CASE NO.:
Appeal (civil) 8193 of 2003

PETITIONER:
State of Rajasthan & Anr..

RESPONDENT:
J.K. Udaipur Udyog Ltd. & Anr.

DATE OF JUDGMENT: 28/09/2004

BENCH:
RUMA PAL & ARUN KUMAR

JUDGMENT:
J U D G M E N T

WITH
C.A. Nos.8194-8201 OF 2003,
C.A. Nos. 8203-8206 OF 2003

RUMA PAL

A scheme was framed by the first appellant granting exemption to industrial units from payment of sales tax on intra-state and inter-state sale of goods and by-products manufactured within the State of Rajasthan. By a subsequent notification the extent of the percentage of exemption available to sick industries was sought to be corrected. The disputes in these appeals relate to the interpretation of the scheme and the effect of the corrigendum.
The scheme was part of the New 4th Industrial Policy of the State. The Policy stated that the object of the scheme was to make Rajasthan "a most favoured destination for industries" and to encourage the setting up of industries in the State. The policy describes the nature of the exemptions which were sought to be granted to the different kinds of industries with exemption/ deferment incentives for 11 years in respect of some industries and 14 years for others. A greater incentive was granted to industries being set up in the five industrial growth centres in the State. The incentives available during the first year were to be gradually tapered off to a particular percentage of the fixed capital investment at different rates in respect of some industries. However, in respect of cement industries the percentage of exemption proposed was at a flat rate of 25% for 11 years. According to the policy the scheme would also give benefits for the first time to sick units. The sick units were classified into two categories as follows:
(1) "Those units which have not availed of any benefits in the past will get full benefits at par with a new unit.

(2) Those units which have availed of sales tax benefits in the past will get ST benefit on a tapering basis up to 11 years (maximum 80% and minimum10% exemption/deferment on a tapering basis)".

Pursuant to this Policy the Rajasthan Sales Tax/Central Sales Tax Exemption Scheme for Industries, 1998 (referred to as 'the scheme') was framed and

notified in exercise of the powers conferred on the State Government by section 15 of the Rajasthan Sales Tax Act, 1994 (referred to as "RST Act") and by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (referred to as 'the CST Act"), The scheme came into force from 1st April 1998. Clause 1-(b) of the scheme envisages that "an industrial unit which commences commercial production during the operative period of this scheme, shall be entitled to claim benefits under this scheme." Clause 3(a) provides that the scheme shall be applicable to:

(i) the new industrial units;

(ii) the industrial units going for expansion;

(iii) the industrial units launching diversification; and

(iv) the sick industrial units.

A "New Industrial Unit" has been defined in clause 2(k) as:-

(i) "New Industrial Unit" means an industrial unit which commences commercial production during the operative period of this Scheme including a unit set up on the site of an existing industrial unit by making separately identifiable capital investment; subject however, that where an industrial unit manufacturing the same product is established on the site of an existing unit, the benefit permissible for a new unit shall be available to it only on the production in excess of 80% of the installed capacity of the existing unit.

(ii) "New Industrial Unit" shall also include a sick unit:-

(a) which has not availed of any benefits of exemption from tax or deferment of tax;

(b) which has been appraised by financial institution and appropriate rehabilitation plan has been formulated; and

(c) which has been purchased by a new management other than by way of collusive transfer and such management has made additional fixed capital investment not less than 25% of the depreciated value of the assets of such unit".

The respondents in these appeals viz M/s. J.K. Udyog and J.K. Synthetics Ltd were writ petitioners before the High Court of Rajasthan and are companies which manufacture cement in different units within the State of Rajasthan. The respondent-companies in these appeals

are undisputedly 'sick'.
The description of the type of units, extent of the percentage of exemption from tax liability, the maximum exemption permissible under the scheme and the maximum time limit for availing the exemption under the scheme have been set out in Annexure 'B' to the Scheme.

We set out below the material portion of Annexure B to the exemption scheme.

