vires Section 3-B(b) of the Act as the statute does not authorize withdrawal of exemption benefit with retrospective effect. It is also submitted that the said notification is manifestly arbitrary. He has contended that the impugned notification cannot be construed as a clarificatory notification as is sought to be contended in the return of the State so as to apply the notification retrospectively. It is submitted by him that it is not a case that the notification is issued in public interest as the impugned notification did not recite that the notification was issued in public interest and as such, State cannot seek to improve its case. He has drawn attention of the Court to paragraph 14 of the return of the State in this connection to demonstrate that only because of the perception that the petitioners are making profit, the impugned notification was issued with retrospective effect. Mr. Agrawal has relied on the decisions of the Hon'ble Supreme Court in *Video Electronics (P) Ltd. v. State of Punjab*, reported in (1990) 3 SCC 87, *Sable Waghire & Co. v. Union of India*, reported in (1975) 1 SCC 763, *Indian Express Newspapers (Bombay) v. Union of India*, reported in (1985) 1 SCC 641, *Shayara Bano v. Union of India*, reported in (2017) 9 SCC 1, *State of Jharkhand v. Brahmputra Metallics Ltd.* reported in (2020) SCC OnLine SC 968, *Mahabir Vegetable Oils (P) Ltd. v. State of Haryana*, reported in (2006) 3 SCC 620, *SVA Steel Re-Rolling Mills Ltd. v. State of Kerala*, reported in (2014) 4 SCC 186, *Director General of Foreign Trade v. M/s. Kanak Exports*, reported in





*(2016) 2 SCC 226, MRF Ltd. v. CST*, reported in *(2006) 8 SCC 702*, *Pawan Alloys & Castings (P) Ltd. v. U.B. SEB*, reported in *(1997) 7 SCC 251* and *State of U.P. v. Birla Corporation Ltd.*, reported in *(2020) 20 SCC 320*.

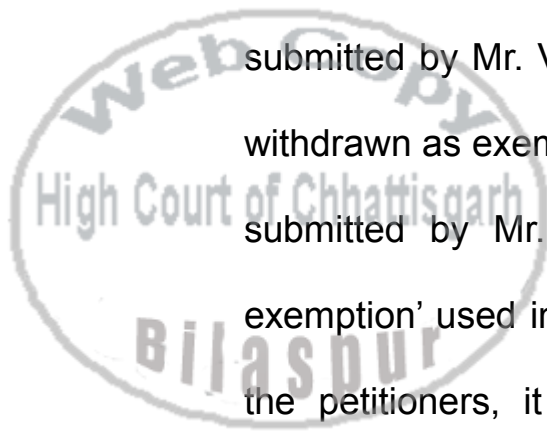
14. Abiding by the stand taken in the return and the additional return filed on behalf of respondents No. 1 to 3 and 6, Mr. Verma submits that the order dated 30.04.2016 passed by the Secretary, Government of Chhattisgarh, Department of Energy, is a reasoned order, who opined that the impugned notification was issued in public interest and that the exemption is only available to such industries who are in actual need owing to their special circumstances and that the exemption from payment of electricity duty is available to such industries who utilized the electricity produced by them for their own use, without making any commercial usage of the electricity produced by the Captive Power Plants. It is submitted that it was realized that the industrial units were making profits out of the exemptions granted to them. The rationale of granting any exemption is to strengthen an industry in its nascent stage to enable it to survive initial days of hardship by providing necessary financial support to the industry to sustain itself till it reaches the stage when it can survive on its own profits. When the petitioners have started earning profit, there is no justification to continue to grant exemption. It is stated that grant and withdrawal of exemption is a policy matter and Section 3(B)(b) of the Act enables levy of electricity duty upon cancellation of exemption and therefore, invocation of principles of promissory estoppel and legitimate expectation, is misconceived. A conjoint reading of Section 3-B of the Act and Section 21 of the Chhattisgarh General Clauses Act, 1957 (for short, Act of 1957)





would demonstrate that power to add, amend, vary or rescind an order is inherent in every enactment and therefore, the notification dated 12.11.2014 cannot be said to be illegal or vitiated. It was concluded by the Government that the policy decision of granting of exemption was not in public interest, and therefore, to correct the mistake in the earlier notifications, the impugned notification was issued. Relying on the additional return filed on behalf of the respondents No. 1 to 3 and 6, it is submitted by him that the impugned notification is a clarificatory notification and therefore, it has retrospective effect. The notification dated 12.11.2014 cannot be construed to be a notification withdrawing the exemption/ concession already granted with respect to selling of electricity. It is submitted by Mr. Verma that it cannot be argued that the policy had been withdrawn as exemption is still being granted for auxillary consumption. It is submitted by Mr. Verma that if literal construction of the word 'total exemption' used in the exemption notification is resorted to as pleaded by the petitioners, it would lead to an absurd situation as non-electricity producing new industrial units would avail benefit of electricity duty exemption only at the time of self-consumption/use, whereas electricity producing units would avail benefit of the electricity duty exemption not only at the time of self consumption/use but also at the time of selling the electricity, which is not the intention of the policy.

15. Mr. Verma further submits that the petitioners are covered both under the definition of 'consumer' under Section 2(a) and 'producer' under Section 2(d)(i) of the Act. Mr. Verma relies on the decisions of the Hon'ble Supreme Court in *Union of India & Another v. VVF Limited & Another*, reported in (2020) 20 SCC 57, *State of Gujarat v. Arcelor Mittal Nippon*





*Steel Limited*, reported in (2022) 6 SCC 459, *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company and Others*, reported in (2018) 9 SCC 1 as well as in *Pepsico India Holdings Private Limited v. State of Kerala & Others*, reported in (2009) 13 SCC 55.

16. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

17. Industrial Policy 2004-2009 was unveiled with an object to promote private sector participation, for creation of industrial infrastructure, to create additional employment opportunities by accelerating the process of industrialisation in the State, to create enabling environment for ensuring maximum value addition to the abundant, locally available mineral and forest based resources, to promote private sector participation for creation of industrial infrastructure in the State and to increase industrial production.

18. The policy classified industries into three categories, namely, negative list industries, special thrust industries and general industries. The industries for power generation from non-conventional sources were classified as a special thrust industries. Sub-clause (ii) of Clause 4.4.5 of the Industrial Policy provides that industries would be entitled to additional directed incentives. Clause B of point 3 of the Industrial Policy provides total exemption for a period of 15 years for special thrust industries from the date of commencement of commercial production for medium large industries. Relevant portions of Industrial Policy are extracted herein below:

“4.4.6. Directed incentives provided in this policy will be available to the following industrial undertakings:



(i) **New Industrial projects** – All such industrial units, which commence commercial production between 1<sup>st</sup> November 2004 to 31<sup>st</sup> October, 2009.

4.4.7. Investors belonging to different categories setting small scale, medium-large and mega industrial projects in different areas of the State will be entitled to directed incentives given in Annexure-4.

4.4.12 The investors, who had taken effective steps for setting up their industrial units prior to 1<sup>st</sup> November 2004, but commercial production had not commenced up to the appointed day, will have the option to avail of the benefit of the package of exemptions/ concessions provided for in the Industrial Policy 2001-2006.

