



GAHC010058322019



**IN THE GAUHATI HIGH COURT**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)  
**PRINCIPAL SEAT**  
**W.P(C) No. 5917/2018**

**Shiva Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, Near Rangia in the district of Kamrup and in the present proceedings represented by one of its partners Sri Navin Kumar Jain age about 45 years.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21



- 4. Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B.** Kar Bhawan, Guwahati.
- 5. Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati

**.....Respondents**

**W.P(C) No. 1828/2019**

**Raj Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, P.S. Puthimari, Rangia, Kamrup and in the district of Kamrup and in the present proceedings represented by one of its partners Sri Ajay Kumar Jain, one of the partners of the petitioner firm.

**.....Petitioner**

**-Versus-**

**1 State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4 Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B.** Kar Bhawan, Guwahati.



**5 Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati

**.....Respondents**

**W.P(C) No. 2138/2019**

**Shri Balaji Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at Vill & P.O. Azara, Hatkhawapara, Mouza- Ram Chariani, Dist. Kamrup, Assam and in the present proceedings represented by one of its partners Sri Sanjay Jain

**.....Petitioner**

**-Versus-**

**1 State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4 The Superintendent of Taxes,** Central VAT Audit Team, Kar Bhawan, Guwahati-5.

**5 Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati-5

**.....Respondents**

**W.P(C) No. 6027/2018**

**Ganesh Met Coke Industries,**



A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, 5F, Electronic Centre Kolkata-700072 and its industrial unit situated at Azara, Hatkhuwapara, Ramcharni, Dist. Kamrup, Assam and in the present proceedings represented by one of its partners Sri Hansraj Jain aged about 76 years

**.....Petitioner**

**-Versus-**

**1 State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4 Assistant Commissioner of State Taxes (earlier known as Assistant Commissioner of Taxes), Guwahati, Unit-B Kar Bhawan, Guwahati-5.**

**5 Commissioner of State Taxes (Earlier known as Commissioner of Taxes). Kar Bhawan, Guwahati-5**

**.....Respondents**

**W.P(C) No. 2096/2019**

**Ganesh Met Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, 5F, Electronic Centre Kolkata-700072 and its industrial unit situated at Azara,



Hatkhuwapara, Ramcharni, Dist. Kamrup, Assam and in the present proceedings represented by one of its partners Sri Hansraj Jain aged about 76 years

.....Petitioner

**-Versus-**

**1 State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4 Assistant Commissioner of State Taxes (earlier known as Assistant Commissioner of Taxes), Guwahati, Unit-B** Kar Bhawan, Guwahati-5.

**5 Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati-5

.....Respondents

**W.P(C) No. 2111/2019**

**Ganesh Met Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, 5F, Electronic Centre Kolkata-700072 and its industrial unit situated at Azara, Hatkhuwapara, Ramcharni, Dist. Kamrup, Assam and in the present proceedings represented by one of its partners Sri Hansraj Jain aged about 76 years



**.....Petitioner**

**-Versus-**

**1 State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4 The Superintendent of Taxes,** Central VAT Audit Team, Kar Bhawan, Guwahati-5.

**5 Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati-5

**.....Respondents**

**W.P(C) No. 5960/2018**

**Raj Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, P.S. Puthimari, Rangia, Kamrup and in the district of Kamrup and in the present proceedings represented by one of its partners Sri Ajay Kumar Jain, aged about 47 years one of the partners of the petitioner firm R/o 34/1N Ballygunge Circular Road, 4<sup>th</sup> Floor, Kolkata-700019, West Bengal

**.....Petitioner**

**-Versus-**

**1 State of Assam**



Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4 Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B.** Kar Bhawan, Guwahati.

**5 Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati

**.....Respondents**

**W.P(C) No. 5957/2018**

**Raj Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, P.S. Puthimari, Rangia, Kamrup and in the district of Kamrup and in the present proceedings represented by one of its partners Sri Ajay Kumar Jain, one of the partners of the petitioner firm

**.....Petitioner**

**-Versus-**

**1 State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**



District Industries & Commerce Center, Kamrup  
(Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-  
21

**4 Assistant Commissioner of State Taxes  
(Earlier Known as Assistant Commissioner of  
Taxes), Guwahati, Unit-B.** Kar Bhawan,  
Guwahati.

**5 Commissioner of State Taxes (Earlier known  
as Commissioner of Taxes).** Kar Bhawan,  
Guwahati

.....Respondents

W.P(C) No. 5937/2018

**Jai Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, near Rangia, Dist-Kamrup, Guwahati, Assam and in the present proceedings represented by one of its partners Sri Sanjay Jain, aged about 51 years.

.....Petitioner

**-Versus-**

**1 State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2 General Manager,**

District Industries & Commerce Center, Kamrup  
(Rural), Mirza, D.K. College Road, Mirza 781025

**3 Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-  
21



- 4 Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B.** Kar Bhawan, Guwahati.
- 5 Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati

**.....Respondents**

**W.P(C) No. 5954/2018**

**Sheo Shakti Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at Village-Maranjana, Near rangia in the district of Kamrup, Assam and in the present proceedings represented by one of its partners Sri Ajay Kumar Jain.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4. Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B.** Kar Bhawan, Guwahati.

**5. Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati



.....Respondents

W.P(C) No. 5931/2018

**Jai Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, near Rangia, Dist-Kamrup, Guwahati, Assam and in the present proceedings represented by one of its partners Sri Sanjay Jain, aged about 51 years.

.....Petitioner

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4. Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B. Kar Bhawan, Guwahati.**

**5. Commissioner of State Taxes (Earlier known as Commissioner of Taxes). Kar Bhawan, Guwahati**

.....Respondents

W.P(C) No. 5932/2018

**Shiva Coke Industries,**



A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, Near Rangia in the district of Kamrup and in the present proceedings represented by one of its partners Sri Navin Kumar Jain age about 45 years.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4. Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B. Kar Bhawan, Guwahati.**

**5. Commissioner of State Taxes (Earlier known as Commissioner of Taxes). Kar Bhawan, Guwahati**

**.....Respondents**

**W.P(C) No. 5980/2018**

**Sheo Shakti Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at Village-Maranjana, Near rangia in the district of Kamrup, Assam and



in the present proceedings  
represented by one of its partners  
Sri Ajay Kumar Jain.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to  
the Government of Assam, Department of Finance  
& Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup  
(Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-  
21

**4. Assistant Commissioner of State Taxes  
(Earlier Known as Assistant Commissioner of  
Taxes), Guwahati, Unit-B. Kar Bhawan,  
Guwahati.**

**5. Commissioner of State Taxes (Earlier known  
as Commissioner of Taxes). Kar Bhawan,  
Guwahati**

**.....Respondents**

**W.P(C) No. 1860/2019**

**Sethi Coke Industries,**

A partnership firm registered  
under the India Partnership Act,  
1932 and having its principal place  
of business at 1/1A Biplabi Anukul  
Chandra Street, Kolkata-700072  
and its industrial unit situated at  
Village-Moranjana, Near rangia in  
the district of Kamrup, Assam and  
in the present proceedings  
represented by one of its partners  
Sri Hansraj Jain.

**.....Petitioner**

**-Versus-**



**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4. Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B.** Kar Bhawan, Guwahati.

**5. Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati

**.....Respondents**

**W.P(C) No. 1843/2019**

**Sheo Shakti Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at Village-Maranjana, Near rangia in the district of Kamrup, Assam and in the present proceedings represented by one of its partners Sri Ajay Kumar Jain.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025



**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**4. Assistant Commissioner of State Taxes (Earlier Known as Assistant Commissioner of Taxes), Guwahati, Unit-B.** Kar Bhawan, Guwahati.

**5. Commissioner of State Taxes (Earlier known as Commissioner of Taxes).** Kar Bhawan, Guwahati

**.....Respondents**

**W.P(C) No. 5133/2018**

**Sheo Shakti Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at Village-Maranjana, Near rangia in the district of Kamrup, Assam and in the present proceedings represented by one of its partners Sri Ajay Kumar Jain.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**.....Respondents**

**W.P(C) No. 5139/2018**



**Shiva Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, Near Rangia in the district of Kamrup and in the present proceedings represented by one of its partners Sri Navin Kumar Jain.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**.....Respondents**

**W.P(C) No. 5141/2018**

**Raj Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, P.S. Puthimari, Rangia, Kamrup and in the district of Kamrup and in the present proceedings represented by one of its partners Sri Ajay Kumar Jain, aged about 47 years one of the partners of the petitioner firm.



**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

**.....Respondents**

**W.P(C) No. 5143/2018**

**Jai Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at village Dalmagaon, near Rangia, Dist-Kamrup, Guwahati, Assam and in the present proceedings represented by one of its partners Sri Sanjay Jain, aged about 51 years.

**.....Petitioner**

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21



.....Respondents

W.P(C) No. 5136/2018

**Sethi Coke Industries,**

A partnership firm registered under the India Partnership Act, 1932 and having its principal place of business at 1/1A Biplabi Anukul Chandra Street, Kolkata-700072 and its industrial unit situated at Village-Moranjana, Near rangia in the district of Kamrup, Assam and in the present proceedings represented by one of its partners Sri Hansraj Jain.

.....Petitioner

**-Versus-**

**1. State of Assam**

Represented by the Commissioner & Secretary to the Government of Assam, Department of Finance & Taxation, Dispur, Guwahati-781006

**2. General Manager,**

District Industries & Commerce Center, Kamrup (Rural), Mirza, D.K. College Road, Mirza 781025

**3. Commissioner of Industries and Commerce**

Assam Udyog Bhawan, Bamunimaidam, Guwahati-21

.....Respondents

**- B E F O R E -**

**HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

|                                     |                                                                                    |
|-------------------------------------|------------------------------------------------------------------------------------|
| <u>Advocate for the petitioners</u> | :Mr. A. Saraf, Senior Advocate assisted by<br>Mr. N.N. Dutta, Advocate             |
| <u>Advocate for the respondents</u> | :Mr. S.C Keyal, Standing Counsel, CGST<br>Mr. B. Chowdhury, Standing Counsel, SGST |
| Judgements reserved on              | : <b>03.10.2024</b>                                                                |
| Date of Judgment & Order:           | : <b>12.02.2025</b>                                                                |



### **JUDGMENT AND ORDER(CAV)**

This bunch of writ petitions can be clubbed into two separate groups.

**2.** W.P(C) No. 5133/2018; W.P(C) No. 5139/2018; W.P.(C) No. 5141/2018; W.P.(C) No. 5143/2018 and W.P(C) No. 5136/2018 are the writ petitions filed by the petitioners aggrieved by the rejection of their respective eligibility certificates which they had applied for under the relevant provisions of the Industrial Policy of 2008. The petitioners are aggrieved that without due and proper appreciation of the facts and materials available before the respondent-Department of Industries, their claim for eligibility certificates were rejected. Consequently they being aggrieved, they have approached this Court praying for appropriate Writ Direction or Order for setting aside their respective rejection orders for grant of eligibility certificates as well as consequential order to the respondents to issue the eligibility certificates and/or otherwise consider them eligible for availing the benefits under the Industrial Policy of Assam 2008.

**3.** In so far as the writ petitions being W.P.(C) No. 1828/2019; W.P(C) No. 2138/2019; W.P(C) No. 5954/2018;



W.P(C) No. 5937/2018; W.P.(C) No. 5957/2018; W.P.(C) No. 2111/2019; W.P.(C) No. 1843/2019; W.P(C) No. 2096/2019; W.P(C) No. 6027/2018; W.P(C) No. 5960/2018; W.P(C) No. 5917/2018; W.P(C) No. 1860/2019; W.P(C) NO. 5980/2018; W.P(C) No. 5932/2018 and W.P(C) No. 5931/2019 are concerned, the petitioners therein have assailed the assessments conducted by the department of Finance and Taxation, Government of Assam considering them as regular dealers who are not entitled to the benefits under the Industrial Policy of Assam, 2008 and overlooking the claims of those petitioners that their cases for grant of eligibility certificate was either pending before the appropriate department at the time the assessments were made or that the same has been rejected and which are being put to challenge by the petitioners.

**4.** The facts involved in both these bunches of cases giving rise to the present litigation are common and therefore all these writ petitions were heard and taken up together for disposal.

