

Supreme Court of India reaffirms the State Government's power to withdraw or modify a fiscal concession

The Supreme Court of India (“**Supreme Court**”), in the case of *The State of Maharashtra and Ors. vs. Reliance Industries Limited and Ors.*¹, considered the question whether the Government of Maharashtra (“**State Government**”) can withdraw or modify electricity duty exemption previously granted to the captive power generators in the exercise of the same statutory power under which such exemption was granted.

Brief facts

1. The Bombay Electricity Duty Act, 1958 (“**BED Act**”) provides for levy and collection of duty on consumption of electricity. It extends to the whole State of Maharashtra.
2. Section 5A of the BED Act empowers the State Government to provide an exemption from the payment of electricity duty (either the whole or any part). This exemption can be in respect of any class of premises or purposes. Section 5A of the BED Act *inter alia* provides that:
 - a) the State Government can issue a notification in the official gazette to this effect, if it considers it necessary in the public interest;
 - b) the exemption can be prospective or retrospective;
 - c) it can apply to the whole or any part of the State; and
 - d) the exemption can be in respect of energy consumed up to a specified limit.
3. The State Government issued a series of notifications under Section 5A of the BED Act between 1994 to 2005 *re.* exemption from payment of electricity duty:
 - a) Notification dated September 1, 1994: An exemption was granted to the industries who consumed electricity through captive power plants.
 - b) Notification dated October 30, 1996: It superseded the notification dated September 1, 1994. An exemption (for electricity duty payable under clause (b) of Part-G of the Schedule to the BED Act) was granted to persons carrying on an industry in Maharashtra, using power from their own captive generating plant for that industry.
 - c) Notifications dated April 1, 2000: The 2 (two) notifications were issued by the State Government:

¹ 2026 INSC 296 (decided on March 25, 2026)

- i) the first notification enabled the State Government to bill electricity duty in premises used for consumption of energy for any purpose under Part A, B, C and G of the Schedule to the BED Act; and
 - ii) the second notification granted an exemption (from electricity duty payable under Clause (b) of Part-G of the Schedule to the BED Act) to persons carrying on an industry in the co-operative sector in Maharashtra, who generated energy from non-conventional sources and consumed it for that industry.
- d) Notification dated April 4, 2001: A part exemption (from electricity duty payable under Clause (b) of Part G of the Schedule to the BED Act) was granted to persons carrying on an industry in Maharashtra, using power from their own captive generating plant for that industry. It *inter alia* provided that:
- i) only payment of INR 0.15 (fifteen paise) per unit of energy consumed is to be paid. Any levy above this was exempted; and
 - ii) this benefit is only available if the generating set is installed under the State Government policy prior to revised policy *re.* captive generation declared *vide* Government Resolution dated April 25, 2000.
- e) Notifications dated April 1, 2000 and April 4, 2001 (“**Impugned Notifications**”): The Impugned Notifications were challenged in a batch of writ petitions before the High Court of Bombay (“**Bombay HC**”).
- f) Notification dated June 16, 2005: It was issued during the pendency of the writ petitions and superseded the notification dated April 4, 2001. It exempted the payment of electricity duty in Maharashtra on consumption of energy generated in a captive power generation station with effect from May 1, 2005. It had the following impact:
- i) it restored the earlier exemption of payment of electricity duty on electricity generated and consumed from captive power plants with effect from May 1, 2005; and
 - ii) it did not restore the earlier exemption of payment of electricity duty for the period between April 1, 2000 to April 30, 2005.
4. By the Order dated June 6, 2006, the Bombay HC disposed of the writ petitions, *inter alia* holding that:
- a) the writ petitioners are aggrieved by the State Government’s action of charging them for guaranteed electric supply at an enhanced rate, after inviting them to set up captive power plants for their needs;
 - b) during the pendency of the Writ Petitions, the earlier exemption granted for payment of electricity duty was restored;
 - c) the only grievance which may be made is regarding payment of enhanced rate during the period when the concession stood reduced or withdrawn. The petitioners were asked to submit a representation to the State Government as well as to the electricity board if they have such grievance; and
 - d) it was directed that such a representation should be decided as early as possible, preferably within 4 (four) weeks.
5. The Captive Power Producers Association’s representation to the State Government seeking exemption from payment of electricity duty was rejected by a communication dated January 25, 2007.
6. The State Government demanded payment of arrears of electricity duty for the intervening period from the Captive Power Producers Association by issuing notices dated February 23, 2007.
7. The captive power plant producers again challenged the validity of the notification dated April 4, 2001 and communication dated January 25, 2007 before the Bombay HC. By the order dated October 5, 2009, the Bombay HC quashed the Impugned Notifications and was *inter alia* held that:
- a) the object of grant of exemption under Section 5A of the BED Act is to encourage the industry to be self-reliant regarding power generation;

- b) the State Government cannot make a distinction between a cooperative sugar factory and a private sugar factory;
 - c) the State Government has failed to provide any justifiable ground for their actions. Budgetary Deficit is not a justifiable reason;
 - d) the State Government reviewed the decision on the basis of the Maharashtra Electricity Regulatory Commission (“**MERC**”) but did not consult MERC while withdrawing the exemption; and
 - e) the State Government rejected the representation of the captive power producers without assigning any reasons.
8. By a judgment dated November 7, 2009, the Bombay HC took a similar view while deciding another batch of writ petitions.
9. Being aggrieved by the Bombay HC’s decision, the State of Maharashtra filed the civil appeals before the Supreme Court.