19. Point 3 of Annexure A-4 provides Electricity Duty exemption only to the new industries. The petitioners come under Medium-Large industry. Point 3 reads as follows:

### “3. Electricity Duty Exemption

Exemption from payment of electricity duty will be given only to the new industries as per the details given below. Expansion projects of the existing industrial units will not be eligible for exemption from electricity duty.

#### A. Small Industry

Region	General Industry	Special Thrust Industry
Category A General Area	– 1. Total exemption for a period of 10 years from the date of	Total exemption for a period of 15 years from the date of



	commencement of commercial production. 2. Exemption for 15 years to the industrial set-up by the scheduled caste/ tribe category.	commencement of commercial production.
Category B- Most Backward Scheduled Tribe dominant areas	Total exemption for a period of 15 years from the date of commencement of commercial production.	Total exemption for a period of 15 years from the date of commercial production.

**B. Medium – Large Industry**

Region	General Industry	Special Thrust Industry
Category A – General area	Total exemption for a period of 10 years from the date of commencement of commercial production.	Total exemption for a period of 15 years from the date of commencement of commercial production.
Category B – Most backward scheduled tribe dominant areas	Total exemption for a period of 15 years from the date of commencement of commercial production.	Total exemption for a period of 15 years from the date of commencement of commercial production.

**C. Mega Project**

Region	General Industry	Special Thrust Industry
Category A – General Area	Total exemption for a period of 15 years from the date of commencement of commercial production.	Total exemption for a period of 15 years from the date of commencement of commercial production.
Category B- Most Backward Scheduled Tribe dominant areas	Total exemption for a period of 15 years from the date of commencement of commercial production.	Total exemption for a period of 15 years from the date of commercial production.

20. In terms of the policy, a notification dated 03.11.2005 was issued by the Department of Energy, State of Chhattisgarh providing total exemption



from payment of electricity duty for a period of 15 years from the start of commercial production in respect of new industrial units. The relevant portion of the notification dated 03.11.2005 issued by the Government of Chhattisgarh, Energy Department, reads as follows:

“Government of Chhattisgarh, Energy Department  
Dau Kalyan Singh Bhawan, Mantralaya, Raipur,

Notification

Raipur, dated 03.11.2005

No. 3000/13/Ati/Adhisuchna/05: Because under the provisions of Industrial Policy 2004-2009 the State Government is of the opinion that it is necessary and justified to promote new industrial units in the State.

Therefore, in exercise of powers conferred under the provisions of Section 3(b) of Chhattisgarh Electricity Duty Act, 1949 (Act of 1949), the State Government has been pleased to grant exemption in the payment of Electricity Duty for the specified period from the date of starting of commercial production only to the new industries to be established in the State as shown in the below mentioned table:

A. SMALL INDUSTRY

Area	General Industry	Special Thrust Industry
Category A – General Area	1. Total exemption upto 10 years from the date of commencement of commercial production. 2. Total exemption up to	Total exemption upto 15 years from the date of commencement of commercial production.



	15 years for the industries established by the Scheduled Caste/ Scheduled Tribe category.	
Category – B Most backward Scheduled Tribe Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption upto 15 years from the date of commencement of commercial production.

#### B. MEDIUM-LARGE INDUSTRY

Area	General Industry	Special Thrust Industry
Category A – General Area	Total exemption upto 10 years from the date of commencement of commercial production.	Total exemption upto 15 years from the date of commencement of commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Total exemption upto 15 years from the date of commencement of commercial production.	Total exemption upto 15 years from the date of commencement of commercial production.

The units having expansion schemes in the existing Industrial Units shall not be eligible for any exemption/concessions/relaxation in making payment of Electricity Duty.

.....

This notification shall be deemed to have come into effect from 01.11.2004.

By order and in the name of the  
Governor of Chhattisgarh

Sd/-



Illegible  
(P.K.Mishra)  
Joint Secretary,  
Government of Chhattisgarh,  
Energy Department, Raipur”

21. Another notification dated 05.04.2006 was issued by the Department of Energy, State of Chhattisgarh, under the Industrial Policy 2004-2009 for new industrial units which commenced production on or after 01.11.2004, wherein also total exemption from payment of electricity duty to special thrust industries and general industries from the date of start of commercial production was provided. In the said notification, it was laid down that the industries could take the benefit of notifications dated 21.06.2002, 25.06.2002 and 18.08.2003 under the Industrial Policy 2001-2006 or could take the benefit of notifications under the Industrial Policy 2004-2009, provided the commercial production commenced after 01.11.2004. The relevant part of notification dated 05.04.2006 reads as under:

“Government of Chhattisgarh  
Energy Department  
Mantralaya, Dau Kalyan Singh Bhawan, Raipur,  
Raipur, dated 5<sup>th</sup> April, 2006

No. F-11-4-2006-13-1: Because under the provisions of Industrial Policy 2004-2009 the State Government is of the opinion that it is necessary and justified to promote new industrial units in the State.

Therefore, in exercise of powers conferred under the



provisions of Section 3(c) of Chhattisgarh Electricity Duty Act, 1949 (Act of 1949), the State Government has been pleased to grant exemption in the payment of Electricity Duty for the specific period from the date of starting of commercial production only to new industries to be established in the State except the industries shown in the list in below mentioned tables:

#### A. SMALL INDUSTRY

Area	General Industry	Special Thrust Industry
Category Sub – General Area	1. Total exemption upto 10 years from the date of commencement of commercial production. 2. Total exemption upto 15 years for the industries established by the Scheduled Caste/ Scheduled Tribe category.	Total exemption upto 15 years from the date of commencement of commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.

#### B. MEDIUM-LARGE INDUSTRY

Area	General Industry	Special Thrust Industry
Category A – General Area	Total exemption up to 10 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.
Category – B	Total exemption up to 15	Total exemption up to





Most backward Scheduled Tribe Dominant Areas	years from the date of commencement of commercial production.	15 years from the date of commencement of commercial production.
--	---	--

### C. MEGA PROJECTS – VERY LARGE INDUSTRY

Area	General Industry	Special Thrust Industry
Category A- General Area	Total exemption up to 10 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commercial production.
Most backward Scheduled Tribe Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commercial production.

The expansion schemes of existing Industrial Units shall not be eligible for any exemption in Electricity Duty.

This notification shall be deemed to have come into effect from 01.11.2001. This notification is being issued replacing the Notification No. 300713/Ashi/Adhisuchna/2003, dated 3<sup>rd</sup> November, 2005 which will remain effective in place of the said Notification.

By order and in the name of the  
Governor of Chhattisgarh

Sd/-

Illegible

(B.K.Mishra)

Joint Secretary”





22. Another notification was issued on 09.07.2008 pursuant to the said industrial policy and in exercise of power under Section 3(B) of the of the Act, whereby the State Government granted total exemption from payment of electricity duty from the date of commencement of commercial production for a period of 15 years giving retrospective effect from 01.11.2004. The notification reads as under:

“Energy Department

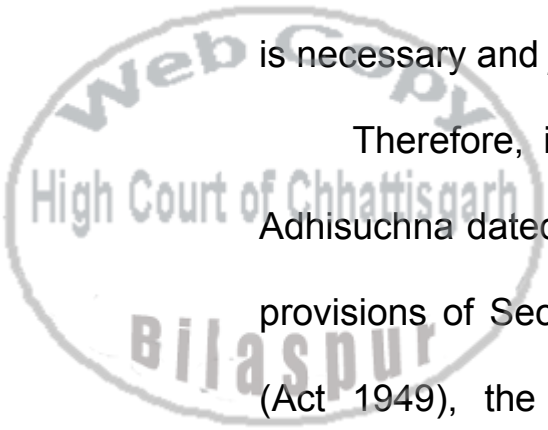
Mantralaya, Dau Kalyan Singh Bhawan, Raipur,

Raipur, Dated 9<sup>th</sup> July 2008

No. 1416/13/2/E.D./Notification/08:- Since under the provisions of Industrial Policy 2004-2009 the State Government is of the opinion that it is necessary and justified to promote new industrial units in the State.