**5.** The brief description of the writ petitioners are enumerated as under:

| Case No. & Party Name                                 | Brief Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| W.P(C) No. 5133/2018<br>(Sheo Shakti Coke Industries) | This writ petition has been filed challenging the order dated 05.05.2018 issued by the Commissioner of Industries & Commerce, Udyog Bhawan, Assam holding the industrial unit of the petitioner firm to be ineligible for grant of eligibility certificate under the Industrial Policy of Assam, 2008 as the said industrial unit was presently found to be "non-functioning" assigning the reason that the Government provides tax exemptions and other fiscal incentives to encourage industrial units for their contribution in economic development of the State in general and employment generation in particular and a non-functioning unit neither contributes in economic development nor in employment generation and as such the same is not entitled for grant of eligibility certificate. |
| W.P(C) No. 5139/2018<br>(Shiva Coke Industries)       | This writ petition has been filed challenging the order dated 05.05.2018 issued by the Commissioner of Industries & Commerce, Udyog Bhawan, Assam holding the industrial unit of the petitioner firm to be ineligible for grant of eligibility certificate under the Industrial Policy of Assam, 2008 as the said industrial unit was presently found to be "non-functioning" assigning the reason that the Government provides tax exemptions and other fiscal incentives to encourage industrial units for their contribution in economic development of the State in general and employment generation in particular and a non-functioning unit neither contributes in economic development nor in employment generation and as such the same is not entitled for grant of eligibility certificate. |
| W.P(C) No. 5141/2018<br>(Raj Coke Industries)         | This writ petition has been filed challenging the order dated 05.05.2018 issued by the Commissioner of Industries & Commerce, Udyog Bhawan, Assam holding the industrial unit of the petitioner firm to be ineligible for grant of eligibility certificate under the Industrial Policy of Assam, 2008 as the said industrial unit was presently found to be "non-functioning" assigning the reason that the Government provides tax exemptions and other fiscal incentives to encourage industrial units for their contribution in economic development of the State in general and employment generation in particular and a non-functioning unit neither contributes in economic development nor in employment generation and as such the same is not entitled for grant of eligibility certificate. |
| W.P(C) No. 5143/2018<br>(Jai Coke Industries)         | This writ petition has been filed challenging the order dated 05.05.2018 issued by the Commissioner of Industries & Commerce, Udyog Bhawan, Assam holding the industrial unit of the petitioner firm to be ineligible for grant of eligibility certificate under the Industrial Policy of Assam, 2008 as the said industrial unit was presently found to be "non-functioning" assigning the reason that the Government provides tax exemptions and other fiscal incentives to encourage industrial units for their contribution in economic development of the State in general and employment generation in particular and a non-functioning unit neither contributes in economic development nor in employment generation and as such the same is not entitled for grant of eligibility certificate. |

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|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| W.P(C) No. 5136/2018<br>(Sethi Coke Industries) | This writ petition has been filed challenging the order dated 05.05.2018 issued by the Commissioner of Industries & Commerce, Udyog Bhawan, Assam holding the industrial unit of the petitioner firm to be ineligible for grant of eligibility certificate under the Industrial Policy of Assam, 2008 as the said industrial unit was presently found to be "non-functioning" assigning the reason that the Government provides tax exemptions and other fiscal incentives to encourage industrial units for their contribution in economic development of the State in general and employment generation in particular and a non-functioning unit neither contributes in economic development nor in employment generation and as such the same is not entitled for grant of eligibility certificate. |
| W.P(C) No. 5917/2018<br>(Shiva Coke Industries) | This writ petition has been filed challenging the order of assessment dated 31.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2012-13 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                                                                                                                                                                                                                                      |
| W.P(C) No. 1828/2019<br>(Raj Coke Industries)   | This writ petition has been filed challenging the order of assessment dated 22.02.2019 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2014-15 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                                                                                                                                                                                                                                      |
| W.P(C) No. 5932/2018<br>(Shiva Coke Industries) | This writ petition has been filed challenging the order of assessment dated 31.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2013-14 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                                                                                                                                                                                                                                      |
| W.P(C) No. 5931/2018<br>(Jai Coke Industries)   | This writ petition has been filed challenging the order of assessment dated 29.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand dated 31.03.2018 issued in pursuance thereof whereby tax has been levied for the year 2012-13 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                                                                                                                                                                                                                     |



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|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| W.P(C) No.<br>5954/2018<br>(Sheo<br>Shakti Coke<br>Industries) | This writ petition has been filed challenging the order of assessment dated 31.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2012-13 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                  |
| W.P(C) No.<br>5937/2018<br>(Jai Coke<br>Industries)            | This writ petition has been filed challenging the order of assessment dated 29.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand dated 31.03.2018 issued in pursuance thereof whereby tax has been levied for the year 2013-14 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate |
| W.P(C) No.<br>5957/2018<br>(Raj Coke<br>Industries)            | This writ petition has been filed challenging the order of assessment dated 22.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2012-13 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                  |
| W.P(C) No.<br>5960/2018<br>(Raj Coke<br>Industries)            | This writ petition has been filed challenging the order of assessment dated 22.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2013-14 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                  |
| W.P(C) No.<br>2111/2019<br>(Ganesh<br>Met Coke<br>Industries)  | This writ petition has been filed challenging the order of assessment dated 22.02.2019 passed by the Superintendent of Taxes, Central VAT Audit Team and the Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2014-15 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                |
| W.P(C) No.<br>2096/2019<br>(Ganesh<br>Met Coke<br>Industries)  | This writ petition has been filed challenging the order of assessment dated 29.08.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2013-14 during which the petitioner was                                                                                                                                                                                                                                                                                           |



|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                       | entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate                                                                                                                                                                                                                                                                                          |
| W.P(C) No. 6027/2018<br>(Ganesh Met Coke Industries)  | This writ petition has been filed challenging the order of assessment dated 28.03.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2012-13 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate |
| W.P(C) No. 2138/2019<br>(Shri Balaji Coke Industries) | This writ petition has been filed challenging the order of assessment dated 14.02.2019 passed by the Superintendent of Taxes, Central VAT Audit Team and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2014-15 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate   |
| W.P(C) No. 1843/2019<br>(Sheo Shakti Coke Industries) | This writ petition has been filed challenging the order of assessment dated 14.02.2019 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2014-15 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate |
| W.P(C) No. 1860/2019<br>(Sethi Coke Industries)       | This writ petition has been filed challenging the order of assessment dated 14.02.2019 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2014-15 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate |
| W.P(C) No. 5980/2018<br>(Sheo Shakti Coke Industries) | This writ petition has been filed challenging the order of assessment dated 29.06.2018 passed by the Assistant Commissioner of Taxes, Guwahati, Zone-B and Notice of Demand issued in pursuance thereof whereby tax has been levied for the year 2013-14 during which the petitioner was entitled to the benefit of exemption from payment of tax by way of remission as per the Industrial Police of Assam, 2008 read with Assam Industries (Tax Remission) Scheme, 2005 and also during the pendency of the application for issuance of Eligibility Certificate |



**6.** The Government of Assam, Department of Industries and Commerce by Notification No. CI.310/2001/PT-III/61 dated 26.09.2003 announced the Industrial Policy of Assam, 2003 to achieve various aims and objectives which are enumerated in the policy which are extracted below:

*"(i) To increase the share of the Industrial Sector to the State Domestic Product (SDP) from the present level of 13.29% a level of atleast 18% at the end of the terminal year of the policy.*

*(ii) To generate more employment opportunities in the State.*

*(iii) To ensure development of adequate and appropriate infrastructures for industrial growth.*

*(iv) To make Assam one of the preferred destinations investment for outside investors.*

*(v) To encourage private investment in Industrial infrastructure projects.*

*(vi) To ensure industrial development in hitherto industrial backward regions of the State.*

*(vii) To create avenues for sustained growth and development of the Small Scale and tiny sectors.*



*(viii) To catalyse administrative and legal reforms with a view simplify the procedure and to ensure time bound disposal matters.*

*(ix) To take steps to promote rural handicrafts so as to conserve and enrich culture heritage, traditions and customs of the state.*

*(x) To promote establishment of medium and large-scale mother industries to create an industrial base, offering large-scale employment opportunities through backward and forward linkages.*

*(xi) To promote Information Technology, high-tech, knowledge based and biotech industries.*

*(xii) To promote export oriented industrial units.*

*(xiii) To take steps to revive the potentially viable sick public Sector undertakings and to make the Public Sector Undertakings economically viable.*

*(xiv) To promote Single Window Clearance system for fast track clearance of industrial proposals."*

**7.** The said policy was made effective from 01.10.2003 and was to remain valid for a period of five years upto 30.09.2008 unless modified/terminated earlier. Under the Industrial Policy, there were various sectors of Industrial activities in the Industrial policy of Assam 2003 were identified as thrust areas and amongst many industries which were based on locally



available minerals were identified as thrust areas. Under the said Industrial Policy of 2003, the State of Assam offered various fiscal incentives which included the State Capital Investment Subsidy, Interest Subsidy on Working Capital, Power Subsidy, Subsidy on Captive Power Generation, Subsidy on Feasibility Study costs, Subsidy on Quality Certification/Technical knowhow, Subsidy on Marketing Assistance, Subsidy on Drawal of power Line etc.

**8.** Initially when the policy was announced, exemption from Sales Tax was not part of the said Industrial Policy. Subsequently, the Assam Industries (Tax Remission) Scheme, 2005 was notified in the Assam Gazette (Extraordinary) No. 165 dated 02.05.2005. Under the said Assam Industries (Tax Exemption) Scheme, 2005, the eligibility criteria for enjoying the benefits by an industrial unit will be available if that industrial unit was considered to be an industrial unit eligible for the benefits available under the Industrial Policy of Assam 2003. Section 3 of the Scheme of 2005 provided for the Tax Exemption/Remission for the eligible unit. Under the said scheme, if an eligible unit registered under the Scheme manufactures any goods in Assam, the said eligible unit shall



be entitled to remission of 99% of Tax payable by such unit according to its return in respect of sales of such goods manufactured in such unit and continue to be eligible for such remissions until the amount of such tax payable exceeds the unavailed quantum of monitory ceiling or the extended unexpired period of eligibility whichever is earlier. The benefits of the Industrial Policy of Assam, 2003 was available to new units which were set up on or after 01.01.2003 as well as for existing units undergoing expansion/diversification in the same place in the State of Assam on or after 01.10.2003.

**9.** The facts being common to all the writ petitioners, the facts in W.P.(C) No. 5917/2018 (Shiva Coke Industries) is taken up for discussion as the lead case. Being desirous of availing the benefits offered under Industrial Policy Resolution 2003 and the Assam Industries Tax (Remission) Scheme, 2005, the petitioners had set up its industrial unit for manufacture of Low Ash Metallurgical coke and Breeze Coke Industry. The petitioner also applied for provisional registration as a small scale industry before the Government of Assam, Directorate of Industries, Assam. The petitioner claims to have made investments of over Rs. 240,00,000/- setting up its



industrial unit. On application made before the department of Industries and Commerce, a provisional registration was granted to the petitioner on 31.12.2004 which was valid for five years from the date of the issue. The petitioner also applied for "No Objection Certificate" from the Pollution Control Board. However, the same was rejected on the basis of a communication issued by the Department of Industries and Commerce, Government of Assam dated 16.0.2005. Being aggrieved, some of the writ petitioners filed writ petitions before this Court being W.P.(C) No. 690/2007 assailing the communication dated 16.05.2005 issued by the Joint Secretary to the Government of Assam, Industries and Commerce Department. The said writ petition was disposed of by order dated 06.08.2007 by which the communication dated 16.05.2005 was set aside. Pursuant to the said order passed by this Court, the certificate was issued and the petitioner completed its setting up of industries. Pursuant to the order dated 06.08.2007 passed by this Court in W.P.(C) No. 690/2007, the petitioner applied for and was granted "No Objection Certificate" by the Department of Industries and Commerce, Government of Assam by a communication dated 04.04.2009 to set up Coke Industries subject to compliance of



the directives of the Government of India as per notification No. 1533 dated 14.09.2006 and subject to obtaining environment clearance of projects falling under category-A and category-B from the Ministry of Environment and Forests, Government of Assam. A communication from the Pollution Control Board, Assam was also enclosed therewith whereby the Assam Pollution Control Board expressed no objection in granting consent to establish Coke units provided that there is compliance to directives of the Government of India as per Notification No. 1533 dated 14.09.2006 and subject to clearance from necessary authorities. The petitioner thereafter applied for and was granted provisional consent to establish a Low Ash Metallurgical Coke and Breeze Coke manufacturing unit by the Pollution Control Board, Assam. The Pollution Control Board also gave consent to the petitioner to operate its business of the petitioner industry for the periods 2009-10, 2010-11 and 2011-12. License was also applied for and was granted by the Chief Inspector of Factories under the Factories Act, 1948 for setting up of factory. Upon due verification of the steps undertaken by the petitioner industry and due compliance of the procedure prescribed, the General Manager, District Industries and Commerce Centre issued an



acknowledgment dated 27.08.2009 on which date it was mentioned that the activities of the Industrial Unit had commenced from 24.06.2009. In view of the acknowledgement issued, the petitioner started commercial production on 24.06.2009.

The Government of Assam thereafter by way of Notification dated 12.05.2009 issued by the Department of Industries announced a new policy namely the Assam Industrial and Investment Policy, 2008 with effect from 01.10.2008. The validity of the said policy was made effective from 01.10.2008 to 30.09.2013. The said policy was available for all new units as well as existing units which go in for substantial expansion and which had commenced commercial production within the period of validity. The said policy was announced by the Government of Assam vide Notification dated 12.05.2009. The Government of Assam also amended the Assam VAT Rules 2005 by insertion of Rule 57A whereby various manufacturing activities mentioned therein would not be treated as "Manufacture" within the meaning of Section 2 (30) of the Act. Amongst the various activities not considered as "manufacture", the activity of conversion of Coal to Coke



was also included. The said Rule 57A was made retrospectively applicable/effective from 01.10.2008. This Rule 57A under the Assam VAT Rules, 2005 came to be assailed before this Court by the petitioner by filing W.P.(C) No. 2900/2011. By the Judgment and Order dated 12.05.2015, the writ petition was allowed and Rule 57A was held to be ultra vires and beyond the competence of the rule making power to alter the definition of manufacture as already provided under the Act of 2003. During the said proceedings before the Court, a dispute arose as to the date on which the industry was set up and started its commercial production. The Court therefore directed the Industries Department to decide the question on facts as regards the date of commence of the commercial production by giving fair opportunities to both parties.

**10.** Pursuant to the said direction, the petitioner submitted relevant documents before the authority. A communication was also submitted by the petitioner dated 16.06.2016 requesting the department to process its pending claims in respect of interest subsidy, transport subsidy, capital investment subsidy and eligibility certificate. It was also informed by the petitioner that the Coke Industry of the



petitioner was not in operation because of the ban of coal by National Green Tribunal (NGT) and once the ban imposed by NGT is withdrawn, the petitioner will start its operation in the industrial unit.