Sl. No.	Type of Units	Extent of the percentage of exemption from total tax liability	Maximum exemption in terms of percentage of eligible fixed capital investment(FCI)	Maximum availing limit for exemption from tax.
1	2	3	4	5
1	New Units other than the units mentioned at S.No.2 and 3 and units going in for expansion or diversification			
	1st year	100 %		
	2nd year	90%		
	3rd year	80%		
	4th year	70%		
	5th year	60%		
	6th year	50%		
	7th year	50%		
	8th year	40%		
	9th year			
	10th year			
	11th year			

40%
30%
30%

100%of eligible fixed capital investment in cases where such investment exceeds Rs.1,50,00 Iacs, and 125% of eligible FCI in cases where such investment does not exceed Rs.150,00 lacs
Eleven years

2
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(a)New Units of knitwears, gems and jewellery, textile, electronics and telecommunications, computer software, foot wears and leather goods, and ceramic
(b) Very Prestigious Units
1st year
2nd year
3rd year
4th year
5th year
6th year
7th year
8th year
9th year
10th year
11th year
12th year
13th year
100 %
100 %
90%
80%
70%
60%
50%
50%
40%
40%
30%
30%
30%
30%

125% of eligible fixed capital investment
Thirteen years

3	All categories of cement Plants/ units including pioneering to Prestigious unit	25% of total liability	100% of eligible FCI
	Very prestigious/Premier Units except mini cement plants mentioned in Annexure-A		Eleven years
4	Sick Units:		
	(a) Sick units which have not availed of benefits of exemption from tax or determent of tax previously, Same benefits which are available to new Units at S. No.1		Eleven years
	(b) Other sick units which have availed of the benefits of exemption from tax or deferment of tax		
	1st year		80%
	2nd year		70%
	3rd year		60%
	4th year		50%
	5th year		40%
	6th year		30%
	7th year		20%
	8th year		10%
	9th year		10%
	10th year		
	11th year		

10%
10%
100% of eligible
fixed capital investment
in cases where
such investment
exceeds Rs.150.00 lacs
and 125% of FCI in
cases where
such investment does
not exceed Rs.150.00 lacs
Eleven years

It is apparent from this annexure that for the purposes of deferring the rate of exemption the industries were classified into three categories under Srl. Nos. 1, 2 and 3 according to the kind of Industry. Cement plants/units have been separately placed in Srl.No.3. According to the respondent-companies, however, sick units were treated as a special category, and irrespective of the nature of the industry, were covered by Srl.4. It is the respondent's case that as far as their cement units were concerned they were not covered by Srl. No 3 but by Srl. No.4 (a) and thus, according to them, they were entitled to the higher benefits accorded to new units under Srl. No.1. According to them the words under column 3 against Srl. No.4 made this clear.

According to the appellants on the other hand, this was never the intention of the State Government which had wanted to treat sick industrial units of a particular kind on par with new industrial units of that kind in the matter of grant of exemption. But we are anticipating the dispute which is considered in detail subsequently. Returning to the scheme : - the procedure for obtaining exemption under the scheme has been provided in clause 4, the relevant extract of which reads as under:

"Sanction of benefits under the Exemption Scheme and issue of Eligibility Certificate:-

(a) In order to avail the benefit under this Scheme, the applicant industrial unit shall have to obtain sanction from the State Level Screening Committee or District Level Screening Committee, as the case may be. The Screening Committees shall act as quasi-judicial authorities whose decisions shall be final subject to other provisions provided for in this Scheme.
(b) \005\005
(c) \005\005..
(d) \005\005.
(e) The appropriate Screening Committee shall, after having examined the application of an industrial unit and after having gathered or collected such other information, documents or evidence as may be considered necessary and after having got conducted such further enquiry as deemed

proper in the circumstances of the case, sanction the benefits under this Scheme to the said unit if it is found fully covered by the provisions of this Scheme and is not in any way debarred or disqualified to claim the said benefits. However, in particular, the said Screening Committee shall reject the application of the applicant, unit\027

(i) where its case does not fall within the parameters of this Scheme, or

(ii) where it has failed in spite of adequate opportunity being given, to supply any information asked for or adduce any evidence required for; or

(iii) where any case of avoidance or evasion of tax is pending against it at any forum or it is found penalized for such offence, within a period of two years immediately preceding the date of the filing of the application; however, the said Screening Committee may waive this disqualification in an appropriate case if the offence is technical or venial in nature or has been compounded.

