SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice K. A. Puj
and the Hon'ble Mr. Justice Rajesh H. Shukla

MULTIPLEX ASSOCIATION OF GUJARAT THROUGH PRESIDENT v. STATE OF GUJARAT & ORS.*

(A) Constitution of India, 1950 — Arts. 14 & 226 — Gujarat Entertainment Tax Act, 1977 (XVI of 1977) — Secs. 3 & 29 — Promissory estoppel — Benefit of tax holiday available to Multiplex cinemas under the 'New Package Scheme of Incentives for Tourism Projects, 1995-2000' — The Scheme providing that benefit shall be available till 'eligible capital investment' is set off by value of tax payable or 10 years whichever is earlier — Held, capital value of tax payable has to be calculated on value of ticket charged for admission to entertainment and not on basis/assumption that value of ticket excludes tax component — State Government is estopped from changing basis of calculation of value of tax payable reducing benefit as Multiplex owners have made huge investment relying as promise in the Scheme.

It is held that liability for payment of duty is imposed upon the proprietor and not upon the visitors of the theatre. (Para 62)

Section 3 which levies tax provides for levy on "gross" payment received from consumer as is clear from the words of Sec. 3 and also as interpreted in *1971 (1) SCC 471*.

The assessable value for determination of the tax liability is the payment received, irrespective of the break-up of this amount, charged for admission to entertainment and tax payable thereon.

The entertainment tax being a taxing measure, and Sec. 3 being a charging Section, it has to be strictly construed, and therefore, liability to pay tax cannot be enlarged beyond what is provided in the Act.

The multiplex cinemas in the ticket issued show that nothing is received in the name of or on account of entertainment tax from the viewers. Therefore, in case of multiplex cinemas, the amount would be taxed under Sec. 3. In the tickets issued, payment of admission is shown as admission to entertainment, tax is shown as "0", service charges shown as "0" and total amount recoverable by and payable to the proprietor is Rs. 100/-. Tax liability has to be, therefore, calculated on this amount *i.e.* Rs. 100/- which would be at 50% payment for admission received from the viewers.

Under the incentive, there is no special method of calculation of the tax liability prescribed as a condition of exemption for the purpose of setting off such tax liability against the incentive limit. This method is prescribed for the first time by the impugned Circulars in November/December, 2000. (Para 62)

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*Decided on 26-6-2009. Special Civil Application No. 5391 of 2004 with Spl.C.A. Nos. 3371 and 13566 of 2004 with Spl.C.A. Nos. 14394, 18716, 18689, 18699 of 2005 and 4319, 11971, 15962 of 2006 with C.A. No. 10427 of 2008 in Spl.C.A. No. 18689 of 2005 with C.A. No. 10470 of 2008 in Spl.C.A. No. 4319 of 2006 with C.A. No. 7819 of 2004 in Spl.C.A. No. 5391 of 2004 with Misc. Civil Appli. No. 97 of 2006 in C.A. No. 11707 of 2005.

The two impugned Circulars, therefore, cannot be read to provide for a method of calculating tax liability which is inconsistent with Sec. 3. If it is an improvement over the original Scheme that is not permissible and would be hit by the principles of promissory estoppel laid down by the Hon'ble Supreme Court in *2008 (2) SCC 777* and *1992 (Supp.) (1) SCC 150*. The proprietors of entertainment have made investments acting on the terms of the notification and calculating the benefit available to them in terms of Sec. 3 of the Act. On the principles of promissory estoppel, the Government is estopped from changing the basis of calculation of tax liability for calculating set off against amount of incentive available. It would also amount to breach of public faith. (Para 64)

(B) Constitution of India, 1950 — Arts. 14 & 226 — Gujarat Entertainment Tax Act, 1977 (XVI of 1977) — Secs. 3 & 29 — Benefit of tax holiday to Multiplex Cinema under the 'New Package Scheme of Incentives for Tourism Projects, 1995-2000' — Extension of time-limit for pipeline projects for the purpose of benefit — Scheme expiring on 30-11-2002 — Government Resolution dated 28-6-2000 laying down that time-limit shall not be extended beyond 30-11-2002 — Held, decision of State Government regarding 'extension' is a matter of policy not subject to judicial review — Plea of promissory estoppel not available to extend operative period of Scheme of benefit — Petitioner's prayer seeking extension turned down.