**11.** That during the pendency of the process of examination of the eligibility of the petitioner to claim its benefit for exemption under the industrial policy which the Department of Industries was examining in terms of the judgment and order dated 12.05.2015 passed in W.P.(C) No. 2900/2011 directing the authorities to do so, the Department of Finance and Taxation initiated the assessment proceedings under the Central Sales Tax Act in respect of the writ petitioner for the period 2012-13 under section 36(1) of the Assam Value Added Tax Act 2003 read with Rule 9(2) of the Central Sales Tax Act. According to the petitioner, since it was eligible for exemption from payment of tax by way of remission and the eligibility certificate in respect thereof was not issued till then by the industries department, the petitioner could not submit its annual and monthly returns online as is required to be submitted by dealers who were granted the benefit of exemption under the Industrial Policy.



**12.** It is the contention of the petitioner that the online returns could not be submitted in the format prescribed as the returns are required to be accompanied by the eligibility certificate which the petitioner was not provided with by the industries department as its claim was still being examined. Accordingly, the petitioner submitted its return in the offline mode/the manual form by claiming exemption from payment of tax by way of remission. These returns, however, were rejected by the Assessing Officer treating the petitioner to be a dealer other than a registered dealer and accordingly completed the assessment levying interest and penalty. The assessing officer levied penalty to the tune of 100% of the tax payable and notice of demand in pursuance to the assessments completed was issued to the petitioner.

**13.** After completion of the assessment order and being served with the notice of demand, the petitioner received the order from the Commissioner of Industries and Commerce, Government of Assam, respondent No 3 being order number CI&C(II) US/EC/202/2003/2017/248/897 dated 05.05.2018 rejecting the petitioner's claim to be eligible for grant of eligibility certificate under the Industrial policy of 2008 on the



ground that the State level committee in its meeting held on the 28.03.2018 had decided to reject the application for grant of eligibility as the status of the unit of the writ petitioner was shown to be " non functioning" by the General Manager District Industries and Commerce Centre Kamrup (Rural), Mirza namely respondent No. 2 herein. In the said order it was held that since the petitioner is a "non functioning" unit and thereby it neither contributes in economic development or in employment generation, the petitioner is not entitled to tax exemptions and other fiscal incentives which are available to other eligible industries under the industrial policy.

**14.** This order is assailed by the petitioner by filing WP(C) No. 5139/2018 which is also being taken up for hearing and disposal together with the present writ petition. By the said writ petition, the petitioner seeks to assail the assessments completed by the department dated 31.03.2018.

**15.** These facts which are narrated above are common for both the series of writ petitions. W.P(C) No. 5133/2018; W.P(C) No. 5139/2018; W.P.(C) No. 5141/2018; W.P.(C) No. 5143/2018 and W.P(C) No. 5136/2018 have been filed by the petitioners putting to challenge the respective orders passed



by the Department of Industries rejecting their claim for eligibility as an “eligible unit” under the Industrial policy of 2008 and thereby denying them the benefits and tax incentives available under the said industrial policy.

**16.** W.P.(C) No. 1828/2019; W.P(C) No. 2138/2019; W.P(C) No. 5954/2018; W.P(C) No. 5937/2018; W.P.(C) No. 5957/2018; W.P.(C) No. 2111/2019; W.P.(C) No. 1843/2019; W.P(C) No. 2096/2019; W.P(C) No. 6027/2018; W.P(C) No. 5960/2018; W.P(C) No. 5917/2018; W.P(C) No. 1860/2019; W.P(C) NO. 5980/2018; W.P(C) No. 5932/2018 and W.P(C) No. 5931/2019 have been filed by the petitioners whereby the assessments made by the Department of Finance and Taxation have been assailed as the same were completed during the pendency of the consideration of the claims of the petitioners to be eligible units by the industries department and by ignoring their claims that in the event they are considered to be eligible units, they will be entitled to all the fiscal benefits and the exemptions available under the industrial policies as well as the Assam Remission of Taxes scheme 2005.

**17.** In so far as the challenge made to the rejection and/or non consideration of the claims of the respective industrial



units to be “eligible units” by the Department of Industries and Commerce, Government of Assam is concerned, the senior counsel appearing for the petitioners submits that the rejection of the claims of the petitioner industrial units for grant of the eligibility certificate on the ground of being “non functioning units” is opposed to the very object and purpose of the industrial policy initiated by the Government of Assam. It is submitted that the industrial units commenced its commercial production as per the dates given in the chart below:

| Case no & Party Name                               | Commenced date for commercial production |
|----------------------------------------------------|------------------------------------------|
| W.P(C) No. 5917/2018 (Shiva Coke Industries)       | 24.06.2009                               |
| W.P(C) No. 1828/2019 (Raj Coke Industries)         | 18.06.2009                               |
| W.P(C) No. 5932/2018 (Shiva Coke Industries)       | 24.06.2009                               |
| W.P(C) No. 5931/2018 (Jai Coke Industries)         | 20.06.2009                               |
| W.P(C) No. 5954/2018 (Sheo Shakti Coke Industries) | 21.10.2009                               |
| W.P(C) No. 5937/2018 (Jai Coke Industries)         | 20.06.2009                               |
| W.P(C) No. 5957/2018 (Raj Coke Industries)         | 18.06.2009                               |
| W.P(C) No. 5960/2018 (Raj Coke Industries)         | 18.06.2009                               |
| W.P(C) No. 2111/2019 (Ganesh Met Coke Industries)  | 05.04.2009                               |



|                                                     |            |
|-----------------------------------------------------|------------|
| W.P(C) No. 2096/2019 (Ganesh Met Coke Industries)   | 05.04.2009 |
| W.P(C) No. 6027/2018 (Ganesh Met Coke Industries)   | 05.04.2009 |
| W.P.(C) No. 2138/2019 (Shri Balaji Coke Industries) | 05.04.2009 |
| W.P(C) No. 1843/2019 (Sheo Shakti Coke Industries)  | 21.10.2009 |
| W.P(C) No. 1860/2019 (Sethi Coke Industries)        | 21.10.2009 |
| W.P(C) No. 5980/2018 (Sheo Shakti Coke Industries)  | 21.10.2009 |
| W.P(C) No. 5133/2018 (Sheo Shakti Coke Industries)  | 21.10.2009 |
| W.P(C) No. 5139/2018 (Shiva Coke Industries)        | 24.06.2009 |
| W.P(C) No. 5141/2018 (Raj Coke Industries)          | 18.06.2009 |
| W.P(C) No. 5143/2018 (Jai Coke Industries)          | 20.06.2009 |
| W.P(C) No. 5136/2018 (Sethi Coke Industries)        | 21.10.2009 |

**18.** It is submitted that pursuant to the initiation of the commercial production, the petitioner submitted its returns before the Sales Tax Authorities claiming VAT Remission. Various other incentives announced under the industrial policy of 2008 were also claimed and submitted before the appropriate authority. In view of the insertion of Rule 57A in the Assam VAT Rules of 2005, the process of conversion of



coal to coke was held to be "not manufacture" and the eligibility certificate to the petitioner industrial unit was not issued. Nevertheless, the petitioner started its commercial production with effect from the dates mentioned in the chart. Because of the ban imposed by the National Green Tribunal in the State of Meghalaya, the commercial production had to be stopped as the coal which was sourced from the State of Meghalaya could not be obtained because of the ban imposed by the NGT. It is submitted that first, in view of the offer made by the state of Assam by virtue of industrial policy, the petitioner altered its position by making huge investments in purchase of land and setting up of the industrial unit. It is submitted that when the commercial production of the industrial unit started as far back as the dates mentioned in the chart given and continued thereafter, the respondent authorities could not refuse to issue eligibility certificate on the ground that in 2018 the said industrial unit was found to be non functional. It is submitted that the industrial units which was operation for nearly seven years, therefore the claim of the respondents that as these industrial units did not satisfy or fulfil the required criteria, they were not eligible for is wholly unjustified. It cannot be said that the object and purpose of



the industrial policy of economic development and employment generation was not met by the petitioner Industrial units. It is submitted that the respondents were informed by written communication that once the ban on coal by NGT was withdrawn, the petitioner will restart commercial production in its industrial unit. Under such circumstances, refusal to grant eligibility certificate by the respondent No. 3 is absolutely illegal without jurisdiction and not tenable in law and therefore the impugned order, rejecting the claims of the petitioners to grant the eligibility certificates should be set aside and quashed. It is submitted that the grounds on which the claim of the eligibility certificate of the writ petitioner was rejected are completely irrelevant as the eligibility certificate is to be made effective from the date of the commencement of commercial production of the industrial unit.

**19.** The respondents cannot deny the various incentives and concessions available to the industrial unit under the industrial policy by refusing to grant the eligibility certificate in respect of the period during which the industrial unit was in operation solely on the ground that the petitioner industrial unit was found to be non functional in the year 2018. It is submitted



that such finding of the respondent No. 3 is absolutely perverse, contrary to the object and scheme of the industrial policy and the same therefore amounts to illegal deprivation of the petitioner from the legitimate claims of the various incentives and concessions announced in the industrial policy, Government of Assam. It is submitted that the impugned action of the respondent authority being absolutely illegal and arbitrary, the same cannot withstand the test of Article 14 Constitution of India and therefore the impugned order dated 05.05.2018 (Order of rejecting eligibility) is liable to be set aside and quashed by the respondents of authority. It is submitted that neither under the Industrial Policy 2008 nor under the provisions of the Assam Industries (Tax Exemption) Scheme 2009 is there any provision to the effect that if the industry closes down before completion of the entire period of eligibility, the said industrial unit shall not be entitled to the benefits of the industrial policy of Assam 2008 for the period the said industrial unit was in operation. It is submitted that that the activity carried on by the petitioner industrial units which was considered to be "*not manufacture*" in terms of rule 57A of the Assam VAT Rules having been declared ultra vires by this Court, there was no hurdle on the part of the



respondents to issue the eligibility certificate in favour of the petitioner. However, the same was denied by treating the petitioner industrial unit to be "non functional" which is contrary to the facts on the ground. It is submitted that ordinarily an eligibility certificate is issued immediately after commencement of commercial production and once the commercial production commences, the benefits available under the industrial policy of 2008 is required to be conferred on such an industrial unit during the entire period of the industrial policy. It is submitted that there is no provision under the industrial policy of 2008 and/or the Assam Industries Tax (Exemption) Scheme, 2009 that the benefits that if an industrial unit closes down before the expiry of the period of eligibility, the benefits availed will have to be refunded back to the government. It is further submitted that the period of eligibility indicates the maximum period prescribed to which the industrial unit shall be entitled to the benefits as per the industrial policy of Assam 2008. As such, it is submitted that it cannot be interpreted to mean that the industrial unit shall be entitled for incentives only if the industry remains functional for the entire period of the eligibility.



**20.** Referring to clause 6-B of the exemption scheme of 2009, the learned senior counsel submits that the said clause prescribes that where an eligibility certificate has been granted under the scheme to an industrial unit and it closes down or reaches the maximum limit of exemption, it shall be the duty of the unit to inform in writing to the jurisdictional tax authorities which had issued the eligibility certificate to it and along with the said report, it should also surrender the original eligibility certificate along with the certificate of entitlement to the concerned authorities. Referring to the said provision, learned senior counsel submits that the framers of the scheme were aware that the situation may arise where unit may for various reasons, close down. However, in such an event, clause 6-B only contemplates a report in writing to be submitted within 14 days of closure to the jurisdictional tax authorities who had issued the eligibility certificate and also surrender the eligibility certificate along with the certificate of entitlement. There is no provision prescribing refund of the benefits availed of by the industrial unit prior to its closure. In support of his contentions, the learned senior counsel refers to order dated 22.11.2023 passed by coordinate bench in WP(C) No. 1603/ 2021 (Duroply Industries Vs Union of India and



Ors). Referring to the said order, the learned senior counsel submits that before the Co-ordinate bench, the claim of the petitioner therein was release of transport subsidy. The transport subsidy claimed by the petitioner to have been entitled was not released on the ground that the industrial unit was not functioning on the date of release of transport subsidy. The writ petition was finally disposed of on the basis of the averments made by the industries department therein that the entitlement of the petitioner for transport subsidy has to be ascertained on the basis as to whether the materials were actually transported or not. The Co-ordinate Bench accordingly held that the rejection of the claim of the benefit of transport subsidy was improper and consequential orders were issued by this Court.

**21.** The learned Senior counsel also referred to the judgment of the Tripura High Court rendered in *Sukhumoy Paul Vs State of Tripura and others* reported in (2021) SCC online (Tri) 273 to buttress his arguments that once the industrial unit commences its production, subsequent closure will not deprive the benefits which accrue to the industrial unit merely because the unit was non functional subsequently. The learned counsel



for the petitioners further submits that the fact that the petitioner industrial unit was functional and had commenced commercial production with effect from date of commercial production is evident from the fact that for the relevant period, the Department of Finance and Taxation had completed its assessment by treating the petitioner unit to be a dealer not covered by the exemptions and the benefits. It is submitted that a bare perusal of the assessment order which is impugned by way of a separate proceeding, will reveal that the assessments were completed by due examination of the books of accounts. It is submitted that under such circumstances, the finding of the respondent No. 3 that the unit was non functional is disputed by the assessments completed by the Department of Finance and Taxation. These assessments were completed under the Central Sales Tax read with the Assam VAT Act and the Rules made thereunder. In terms of the assessment, the petitioner was assessed to tax, penalty and interest for sales. These assessments were in respect of the industrial unit for the period in question. Under such circumstances it cannot be held that the unit "non functional" as the tax authorities had completed the assessments upon due perusal of the books of accounts.