Therefore, in accordance to earlier Notification No. 3000/13/U.V./ Adhisuchna dated 03.11.2005, in exercise of powers conferred under the provisions of Section 3(b) of the Chhattisgarh Electricity Duty Act, 1949 (Act 1949), the State Government has been pleased to grant the exemption in the payment of Electricity Duty for the specified period from the date of starting of commercial production only to the new industries to be established in the State (except the units having schemes of expansion of their existing units). The anomalies/deficiencies have been found in the notification and the Industrial Policy 2004-2009 issued earlier, therefore, for maintaining provisions of incentives of exemption in the payment of Electricity Duty modification in Industrial Policy 2004-2009 and notification dated 03.11.2005 is necessary.

Therefore, by superseding the Notification No. 3000/13/U.V./ Adhisuchna/05, dated 03.11.2005 issued earlier, this notification is being





issued. Accordingly, the exemption in the payment of Electricity duty for specific period is being granted to new units of various categories from the date of starting their commercial production as shown in front of them in the following tables:

**A. SMALL INDUSTRY**

Area	General Industry	Special Thrust Industry
Category A – General Area	1. Total exemption up to 10 years from the date of commencement of commercial production. 2. Total exemption up to 15 years for the industries established by the Scheduled Caste/ Scheduled Tribe category.	Total exemption up to 15 years from the date of commencement of commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.

**B. MEDIUM-LARGE INDUSTRY**

Area	General Industry	Special Thrust Industry
Category A – General Area	Total exemption up to 10 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.



### C. MEGA PROJECTS – LARGE INDUSTRY

Area	General Industry	Special Thrust Industry
Category A – General Area	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.

The units having expansion schemes in the existing industrial units shall not be eligible for any exemption/concessions/relaxation in Electricity Duty.

This notification shall be effective retrospectively w.e.f. 01.11.2004.

By order and in the name of the  
Governor of Chhattisgarh

Sd/-

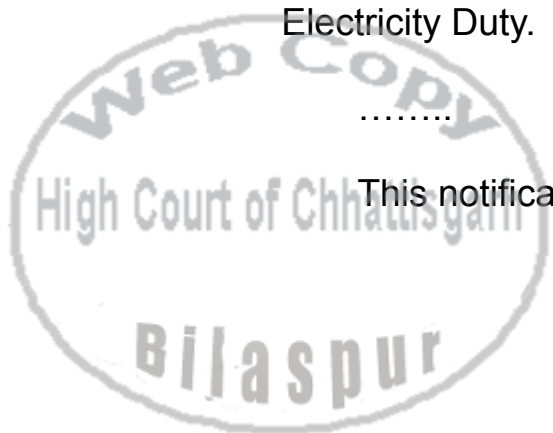
Illegible

(S.L.Adile)

Under Secretary,  
Government of Chhattisgarh,  
Energy Department, Raipur”

23. It is also relevant to extract the notification dated 30.09.2013. The same reads as under:

“Government of Chhattisgarh  
Energy Department  
Mahanadi Bhawan, Mantralaya, Naya Raipur,





## Notification

Raipur, dated 30.09.2013

No. F21/29/08/13/2/2013: The State Government is of the opinion that some of the anomalies in the notification No. F-11-4-2008-13-1 dated 05.04.2008 have been found and superseding of notifications issued earlier is not mentioned in the notification No. 1416/13/ED/Adhisuchna/08, dated 09.07.2008, and therefore, in regard to granting benefit of relaxation / concession / exemption in making payment of electricity duty there is position of misunderstanding in regard to Industrial Policy 2004-2009, therefore, for encouraging new industrial units by way of granting benefit of relaxation / concession/ exemption in making payment of electricity duty in the State under the provisions of industrial policy 2004-2009, it is justified and necessary to issue this notification.

Therefore, in exercise of powers conferred under the provisions of Section 3(b) of Chhattisgarh Electricity Duty Act, 1949 (Act 1949), for avoiding the present misunderstanding, by superseding both the aforesaid notifications alongwith all other notifications issued earlier, the State government has been pleased to grant the exemption /concession / relaxation in the payment of Electricity Duty for the specific period from the date of starting of commercial production to the eligible industries of various categories established in the State (except the expansion schemes of existing units) as shown in the below mentioned table:

### A. SMALL INDUSTRY

Area	General Industry	Special Thrust Industry
------	------------------	-------------------------



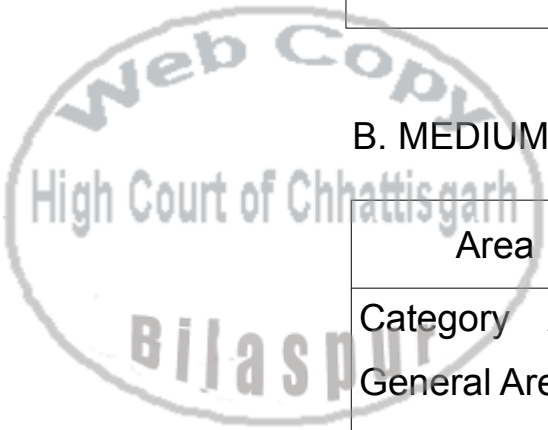
Category A – General Area	1. Up to 10 years complete relaxation from the date of starting commercial production. 2. Up to 15 years relaxation for the industries established by the Scheduled Caste/ Scheduled Tribe category.	Up to 15 years complete relaxation from the date of starting commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Up to 15 years complete relaxation from the date of starting commercial production.	Up to 15 years complete relaxation from the date of starting commercial production.

**B. MEDIUM-LARGE INDUSTRY**

Area	General Industry	Special Thrust Industry
Category A – General Area	Up to 10 years complete relaxation from the date of starting commercial production.	Up to 15 years complete relaxation from the date of starting commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Up to 15 years complete relaxation from the date of starting commercial production.	Up to 15 years complete relaxation from the date of starting commercial production.

**C. MEGA PROJECTS – LARGE INDUSTRY**

Area	General Industry	Special Thrust Industry
Category A – General Area	Up to 15 years complete relaxation from the date	Up to 15 years complete relaxation from the date

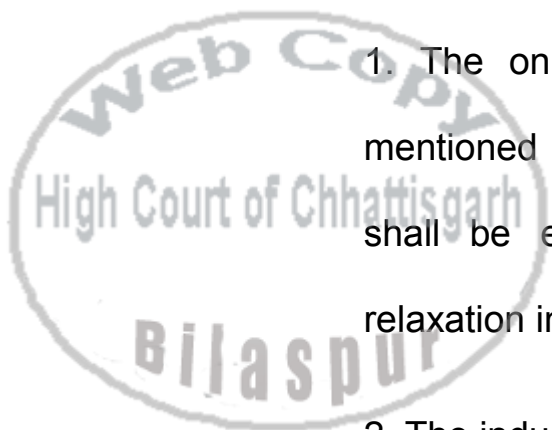




	of starting commercial production.	of starting commercial production.
Category – B Most backward Scheduled Tribe Dominant Areas	Up to 15 years complete relaxation from the date of starting commercial production.	Up to 15 years complete relaxation from the date of starting commercial production.