(f) In case of sanction of benefits under the Scheme, such sanction shall be communicated in writing to the Assessing Authority of the applicant unit, who shall issue Eligibility Certificate to the said unit in Form\027C, appended to this notification, within a period of seven days from the date of the receipt of the sanction, and a copy of such Certificate shall also be sent to the Member Secretary of the concerned Screening Committee.

(g) The Eligibility Certificate issued under this Scheme shall remain in force till the permissible exemption from tax in accordance with the provisions of this scheme is not exhausted, or till such Certificate is not amended, suspended or revoked.

(h) The benefits under this Scheme shall be available from the date of the application filed by the applicant unit completed in all respects, as certified by the member Secretary of the appropriate Screening Committee.

(i) During the currency of the Eligibility Certificate, the unit concerned shall be exempted from payment of tax on the

intra-State sales/inter-State sales of the goods and by-products manufactured by it within the State including the waste items derived therefrom and the packing material used therewith."

The order in which the steps envisaged for grant of benefits under this clause of the scheme was therefore;

1) making of an application by the industrial unit;
2) the certification of the application as complete and the provisional availability of the benefits (clause 4(h));
3) The examination of the application by the Screening Committee after collecting information/enquiry etc Clause (4(e));
4) The sanction or rejection of the application by the Screening Committee . (Clause (4(e));
5) In case of sanction, the communication of the sanction to the Assessing Authority. (Clause (4 (f))
6) The issuance of Eligibility Certificate by the Assessing Authority within seven days. (Clause 4(f));
7) The availability of exemption from payment of tax during the currency of the Eligibility Certificate until the exemption was either exhausted or unless the certificates were amended, suspended or revoked. (Clauses 4(i)).

The respondent companies applied for exemption under the scheme claiming benefits at par with units under Srl.No.1. As far as M/s. J.K. Synthetics Limited is concerned, the Director of Industries certified that the application was complete. The certificate issued under Section 4(h) on 20th February, 1999 made it clear:

"This certificate will not be treated as sanction of incentive under the Sales Tax Exemption Scheme, 1998. Incentive if any availed under Clause 4(h) of the aforesaid scheme will be entirely at the risk of the unit, subject to decision of the State level Screening Committee. A suitable undertaking shall be taken by the concerned assessing authority in this regard from the unit."

In terms of the requirement, M/s. J.K. Synthetics Limited gave an undertaking in writing to the effect that the incentives availed by the company from the date of completion of the application till the grant of sanction of eligibility certificate would be entirely at the risk of the company and in case the company's application was rejected for any reason, the company shall pay the tax which was being availed of on the basis of the certificate of completion.

While the application of M/s. J.K. Synthetics was pending for consideration by the Screening Committee, the corrigendum was issued on 30th September, 1999, by the Finance Department inter-alia, amending the third column against Srl.No.4 of Annexure B by replacing the phrase "New units at Srl. No. 1" with "New units at Srl. No. 1,2 and 3 as the case may be". Thus sick cement units under Srl.No.4 (a) were expressly put on par with new cement units under Srl.No.3.

M/s. J.K. Synthetics Limited submitted a representation to the Screening Committee that the corrigendum should not affect the company. The Screening Committee deferred its decision on the ground that as the particular unit of M/s. J.K. Synthetics Limited in respect of which the exemption was

claimed was not sick, although the company itself had been declared sick, it should await the rehabilitation programme duly approved by the BIFR providing the benefit of sales tax incentives scheme to all such units. While deferring the case till the approval of the rehabilitation programme by BIFR, the Screening Committee said that the unit could avail of the benefit under the scheme to the extent permissible under the corrigendum. Neither any sanction under clause 4(e) and consequently no Eligibility Certificate under clause 4(f) have been issued to M/s. J.K. Synthetics Limited under the scheme till today.

As far as M/s. Udaipur Udyog Limited is concerned, its application under the scheme was certified as complete under Clause 4(h)on 26th July, 1999 and was sanctioned on 30th December, 1999. However the quantum of benefit was granted in terms of the corrigendum from the date of issuance of the corrigendum. The eligibility certificate was issued to M/s. J.K. Udyog on 29th February, 2000 also restricting the benefits under the scheme on the basis of the corrigendum.