**22.** It is therefore submitted that the denial of the eligibility certificate by the industries department being contrary to the facts as evident from the records, the same is totally illegal, perverse and is therefore required to be interfered with, set aside and quashed.

**23.** The learned senior counsel submits that as the petitioners had acted upon the offer of the Government of Assam by the Industrial Policy 2008 and had altered their positions to their detriment by making huge financial investments in setting up industries and purchase of materials and employment of personnel. Under such circumstances, under the doctrine of promissory estoppel, the respondent authorities cannot deny the benefit which have been offered under the Industrial Policy of 2008 as the petitioner had genuinely accepted the offer and altered its position by making the necessary investments.

**24.** In so far as the writ petitions filed by the various writ petitioners/ industrial units challenging the various assessment orders made by the Finance department, it is submitted that under the Remission scheme, returns were required to be filed online accompanied by the eligibility certificate. Unless the



eligibility certificate is submitted, the returns could not be filed online as per the format prescribed. Under the circumstances, since the question of eligibility certificate was under due consideration before the respective industries department, the petitioners who although had fulfilled all the criteria prescribed under the industrial policy and had commenced its commercial production with effect from the respective dates of the respective industrial units, because of none issuance of the eligibility certificates by the respondent industries department, the petitioners were deprived from filing the annual/monthly returns by the online mode. Since they were not issued the eligibility certificates by the industries department at the time they were required to furnish their returns, they had to file their returns in the physical form by mentioning therein that they are eligible for the exemptions and that their eligibility certificates have not yet been issued by the Industries department as the matters were under consideration of the State Authorities. However, the respondent Tax department refused to accept the plea of the respective Industrial units that the eligibility certificates were under active consideration by the designated authorities and thereby refused to grant the benefits attributable to the respective industrial units under



the Industrial policy of 2008 read with the Assam Industries (Tax Remission) Scheme. It is submitted that because of the lapses on the part of industries department, the returns could not be filed by the online process and for which the petitioner industrial units are not at fault. The delay that had occurred in consideration of the claims for eligibility was not due to any fault of the petitioner industrial units. It is submitted that when the industrial policy of 2008 was initiated by the Government of Assam, it is expected that the various departments and components of the Government of Assam will act in unison to ensure that the benefits conferred under the Industrial policy of 2008 will be made available to all units who satisfy the requirements prescribed. It is submitted that the Department of Industries as well as the Department of Finance and Taxation being both components of the Government of Assam, there ought to have been proper coordination between both the departments. The Department of Taxation ought not to have proceeded with the assessments made until such time the claims of the benefits of eligibility was considered by the industries department. This was required to be done more so in view of the order dated 12.05.2015 passed in W.P.(C) 2900/2011, whereby this Court



directed the industries department to decide the question of fact as regards the date of commencement of commercial production after giving fair opportunity to the parties. It is submitted that under such circumstances, the assessments completed by the respondent Taxation Department are contrary to the very scheme and object of the industrial policy and the benefits available thereunder read with the Assam Industries (Tax Remission) Scheme. In support of his contentions, the learned senior for the petitioner relies upon the following judgments of the Apex court:

*"(1) Motilal Padampat Sugar Mills reported in (1979) 2 SCC 409.*

*(2) Century Spinning and Manufacturing Company Ltd, reported in (1970 1, SCC 582*

*(3) Purnami oil mills versus state of Kerala reported in 1986, (Supp) SCC 728;*

*(4) State of Bihar versus Usha Martin Industries, reported in 1987 Supplementary SCC 710;*

*(5) Sri Bhakul Oil Industries reported in 1987 1 SCC 31;*

*(6) Pawan Alloys and Castings Private Limited reported in 1997 7 SCC 251;*



*(7) Mahabir vegetable Oils (P) Limited reported in 2006 3 SCC 620;*

*(8) State of Punjab versus Nestle India Limited reported in 2004 6 SCC 465.*

*(9) Kashinka Trading versus Union of India reported in 1995 1 SCC 274;*

*(10) MRF limited versus assistant CST reported in 2006 8 SCC 702;*

*(11) State of Jharkhand versus Brahmaputra Metallics reported in 2023 10 SCC 634."*

**25.** Relying on all the judgments referred above learned senior counsel submits that the actions of the respondent authorities in denying the petitioner unit its eligibility certificate to claim the benefits it is eligible to under the industrial policy of 2008 read with Tax Remission Scheme is wholly irrational, opposed to public policy, contrary to the very object and purpose of the industrial policy and the same is contrary to the facts available on record and therefore perverse inasmuch as the tax department concluded its assessments by holding that the industrial unit had completed its sales from the said industrial unit, the impugned orders, whereby the eligibility



certificate was rejected needs to be interfered with, set aside and quashed.

**26.** The learned counsel appearing for the industries department submits that an affidavit has been filed on behalf of the industries department in W.P.(C) No. 1828/2018. He submits that since the facts involved are similar and common for the purposes of all the other cases, he would like to refer to and rely on the said affidavit.

**27.** The learned counsel for the Industries Department referring to the various provisions of the industrial policy submits that there are various steps which are required to be undertaken in so far as the industries are concerned in order to avail the various incentives and benefits prescribed under the industrial policy. Referring to the facts of the case in WP(C) 1828 of 2019, the learned counsel for the industries department submits that in so far as this petitioner is concerned, their application for eligibility certificate was filed only on 08.02.2016, although they claimed to have commenced their commercial production on the 18.06.2009. It is submitted that it is not believable that where an industry claims to have commenced its commercial production with



effect from 18.06.2009, it does not submit its eligibility certificate for about seven years. It is submitted that unless all the steps and procedures prescribed under the industrial policy are duly complied with, the benefits available under the industrial policy cannot be made available to the concerned industry. It is submitted that for availing the benefits, the first step is to submit the application for eligibility certificate accompanied by all relevant documents and information. The learned counsel submits that there is no explanation as to why the petitioner unit submitted its application for eligibility certificate in 08.02.2016 if it had already commenced its commercial production on 18.06.2009. The learned counsel for the industries department, further submits that the eligibility criteria under the industrial policy is prescribed under clause 4.6. Clause C of the said clause prescribes that over the period of five years there should be 100% of indigenous people in employment in non managerial posts, and 90% of indigenous people in managerial posts. It is submitted that these information are nowhere reflected in the pleadings although it is submitted that all were furnished before the authorities. The learned counsel for the respondent submits that for grant of eligibility certificate, an enquiry report is required to be issued



by the General Manager of the District Industrial Centre (DICC) as an enquiry officer in the format prescribed. From the communication of the General Manager dated 06.03.2017, which is enclosed to the affidavit, the enquiry report, as required, could not be submitted as the concerned unit was found to be within "non functional". Under such circumstances where the scheme itself prescribes for furnishing of an enquiry report by the General Manager, DICC and the same could not be furnished by the Enquiry officer for the reasons mentioned, namely, for the unit being "non functional", the State Level committee had no option but to reject the claim of the petitioner for eligibility certificate. It is therefore submitted that there is nothing available on record to show that these industrial units were functional at the relevant point in time and a field enquiry as required to be conducted could not be conducted by the industries department as the unit itself was "non functioning". Under such circumstances, there is no infirmity in the order impugned the present writ petitions rejecting the claims of eligibility by the industries department. He therefore submits that there is no merit in these writ petitions and the same should therefore be dismissed as being devoid of any merit.



**28.** Mr. B. Chowdhury, learned counsel appearing for the Taxation department submits an affidavit in opposition has been filed in WP(C) No. 5917 of 2018 and he also submits that since the facts are similar for the purposes of the respondent Taxation department, they would like to rely on the affidavit filed in WP(C) No. 5917 of 2018 for all the other writ petitions. The learned counsel appearing for the Finance Department, submits that in so far as the assessments carried on by the Taxation department in respect of the industrial units are concerned, since there was no eligibility certificate enclosed, they were not found to be entitled to the tax exemption and other fiscal incentives offered under these schemes. It is submitted that there is no bar for the State Government to restrict or withdraw any of the incentives prescribed at any point in time. It is submitted that since the industrial policy prescribes specific procedures requiring eligible units to comply with the same before claiming benefits under the scheme under the industrial policy and the scheme, and the same not having been done by the petitioner industries, and in the absence of the eligibility certificates required to be issued by the industries department, the respondent department is duty bound in law to complete the assessments, and which was



accordingly done. The orders of assessment which are impugned in writ petitions W.P.(C) No. 1828/2019; W.P(C) No. 2138/2019; W.P(C) No. 5954/2018; W.P(C) No. 5937/2018; W.P.(C) No. 5957/2018; W.P.(C) No. 2111/2019; W.P.(C) No. 1843/2019; W.P(C) No. 2096/2019; W.P(C) No. 6027/2018; W.P(C) No. 5960/2018; W.P(C) No. 5917/2018; W.P(C) No. 1860/2019; W.P(C) NO. 5980/2018; W.P(C) No. 5932/2018 and W.P(C) No. 5931/2019 are therefore as per law, and there is no infirmity in the orders issued by the respective assessment authorities. The writ petitions assailing the assessment orders are therefore devoid of and the same should therefore be dismissed.

**29.** In reply, the learned senior counsel for the petitioners disputes the contentions of the respondents. He submits that once the eligibility is issued, it is valid for the entire period of industrial policy. He submits that there is no provision for cancellation of eligibility certificate or for periodic verification by the industries department. It is submitted that there is no provision for cancellation of the eligibility certificate with retrospective effect. The learned senior counsel submits that since under Rule 57A of the Rules of 2009 manufacture of



coke was excluded from the term "*manufacture*", during the currency of that provision, there was no question of the petitioner units claiming any benefits under the industrial policy for the exemption. These Rules were held to be ultra vires and struck down on 12.05.2015 and thereafter, the petitioner unit, having become eligible to make a claim under the industrial policy, submitted its application for being considered as an eligible industry. It was for these reasons that notwithstanding the initiation of commercial production in 2009, the petitioner applied for eligibility certification in the year 2016. He further submits that if the unit was indeed found to be "non functional", there was no question of any manufacture and consequent sales of its goods, therefore, there ought not to have been any imposition of sales tax by the respondent Finance department. It is submitted that if there is no manufacture, then there is no question of sales leading to imposition of sales tax/VAT. It is submitted that merely because the industrial unit was non functional for a particular period of time would not disentitle such an industry from the benefits of the industrial policy by treating it to be an eligible industry, if during the currency of the policy, the



industrial unit satisfies the prescriptions and the requirements under the said eligibility certificates under the industrial policy.

**30.** The learned counsel for the parties have been heard. The elaborate pleadings on record as well as the Judgments pressed into service have been carefully perused and noted.

**31.** As discussed above, there are two batches of writ petitions which are taken up together for hearing and disposal.

**32.** In W.P(C) No. 5133/2018 (Sheo Shakti Coke Industries); W.P(C) No. 5139/2018 (Shiva Coke Industries); W.P(C) No. 5141/2018 (Raj Coke Industries); W.P(C) No. 5143/2018 (Jai Coke Industries) and W.P(C) No. 5136/2018 (Sethi Coke Industries), the challenge in these writ petitions have been made to the respective orders issued by the Commissioner of Industries and Commerce, Udyog Bhawan, Assam whereby the department has arrived at a conclusion that the industries are not eligible for the grant of eligibility certificate under the Industrial Policy of Assam 2008 as the said industrial unit was found to be 'non-functioning'. The department came to the conclusion that the fiscal incentives are provided by the Government to encourage industrial units for their contribution in economic development of the State in general and local



employment generations in particular and the 'non-functioning' unit neither contributes in economic development nor in employment generation and as such the same is not entitled for grant of eligibility certificate.

**33.** In W.P(C) No. 5917/2018 (Shiva Coke Industries); W.P(C) No. 1828/2019 (Raj Coke Industries); W.P(C) No. 5932/2018 (Shiva Coke Industries); W.P(C) No. 5931/2018 (Jai Coke Industries); W.P(C) No. 5954/2018 (Sheo Shakti Coke Industries) W.P(C) No. 5937/2018 (Jai Coke Industries); W.P(C) No. 5957/2018 (Raj Coke Industries); W.P(C) No. 5960/2018 (Raj Coke Industries); W.P(C) No. 2111/2019 (Ganesh Met Coke Industries); W.P(C) No. 2096/2019 (Ganesh Met Coke Industries); W.P(C) No. 6027/2018 (Ganesh Met Coke Industries); W.P.(C) No. 2138/2019 (Shri Balaji Coke Industries); W.P(C) No. 1843/2019 (Sheo Shakti Coke Industries); W.P(C) No. 1860/2019 (Sethi Coke Industries) and W.P(C) No. 5980/2018 (Sheo Shakti Coke Industries), the petitioners are assailing their respective orders of assessments passed by the jurisdictional assessing officer under the State Taxes Department and the consequential notice of demand issued in pursuance whereof Taxes for the year 2014-15 has



been levied on the petitioners notwithstanding that the petitioner had applied for and had claimed entitlement to the benefits of exemption from the payment of tax by way of remission as per the Industrial Policy of Assam, 2008 read with the Assam Industries (Tax Remission Scheme), 2005 and without taking into consideration the fact that the application for issuance of eligibility certificate was pending consideration before the competent authority. The challenge is made on the ground that the petitioners cannot be deprived of its due exemption which the petitioner claims to be entitled to under the Industrial Policy as well as the Tax Remission Scheme for no fault of the petitioners but only because the competent authority took time for disposal of the applications for issuance of the respective eligibility certificate. Since this fact was brought to the notice of the Tax authorities, the respective assessments of the petitioners ought not to have been proceed with till effective orders were passed on their claims for entitlements for the exemptions under the relevant Industrial Policy.