Therefore, in accordance to above the exemption in making payment of electricity duty shall be subject to the following terms i.e.-

1. The only new industries / units completing provisions as mentioned in para 4.4.6 of Industrial Policy 2004-2009 of the State shall be eligible for the benefit of exemptions/ concessions/ relaxation in making payment of Electricity Duty.
2. The industries included in the list of ineligible List as mentioned in Appendix 2 of Industrial Policy 2004-2009 of the State shall not be eligible for the benefit of exemptions/concessions/relaxation in making payment of Electricity Duty.
3. In accordance to Part 3 of Appendix 4 of Industrial Policy 2004-2009 of State, the industries shall not be eligible for the benefit of exemptions / concessions/ relaxation in making payment of Electricity Duty for the expansion scheme of their Industry/Unit.
4. Those industries who under the provisions as mentioned in para 4.4.12 of Industrial Policy 2004-2009 might had taken prescribed





effective steps for establishing of industry established prior to 01.11.2004.

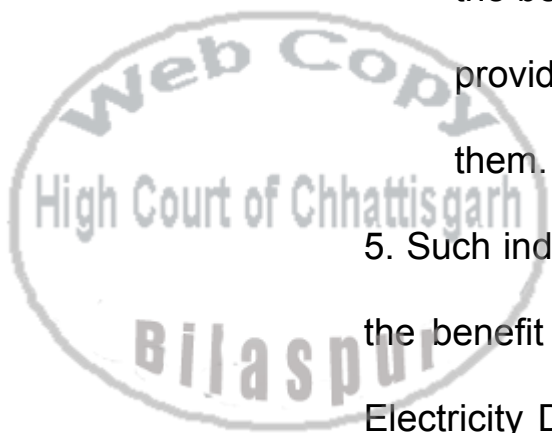
(1) The physical and legally possession of land for the industry might have been taken over.

(2) The construction of shed/building might have been started in accordance to project report, and

(3) Confirm purchase order for purchasing of plant and machinery in accordance to project report might have been issued, but the commercial production might have not been started on prescribed date, they will be having options to avail the benefit of packages of relaxation/concession/exemption as provided in Industrial Policy 2001-2006 shall be available for them.

5. Such industries/investors in whose case the certificate for getting the benefit of relaxation/concession/exemptions in the payment of Electricity Duty has been issued in accordance to Industrial Policy 2001-2006 by the Chief Electrical Inspector, will not be eligible for getting the benefit of relaxation / concession / exemptions in the payment of Electricity Duty under the provisions of Industrial Policy 2004-2009, however, in accordance to certified issued earlier the benefit of relaxation/concession/exemptions in the payment of Electricity Duty shown in the aforesaid certificate for the prescribed period will remain as it is.

6. The eligibility for getting the benefits of exemption / concession / relaxation in making payment of Electricity Duty subject to the terms/provisions of Industrial Policy 2004-209 shall be determined





by the Industries Department, for which the applicant/industry has to produce application mentioning therein that all the provisions mentioned in the Industrial Policy 2004-2009 have been satisfied in the office of Chief Electrical Inspector. Accordingly, after considering application, the eligibility certificate for granting of benefit of exemption / concession / relaxation in making payment of Electricity Duty for the prescribed period as per provisions of Industrial Policy shall be issued.

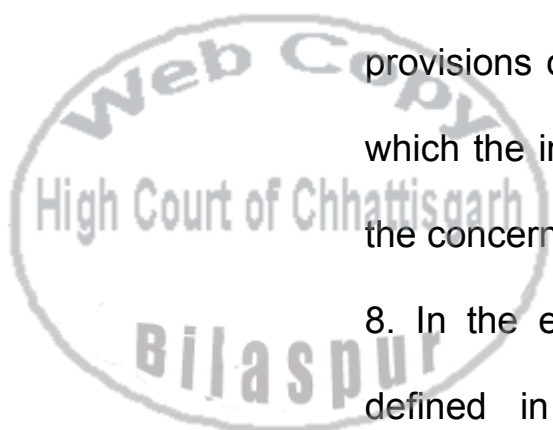
7. In accordance to provisions of Industrial Policy the industries / investors for getting the benefit of relaxation / concession / exemptions the industry/investor shall be responsible to satisfy the provisions of providing employment to the people of local area, for which the industry/investor has to produce the certificate issued by the concerned District Collector necessarily.

8. In the event of being found violation of any of the terms as defined in the Industrial Policy, the eligibility of relaxation/ concession/ exemptions in the payment of electricity duty of such industry / investor shall be cancelled automatically and the amount availed towards relaxation / concession/ exemptions by the industry/investor shall be recovered as per prevailing land revenue recovery provisions.

9. The decision of Energy Department in regard to eligibility of relaxation / concession / exemptions in the payment of Electricity Duty shall be final.

The provisions of this notification shall be effective w.e.f 01.11.2004.

By order and in the name of Governor  
of Chhattisgarh





Sd/- Illegible  
(V. Anand Babu)  
Special Secretary,  
Government of Chhattisgarh,  
Energy Department, Raipur”

24. It is also relevant to extract the impugned notification dated 12.11.2014. The same reads as under:

“Government of Chhattisgarh

Energy Department

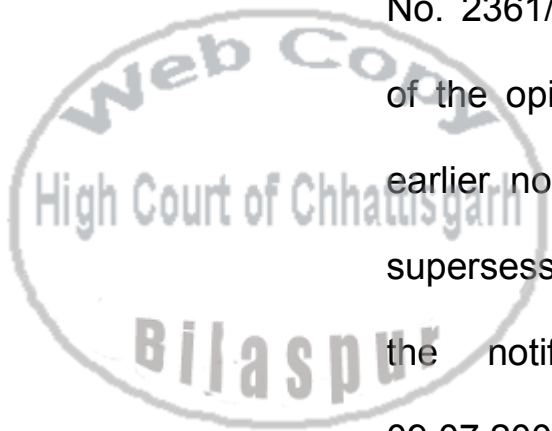
Mantralaya, Mahanadi Bhawan, Naya Raipur

NOTIFICATION

Raipur, dated 12.11.2014

No. 2361/F-21/29/2008/13/2: Whereas, the State Government is of the opinion that there are discrepancies in this department's earlier notification number F-11-4-2006-13-1, dated 05.04.2006, supersession of the said earlier notification was not mentioned in the notification number 1416/13/ED/Notification/08, dated 09.07.2008 and notification number F21/29/08/13/2/201, dated 30.09.2013 issued in super session of the above two notifications is also ambiguous and hence there is confusion with regard to application of Electricity Duty Exemption as provided in Industrial Policy 2004-2009 and it is necessary and expedient to supersede earlier notification for the purpose of encouraging new industrial units and to provide specified incentives for exemption in the electricity duty in the State under Industrial Policy 2004-2009;