Since the respondent had been availing of the higher rates of exemption against Srl.No.1, consequent upon the decision of the Screening Committee granting the benefits under the corrigendum, provisional assessment orders and notices were issued to both the respondent companies by the Sales Tax Authorities over the differential sales tax.

M/s. J.K. Synthetics Limited and J.K. Udyog Limited filed separate writ petitions before the High Court of Rajasthan challenging the corrigendum dated 30th September, 1999; in the alternative a prayer was made to hold that the corrigendum had no application to the respondent companies; for quashing the decisions of the Screening Committee in so far as the respondent companies were given the benefit of the exemption scheme on the basis of the corrigendum and for quashing the provisional assessment orders and notices.

The submission of the respondent companies before the High Court inter alia was that the scheme as originally framed allowed the companies to avail of the benefit of the exemption scheme under the Srl.No. 4(a) read with Srl. No. 1 for a period of 11 years up to a maximum limit of hundred percent of the companies' eligibility fixed capital investment at percentages of the total tax liability ranging from 100% in the first year to 30% in the 11th year. These rights of the companies under the scheme were claimed to be crystalised with effect from the date of the certification of their applications under clause 4 (h), which could not be taken away by the corrigendum with retrospective effect.

The learned single judge accepted the submission of the respondent companies that the impugned corrigendum really amounted to an amendment of the scheme. But it was held that the State Government was competent to modify the scheme and, therefore, the respondent companies were entitled to relief in terms of the scheme as originally notified up to the date of amendment and subsequent thereto as provided in the corrigendum. Since the corrigendum had been published in the Official Gazette on 7th January, 2000 it was held that it would be applicable with effect from that date.

Several appeals were preferred both by the State of Rajasthan as well as by the respondent companies from the decision of the learned Single Judge. The Division Bench disposed of all the appeals by the judgment impugned before us. The Appellate Court agreed with the learned Single Judge that the corrigendum notification was in fact an amendment of the scheme and therefore, this would operate only prospectively i.e. from 7th January, 2000. The plea of the respondent companies that the State Government was bound by the principles of promissory estoppel from modifying or amending the

scheme was negated by the Division Bench. The respondent companies have not sought to challenge this conclusion before us. The Division Bench however held that the rights of the respondent companies of enjoying the benefit under the original scheme including the maximum amount of exemption, the maximum period of exemption, and the percentage of exemption were available to the respondent companies with effect from the date of certification of their applications under clause 4(h) and were substantive and that these rights could not be affected adversely unless the subsequent notification clearly manifested an intention to do so. It was held that the corrigendum did not contain any such explicit provision nor could any inference be drawn that accrued rights were to be affected. It was held that even if this proposition was unacceptable, the amendment was arbitrary and violative of Article 14 being discriminatory vis-'-vis other sick industries. It was further held that the amendment could not discriminate against sick cement plants which had not availed of benefits of tax exemption earlier, so that such sick industries were treated in a manner worse than sick cement industries which had availed of exemptions from sales tax earlier. The Division Bench accordingly held that the respondent companies were entitled to avail of the benefits under the scheme as originally notified in the manner provided in column 3 of Serial No. 1 of Annexure B read with Serial No. 4(a) and that such rights were not affected by the corrigendum published on 7th January, 2000. However. the corrigendum notification itself was not quashed as had been prayed for.

The appellants have impugned the decision of the Division Bench and have contended that the Division Bench had erred in fact and in law in coming to the conclusion that the respondent companies had a vested right to the benefits of the scheme as available to new units under Srl. No. 1 of Annexure 'B' to the scheme. It is pointed out that as far as J.K. Synthetics is concerned its application has not been sanctioned at all. It is contended that the corrigendum notification was in fact a corrigendum and not an amendment, and that the corrigendum merely made explicit the intention of the State Government to treat the sick units of a particular industry on par with new units of such industries. It is further contended that even if the corrigendum were construed as an amendment, the State Government had the power to withdraw or modify the benefit of the scheme not only under Section 15 of the RST Act read with Section 8(5) of the CST Act but also under clause (9) of the scheme which provides for the power to the State Government to review or modify the exemption scheme "as and when needed in public interest". It is submitted that an exemption is in the nature of a concession and was by that reason a defeasible right. It is submitted that exemptions granted could not create any vested right in the beneficiaries of the exemption to the continued grant of the exemption until and unless the beneficiary was able to establish that the State Government was bound by the principles of promissory estoppel from modifying or withdrawing the concession. It is submitted that since the respondent companies had failed to establish any promissory estoppel on the part of the State Government, the Government could withdraw or modify the concession given at least from the date of the publication of the corrigendum notification. As far as the High Court's findings on the issue of discrimination is concerned, it is submitted that in fact there were no other cement units in the State in comparison with which it could be said that the respondents-companies were being unfairly treated. The language of Srl. No.3 in Annexure B was also relied upon to contend that the corrigendum was not discriminatory and merely treated sick cement units and new cement units equally.