**34.** In order to appreciate the arguments addressed by the counsel, it is necessary to refer to the provisions of the Industrial Policy as well as the Tax Exemption.

**35.** The Government of Assam, Industries and Commerce Department by a Notification No. CI.310/2001/Pt-III/61 dated 26.09.2003 announced its Industrial Policy of Assam, 2003 to achieve various aims and objectives which are enumerated herein below:-

1. *To increase the share of the industrial sector to the State Domestic Product (SDP) from the present level of 13.29% a level of at least 18% at the end of the terminal year of the Policy.*
2. *To generate more employment opportunities in the State.*
3. *To ensure development of adequate and appropriate infrastructures for industrial growth.*
4. *To make Assam one of the preferred destinations investment for outside investors.*
5. *To encourage private investment in Industrial infrastructure projects.*
6. *To ensure industrial development in hitherto industrial backward regions of the State.*
7. *To create avenues for sustained growth and development of the Small Scale and tiny sectors.*



8. *To catalyse administrative and legal reforms with a view simplify the procedure and to ensure time bound disposal matters.*
9. *To take steps to promote rural handicrafts so as to conserve and enrich cultural heritage, traditions and customs of the state.*
10. *To promote establishment of medium and large-scale mother industries to create an industrial base, offering large-scale employment opportunities through backward and forward linkages.*
11. *To promote Information Technology, high-tech, knowledge based and biotech industries.*
12. *To promote export oriented industrial units.*
13. *To take steps to revive the potentially viable sick Public Sector Undertakings and to make the Public Sector Undertakings economically viable.*
14. *To promote Single Window Clearance system for fast track clearance of industrial proposals.*

**36.** The said Policy was made effective from 1<sup>st</sup> October, 2003 and was to remain valid for a period of five years i.e. up to 30<sup>th</sup> September, 2008 unless modified/terminated earlier. It may be relevant herein to mention that various sectors of Industrial activities in the Industrial Policy of Assam, 2003 were identified as thrust areas and amongst many, industries based on locally



available minerals were identified as thrust area. It may be relevant herein to mention that amongst various other minerals which are available in the State of Assam 'coal' is one of the main minerals available in Assam.

**37.** As per the said Industrial Policy of Assam, 2003, the State of Assam promised and assured the people that various fiscal incentives would be provided which inter-alia were State Capital Investment Subsidy, Interest Subsidy on Working Capital, Power Subsidy, Subsidy on Captive Power Generation, Subsidy on Feasibility Study Costs, Subsidy on Quality Certification/Technical Know How, Subsidy on Marketing Assistance, Subsidy on Drawal of Power Line, etc. It may be relevant herein to mention that initially in view of the change to be brought into effect as regards the tax system, the exemption from sales tax was not mentioned in the Industrial Policy of Assam, 2003 but subsequently the Assam Industries (Tax Remission) Scheme, 2005 was notified in the Assam Gazette Extra-Ordinary No. 165 dated 02.05.2005. It may further be relevant herein to mention that under the Assam Industries (Tax Remission) Scheme, 2005, the eligibility criteria for enjoying the benefits thereon amongst others, was if an industrial unit is eligible under the Industrial Policy of Assam,



2003, the said Industrial Unit shall be treated as an eligible industrial unit. As per the terms of the Industrial Policy read with the terms of the Tax Remission Scheme, 2005, the tax exemption/remission which was allowed for the eligible units was contained in Section 3 of the Scheme of 2005 whereby if an eligible unit registered under the Act manufactures any goods in Assam, the said eligible unit shall be entitled to remission of 99% of the tax payable by such unit according to its return in respect of sales of such goods manufactured in such unit and continue to be eligible for such remission until the amount of such tax payable exceeds the un availed quantum of monetary ceiling or the extended unexpired period of eligibility whichever is earlier. The benefits of the Industrial Policy of Assam, 2003 was available to new units which were set up on or after 01.10.2003 and existing units undergoing expansion/diversification at the same place in the State of Assam on or after 01.10.2003.

**38.** From the pleadings available before this Court, it is seen that the Petitioners took steps for setting up Industrial Units for manufacture of Low Ash Metallurgical Coke and Breeze Coke Industry. The Petitioners thereafter applied for a Provisional Registration as a Small Scale Industry before the Government of



Assam, Directorate of Industries, Assam. In respect of the petitioner Shiva Coke Industries, it was mentioned in the said Provisional Registration that the investments made were as follows:-

|                           |   |                 |
|---------------------------|---|-----------------|
| Land and Land Development | - | Rs. 20,00,000/- |
| Building and Shed         | - | Rs.100,00,000/- |
| Plants & Machineries      | - | Rs. 80,00,000/- |
| Other Fixed Assets        | - | Rs. 40,00,000/- |

**39.** In total the net investments to be made was Rs. 240,00,000/-. The General Manager, District Industries and Commerce Centre, upon the Application made by the Petitioner, granted Provisional Registration on 31.12.2004 which was valid for a period for five years from the date of issue.

**40.** In the mean time, the Petitioner applied for a No Objection Certificate from the Pollution Control Board. However, the concerned officials of the Pollution Control Board rejected the issuance of the No Objection Certificate on the ground that there existed a letter from the State Government, Department of Industries and Commerce dated 16.05.2005. The Petitioner filed Writ Petition being W.P.(C) No. 4084/2007 challenging the communication dated 16.05.2005 issued by the Joint Secretary to the Government of Assam, Industries and Commerce Department



directing all the General Managers, District Industries and Commerce Centre not to issue temporary/permanent Registration Certificate for establishment of Coke Industries and further directing not to allow Coke Industries to start their industries which have obtained license but have not started operating to commence their operation. The aforementioned Writ Petition was disposed off vide an order dated 10.8.2007 by which the communication dated 16.5.2005 was set aside with a direction to the Pollution Control Board to consider the request of issuance of No Objection Certificate to the petitioner without being influenced by the directions contained in the letter dated 16.5.2005.

**41.** Pursuant to the said Judgment and Order dated 10.08.2007, the Petitioner completed construction of its proposed industrial unit by spending huge amounts of money. At this stage, it may be relevant herein to mention that the Petitioner made the following expenditures towards setting up its industrial unit. The same are stated herein below.

| <b>Sl. No.</b> | <b>Particulars</b>        | <b>Amount Spent</b> |
|----------------|---------------------------|---------------------|
| 1              | Land and land development | Rs. 25,00,000       |
| 2              | Factory shed and building | Rs. 216,00,000      |

|              |                     |                       |
|--------------|---------------------|-----------------------|
| 3            | Plant and machinery | Rs. 104,00,000        |
| 4            | Generator Set       | Rs. 5,00,000          |
| <b>Total</b> |                     | <b>Rs. 350,00,000</b> |

**42.** Pursuant to the Judgment dated 24.07.2007, 10.8.2007 and various other Orders passed by this Hon'ble Court in relation to the communication dated 16/5/2005 as mentioned above, the Petitioner as well as other Coke Industries submitted applications before the General Manager, District Industries and Commerce Centre for issuance of the EM (Part – II) under the MSMED Act, 2006. Upon such requests being made to the General Manager, District Industries and Commerce Centre, Kamrup, the latter issued a Communication dated 23.06.2008 to the Director of Industries and Commerce with a request to advise as to whether the EM (Part-II) applications for issue of acknowledgement should be issued or not.

**43.** The Director of Industries and Commerce in pursuance to the aforesaid letter dated 23.06.2008 issued a communication to the Commissioner and Secretary to the Government of Assam dated 16.07.2008 requesting the latter to issue necessary directions in view of the Order dated 24.07.2007 passed by this



Hon'ble Court wherein the Communication dated 16.05.2005 was quashed.

**44.** The Joint Secretary to the Government of Assam, Industries and Commerce Department by a Communication dated 04.04.2009 informed the Director, Industries and Commerce that the Government has no objection for setting up Coke Industries subject to the compliance of the directives of the Government of India as per Notification No. 1533 dated 14.09.2006 and subject to obtaining Environment Clearance of Project falling under Category – A and Category – B from the Ministry of Environment and Forest, Government of India. In that regard, the Joint Secretary also enclosed the Communication received from the Pollution Control Board, Assam wherein it was mentioned that the Pollution Control Board, Assam has no objection in granting consent to establish Coke Units provided there is compliance to directives of the Government of India as per Notification No. 1533 dated 14.09.2006 and subject to clearance from the necessary authorities.

**45.** The Petitioner further applied for the Provisional Consent to Establish a Low Ash Metallurgical Coke and Breeze Coke manufacturing unit before the Pollution Control Board, Assam which was accorded on 04.04.2009.



**46.** The Petitioner also applied before the Chief Inspector of Factories under the Factories Act, 1948 for approval, licensing for registration of Factories under the Provisions of Factories Act, 1948. The Chief Inspector of Factories, Assam on 18.02.2009 granted the license bearing License No. KAM/1117 for setting up the Factory. The Pollution Control Board also gave the consent to operate the business of the Petitioner Industry for the period 2009-10, 2010-11 and 2011-12.

**47.** Subsequently, the Additional Director, Directorate of Industries and Commerce by a Communication dated 06.05.2009 intimated the General Manager, District Industries and Commerce Centre about the decision of the Government as given in the Communication dated 04.04.2009. Pursuant thereto, the General Manager, District Industries and Commerce Centre on 28.05.2009 by a Communication to the Director of Industries and Commerce with a request to inform as to whether the General Manager, Director of Industries and Commerce should accept the actual/declared date of commercial production of the said unit or as 04.04.2009, the date when the Government of Assam accorded its approval in the acknowledgement under the EM (Pt-II).

**48.** The Additional Director, Directorate of Industries and Commerce vide a Communication dated 01.06.2009 informed the



General Manager, District Industries and Commerce Centre that the EM acknowledgement should be issued on finding of actual field verification and documents submitted with the EM Application in support of different declaration, statements, etc. made in the Application. It was further mentioned that the date of commencement of the commercial production cannot be changed in the acknowledgement EM (Part-II) to be issued provided the same can be established with supporting documents by the Applicant. After the receipt of the observations made in the Communication dated 01.06.2009, the General Manager, District Industries and Commerce Centre acknowledged that the Petitioner Unit had commenced its activities of manufacture from 21.10.2009. The said acknowledgement was given on 15.03.2010.

**49.** In view of the above, the Petitioner could only start commercial production only on 21.10.2009. In the meantime, it is stated that the Government of Assam by a Notification dated 12.05.2009 issued by the Commissioner and Secretary to the Government of Assam, Industries and Commerce Department announced a new Policy, namely, the Assam Industrial and Investment Policy of Assam, 2008 with effect from 01.10.2008.

**50.** The period of validity of the Industrial Policy of 2008 was for a period of five years with effect from 01.10.2008 till



30.09.2013. The eligibility criteria as per the said Policy was all new units as well as existing units which go in for substantial expansion and which had commenced commercial production within the period of validity will be eligible for the incentives from the date of commencement of commercial production for the period applicable for each incentive. In the said Industrial Policy of 2008, various fiscal incentives such as interest subsidy on term loan, power subsidy, subsidy of quality certification/technical knowhow and subsidy on drawal of power line were given.

**51** The Government of Assam, in the meantime amended the Assam VAT Rules, 2005 by the insertion of Rule 57A in the Assam Value Added Tax Rules whereby various activities of manufacture mentioned therein was treated as not amounting to manufacture within the meaning of Section 2(30) of the Act. Amongst various activities, the activity of conversion of coal to coke was included as an activity not amounting to manufacture within the purview of the Act. It may further be relevant herein to mention that the said Rule 57A was made retrospectively effective from 01.10.2008. The Assam Industries (Tax Exemption) Scheme, 2009 was also notified on 3.11.2009.

**52.** The validity of the said Rule 57A was challenged before this Hon'ble Court in a bunch of writ petitions. In those



proceedings, it was contended that the Petitioner had on the basis of the various promises and assurances given by the Government of Assam in its Industrial Policy Resolution of 2003 had set up its Industrial Unit by altering its position and thereby it was not permissible for the State in view of the Doctrine of Promissory Estoppel to resile from the said promises by treating the activities of conversion of coal to coke carried out by the industrial unit of the petitioner firm not to be manufacture and thereby denying the benefit of various incentives to the petitioner firm.

**53.** Those writ petitions came up for hearing before a Division Bench of this Hon'ble Court and vide judgment and order dated 12.05.2015 allowed the writ petition and held Rule 57A (I) of the Assam Value Added Tax (Third Amendment) Rules, 2009 to be ultra vires the provisions of the provisions of the definition of 'manufacture' under the Act of 2003 and beyond the competence of the Rule making powers to alter the definition of 'manufacture' as defined under the Act. During the course of the hearing of those matters a dispute was raised with regard to the date on which the industrial unit was set up and started its commercial production. It was contended by the State that the industrial unit was set up in the year 2005 and commercial



production commenced prior to the date of coming into effect of the Industrial Policy of 2008 and thereby those units was not entitled to any concession under the Policy of 2008. This Hon'ble Court, therefore, directed the Industries Department to decide the said question of fact as regards the date of commencement of commercial production after giving fair opportunity to both the parties.

**54.** After the aforesaid judgment of this Hon'ble Court, the petitioner submitted its application for grant of eligibility certificate under the Industrial Policy of 2008 before the Respondent No. 2 along with relevant papers and documents and requested for grant of eligibility certificate vide letter dated 08.02.2016. Thereafter, the petitioner was asked to submit some additional documents which were submitted by the petitioner vide letter dated 29.02.2016.