Having considered the rival submissions, the Court is of the view that combined reading of the First Government Resolution dated 20-12-1995 along with Second Resolution dated 28-6-2000 together with last Resolution dated 30-9-2000 clearly suggests that the operative period of the policy in question came to be finally over on 30-11-2000 and the time-limit for completing the project and commencing the commercial activities in case of pipeline units, could, at the best, be said to have been extended only upto 30-11-2002. (Para 90)

Pipeline cases like the petitioners cannot be treated *at par* with those who had acted on the strength of the said policy as contained in the First Resolution dated 20-12-1995. (Para 96)

When the policies ceased to exist after 30-11-2000, whereunder the petitioners were supposed to commence their commercial activities before 30-11-2002, and the petitioners having not so commenced their commercial activities, are obviously not entitled to the incentive benefits in question. (Para 97)

For interpretation of the resolutions in question, one has to apply the very principles which are applicable in case of legislative provisions. (Para 101)

The State Government should not be directed to continue and/or adopt a particular policy since such aspects may not be judicially reviewable. (Para 102)

There is no question of application of the principles of promissory estoppel to the instant case. (Para 103)

A person invoking exception of exemption from the provision to relieve him from the tax liability, must establish clearly that he is covered by the said provision. (Para 104)

(C) Constitution of India, 1950 — Arts. 14 & 226 — Gujarat Entertainment Tax Act, 1977 (XVI of 1977) — Secs. 3 & 29 — Benefit of tax

holiday to Multiplex Cinema under the 'New Package Scheme of Incentives for Tourism Projects, 1995-2000' — Benefit available till eligible capital investment is set off by value of tax payable or 10 years, whichever is earlier — Fixing of 'eligible capital investment' — Petitioners seeking to fix their 'eligible capital investment' higher than that fixed by State authorities — The Court remanding to authorities to decide the issue afresh in accordance with provisions of Scheme — Investment made after 30-11-2002 not to be treated as 'eligible capital investment'. *(See* Paras 110 and 111)

M/s. Liberty Talkies v. State of Gujarat (1), State of Madhya Pradesh v. G. S. Dall and Flour Mills (2), S. Gopal Reddy v. State of Andhra Pradesh (3), Tata Consultancy Services v. State of Andhra Pradesh (4), Promoters & Builders Association v. Pune Municipal Corporation (5), Balco Employees Union v. Union of India (6), Kaskinka Trading v. Union of India (7), Shrijee Sales Corporation v. Union of India (8), Novopan India Ltd. v. C.C.E. (9), Liberty Oil Mills (P) Ltd. v. C.C.E. (10), relied on.

Rajkumar Dey v. Tarapada Dey (11), Hansraj Gordhandas v. H. H. Dave, Assistant Collector and Central Excise & Customs, Surat (12), Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore (13), Joint Commercial Tax Officer, Division III, Madras v. M/s. Spencer & Co. (14), Cynides Chemicals Co. v. State of Gujarat (15), Madras Rubber Factory Ltd. v. Union of India (16), State of Jharkhand v. Tata Cummins Ltd. (17), State of Karnataka v. Balaji Computers (18), U.P. Power Corporation Ltd. v. Sant Steels & Alloys (P) Ltd. (19), Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector (20), State of Punjab v. Nestle India Ltd. (21), Industrial Finance Corporation of India Ltd. v. Cannanore Spinning & Weaving Mills Ltd. (22), Hitech Electrothermics & Hydropower Ltd. v. State of Kerala (23), Mohammed Gazi v. State of M.P. (24), Bareilly Development Authority v. Methodist Church of India (25), Essar Oil Ltd. v. State of Gujarat (26), Express Hotels v. State of Gujarat (27), Rolcom Engg. Co. Ltd. v. State of Gujarat (28), referred to.