Counsel for the respondent-companies has submitted

that there was no power in the State Government to issue the corrigendum with retrospective effect. It is submitted that the scheme was issued not only under Section 15 of the RST Act but also under Section 8(5) of the CST Act. The exercise of the power was thus, to use counsel's language, 'inseverable'. It is argued that as there is no power under Section 8(5) of the CST Act to withdraw an exemption with retrospective effect the entire exercise of issuing the corrigendum must fail. In addition, it is submitted that even Section 15 of the Act did not allow the State Government to withdraw an exemption with retrospective effect. It is stated that under clause 4(h) read with clause 5(g), on the date on which the respondents-companies' application was certified as being complete, rights accrued to the industrial units which could not be withdrawn and it was not necessary to rely upon the principle of promissory estoppel for the purpose of claiming continued exemption. It is submitted that the subsequent notification was not a corrigendum but an amendment of the scheme and could not be construed as amounting to withdrawal of the rights conferred under the scheme as originally published. It is submitted that sick units have been treated as a class apart irrespective of the nature of industry. It is also submitted that the corrigendum if construed in the manner advocated by the appellants, would be violative of Article 14. Finally, it is submitted that in any event this Court should protect the respondent-companies in so far as they had availed of the benefits of the scheme as originally published at least from the date of the order of the High Court. It is submitted that the High Court had struck down the corrigendum notification, Therefore, Annexure B as originally notified would revive. The decision of the High Court not having been stayed by this Court, the respondent-companies had not and indeed could not recover the sales tax from their customers by virtue of Section 14(2) of the RST Act and it would in these circumstances be inequitable to saddle them with sales tax liability for the period subsequent to the decision of the High Court. Reliance has been placed on the decision of this Court in State of Rajasthan V. Mahaveer Oil Industries and Ors. 1999 (4) SCC 357 in support of the submission.

The issue whether the subsequent notification should be read as a correction or an amendment of the scheme as originally notified would be relevant only if the appellants sought to give retrospective effect to it. Since the appellants have stated before us that they do not intend to take away the benefits which may have actually been enjoyed by the respondent companies prior to the date of publication of the corrigendum viz 7th January, 2000, a determination of the issue would be an academic exercise and a consideration of the several decisions cited with regard to the principles for deciding whether a statutory provision has retrospective effect, is unnecessary. The question is whether the subsequent notification could operate as far as the respondent companies are concerned with effect from 7.1.2000. The answer to this question would depend upon the nature of the rights of the respondent companies under the scheme.

An exemption is by definition a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption granted under a statutory provision in a fiscal statute has been held to be a concession granted by the State Government so that the beneficiaries of such concession are not required to pay the tax or duty they are otherwise liable to pay under such statute. The recipient of a concession has no legally enforceable right against the Government to grant a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one in the sense

that it may be taken away in exercise of the very power under which the exemption was granted. [See: Shri Bakul Oil Industries & Anr. V.State of Gujarat; 1987 (1) SCC 31; Kasinka Trading v. Union of India (1995)1 SCC 274; Shrijee Sales Corpn. v. Union of India (1997) 3 SCC 398].

In this case the scheme being notified under the power in the State Government to grant exemptions both under Section 15 of the RST and Section 8(5) of the CST in the public interest, the State Government was competent to modify or revoke the grant for the same reason. Thus what is granted can be withdrawn unless the Government is precluded from doing so on the ground of promissory estoppel, which principle is itself subject to considerations of equity and public interest. [See: Sales Tax Officer v. Shree Durga Oil Mills (1998) 1 SCC 572]. The vesting of a defeasible right is therefore, a contradiction in terms. There being no indefeasible right to the continued grant of an exemption (absent the exception of promissory estoppel), the question of the respondent companies having an indefeasible right to any facet of such exemption such as the rate, period etc. does not arise.