**55.** In the meantime the petitioner vide letter dated 16.06.2016 addressed to the Respondent No.2, requested the Respondent No. 2 to process the pending claims in respect of interest subsidy, transport subsidy, capital investment subsidy and issuance of eligibility certificate. In the said letter, the petitioner also informed the Respondent No.2 that the coke industry of the petitioner is not in operation because of ban of



coal by N.G.T and informed the Respondent No.2 that once the ban of coal by N.G.T is withdrawn, the petitioner shall start its operation in its industrial unit.

**56.** The petitioner was, however, surprised to receive an order from the Commissioner of Industries & Commerce, the Respondent No.3 herein being order no. CI&C(II)US/EC/2003/203/2017/332/916 dated 05.05.2018 holding the industrial unit of the petitioner firm to be ineligible for grant of eligibility certificate under the Industrial Policy of 2008 on the ground that the State Level Committee in its meeting held on 28.03.2018 had decided to reject the application for grant of eligibility as the status of the Unit was indicated as "non-functioning" by the Respondent No.2. The Respondent No.3 in the said order observed that the Government provides tax exemptions and other fiscal incentives to encourage industrial units for their contribution in economic development of the State in general and employment generation in particular and a "non-functioning" unit neither contributes in economic development nor in employment generation.

**57** The Government of Assam announced the Industrial Policy of 2008 for encouraging industries to establish the units in the State of Assam by providing incentives in several aspects



including taxation. The various features of the industrial policy are extracted below:

#### *INDUSTRIAL POLICY – INTRODUCTION*

##### *4.1 AIMS AND OBJECTIVES*

- 1) To generate economic development by accelerating the process of industrialization.*
- 2) To generate employment and increase income by encouraging the establishment of micro enterprises.*
- 3) To increase the share of the Industrial sector in the State Domestic Product (SDP).*
- 4) To make Nature – Economics Centric Development.*
- 5) To make Agro and rural area linked industrial investment as focused programme. Besides, the State Government would endeavour to encourage youths of the State, particularly the women entrepreneurs to set up industries, encourage to help increase exports and attract Foreign Direct Investment (FDI) particularly from NRIs.*

##### *4.2 STRATEGY*

*The aims & objectives will be endeavoured to be achieved by following suitable and appropriate strategies like:*

- 1) Creation of quality infrastructure*
- 2) Cluster development*
- 3) Encourage investment by fiscal incentives*
- 4) Tax concessions to attract investment*
- 5) Facilitate access to market*
- 6) Facilitate mega investment*
- 7) Simplification of procedures*
- 8) Industry friendly administration*
- 9) Create conducive atmosphere to induce investment*

##### *4.2 (A):*

*To provide incentives for development of service sector in the areas of Tourism, Health services vocational training etc. a separate policy will be notified later on.*



#### **4.3 PERIOD OF VALIDITY OF THE POLICY**

*The policy will be effective from 1/10/2008 and will be valid for a period of 5 years, i.e. up to 30/9/2013. All new units as well as existing units which go in for substantial expansion and which commence commercial production within the period of validity will be eligible for the incentives from the date of commencement of commercial production for the period applicable for each incentive.*

#### **4.4 EFFECTIVE DATE**

*Effective date for the new policy shall be 1/10/2008 and from that date the 2003 Policy will cease to operate unless otherwise provided for.*

*Units which commenced commercial production prior to 1/10/2008 and are eligible under 2003 policy shall continue to be governed by the Industrial Policy 2003. However no application for Eligibility Certificate claims under the 2003 policy will be entertained after 31-3-2009.*

#### **4.5 DEFINITIONS**

*1) EXISTING UNIT means a unit, which is or was in commercial production in the State of Assam prior to 1/10 /2008.*

*2) SUBSTANTIAL EXPANSION means a unit, which has commenced commercial production in the State of Assam during the validity period of Industrial Policy 2008.*

*3) SUBSTANTIAL EXPANSION means increase in value of fixed capital investment in plant and machinery of an existing unit by at least 25% as well as increase of employment by at least 10% and at least 25% increase in production compared to average annual production of previous three years. Prior to going for expansion, the unit should be operating at least at a minimum of 80% capacity during the period of three previous years and prior intimation to the concerned implementing agency.*

*4) NON-ELIGIBLE UNIT: Non-eligible unit means those industries, which are declared as Non-eligible under this policy.*

*5) MANUFACTURE means any activity that brings out a change in an article or articles as a result of some process, treatment, labour and*

*results in transformations into a new and different article so understood in commercial parlance having a distinct name, character use, but does not include such activity of manufacture as may be prescribed by Finance Department.*

*6) MICRO/SMALL/MEDIUM ENTERPRISE: As defined in the Micro, Small and Medium Enterprises Development Act, 2006 as amended from time to time.*

*7) INDUSTRIAL ESTATE/PARK under this policy means an area not less than 500 bighas with infrastructure facilities or built up space with common facilities for the purpose of industrial use commensurate with the master plan of the district or town or city as applicable. Minimum 25% area is to be left for open space and green belt and minimum 10% area for common utility.*

#### **4.6 ELIGIBILITY CRITERIA**

*Unless otherwise specified, the eligibility criteria shall be as below:*

*a) A unit that is engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 is eligible.*

*b) New Units set up on or after 1/10/2008 as well as existing units undergoing substantial expansion at the same place in the State of Assam on or after 01-10- 2008 shall be eligible for incentives under 2008 Industrial Policy provided that for the units undergoing substantial expansion, the fiscal incentives will be only against the additional investments made on plant & machineries.*

*c) A unit shall have employment of 80% people of Assam in the managerial cadre and 90% people of Assam in the non-managerial cadre and that over a period of 5 years from the commencement of commercial production, such unit would take all effective steps to ensure 100% employment of people of Assam in nonmanagerial cadre and at least 90% in managerial post.*

*d) A unit availing grants/incentives from a Department/ an agency under the State/ Central Government/ foreign agencies shall not be eligible for similar type of incentives under this policy.*

e) *Incentives/ subsidies/ concessions/ financial support under this policy shall be applicable to units in the private sector, joint sector, co-operatives as well as units set up by State Government only.*

f) *The non-eligible industries mentioned in annexure one will not be eligible for any incentives under this Industrial Policy.*

g) *In case a new unit is promoted in the premises of an existing unit; it should be distinctly identifiable and be located in the open spaces available in the premises. The earlier unit in the premise should not be closed nor any plant & machinery be dislodged from the earlier unit.*

The following tax incentives were also offered:

## **TAX INCENTIVES**

### **7.1 VAT EXEMPTION**

*All eligible units, which manufacture goods in Assam, will be entitled to exemption of 99% of the tax payable under the Assam Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 subject to the limit mentioned below.*

| <i>Category</i>              | <i>Micro</i>                                                                         | <i>Small</i>                                                                         | <i>Medium &amp; Large</i>                                                            |
|------------------------------|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <i>New</i>                   | <i>Seven years subject to maximum of 200% of fixed capital investment</i>            | <i>Seven years subject to maximum of 150% of fixed capital investment</i>            | <i>Seven years subject to maximum of 100% of fixed capital investment</i>            |
| <i>Substantial Expansion</i> | <i>Seven years subject to maximum of 150% of additional fixed capital investment</i> | <i>Seven years subject to maximum of 100% of additional fixed capital investment</i> | <i>Seven years subject to maximum of 90% of additional fixed capital investment.</i> |



*Fixed capital investment means & includes investment in plant & machinery or additional investment in plant & machinery (for expansion units) and building connected directly with manufacturing process.*

*In case of micro industries only, cost of land purchased up to 40% of total investment in plant and machinery, can be included as part of fixed capital investment.*

*The Finance Department of Government of Assam shall be the implementing agency for tax incentives. The Finance Department will bring out a separate notification in this regard.*

#### **702. EXEMPTION FROM STAMP DUTY AND REGISTRATION FEE**

*To encourage setting up industrial infrastructure in the form of Industrial Park/ Estate through purchase of Private/ Government land, there will be 100% reimbursement of the stamp duty and registration fees against submission of equivalent Bank Guarantee from a nationalized bank that the Industrial Park/ Estate will be set up within a period of 3 years. The said Guarantee will be invoked if the Industrial Estate / Park will not be set up within 3 years or if the land is used for any other purpose.*

**58.** In the above conspectus, this Court is required to decide whether the challenge made in these writ petitions can be sustained.

**59.** During the course of the hearing, the relevant records etc. were called for. The respondents during the course of the hearing the respondents placed before the Court the “operational guidelines for the Industrial and Investment Policy of Assam 2008”. Referring to the said guidelines, it is submitted that under the procedures for issuance of eligibility



certificate as per clause-4, the eligibility certificate duly filled with all prescribed documents be submitted within six months of the commencement of the commercial production and incomplete and rejected application should be returned to the concerned unit within one month of its receipt justifying the reasons for rejection. The time limit for various authorities to examine the eligibility certificate have also been prescribed under the said clause. The form of eligibility certificate is available Form-1A of the guidelines. The guidelines also include an enquiry report on the application for grant of eligibility certificate which is to be issued by the General Manager, DICC/MD, AIDC after physical verification of the unit. The said report will also include a statement on the machinery and equipment etc.

**60.** The affidavit filed by the Industries Department in so far as the writ petitions challenging the rejection of the eligibility certificates are concerned, revealed that the rejection was made on the basis of the report furnished by the General Manager. The Minutes of the meeting of the State Level Committee held on 28.03.2018 in respect of grant of eligibility certificate under the Industrial Policy 2008 in so far as Shiva



Coke Industries is concerned, was rejected on the basis of information furnished by the Member Secretary as intimated by the General Manager, District Industrial Centre vide letter dated 06.03.2017 that the unit was 'non-functioning' and pursuant to the committee meeting, the respective units were informed about their ineligibility.

**61.** Under such circumstances, the respondents were permitted to place before the Court the materials on the basis of which the General Manager, DICC submitted its report of 'non-functioning' unit. The Court considered it apposite to permit the respondent authorities to place such materials to show the relevant date(s) when the physical inspection was made and the said unit was found to be non-functioning. On the other hand, the Sales Tax Department completed the assessments and raised the demand on the petitioner and other similarly situated petitioners. The assessment order clearly reveals that the assessment and the consequential demand was made after due examination of the books of accounts. The assessment of tax was made on the turnover of the unit/industry. Consequently, there appears to be a contrary stand reflected by the two departments of the



Government namely, the Industries and the Finance Department. It is trite to mention here that in the State Level Committee constituted to examine and issue eligibility certificates, representatives of both the industries as well as the Finance and Taxation Department are members and which fact is not disputed by the respondents. Under such circumstances, it cannot be understood as to how a unit which was found to be non-functioning by the industries department could have reflected the turnover of goods manufacture and on the basis of which the assessments were carried out and demands were raised by the Finance and Taxation Department. If the unit was indeed 'non-functioning' then there could not have been any turnover leading to an assessment and consequential demand. If indeed the assessments were made by the Finance and Taxation department after proper examination of books and accounts it reveals that the units was functioning and could therefore carry on its manufacturing activities and on the basis of the books and accounts maintained and which were examined by the Finance and Taxation Department. These assessments were completed and demands were raised as the petitioners



units could not furnish its eligibility certificate for claiming exemption of tax benefits.

**62.** The Judgments pressed into service by the counsel for the petitioners needs to be referred to at this Stage.

In ***Duroply Industries Limited Vs. The Union of India & 5 Ors [W.P.(C) No. 1603/2021***, the learned senior counsel for the petitioners referred to by a Co-ordinate Bench of this Court was dealing with the subsidy on the Transport Subsidy. However, it is seen that in the said case, Transport Subsidy were not released as the said industrial unit was not functioning on the date of release of the Transport Subsidy. In the said case, this Court raised a specific query to the learned counsel on behalf of the Industries Department as to whether it is a necessity of the Transport Subsidy Scheme that the industry concerned has to be functioning as on the date on which the amount is to be released, or it is necessary to make verification as to whether such raw materials or finished goods were actually transported or not. Upon submissions made by the learned counsel appearing on behalf of the Industries Department in that matter that though it is the requirement of the Scheme that the Transport Subsidy is to be released



without any delay, at the same time it is also required to be looked into as to whether the raw material and finished products in respect of which the Transport Subsidy has been claimed, were actually transported within the framework of the said Scheme and further that the entitlement of the Petitioner was to be ascertained on the basis of the materials as to whether the Petitioner actually transported the raw materials as well as the finished products, or not. The Co-ordinate Bench on being satisfied that the unit was duly functioning on the date when the claims were made. It concluded that the State Level Committee ought not to have rejected the claims of the petitioners on the ground that the petitioner was non-functioning. In paragraph 9 of the said Judgment of ***Duroply Industries Limited (Supra)***, the Co-ordinate Bench of this Court held that the Petitioner's unit was duly functioning at the time when the claims for Transport Subsidy were made, and the said unit has to be closed down subsequently due to the financial crisis and shortage of raw material and thereby the State Level Committee ought not to have rejected the claims of the Petitioner on the ground that with effect from January, 2018 the Petitioner unit was not functioning. Paragraph 8 and 9



of the said Judgment and Order are relevant and the same are reproduced herein below:

*"8. The affidavit-in-opposition filed by the respondent Nos. 3, 4, 5 and 6 in both the writ petitions clearly shows that the claims of the petitioner were duly verified and due recommendations were made for payment of the amount of transport subsidy in favour of the petitioner. This Court has also raised a specific query upon the learned counsel appearing on behalf of the Industries Department as to whether it is the necessity of the Transport Subsidy Scheme that the industrial unit concerned has to be functioning as on the date on which the amount is to be released, or is it necessary to make verification as to whether such raw materials or finished goods were actually transported or not. Learned counsel appearing on behalf of the Industries Department with all fairness submitted that though it is the requirement of the scheme that the transport subsidy is to be released without any delay, at the same time it is also required to be looked into as to whether the raw materials and finished products, in respect of which the transport subsidy has been claimed, were actually transported within the framework of the said scheme. The learned counsel appearing on behalf of the respondent Industries Department further submitted with candour that the entitlement of the*



*petitioner has to be ascertained on the basis of the materials as to whether the petitioner actually transported the raw materials as well as the finished products, or not.*

*"9. This Court had also duly perused the Transport Subsidy Scheme and had also taken note of the fact that the petitioner unit was duly functioning at the time when the claims for transport subsidy were made, and this aspect of the matter would be clear from the certificate issued by the General Manager, District Industries and Commerce Centre, Dibrugarh, stating that the petitioner unit was physically verified on 17.11.2016 and it was found functioning as on date. Even the affidavit-in-opposition filed by the respondents on 16.03.2022 reveal that the petitioner unit had to be closed down sometime in January, 2018 due to financial crisis and shortage of raw materials. Under such circumstances, it is the opinion of this Court that the respondent authorities, more particularly, the State Level Committee ought not to have rejected the claims of the petitioner on the ground that with effect from January, 2018 the petitioner unit was not functioning."*

**63. In *Sukhamoy Paul Vs. State of Tripura & Ors., 2021 SCC OnLine Tri 273* while dealing with a similar situation with**



regard to the Transport Subsidy Scheme, the Tripura High Court held as under :

*"15. ....The eligibility period for claiming subsidy may be 5 years, the scheme nowhere provides that only if a new industrial unit continues such manufacturing activity for a period of 5 years that it can claim the transport subsidy. Therefore, even if, as pointed out by the respondents, the petitioner at some later point of time after commencing its production got engaged into the same activity as a job worker, this would not amount to breach of any of the eligibility conditions of the scheme."*

**64.** The aforesaid two judgments of this Hon'ble Court and that of Tripura High Court are squarely applicable in the present case.