Special Civil Application Nos. 5391, 3371 and 13566 of 2004; 14394, 18716, 18689 and 18691 to 18699 of 2005; 4319, 11971 and 15962 of 2006; and *Civil Application Nos. 10427 and 10470 of 2008; 7819 of 2004; Misc. Civil Application No. 97 of 2006 :*

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(1) 1971 (1) SCC 471 (2) 1992 Supp. (1) SCC 150 (3) AIR 1996 SC 2184
(4) 2005 (1) SCC 308 (5) 2007 (6) SCC 143 (6) AIR 2002 SC 350
(7) 1995 (1) SCC 274 (8) 1997 (3) SCC 398
(9) 1994 Supp. (3) SCC 606 (10) 1995 (1) SCC 451
(11) 1987 (4) SCC 398 (12) AIR 1970 SC 755 (13) 1971 (28) STC 331
(14) 1975 (2) SCC 358 (15) 2000 (118) STC 228 (16) 1981 ELT 804 (Del.)
(17) 2006 (145) STC 340 (18) 2007 (2) SCC 743 (19) 2008 (2) SCC 777
(20) 2007 (5) SCC 447 (21) 2004 (6) SCC 465 (22) 2002 (5) SCC 54
(23) 2003 (3) SCC 716 (24) 2000 (4) SCC 342 (25) 1988 (Supp.) SCC 342
(26) Spl.C.A. No. 24233 of 2007 decided on 22-4-2008 by Guj.H.C.
(27) Spl.C.A. No. 4977 of 2006 decided on 18-10-2007 by Guj.H.C.
(28) Spl.C.A. No. 2033 of 2004 decided on 2-3-2006 by Guj.H.C.

K. S. Nanavati, Senior Advocate with *Keyur Gandhi* with *Raj Yadav* with *Paritosh Calla*, for Nanavati Associates, for the Petitioners.

Kamal B. Trivedi, Advocate General with *Ms. Sangeeta Vishan*, A.G.P., for the Respondents.

Special Civil Application No. 18690 of 2005 :

Mihir J. Thakore, Senior Advocate with *Keyur Gandhi* with *Raj Yadav*, for Nanavati Associates, for the Petitioners.

Kamal B. Trivedi, Advocate General with *Ms. Sangeeta Vishan*, A.G.P., for the Respondents.

K. A. PUJ, J. Since, all these petitions and/or applications centre round some of the common issues and since they were heard together, the same are being disposed of by this common judgment and order.

2. Special Civil Application No. 5391 of 2004 is filed by Multiplex Association of Gujarat for and on behalf of its 11 members challenging the Circulars dated 23-11-2000 and 5-12-2000 and seeking directions to the respondent-authorities to consider only entertainment tax payable notionally as capital value for the purpose of setting off the eligible capital investment of its members.

3. Special Civil Application No. 3371 of 2004 is filed by M/s. Essem Entertainment Pvt. Ltd. for treating its amount of eligible capital investment at Rs. 1400 lacs in place of Rs. 735 lacs as indicated in T.R.C. with a prayer for interim relief to provisionally calculate notional tax at 45% of the amount paid by the spectators as admission charges.

4. Special Civil Application No. 13566 of 2004 is filed by M/s. Chaitanya Cine-World Pvt. Ltd. for quashing and setting aside the order dated 9-3-2004 restricting the total eligible capital investment to the tune of Rs. 761.86 lacs with a further prayer for interim relief of provisionally treating the petitioner's eligible capital investment at Rs. 1100 lacs and calculate notional tax at the rate of 45% of Rs. 97/- (*i.e.* Rs. 100 ticket charges minus Rs. 3 service charges).

5. Thereafter, Special Civil Application Nos. 18689 to 18699 of 2005 and 18716 of 2005 and 14394 of 2005, in all 13 petitions, were filed by individual parties owning Multiplex Theatres which have been treated as pipeline cases, wherein they have challenged the order dated 20-7-2005 passed by the respondent-authority refusing to grant extension of time for completing the project of Multiplex with the prayer for interim relief against the recovery of entertainment tax or any other tax from the petitioners.

6. Special Civil Application No. 4319 of 2006 is filed by M/s. Inox Leisure Ltd. challenging the decision dated 16-2-2006 of the S.V.C. rejecting the request of the petitioner for issuance of final eligibility certificate on the ground that they had not started commercial operation within the permissible time-limit.