In any event, the High Court erred in fact in holding that M/s. J.K. Synthetics had a vested right to the benefits of the scheme. Clause 4 of the scheme clearly provides that the benefits under the scheme were subject to the sanction of the Screening Committee. No sanction has been issued to M/s. J.K. Synthetics till date.

Apart from this, the exemption being a creature of the scheme is subject to the scheme. Clause 9 of the scheme makes it clear that the right under the scheme was temporary in the sense that the scheme could be modified or reviewed. It is true that clause 9 also provides that such review or modification could take place only in the public interest. But nevertheless the right conferred was a modifiable or revocable one. If any right under the scheme is held to be unmodifiable it would be contrary to the scheme itself. Therefore even if one were to assume that the respondent companies were entitled to the benefits of the scheme on par with new units under Srl.No.1 with effect from the date of the certification of their application under clause 4(h), the right could be modified with effect from the date on which the scheme was modified. The further argument of the respondent that the subsequent notification could not be construed as a modification and would apply only to subsequent applicants is unacceptable. There is no ambiguity in the language of the subsequent notification. On the contrary the use of the word corrigendum itself indicates the intention was to correct and to rectify what the State Government thought had been erroneously done.

Coming now to the question of public interest. The 4th New Industrial Policy pursuant to which the scheme had been framed by the State Government was indisputably in the public interest. Therefore, if the intention of the State Government was to effectuate the policy by issuing the subsequent notification it cannot be said that the State Government was not acting in the public interest. The Industrial Policy which resulted in the exemption scheme expressly provided that the rate of benefits which were to be given to sick industrial units which had not availed of any such benefits in the past would be at par with a new unit. But does this mean that the words "new unit" in the policy referred to industries under Srl. No.1 ? We think not. New units of different kinds of industries had been separately classified both under the policy and under Srl.Nos.1,2 and 3 of Annexure B to the scheme. Each of the three categories at Srl.Nos.1,2 and 3 have been granted different rates of exemption Serial No.1 relates to new industries not covered by Srl.No.2 and 3. It is therefore, the residuary category and any new industry covered by Srl. Nos. 2 and 3 would not be covered by Srl.No.1. Serial No.2

speaks of particular industries such as knitwears, gems and jewellery, textile, electronics telecommunications, computer software, footwear and leather goods and ceramics. This category of industries has been sub-classified under the heads of (a) "new units" and (b) very prestigious units". A very prestigious unit is not defined in the scheme itself but is referred to in the industrial policy as those industries which have a fixed capital investment of Rs.50 crore or more and regular employment of 250 persons. Srl.No.3 makes no such distinction and refers to "all categories" of cement plants except mini cement plants mentioned in Annexure 'A' to the scheme. Subject to the exception of Annexure A all categories of cement plants/units including new units have been allowed exemption of 25% of the total tax liability for 11 years. There is no tapering of the incentive for the 11 years that the benefit was to be available as is the case under the other Serial Numbers. "All categories" would necessarily include new cement plants and sick industrial units falling within the definition of Clause 2(k)(ii), which was also entitled to the same level of benefit as all other new cement units. It would be incongruous to grant sick industrial units which do not fall within clause 2(k)(ii) higher benefits than sick industrial units which do. Since a sick industrial unit is granted a particular benefit subject to the fulfillment of various conditions, it implies that the industry which fulfils the conditions would be better off than the one which does not. If we were to accept the respondents' interpretation of the original notification under Srl.No.4(a) and (b), higher benefits would be available to sick industrial units which did not comply with the conditions imposed under clause 2(k)(ii). Such a conclusion is not only illogical but would serve to make a distinction between sick industrial units on an irrational basis. Clause 2(k)(ii) therefore indicates that the highest benefit that a sick industrial unit can claim under the scheme, is to be treated at par with new industries.