**65.** It is further seen from the pleadings that there is no dispute prior to closing down of the industrial unit of the Petitioner, the Petitioner's industrial Unit was producing the goods and was making sales of the same and the same will be evident from the orders of assessment passed by the Assessing Authority which are subject-matter of challenge in the other Writ Petitions:

**66** In the orders of assessments, the Assessing Authority levied taxes on the sales made by the Petitioner's industrial unit on the ground that the Petitioner's industrial unit failed to produce the



eligibility certificate for claiming the remission of the tax as per the Scheme of 2009. The said orders of assessments clearly reflects that the industrial unit of the Petitioner was in operation prior to closing down of the same which was due to non-availability of coal due to ban by the National Green Tribunal and the said fact was duly intimated to the Respondent Authorities. If the industrial unit of the Petitioner was not a operation before closing down, the question of making sale of the goods by the said industrial unit prior to its closure does not arise and the very fact that Central Sales Tax has been levied for the periods prior to the closing down of the industrial unit on the sales made by the Petitioner in its industrial unit clearly shows that the industrial unit of the Petitioner was in operation prior to before its closure. If the contention of the Industries Department is to be accepted that the industrial unit of the Petitioner was not in operation at all, the question of making any sale of the goods produced in the said industrial unit and levying of the tax of the sale could not have arisen. If the said contention of the Industries Department is accepted, then the orders of assessment which have been passed levying tax on the sales made by the Petitioner on the goods manufactured to its industrial unit itself shall be illegal, without jurisdiction as there was no production and the question of sale of



the said goods produced in the industrial unit would not arise and thereby the question of levy of tax on such sale on goods produced in the industrial unit also does not arise.

**67.** The orders passed by the Assessing Authority levying tax clearly shows that the industrial unit was fully in operation during the period before its closure and in the absence of any provisions to the contrary in the Industrial Policy, closure of the industrial unit prior to the expiry of the period of the eligibility cannot a ground for denial of the eligibility certificate to an industrial unit for the period the industrial unit was in operation.

**68** The contention of the Industries Department that the application for the eligibility certificate has to be made within six months from the date of its commercial production cannot be accepted in view of the fact that the Petitioner could not have applied for the eligibility certificate immediately after the commencement of the production as an amendment was made under Section 57(A) in the Assam Value Added Tax Rules providing that the conversion of coal into coke shall not be manufacture. It is only after the said Rules were declared ultra-vires by this Hon'ble Court, the Petitioner submitted its application for issuance of eligibility certificate. The other submissions advanced by the learned counsel for the Industry Department are



not the ground on which the application for issuance of the eligibility certificate was rejected by the Commissioner of Industries & Commerce and thereby the same cannot be considered while examining the validity of the impugned order. It is a settled law that the validity of an order has to be examined on the basis of the contents of the said order and the validity of the same cannot be supported by subsequent affidavits and submissions.

**69** In the case of ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji***, reported in ***AIR 1952 SC 16***, the Apex Court in paragraph 9, held as under:

*"9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of the Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*



The aforesaid judgment of the Apex Court was relied upon in the case of ***Mohinder Singh Gill Vs. Chief Election Commissioner***, reported in ***(1978) 1 SCC 405***, wherein the Apex Court held as under:

*"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :*

*"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting's and conduct of those to whom they are addressed and must be*



*construed objectively with reference to the language used in the order itself."*

*Orders are not like old wine becoming better as they grow older."*

Thereby the submissions advanced by the Industry Department to support the order of rejection of the application for eligibility certificate were not at all the ground on which the application for issuance of eligibility certificate was rejected and thereby the same cannot be considered while examining the validity of the order dated 05.05.2018.

**70.** It is further case of the petitioner that the petitioner having established its industrial unit on the basis of the various incentives and concessions announced in the Industrial Policy of the Government of Assam by making huge investments and having altered its position on the basis of the same, the respondent authorities cannot be allowed to resile from the promises and the refusal to grant eligibility certificate in respect of the industrial unit of the petitioner firm amounts to resiling from the promises made in the Industrial Policy and on the basis of the Doctrine of Promissory Estoppel, the respondent authorities are estoppel from acting contrary to the promises made in the Industrial Policy by



refusing to grant eligibility certificate to the industrial unit of the petitioner firm on untenable grounds.

Under the doctrine of promissory estoppels where the Government has made a promise and the prose relying on the promise has altered it's position to its detriment the Government is not exempt from it's liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen. The superstructure of the doctrine with its preconditions, strengths and limitations has been outlined by the Apex Court in its landmark judgment of ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409.*** The Apex Court reiterated the well known pre conditions for the operation of the Doctrine of Promissory estoppel as under:

- (1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;
- (2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.



The Apex Court further observed that that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made — contractual, administrative or statutory. In paragraphs 8 and 24 of the said Judgment, the Apex Court observed as under:

*"[E]quity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute."*

*"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution."*



The Apex Court further in the said judgment in paragraph 33 observed as under:

*"Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it."*

**71.** In so far as the limitation of the Doctrine of Promissory Estoppel is concerned the Apex Court in the said judgment, ***Motilal Padampat (Supra)***, held as under:

*"1) Since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. But it is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government.*

*(2) No representation can be enforced which is prohibited by law in the sense that the person or authority making the representation or promise must have the power to carry out the promise. If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised. Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot*

*be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax."*

**72.** The Apex Court again the case of **Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582 : (1970) 3 SCR 854]** emphasized the strengths as defined earlier by holding as under:

*"If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law, if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereupon but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation."*

**73.** The Doctrine of Promissory Estoppel has been repeatedly applied by the Apex Court in statutory notifications. In ***Pournami Oil Mills v. State of Kerala [1986 Supp SCC 728 : 1987 SCC (Tax) 134]*** the Government of Kerala by an order dated 11-4-1979 invited small-scale units to set up their industries in the State of Kerala and with a view to boost industrialization, exemption



from sales tax and purchase tax was extended as a concession for a period of five years, which was to run from the date of commencement of production. By a subsequent notification dated 29-9-1980, published in the gazette on 21-10-1980, the State of Kerala withdrew the exemption relating to the purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the said notification. While quashing the subsequent notification, it was observed:

*"If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of M.P. Sugar Mills [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] . On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in Bakul Cashew Co. v. STO [(1986) 2 SCC 365 : 1986 SCC (Tax) 385] . In Bakul Cashew Co. case [(1986) 2 SCC 365 : 1986 SCC (Tax) 385] this Court found that there was no clear material to show any definite or certain promise which had been made by the Minister to the persons*

*concerned and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in M.P. Sugar Mills case [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] . In our view, to the facts of the present case, the ratio of M.P. Sugar Mills case [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] directly applies and the plea of estoppel is unanswerable.*

*... Such exemption would continue for the full period of five years from the date they started production. New industries set up after 21-10-1980 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries.”*

**74.** The aforesaid decision was followed by a three-Judge Bench in ***State of Bihar v. Usha Martin Industries Ltd. [1987 Supp***



**SCC 710 : 1988 SCC (Tax) 116]** where it was stated that the matter stands concluded by the decision in ***Pournami Oil Mills*** case. In **Shri Bakul Oil Industries v. State of Gujarat [(1987) 1 SCC 31 : 1987 SCC (Tax) 74 : AIR 1987 SC 142]** It was observed in para 11 as under:

*"The exemption granted by the Government, as already stated, was only by way of concession for encouraging entrepreneurs to start industries in rural and undeveloped areas and as such it was always open to the State Government to withdraw or revoke the concession. We must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz. the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the Government can withdraw an exemption granted by it earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the Government grants exemption to a new industry and if on the basis of the representation made by the Government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption could not be withdrawn except by means of legislation having regard*

*to the fact that promissory estoppel cannot be claimed against a statute."*

**75.** Answering the question as to whether the Board can be restrained from withdrawing the rebate prematurely before the completion of three/five years' period by virtue of the doctrine of promissory estoppel, the Apex Court in ***Pawan Alloys & Casting (P) Ltd. v. U.P. SEB [(1997) 7 SCC 251]*** held in paragraphs 10 & 24 as under:

*"10. It is now well settled by a series of decisions of this Court that the State authorities as well as its limbs like the Board covered by the sweep of Article 12 of the Constitution of India being treated as 'State' within the meaning of the said article, can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any statutory prohibition, absence of power and authority of the promisor and is otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.*

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*24. ... We, therefore, agree with the finding of the High Court on Issue 1 that by these notifications the Board had clearly held out a promise to these new industries and as*



*these new industries had admittedly got established in the region where the Board was operating, acting on such promise, the same in equity would bind the Board. Such a promise was not contrary to any statutory provision but on the contrary was in compliance with the directions issued under Section 78-A of the Act. These new industries which got attracted to this region relying upon the promise had altered their position irretrievably. They had spent large amounts of money for establishing the infrastructure, had entered into agreements with the Board for supply of electricity and, therefore, had necessarily altered their position relying on these representations thinking that they would be assured of at least three years' period guaranteeing rebate of 10% on the total bill of electricity to be consumed by them as infancy benefit so that they could effectively compete with the old industries operating in the field and their products could effectively compete with their products. On these well-established facts the Board can certainly be pinned down to its promise on the doctrine of promissory estoppel."*

**76.** In ***Mahabir Vegetable Oils (P) Ltd. v. State of Haryana, (2006) 3 SCC 620***, the Apex Court observed that "*it is beyond any cavil that the doctrine of promissory estoppel operates even in the legislative field*". This was in connection with a statutory notification under the Haryana General Sales Tax Act.



**77.** A survey of the earlier decisions has also been made by the Apex Court in ***State of Punjab v. Nestle India Ltd., (2004) 6 SCC 465***, wherein the law has been stated in the following terms:

*"25. In other words, promissory estoppel long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute."*

**78.** Referring to its judgment in ***Motilal Padampat (Supra)***, the Apex Court in ***Nestle India Ltd (Supra)*** observed as under:

*"29. As for its strengths it was said: that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made — contractual, administrative or statutory. To put it in the words of the Court:*



*'The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.*

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*[E]quity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute.*

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*Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. "*

**79.** The Apex Court distinguished its earlier decision in ***Kasinka Trading v. Union of India, (1995) 1 SCC 274***, by holding as under:

*"40. The case of Kasinka Trading v. Union of India [(1995) 1 SCC 274] cited by the appellant is an authority for the proposition that the mere issuance of an exemption notification under a provision in a fiscal statute such as Section 25 of the Customs Act, 1962, could not create any promissory estoppel because such an exemption by its very nature is susceptible to being revoked or modified or subjected to other conditions. In other words, there is no unequivocal representation. The seeds of equivocation are inherent in the power to grant exemption. Therefore, an exemption notification can be revoked without falling foul of the principle of promissory estoppel. It would not, in the circumstances, be necessary for the Government to establish an overriding equity in its favour to defeat the petitioner's plea of promissory estoppel. The Court also held that the Government of India had justified the withdrawal of exemption notification on relevant reasons in the public interest. Incidentally, the Court also noticed the lack of established prejudice to the promises when it said:*

*'The burden of customs duty, etc. is passed on to the consumer and therefore the question of the appellants being put to a huge loss is not understandable.'"*

**80.** In ***MRF Ltd. v. Asstt. CST, (2006) 8 SCC 702***, the judgment in ***Kasinka Trading (Supra)*** was also held to be inapplicable. In the said judgment, it was held that the doctrine of promissory estoppel will also apply to statutory notifications.



**81.** The law relating to promissory estoppel was again reiterated and crystallized by the Apex Court in its latest judgment, ***State of Jharkhand vs. Brahmaputra Metallica Ltd., (2023) 10 SCC 634.***

**82.** After elaborate discussions of the law on Promissory Estoppel as laid down by the Apex Court, it is seen that the State authorities as well as its limbs covered under the sweep of Article 12 of the Constitution of India being treated as 'State' within the meaning of the said article, can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fall under any statutory prohibition, absence of power and authority of the promisor and/or is otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.