7. Special Civil Application No. 11971 of 2006 is filed by M/s. Perfect Entertainment Ltd. for direction to forthwith issue final eligibility certificate based upon the total investment to the tune of Rs. 4.70 crores.

8. Special Civil Application No. 15962 of 2006 is filed by M/s. Chanod Cine Park challenging the decision dated 14-7-2006 restricting the total eligibility capital investment to the tune of Rs. 268.68 lacs instead of Rs. 432.14 lacs.

9. Initially, this Court *vide* its order dated 27-10-2005 directed the petitioners to deposit 75% of the tax demanded by the State Government and on such deposit, the balance recovery was ordered to be stayed and State Government was restrained from taking any coercive action. Being aggrieved by the said interim order, all the owners of Multiplexes approached the Apex Court and the Apex Court *vide* its order dated 18-11-2005 permitted them to approach this Court for clarification of its order with regard to quantum and dismissed the leave petitions. Thereafter, while disposing of Civil Application No. 11707 of 2005 in Special Civil Application No. 5391 of 2004 on 30-11-2005, this Court took the view that in absence of any exemption certificate or order of extension, which leads to an order of exemption, the persons, whose cases were in pipeline and even those persons, who have successfully obtained certificates etc., would be liable to pay 50% of their collection. All these matters rested there and this interim order was considered to have an application only to the collection made till the said date and not to the subsequent collection made during the pendency of all these petitions. Be that as it may, in this factual background, all these matters are heard by the Court. For the sake of convenience, facts and submissions are taken from Special Civil Application No. 5391 of 2004.

10. The questions posed by the petitioner Association for consideration of this Court are as under :

(i) Whether the action on the part of the respondents in considering the entire amount of the value of the ticket as the capital value for the purpose of setting off the eligible capital investment of the members of the petitioner Association is arbitrary, discriminatory and violative of fundamental rights of the members of the petitioner Association guaranteed under Arts. 14, 19 and 300A of the Constitution of India.

(ii) Whether the action on the part of the respondents in considering the entire amount of the value of the ticket as the capital value for the purpose of setting off the eligible capital investment of the members of the petitioner Association is violative of the promise held out by the respondent State in the form of the policy contained in the Resolution dated 20-12-1995 and subsequent Resolutions whereby the said policy was modified from time to time by the Information, Broadcasting and Tourism department of the respondent State and whether the respondents are estopped from taking a different view than the one on the basis of which the members of the petitioner Association have invested about 300 crores of rupees towards cost of establishing Multiplexes in the State of Gujarat and have thus acted to their prejudice for all these years?

(iii) Whether the respondent State has committed an error in not properly appreciating the meaning of 'tax exemption' occurring in the Gujarat Entertainment Tax Act, 1977 (hereafter referred to as "the Act") in the context of the provisions contained in the Scheme?

(iv) Whether the interpretation placed by the respondent-State on the relevant provisions of the Scheme is warranted by the language employed in the Scheme and the objectives which were required to be achieved in the framing of the Scheme?

(v) Whether the respondent-State has violated its obligation which it has incurred under the Scheme after it required the members of the petitioner Association to invest more than Rs. 300 crores in the setting up of several Multiplex Complexes on the faith of the promise held out by it in the form of the said policy/Scheme?

(vi) Whether the impugned action on the part of the respondent-State amounts to giving the benefit by one hand and taking away the same by another hand on a wrong interpretation of certain provisions of the Scheme?

(vii) Whether in the context of the provisions contained in the Scheme and the preamble of the Resolution containing the said Scheme, the respondent-State is justified in considering the entire amount of the value of the ticket as capital value for the purpose of setting off the eligible capital investment of the members of the petitioner-Association against notional amount of entertainment tax?

(viii) Whether the action on the part of the respondent-State amounts to indirect withdrawal of the benefit that was made available under the Scheme to the members of the petitioner-Association?