Now therefore, in exercise of the powers conferred by Section 3-B of the Chhattisgarh Electricity Duty Act, 1949 (No. X of 1949) and in super session of this department earlier notifications with



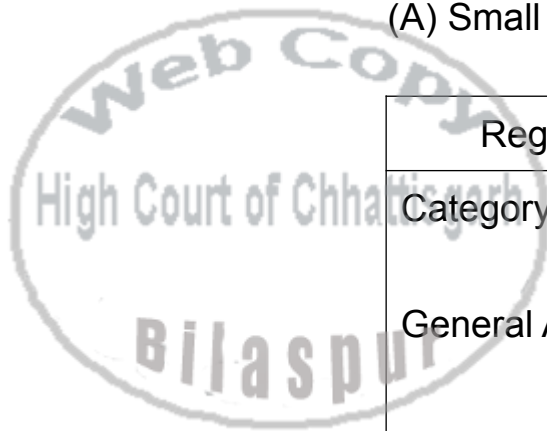


respect to exemption from payment of electricity duty under Industrial Policy 2004-2009 and for the purpose of clarifying the status of confusion in the provisions, the State Government, hereby, exempts eligible new industries (except expansion projects of existing industrial units) of various categories as specified in the table mentioned below, from the date of commencement of commercial production, from payment of electricity duty payable only on the electrical units consumed for its own use for the period indicated against them, namely:-

(emphasis supplied)

(A) Small Industry

Region	General Industry	Special Thrust Industry
Category A General Area	1. Total exemption up to 10 years from the date of commencement of commercial production.  2. Total exemption up to 15 years to the industries set-up by the Scheduled Castes/Tribes cadre.	Total exemption up to 15 years from the date of commencement of commercial production.
Category B – Most Backward Scheduled Tribes Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.



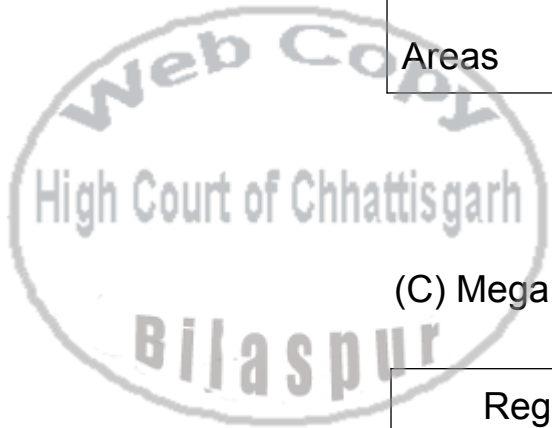


(B) Medium Large Industry

Region	General Industry	Special Thrust Industry
Category A General Area	Total exemption up to 10 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.
Category B – Most Backward Scheduled Tribes Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.

(C) Mega Project

Region	General Industry	Special Thrust Industry
Category A General Area	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.
Category B – Most Backward Scheduled Tribes Dominant Areas	Total exemption up to 15 years from the date of commencement of commercial production.	Total exemption up to 15 years from the date of commencement of commercial production.





Above exemption from Electricity Duty shall be given under the following conditions, namely:-

(1) Only those new industrial projects, who are complying with the conditions stipulated in clause 4.4.6 of the Industrial Policy, 2004-2009 of the State shall be entitled for exemption from payment of Electricity Duty.

(2) Ineligible Industries (Negative list) included in Annexure-2 of the Industrial Policy, 2004-2009 of the State, which is as per enclosed Annexure-A, shall not be eligible for exemption from payment of Electricity Duty.

(3) Expansion projects of existing industrial units shall not be eligible for exemption from payment of Electricity Duty as mentioned in Part-3 of Annexure-4 of the Industrial Policy, 2004-2009 of the State.

(4) Those industries who have undertaken “effective steps” prior to 01.11.04 under Clause 4.4.12 of the Industrial Policy, 2004-2009 of the State, for establishment of industries i.e. -

(i) Unit has taken valid possession of land,

(ii) Unit has commenced construction of shed as per DPR, and

(iii) Unit has placed final purchase order for plant and machinery as per Project Report but if the commercial production has not commenced on the appointed day, then the units shall have the option to avail concession/exemption provided in Industrial Policy 2001-2006.





(5) Such industry(ies)/investor(s), who have issued certificate by the Chief Electrical Inspector for exemption from payment of Electricity Duty as per Industrial Policy 2001-06 or as per the previous notifications issued by the Energy Department, shall not be eligible for exemption from payment of Electricity Duty under Industrial Policy, 2004-2009 of the State as per this notification. However, facility of exemption from payment of Electricity Duty as per certificate issued earlier, shall remain as it is for the period indicated in the said certificate.

(6) Department of Industries shall determine the eligibility of exemption for industrial units, as per prescribed conditions of the Industrial Policy, 2004-2009 of the State, for availing the facility of exemption from payment of Electricity Duty. For this purpose applicant industry has to submit an application in the office of Chief Electrical Inspectorate alongwith certified certificate by the Department of Industries in which it has been clearly stated that industry is complying with all the provisions of the Industrial Policy, 2004-2009 of the State. Thereafter, the Chief Electrical Inspectorate shall after considering the Department of Industries' recommended application, issue certificate for exemption from payment of Electricity Duty for the period prescribed in the Industrial Policy.

(7) It shall be the responsibility of the investor to comply the provision relating to providing employment to the local resident in the industrial unit as per the provisions of Industrial Policy and for this purpose investor has to compulsorily produce certificate





issued by the Collector of concerned district.

(8) Eligibility of exemption shall end automatically on violation of any of the conditions defined in the Industrial Policy and benefits availed against the concession shall be recovered as arrears of land revenue.

(9) Decision of Department of Energy regarding eligibility for exemption from Electrical Duty shall be final.

This notification shall be deemed to have come into force with retrospective effect from the date of 01.11.2004.

By order and in the name of the  
Governor of Chhattisgarh

Sd/- Illegible

(B. Ananda Babu)

Secretary

Govt. of Chhattisgarh

Energy Department”



25. In *Video Electronics* (supra), the Hon'ble Supreme Court had observed that a notification issued in accordance with the powers conferred by the statute has a statutory force and validity and that the power to grant exemption is quasi legislative. Therefore, it cannot be disputed that issuance of exemption notification is exercise of legislative power.

26. In *Sable Waghire* (supra), it was held that a notification issued under provision of a statute is not an executive order but is a piece of subordinate legislation. In *Indian Express Newspapers* (supra), it was



held that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature and that subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made or that it is contrary to some other statute as subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is manifestly arbitrary.

27. In *Shayara Bano* (supra), the Hon'ble Supreme Court held that the decision in *State of A.P. v. McDowell & Co.*, reported in (1996) 3 SCC 709, wherein it was observed that there is an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14, is not a good law and it was held that a subordinate legislation can be struck down on the ground that it is arbitrary and therefore, violative of Article 14 of the Constitution of India. Manifest arbitrariness is something done by the legislature capriciously, irrationally and/or without adequate determining principle or when something is done which is excessive and disproportionate.

28. In *Brahmputra Metalics Ltd.* (supra), the Hon'ble Supreme Court had given an expansive interpretation to the doctrine of promissory estoppel in order to remedy the injustice being done to a party who has relied on a promise.