**83.** Having examined the peculiar facts and circumstances enumerated before this Court by the parties, it is seen that the petitioner Industries in respect of W.P.(C) No. 5133/2018; W.P.(C) No. 5139/2018; W.P.(C) No. 5141/2018; W.P.(C) No. 5143/2018 and W.P.(C) No. 5136/2018 has established their units within the period



concerned and pursuant Judgment and order dated 12.05.2015 passed in W.P.(C) No. 2899/2011 and other bunch of writ petitions setting aside the Rule 57A of the Assam Value Added Tax (Third Amendment) Rules 2009 as ultra vires provisions of the definition "manufacture" as prescribed under the Assam Value Added Tax Act, 2003, applications as necessary were duly made for grant of eligibility certificate. There being no material placed before the Court by the respondents to the effect that the units of the Industries concerned never commenced commercial production or were never established in terms of the provisions of the Industrial Policy, in the face of the assessments conducted by the Finance Department and levy of demand of sales tax on the sales made by these units/industries and these assessments having been made on the basis of due examination of the books of accounts of the said industries, it has to be held that these industries did establish their units in terms of the Industrial Policy and had commenced its productions. But for the insertion of Rule 57A in the Assam Value Added Tax (Third Amendment) Rules which did not consider conversion of Coal to Coke carried out by these units, the eligibility certificate could not be applied for as the production carried on by the unit/industry was excluded from the definition of 'manufacture'. However, pursuant to the said Rule 57 being set aside, the steps



were taken by the petitioner industries to submit the required applications for their respective eligibility certificates. Perusal of the Industrial Policy available before this Court does not reveal that anywhere in the Industrial Policy there is any mandate prescribed that the concerned industries setup must continue to be in existence throughout the tenure of the policy. From the pleadings, in so far as the Shiva Coke Industries is concerned, it is seen that the industry was setup and a provisional registration was granted on 31.12.2004 which was valid for five (5) years. The Pollution Control Board had granted its provisional consent on 04.04.2009 and thereafter granted the consent to operate the business for the period 2009-10, 2010-11 and 2011-12, the licence by the Chief Inspector of Factories was granted on 18.02.2009. The Entrepreneurs Memorandum available in the pleadings, containing the details of the industry to be set up including the date of commercial production reflects that the date of commercial production is shown to be 24.06.2009 and the acknowledgement to that was issued by the Office of the General Manager, DIC Centre. As such, it clearly established that the industry was set up and the various departments had granted their consent and No Objection Certificates. Therefore without proper materials being placed before the Court, a mere statement or a certificate given by the General Manager of the Industries Department that the



unit is non-functional would be contrary to the established procedure prescribed under the Industrial Policy and the steps taken by the petitioner industry duly acknowledged by the concerned departments. The industry department was permitted opportunities to produce the relevant records on the basis of which the General Manager had issued the certificate that the industry was non-functioning on the date it went for physical verification. However, no such records were placed before the Court.

**84.** Under such circumstances, both the conclusions arrived at by the industries department as well as the Finance and Taxation Department run contrary to each other and cannot be accepted to be correct at the same time. If the conclusions arrived at by the Industries department that the industry was non-functioning is to be accepted, then the assessments made by the Finance Department and the consequential demand will have to be illegal and arbitrary as the industries department have held that the industry was non-functioning and therefore could not have generated any production and consequent sales. However, a perusal of the assessment order by the Finance and Taxation Department reveals that the said order was passed upon due verification of books of accounts and other relevant documents. The assessments were made treating the



petitioners to be regular registered dealer in the absence of the eligibility certificate produced by the petitioners. The benefit of exemption was not granted as the eligibility certificate was not produced. Since the orders of assessment and the subsequent demands were stated to be passed by the Finance Department after due examination of the books of accounts and other relevant documents, such findings by a quasi-judicial authority strongly suggests that the industry was in existence at the time when the assessments were completed for the relevant years. In the face of such conclusion by the quasi-judicial authority, the certificate of the General Manager that the industry was non-functional cannot be accepted.

**85.** This certificate of the General Manager cannot be accepted on another ground also. The eligibility certificate in respect of the writ petitioner was rejected by the State Level Committee in which the representatives of both the industries as well as the Finance Department are members. Where one component of the State Level Committee returned the finding that the industry conducted sales of its products and accordingly they were assessed to tax and demands were raised, another component of the same State Level Committee namely the Industries Department cannot come to a conclusion that



the unit was non-functional. The State Level Committee in its turn could not have rejected the eligibility certificate of the writ petitioners, without due consideration of the fact that they have also been assessed to tax by the Finance Department who is also a part of the State Level Committee. It is a trite law that the Government must speak in one voice. The Industrial Policy having been announced by the Government of Assam, the various components of the State Level Committee comprising of Industries, Finance etc. must ensure that the benefits required to be given to the various industries if found to be eligible must be duly conferred and in the event any of these industries are found to be ineligible then any orders rejecting such claims must be issued by the State Level Committee upon due consideration of the views of all the respective departments. In the facts of the present case, the State Level Committee rejected the claims of the eligibility certificate by the petitioner on the basis of the certificate issued by the General Manager that the industry was non-functioning. From the pleadings and the materials placed before the Court, it is seen that State Level Committee did not consider the assessments made by the Finance Department and the demand raised in respect of the said industry before concluding that the industry was non-functional and consequently rejected its eligibility certificate.



**86.** It is also clear from the pleadings that pursuant to the promises offered by the Government by way of the Industrial Policy, the petitioners altered their position to their detriment and made substantial investments. If these industries were indeed non-functioning then their registrations etc under the Industrial Policy also should have been cancelled and appropriate proceedings as per law should have been initiated against them by the Government. No such steps were initiated or even shown to be contemplated. Under such circumstances the state cannot be permitted to resile from its promise made without any justified reasons. Any such denial of the benefits under the Industrial Policy, if permitted, will be in total violation of the Doctrine of promissory Estoppel.

**87.** As have been discussed above, the State Level Committee comprises of representatives of various Government Departments including the Industries and Taxation. If the State Level Committee had indeed examined the claims of the petitioner for grant of eligibility certificates on relevant documents and materials, it would have been known to the State Level Committee that the Finance and Taxation Department have proceeded to make assessments on the concerned unit or industry for the relevant assessment years and therefore, the report of the General Manager, Industries on the other



hand that the unit or the industries were non-functioning ought to have called for a detailed examination requiring re-verification of the contrary views of both the departments. It is necessary to hold here that the State Government although comprises of several departments, that the voice of the Government must be One. Where the Government has announced the Industrial Policy inviting the Industrialists to set up their industries and held out a promise to give them all benefits all notified under the Industrial Policy, then the respective departments of the Government must work in tandem to ensure that the promise held out by the Government in the Industrial Policy is properly implemented in terms of the promise held out. The departments cannot be to have contrary views in respect of the functioning of an Industry as the same will be contrary to the scheme of the Industrial Policy itself. In this context, a reference to the Judgment of the Apex Court rendered in *Vadilal Chemicals Ltd. Vs. State of A.P. and ors*, reported in (2005) 6 SCC 292 is required to be referred to.

**88.** In that case, before the Supreme Court, the activity undertaken by the said industry was not held to be “manufacture” although the industry had its eligibility certificate by the concerned committee in terms of the Government order issued by the State of Andhra



Pradesh granting benefits and exemptions to the industries such as the petitioner therein. The Apex Court in that case held that the grant of eligibility certificates was not the outcome of an unconsidered decision based on extraneous consideration and the matter was considered in-depth and sanctioned by the District Level Committee of which the department of Taxation was a part. No malafides were attributed against the industry therein nor was it a case of the industry taking unfair advantage of the Government Notification. The Apex Court therefore held that State which is represented by the Departments can only speak in one voice.

**89.** In the context of the present case proceedings also the application for eligibility was duly submitted to the Industries Department and which was received by none other than in the Office of the General Manager, Industries. The various other departments from whom the clearance was required to be obtained like the Pollution Control Board, the Inspector of Factories etc were also duly obtained. Subsequently, the Finance Department came to initiate the assessment proceedings in respect of the unit for the industry concerned as registered dealer under the Assam Vat Act 2003 and the Rules thereunder and declined to grant the relevant exemptions



as the eligibility certificate could not be produced at the time of filing the returns by the said units or industries.

**90.** As have been discussed, the assessment orders itself reflects that the books of accounts etc were examined and pursuant to which the assessment orders and the consequential demands were raised. Therefore, in the facts of the present case, besides the other departments which had the occasion to examine the papers submitted for establishment of the industry as well as assessment order and the consequential demands raised by the Finance Department, the fact remains that there is no malafide alleged against the industry or unit by the respondent authorities. There is also no allegation that undue advantage has been sought to be taken by the industries in respect of Industrial Policy concerned. Under such circumstances, the department of Finance as well as the Industries Department, being representatives of different department but a part of the same Government and a constituent members of the State Level Committee,- the State Level Committee being the mouth piece of the Government in so far as the Industrial Policy is concerned they must speak in one voice by taking into various views and evaluations undertaken by each of the constituent members.



**91.** The conclusions have been arrived at by this Court are on the basis of the facts in W.P.(C) No. 5133/2018 (Sheo Shakti Coke). As have been discussed above, in all the other writ petitions namely, W.P.(C) No. 5139/2018 (Shiva Coke Industries); W.P.(C) No. 5141/2018 (Raj Coke Industries); W.P.(C) No. 5143/2018 (Jai Coke Industries) and W.P.(C) No. 5136/2018 (Sethi Coke Industries), the facts and circumstances are similar. Therefore, the conclusions arrived at by this Court are also applicable to the other writ petitions in W.P.(C) No. 5139/2018; W.P.(C) No. 5141/2018; W.P.(C) No. 5143/2018 and W.P.(C) No. 5136/2018. These writ petitions are therefore, allowed. The impugned orders or communications issued by the State Level Committee rejecting the eligibility of these writ petitioners vide orders dated 05.05.2018 are all set aside. The matters are remanded back to the authorities more particularly the State Level Committee to pass appropriate orders in respect of the eligibility of each of the industries or units granting them eligibility under the Industrial Policy. The industries shall be granted their respective eligibility certificates and their claims shall not be denied on the ground that the units/industries subsequently closed its operations and/or did not operate for the entire period of the Industrial Policy and/or continued production.



**92.** In so far as the W.P.(C) No. 1828/2019; W.P(C) No. 2138/2019; W.P(C) No. 5954/2018; W.P(C) No. 5937/2018; W.P.(C) No. 5957/2018; W.P.(C) No. 2111/2019; W.P.(C) No. 1843/2019; W.P(C) No. 2096/2019; W.P(C) No. 6027/2018; W.P(C) No. 5960/2018; W.P(C) No. 5917/2018; W.P(C) No. 1860/2019; W.P(C) NO. 5980/2018; W.P(C) No. 5932/2018 and W.P(C) No. 5931/2019, it is seen that these writ petitions have been filed putting to challenge the assessments made by the assessing authority namely the Finance and Taxation Department for the relevant years in questions and the consequential demands raised. The sole ground for assailing the assessment orders in these writ petitions is that the Finance Department ought not to have proceeded with the assessments in question as the relevant applications for grant of eligibility certificates in respect of the industries or units were pending before the appropriate authority under the relevant Industrial Policy. As a consequence thereof, the benefit of exemptions by the petitioners could not be availed off as the returns could not be filed on the online mode supported by the eligibility certificate as is required under the procedure. These returns were filed in the physical mode with due representations that the claims for eligibility are under consideration and the department is required to await the grant of eligibility certificate by the Industries



Department. No other ground is urged in these writ petitions. The industrial policy having been carefully examined does not provide for any exemptions for the period during which the eligibility certificate is under consideration. Even under the Assam Industries (Tax) Remission Scheme, 2005 which was announced to grant exemption from taxation under the Industrial Policy, there was no provision for grant of any benefits unless the eligibility certificate is granted to the unit concerned. No benefit is contemplated during the period under which the application for grant of eligibility certificate is under consideration. Since the only ground urged for assailing the assessments and the consequential demands raised is the refusal of the Finance and Taxation Department to await for the grant of eligibility certificate which was under consideration at the relevant point in time, in the absence of any provisions prescribed under the Act, Rules or the Scheme or the Industrial Policy being referred to, no infirmity is found in the assessments made by the department. These writ petitions are found to be devoid of merits and the prayers made in these writ petitions for interference of the relevant assessment orders and the demands made are therefore rejected.

**93.** However, in view of the directions herein above in respect of W.P.(C) No. 5133/2018; W.P.(C) No. 5139/2018; W.P.(C) No.



5141/2018; W.P.(C) No. 5143/2018 and W.P.(C) No. 5136/2018 which are remanded to the authorities for grant of the eligibility certificates once the eligibility certificate is granted then the consequential benefits of exemptions in respect of the taxes to be paid under the Assam Vat Act, 2003 read with the Rules made thereunder read together with the provisions of the Assam Industries (Tax Remission) Scheme, 2005 will also be granted to the writ petitioners for the relevant assessment years. Once the eligibility certificate as such is granted as directed, the relevant authorities will ensure that the benefits applicable to the petitioners are not denied and the same are granted to the petitioners by giving them necessary refund or the benefit of adjustments towards the future taxes to be paid.

**94.** The writ petitions are accordingly disposed of in terms of the above. No order as to costs. Interim order stands merged with the final order. Pending I.As, if any, are also disposed of.

**JUDGE**

**Comparing Assistant**