The thrust of the industrial policy was to give an incentive to new entrepreneurs. It is true that there are separate provisions for 'sick industries' but given the main object of the policy to make Rajasthan a "most favoured destination for industries", it could not have been the intention of the State Government to give a lower benefit to new industries and to give higher benefits to sick industrial units already established in the State. However, when the scheme was first notified although the body of the scheme effectuated the objective, the entry under column 3 against Srl.No.4 in Annexure B did not clearly reflect this. Doubtless the interpretation put by the respondent companies and accepted by the High Court on the entries against Srl.No. 4 as it originally stood in Annexure B, is a possible interpretation, but in our opinion Annexure B was equally susceptible of the interpretation put forward by the appellants before us particularly in the context of the Industrial Policy.

It was to clarify this ambiguity that the subsequent notification was issued by the State Government to correct or amend Annexure B to the extent that it could be interpreted in a manner not in keeping with the published industrial policy of the State and the substantive provisions of the scheme.

For these reasons also the corrigendum cannot be said to be violative of Article 14. On the contrary, if the corrigendum were not to be given effect to, the entire scheme would operate irrationally by making an invidious distinction between sick cement units as we have already said. The irrationality is also apparent vis-a-vis industries referable to Srl.No.2. Under the scheme, the highest rate of exemption and greatest benefits is granted to new units under Srl.No.2. If the respondents' interpretation of the corrigendum is accepted, a sick industry of a particular kind which otherwise falls under Srl.No.2 would, by virtue of the entry against Srl.No.4, be entitled to much lesser than new units of the same

kind of industry as it would be treated on par with new units of different kinds of industries under Srl.No.1. This is perhaps the reason why the corrigendum was not challenged by those industries covered by Srl. No.2 which are sick and which are not new industrial units within the meaning of clause 2(k)(ii) of the scheme. Although it appears to us that Srl.No.3 would include all categories of cement industries, the question whether Srl. No. 4(b) would relate to sick cement industries not covered by clause 2(k)(iii) or Srl. No.4(a) is not an issue which requires to be finally decided in this case, particularly when there is no such industry before us which claims the benefit of clause 4(b).

Learned counsel for the respondents' additional contention is that the Screening Committee had proceeded on the basis that the sick cement units were covered under Srl.No.4 and not Srl.No.3. It is argued that such decision of the Screening Committee being final in terms of Clause 4(a) of the scheme, it was not open to the State to contend otherwise. The argument is without force. The finality given to the decision of Screening Committee in terms of Clause 4(a) is "subject to other provisions provided for in the scheme". Any decision of the Screening Committee cannot be contrary to the provisions of the scheme. Besides all that the Screening Committee has held is that the respondent companies are to be treated on par with other cement companies, with effect from the date of the subsequent notification. That is also what the appellants contend, namely that Srl.No.4(a) expressly puts sick cement units on par with new cement units under Srl.No.3.

The respondent companies are therefore required to avail of the benefits under the scheme on the basis of the corrigendum with effect from 7.1.2000. Learned counsel for the respondent companies may be right in his contention that if a sanction is granted and an Eligibility Certificate issued on the basis of the sanction, then having regard to the provisions of Section 4(h) the period of exemption under the sanction ought to cover the date of the certification of the application as complete under Clause 4(h). But it is again unnecessary to decide the ambit of the Screening Committee's power, as the appellants have not argued that the benefits of the higher rate of exemption already availed of by the respondent companies with effect from the date of certification under clause 4(h) up to 7th January, 2000 should be taken away from them.

This brings us to the last argument of the respondent companies viz. that they should not be made liable for the sales tax on the basis of the corrigendum for the period they had availed of the exemptions after the decision of the High Court. The submission proceeded on the basis that the High Court had quashed the corrigendum Notification. As we have noted earlier the Division Bench had not quashed the corrigendum notification but had contented itself with construing it. The mere fact that this Court has not granted a stay of operation of the decision of the High Court would not give the respondent companies any right to the fruits of that decision if the decision is ultimately reversed by this Court. Besides the respondent-companies should have been aware that with the admission of the appeal from the High Court's order their rights thereunder were precarious. [See: Union of India v. West Coast Paper Mills Ltd. 2004(2) SCC 747, 753].

The mere circumstance that the respondent companies having availed of the exemption scheme were prohibited from collecting the tax from its customers or that they had not collected the sales tax from their customers, (which assertion is strongly disputed by the appellants), is of no consequence. The primary liability to pay the Sales Tax is on the seller. The seller may or may not be entitled to recover the same from the purchaser. The State Government is entitled to recover the same from the respondent-companies irrespective of the fact that the

respondent-companies may have lost the chance of passing on their liability to pay sales tax to their purchasers.