29. In *Mahabir Vegetable Oils (P) Ltd.* (supra), it was held by the Hon'ble Supreme Court that the doctrine of promissory estoppel operates even in the legislative fields. It was also held that what is granted can be

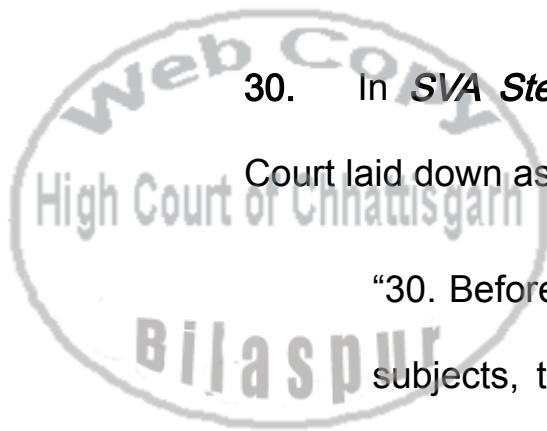


withdrawn by the Government except in the case where the doctrine of promissory estoppel applies and that promissory estoppel operates on equity and in public interest. It was also held that it is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in that behalf is contained in an Act. The rule making power is a species of delegated legislation and therefore, a delegatee therefore can make rules only within the four-corners thereof. It was also observed that it is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act, or arises by necessary and distinct implication.

30. In *SVA Steel Re-Rolling Mills Ltd.* (supra), the Hon'ble Supreme Court laid down as follows:

"30. Before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise.

31. In the instant case, the respondent State was conscious about the fact that there was a problem with regard to supply of electricity in the State of Kerala and possibly for that reason industries which depended much upon electricity as a source of power were not inclined to establish new industries in the State of Kerala. Before

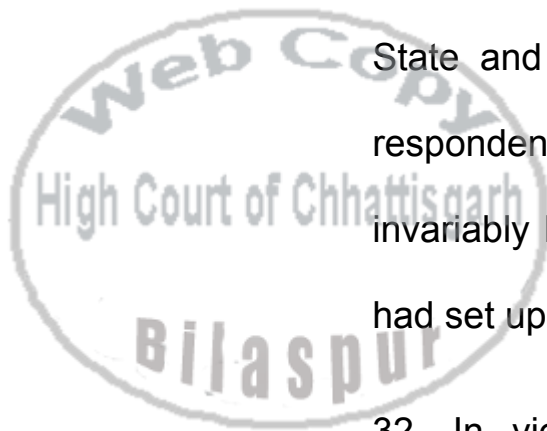




setting up an industry, the entrepreneur or the industrialist considers several factors and thereupon takes several decisions like place of business, capacity at which production should be made, type of raw material, etc. After considering all these factors, a final decision is taken with regard to setting up of an industry. For a new entrepreneur, such a decision is of vital importance because if he fails in his estimates or in consideration of all the relevant factors, there are all chances that he would fail not only in his business but he would completely ruin himself. Thus, one can very well appreciate that the appellants must have thought about all relevant factors, including the incentives offered by the respondent State and might have decided to set up their industries in the respondent State. While deciding this case, this Court would invariably keep in mind the circumstances in which the appellants had set up their industries in the State of Kerala.

32. In view of the incentives and assurances given to the appellants along with others, who were desirous of setting up new industries, the appellants set up their new units which were much dependent upon continuous supply of electricity. One of the appellants is a Steel Re-rolling Mill. In steel industry, when the industry is concerned with making of steel or re-rolling of steel, it requires lot of power and energy, and electricity being one of the important sources of power, the appellant was much dependent on continuous supply of electricity, which had been assured to it by the respondent State.

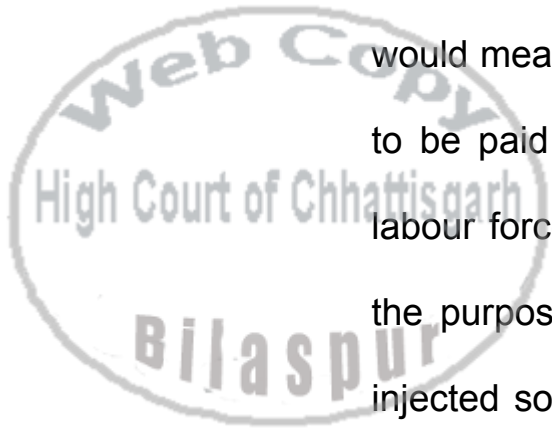
33. If an assurance was given to the appellants and similarly





situated persons that they would be given 100% electricity supply for five years, the respondent cannot wriggle out of their liability by making a policy to the effect that the benefit by way of incentive would be extended only if the electricity supply was reduced to less than 50% on a particular day. A steel industry, for example, which cannot function without electricity or power in any other form, would be put to enormous inconvenience and loss if the power supply is not continuous. So as to reactivate or to restart the machines or to start the process afresh, the industry has to spend something more than what it would have spent if the supply or power, namely, electricity was uninterrupted. Stoppage of manufacturing process would mean losses under several heads. The labour employed has to be paid even when the employer does not get work from the labour force. Very often, so as to bring a required temperature for the purpose of carrying on certain processes, more fuel is to be injected so as to attain the condition which was prevailing prior to electricity supply being disconnected. Moreover, there would be several overhead expenses which one has to incur even if there is no production or stoppage of manufacturing process.”

31. The Hon'ble Supreme Court, in *VVF Limited & Another* (supra) held that doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the objective to be achieved and public good at large. The doctrine cannot be pressed into to compel the government or the public authority to carry out the representation or promise which was contrary to law. The doctrine must yield when the equity so demands if it can be shown having regard to the





facts and circumstances of the case that it would be inequitable to hold the government or the competent authority to its promise, assurance or representation. Even in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel. It was also observed that a clarificatory order can be given retrospective effect as it can throw light on substantive provisions. It was further observed that the notification/ industrial policies impugned before the High Courts are clarificatory in nature and it can be defined as an act to remove the doubts. It was further held that it cannot be said that by the subsequent notifications/industrial policies, the benefits which were accrued/granted under the earlier notifications were sought to be taken away.

32. In *Arcelor Mittal Nippon Steel Limited* (supra), the Hon'ble Supreme Court held that the doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeon-holes. This was illustrated by observing that there cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties.

33. In *Pepsico India Holdings Private Limited* (supra), the Hon'ble Supreme Court had taken note of the judgment in the case of *U.P. Power Corporation Ltd. and Another v. Sant Steels & Alloys (P) Ltd. and Others*, reported in (2008) 2 SCC 777, wherein it was laid down that in order to keep the faith and maintain good governance, it is necessary that



whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that as the same is a matter of faith which is very important in the 21<sup>st</sup> Century when there is a global economy.

34. In *MRF Ltd.* (supra), the Hon'ble Supreme Court held that under Section 10(1) of the Kerala General Sales Tax Act, 1963, the State Government has the power to make an exemption or reduction in rate either prospectively or retrospectively in respect of any tax payable under that Act. The power of Government under Section 10(3) of the Act of 1963, by notification in the Gazette to cancel or vary any notification issued under Section 10(3) cannot be exercised retrospectively. It was further held that the doctrine of promissory estoppels is applicable as against the statutory notification.