Issue

The principal question before the Supreme Court was whether the State Government can withdraw or modify electricity duty exemption previously granted to the captive power generators in the exercise of same statutory power under which such exemption was granted?

Findings and analysis

1. The Supreme Court relied on a series of judgments whereby the following legal propositions have emerged:
 - a) the grant of an exemption as a concession by the State Government under a statutory provision in a fiscal statute, is not a legally enforceable right against the Government. This right may be taken away in exercise of the very power under which it was granted.
 - b) justiciability of a notification can be tested on the touchstone of Article 14 of the Constitution of India (“**Constitution**”);
 - c) the doctrine of promissory estoppel is available against the State Government. But the Government must be allowed to change its stand in case of a supervening public equity. The Government can withdraw its earlier promise anytime, in public interest, even if it induced a person to act on it and they suffered loss on account of such withdrawal. However, the court must satisfy itself that such public interest exists; and
 - d) legitimate expectation can be inferred against a statute only if such a claim is in public interest. For a statute to claim a bar against legitimate expectation, it must show that the shift in policy is for the advancement of public interest.
2. In light of the above legal propositions, the Supreme Court held that the captive power generators do not have any legally enforceable right to insist upon continuation of exemption indefinitely. Their limited right was to enjoy the concessions till they remained in force. The Supreme Court *inter alia* observed that:
 - a) the exemption under Section 5A of the BED Act was a concession granted by the State Government to encourage industrial self-sufficiency in power generation and to reduce the burden on public electricity supply system;
 - b) the exemption flowed from the exercise of statutory power under Section 5A of the BED Act. Therefore, there could be no assurance that this will continue forever. Its very nature implies that it can be modified/withdrawn in public interest;
 - c) the exemption was neither withdrawn prematurely nor with retrospective effect; and

- d) the Government can withdraw/modify a concession in exercise of the same statutory power under which it was granted.
3. The Supreme Court, while examining whether exercise of such power violates Article 14 of the Constitution, observed that:
- a) the concerned industries enjoyed the exemption from 1994 till 2000;
 - b) the State Government later took a policy decision to withdraw and modify the exemption on account of fiscal administration, to augment public revenue, and to address budgetary constraints. This justification by the State cannot be regarded as extraneous or unreasonable;
 - c) the judicial review in such policy matters is confined to examining whether the decision is manifestly arbitrary, discriminatory or actuated by extraneous consideration; and
 - d) in the present case, the decision was taken in public interest, it was neither arbitrary nor unreasonable. Hence, the doctrines of legitimate expectation and promissory estoppel have no application here.
4. The Supreme Court also examined the present issue from a fresh perspective on the manner in which the Government exercises its statutory power to withdraw an exemption. The Supreme Court held that the manner must also satisfy the requirements of reasonableness and fairness. It observed that:
- a) such withdrawal should not cause undue hardship to those who have structured their affairs on the concessions earlier granted to them. They should not be subjected to abrupt policy reversals;
 - b) a reasonable notice must be given to the beneficiaries so that they have a reasonable opportunity to reorganise their affairs and adjust to the altered regulatory framework, provided such a course is feasible;
 - c) the Impugned Notifications will be treated as taking effect only after the expiry of a reasonable notice period;
 - d) a period of 1 (one) year would constitute a reasonable notice to enable the captive power generators to adjust their operations and financial planning.
5. Consequent to the above discussion, the Supreme Court was pleased to:
- a) quash and set aside the judgment and order dated October 5, 2009 and November 7, 2009;
 - b) upheld the power of the State Government to withdraw/modify the exemption granted under Section 5A of the BED Act;
 - c) the Impugned Notifications would operate only after the expiry of a period of 1 (one) year from their respective dates; and
 - d) allow the civil appeals filed by the State Government.

Conclusion

While the Supreme Court has reiterated the State's power to withdraw and modify fiscal concessions under a Statute, it has also departed from the practice of abrupt withdrawals. The Supreme Court has emphasised that the exercise of such statutory power must meet the requirements of reasonableness and fairness. This judgment will provide a basis for the industries that suffer financial hardship due to abrupt policy changes by the Government to seek appropriate relief. The judgment provides for the requirement of according reasonable time/opportunity for the beneficiaries to reorganise their affairs and adjust to the altered regulatory framework.

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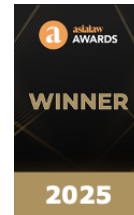
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