It is true that this Court has on some occasions granted relief from payment of sales tax to an assessee despite having found against the assessee on equitable considerations. But on every occasion there was something more than the mere impossibility of the assessee passing on the tax to its purchasers. Thus in the case of British Physical Lab India Ltd. V. State of Karnataka and Anr. 1999 (1) SCC 170, the State Government had itself issued a notification reducing the rate of tax. The notification was struck down by Court. The State Government then sought to recover the difference between the reduced rate as had been notified by it and the rate generally applicable. This Court granted relief to the assessee since the State Government had itself issued the notification concerned.

Similarly in Shree Cement Limited and Anr. v. State of Rajasthan and Others 2000(1) SCC 765, relief was granted having regard to the peculiar history of the case. By three notifications covering 1990 to 1994 issued by the State of Rajasthan the rate of tax payable by local dealers in respect of inter-state sales had been reduced. The notifications were challenged by cement manufacturers from outside the State. The High Court rejected the challenge. When the non local cement manufacturers came to this Court, this Court held that the notifications were void and quashed them. [Shri Digvijay Cement Companies v. State of Rajasthan, 1997 (5) SCC 406]. A fourth notification was subsequently issued by the State of Rajasthan similar to the earlier three notifications which had been quashed. The fourth notification was challenged directly before this Court by means of a writ petition under Article 32. This time the Bench which entertained the writ petition disagreed with the view expressed earlier by this Court in respect of Shri Digvijay Cement and referred the matter to a larger Bench. The Constitution Bench overruled the decision in Shri Digvijay Cement. The question then was whether the local manufacturers would be entitled to the benefit of the decision of the Constitution Bench despite the fact that the notifications under which they had availed of a lower rate of tax had been decided against them in Shri Digvijay Cement. This Court held in favour of the local manufacturers. The circumstance that the notifications were subsequently held to be valid by a larger Bench operated to protect them from liabilities which had arisen by virtue of the earlier erroneous decision.

In State of Rajasthan and anr. v. Mahaveer Oil Industries & others 1999(4) SCC 357, this Court allowed the assessee to retain benefits under a scheme upto 4.4.1994 despite the fact that the assesses were held not entitled to such benefits, on the ground that in another proceeding this Court had allowed similar industries to retain the benefit up to 4.4.1994. What is of significance is that the assesses were denied further benefit even though they had been successful before the Single Judge, before the Division Bench of the High Court and no stay had been obtained from this Court at any stage. It was said:

"The respondents have been aware throughout that the judgment of the Single Judge was appealed against. Even after the Division Bench dismissed the appeal the matter was carried further by filing the present special leave petition/appeal before this Court. The respondents continued to enjoy the benefits of the said two Schemes since no stay was obtained. Nevertheless, the question whether the respondents are entitled to the said benefits, has been sub judice throughout. Since the appeal is now being

decided against the respondents, they cannot claim the benefit of an eligibility certificate which was granted entirely on account of a judgment of a Single Judge in their favour which is now being set aside."

As far as M/s. J.K. Synthetics is concerned, their right to obtain benefits under the scheme by reason of clause 4(b) was in any event provisional. The undertaking given by this company was to the effect that the benefits of the scheme were being availed at the risk of the company till the sanction was granted by the Screening Committee. Since no sanction has been granted to the company, the company was aware that its rights to the benefits under the scheme were conditional and that it might be called upon to meet its sales tax liabilities in the event sanction was not granted on its application.

In such circumstances it must be open to the State Government to recover sales tax dues as it is entitled to under the RST Act allowing the respondent companies to only keep such benefits as had been already availed of by then upto 7th January, 2000 and thereafter at the rates specified and according to the provisions of the scheme as modified by the corrigendum notification. However no interest or penalty will be charged from the respondent companies by the appellants on the differential amounts for the period the matter was sub judice before this Court provided the respondent companies pay the principal amount of sales tax within such time as may be specified by the appellants in this regard.

We, therefore, allow the appeals and set aside the impugned decision without any order as to costs.