35. In *Birla Corporation Ltd.*, the Hon'ble Supreme Court held that financial implications regarding future revenue loss cannot be invoked as supervening public interest in reference to the activities of the industrial units who qualify the conditions specified in notification dated 27.02.1998 in all other respects and had commenced commercial production before the specified date. It was held that an enforceable right had accrued to and crystallised in favour of such industrial units which could not be truncated or snapped unless the dominant purpose for which the notification came to be issued had ceased to exist. It was also observed that it can safely be presumed that the policy makers were fully conscious about the so-called loss of future revenue due to rebate granted to the units when they had issued notification in question.



36. In *M/s. Kanak Exports* (supra), the Hon'ble Supreme Court held that the Government has a right to amend, modify or even rescind a particular scheme and that in complex economic matters, every decision is necessarily empiric and it is based on experimentation and therefore its validity cannot be tested on any rigid prior considerations or on the application of any straight-jacket formula. The Hon'ble Supreme Court, however, held that a delegated or subordinate legislation can only be prospective and not retrospective, unless rule making authority has been vested with power under a statute to make rules with retrospective effect. On consideration of the factual matrix of the case, the Hon'ble Supreme Court came to the conclusion that the writ petitioner/exporter had not actually achieved the targets set down in the original scheme and thereby had not acquired any "vested right" and there was only blatant misuse of the provisions of the scheme and therefore, the impugned decision did not take any vested right of the exporters and amendments were necessitated by over-whelming public interest/considerations to prevent the misuse of the scheme. It was in the background of the above circumstances, the Hon'ble Supreme Court held that even when the impugned Notification issued under the provisions of the Act could not be retrospective in nature, such retrospectivity had not deprived the writ petitioners/exporters of their right inasmuch as no right had accrued in favour of such persons under the scheme. The Hon'ble Supreme Court emphatically laid down that in exercise of writ jurisdiction, the High Court cannot come to the aid of such petitioners/exporters who, without making actual exports, play with the provisions of the scheme and try to take undue advantage thereof.

37. In *Pawan Alloys & Castings (P) Ltd.* (supra), the Hon'ble Supreme



Court observed that when no public interest was sought to be pressed in service by the Board for withdrawal of the incentive rebate, and the same was solely on the ground of commercial interest of the Board which had earlier held out a promise of incentive rebate, the equity which had arisen in favour of the appellants remained untouched and undisturbed by any overwhelming and superior equity in favour of the Board entitling it to withdraw the incentive rebate in a premature manner leaving the promisees high and dry.

38. In *Dilip Kumar & Company and Others* (supra), the Constitution Bench of the Hon'ble Supreme Court had examined the correctness of the decision rendered in the case of *Sun Export Corporation, Bombay v. Collector of Customs, Bombay*, reported in (1997) 6 SCC 564, on a reference being made. The question that had arisen for consideration was as to what is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied? In that context, the Hon'ble Supreme Court had answered the reference holding that an exemption notification should be interpreted strictly, and the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue. Holding thus, the decision in *Sun Export Corporation, Bombay* (supra) was overruled.

39. In the notification dated 09.07.2008, it is mentioned that anomalies/



deficiencies have been found in the notification dated 03.11.2005 and the Industrial Policy 2004-2009, and therefore, modification in the Industrial Policy 2004-2009 and notification dated 03.11.2005 is necessary. The notification dated 30.09.2013 recites that “some anomalies had been found” in the notification dated 05.04.2008 and that apart, supersession of the earlier notification issued is not mentioned in the notification dated 09.07.2008, and therefore, in the matter of grant of relaxation/exemption/concession, there may be possibility of misunderstanding, as a result of which issuance of the notification dated 30.09.2013 is necessitated. The impugned notification dated 12.11.2014 purports to clear the confusion with regard to the earlier notifications without even referring to in which respects there may be confusion. A bald statement is made that notification dated 30.09.2013 is ambiguous.

40. The notifications dated 03.11.2005, 09.07.2008 and 30.09.2013, as noted earlier, were issued under the provisions of Section 3-B(b) (wrongly referred as 3-B) of the Act. The notification dated 05.04.2006 recites that the same was issued under Section 3(c) of the Act, though there is no Section 3(c). In essence, the same is also issued under Section 3-B(b) of the Act.

41. Section 3-B(b) of the Act reads as under:

**“3-B. Power to exempt.** – Where the State Government is of opinion that,-

(i) in order to encourage the establishment of any particular industry or class of industries in the State; or

(ii) having regard to the particular circumstances of any



industry or class of industries; or

(iii) in order to extend facilities to such persons or class of persons and for such purpose as the State Government may, by notification specify;

it is necessary or expedient so to do in public interest, it may, by notification and subject to such conditions, if any, as it may specify in the notification, -

(a) exempt from payment of duty in whole or in part -

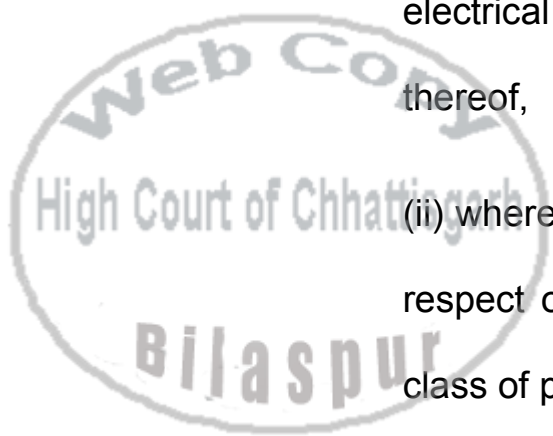
(i) any distributor of electrical energy or producer in respect of the electrical energy sold or supplied to such industry for the purpose thereof,

(ii) where any producer or class of producers runs the industry, in respect of the electrical energy consumed by such producer or class of producers for the purpose of such industry;

(iii) any distributor of electrical energy or producer in respect of the electrical energy sold to or used for consumption by person or class of persons and for purposes specified in the notification;

(b) cancel any such notification and again subject, by a like notification, the distributor of electrical energy or producer or class of such producers to the payment of such duty in respect of such sale, supply or consumption of electrical energy.”

**42.** Though, number of exemption notifications, as noticed above, came to be issued, grant of exemption of electricity duty up to 15 years from the date of commencement of commercial production was consistently



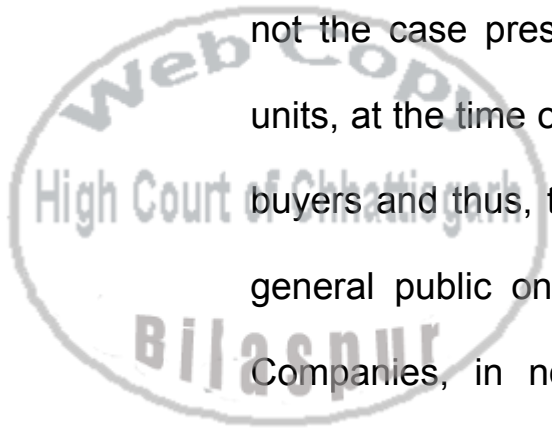


maintained in all these notifications. Exemption from payment of electricity duty was available irrespective of the fact as to whether electricity was for self consumption/use or for the purpose of producing electricity and selling the same.

43. The notification dated 12.11.2014 for the first time introduced that exemption upto 15 years from the date of commencement of commercial production from payment of electricity duty payable is relatable to only in respect of electrical units consumed for its own use, that too, with retrospective effect from 01.11.2004.

44. One aspect that has to be taken note of at this juncture is that it is not the case presented on behalf of the State that electricity producing units, at the time of selling the same, was realising electricity duty from the buyers and thus, they had made undue gain and profit at the expense of general public on the strength of exemption granted. The Distribution Companies, in normal course, is to realise electricity duty from the consumers. The State has also not indicated as to whether the Distribution Companies, who, after purchasing electricity from the electricity producing companies, while selling the same to its consumers, had charged electricity duty or not. These aspects of the matter, which are very relevant, had not been adverted to by the State.

45. Thus, the notification dated 12.11.2014 has curtailed/restricted exemption granted towards payment of electricity duty only to the extent of consumption for its own use. Prior to issuance of the said notification, the eligible petitioners were granted exemption from payment of electricity duty irrespective of the fact as to whether they had used electricity for its own





use or for generating electricity for the purpose of onward sale.

**46.** Section 3-B of the Act provides that where the State Government is of the opinion that (i) in order to encourage the establishment of any particular industry or class of industries in the State; or (ii) having regard to the particular circumstances of any industry or class of industries; or (iii) in order to extend facilities to such persons or class of persons and for such purpose as the State Government may, by notification specify; it is necessary or expedient so to do in public interest, it may, by notification and subject to such conditions, if any, as it may specify in the notification, - (a) exempt from payment of duty in whole or in part - (i) any distributor of electrical energy or producer in respect of the electrical energy sold or supplied to such industry for the purpose thereof, (ii) where any producer or class of producers runs the industry, in respect of the electrical energy consumed by such producer or class of producers for the purpose of such industry; (iii) any distributor of electrical energy or producer in respect of the electrical energy sold to or used for consumption by person or class of persons and for purposes specified in the notification.

**47.** Section 3-B(b) of the Act provides for cancellation of any such notification granting exemption and again subject, by a like notification, the distributor of electrical energy or producer or class of such producers to the payment of such duty in respect of such sale, supply or consumption of electrical energy.

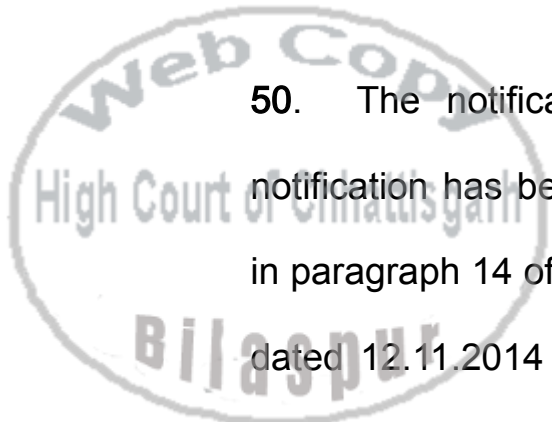
**48.** Section 3-B(b) of the Act, on a plain reading, does not authorise cancellation of any such notification granting exemption benefit with retrospective effect.



49. On the basis of the Industrial Policy 2004-2009, without making any differentiation as to whether electricity is being used for its own use or for the purpose of generating electricity for onward sale to Distribution Companies and other entities, new industrial units were granted exemption from payment of electricity duty. Admittedly, by the notification dated 12.11.2014, the concession/exemption from payment of electricity duty has been done away with in respect of electricity sold by such new industrial units. Therefore, the argument of Mr. Verma that the notification dated 12.11.2014 is not a notification withdrawing exemption/concession already granted with respect to selling of electricity with retrospective effect, but the same is only a clarificatory notification, is without any substance.

50. The notification dated 12.11.2014 does not indicate that such notification has been issued in public interest. From the averments made in paragraph 14 of the return of the State, it is manifest that the notification dated 12.11.2014 came to be issued solely because the petitioners had started earning profits. If profits are earned legitimately, the same cannot be construed to be detrimental to public interest, necessitating withdrawing a notification retrospectively.

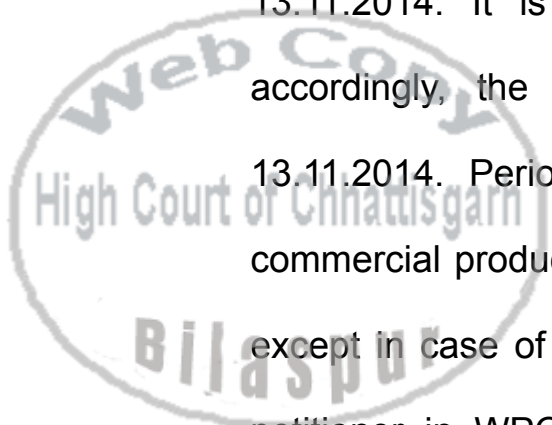
51. Present is not a case that the petitioners had misused the provisions of Industrial Policy 2004-2009 and the notifications issued from time to time to implement the policy or that they had taken undue advantage. It is also not the case presented that the petitioners did not have any vested right towards exemption of payment of electricity duty for own consumption as well as for sale of electricity. In the above background, bearing in mind the law laid down by the Hon'ble Supreme Court on the doctrine of





promissory estoppel, we are of the opinion that notification dated 12.11.2014, which was deemed to have come into force with retrospective effect from 01.11.2004 and which was issued in supersession of earlier notifications with respect to exemption from payment of electricity duty under Industrial Policy 2004-2009, cannot be sustained in law so far it relates to nullifying exemption granted in respect of sale of electricity.

52. With regard to post-12.11.2014, it is noticed that by means of interim order(s), it was provided that the petitioners shall not be compelled to deposit electricity duty payable up to 12.11.2014. At the same time, the petitioners were directed to pay the amount of electricity duty from 13.11.2014. It is submitted by learned counsel for the parties that accordingly, the petitioners have been paying electricity duty from 13.11.2014. Period of 15 years from the date of commencement of commercial production in respect of the petitioners is also over, save and except in case of the petitioner in WPC No. 1829/2016. At any rate, the petitioner in WPC No. 1829/2016, having not commenced commercial production before 31.12.2009, even otherwise, was not entitled to exemption from payment of electricity duty under the Industrial Policy 2004-2009. Interim order to pay electricity duty from 13.11.2014, it has to be understood, was not in respect of self-consumption of electricity, as the notification dated 12.11.2014 retained exemption in that respect, but the same was in relation to sale of electricity by the petitioners. The incidence of payment of electricity duty is finally borne by the consumers. Therefore, it cannot be countenanced that petitioners have/had suffered any prejudice because of the notification dated 12.11.2014 so far as its prospective operation is concerned. Doctrine of promissory estoppel is an equitable





remedy and has to be moulded depending on the fact situation. In the attending facts and circumstances, it will be wholly inequitable to pin down the authorities to pre-12.11.2014 position. In that view of the matter, we are of the opinion that no further orders are called for with regard to payment of electricity duty with effect from 13.11.2014.

**53.** Accordingly, the writ petitions stand disposed of providing that the respondents shall not recover any amount towards electricity duty from the petitioners up to 12.11.2014.

**54.** No costs.

Sd/-  
(Arup Kumar Goswami)

**CHIEF JUSTICE**

Sd/-  
(Deepak Kumar Tiwari)

**JUDGE**