11. Before these questions are considered, it is necessary to record brief facts of the case. The respondent-State had published a policy declaring incentives to the entrepreneurs who may come forward to establish Tourism industry in the State of Gujarat, subject to the terms and conditions set out in the Resolution dated 20-12-1995 containing the details of the said Scheme known as "New Package Scheme of Incentives for Tourism Projects, 1995-2000". The Preamble of the said Resolution passed by the respondent-State is relevant to the present purpose. It says that the State Government had declared "New Tourism Policy, 1995" wherein Tourism has been accorded the status of an industry with a view to make available all fiscal and non-fiscal incentives, benefits, reliefs and concessions available to the industries. Based on the "New Tourism Policy" and in order to give a boost to Tourism Sector by attracting higher investment in the areas with tourism potential and to generate employment opportunities, the State Government has introduced new package scheme of incentives for tourism projects for the period 1995-2000, scrapping the old incentive Scheme of 1991 announced *vide* Government Resolution cited in the Preamble. The respondent-State, had thereafter, modified the said Scheme from time to time and last such modification is contained in the Government Resolution dated 28-2-1997.

12. Clause 4.5 of the said Scheme provides for eligible capital investment. Clause 4.6 provides for eligible areas. Clause 4.7 enumerates effective steps. Clause 5 deals with procedure for registration and Clause 6 contemplates eligible Units. Clause 8 provides for incentives. It says that the tax holiday of 5-10 years will be available to new units and expansion of existing units (as per

condition set out earlier) in respect of the following taxes, and upto 100% of capital investment. The tax holiday will be available to units conforming to the list in Appendix 'B' and falling within the eligible areas.

List of Taxes :-

(1) Exemption from Sales-tax.

(2) Exemption from Turnover-tax.

(3) Exemption from Electricity duty.

(4) Exemption from Luxury Tax.

(5) Exemption from Entertainment Tax.

13. So far as the present petition is concerned, Mr. K. S. Nanavati, learned Senior Counsel submitted that it is in respect of tax holiday of 5-10 years in the form of exemption from entertainment tax and upto 100% of capital investment. Clause 8.1 provides for period of eligibility and item No. 1 of the tabular statement in the said Clause clearly contemplates that Prestigious Tourism units are entitled to tax holidays for a period of ten years. The members of the petitioner-Association have established entertainment complexes appearing at Item No. XXII in Appendix 'B' (Tourism Units) to the said Resolution and each one of the members of the petitioner-Association (except City Pulse) has invested more than Rs. 10 crores towards cost of establishing the said units, and therefore, all the units of the members of the petitioner-Association fall in Category No. 1-Prestigious Tourism Units listed in Clause 7 of the said Resolution.

14. Clause 10 of the said Resolution provides for the procedure for registration of tourism units for incentives and Clause 11 provides for the procedure for claiming incentives. Clause 12 of the Scheme provides for the conditions subject to which incentives will be granted to the tourism units under the Scheme and it also provides that breach of any of the said conditions will entail withdrawal of the incentives granted earlier with immediate effect.

15. Initially, the above Scheme was scheduled to be effective till 31-3-2000. However, the said period was extended from time to time, and ultimately, the said period expired on 30-11-2000. Though, the said Scheme is in force, the incentives made available under the said Scheme have been discontinued with effect from 30-11-2000 to the units which might have come into existence after that date. On the faith of the said policy containing incentives to the Tourism project, all the members of the petitioner-Association have established entertainment complexes and each of them has (except City Pulse) invested more than Rs. 10 crores towards cost of establishing such complexes. In all, more than 17 Multiplex Theatres have been established by the members of the petitioner-Association and all of them are providing entertainment to the members of the public. Other Multiplex Theatres were being constructed in different parts of the State of Gujarat and total estimated investment in the form of cost of providing such entertainment complexes works out to about Rs. 300 crores. Under the Scheme, the respondent-State has provided for tax holiday (exemption from payment of entertainment tax) as defined under the Act. Section 2(e) of the Act defines entertainment as under :

"Entertainment includes any exhibition, performance, amusement, game or support to which persons are admitted for payment."

16. Section 2(g) defines payment of admission which reads as under :-

"Payment of admission includes (i) any payment made by person, having admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving tax or more than tax is required."

17. Section 3 of the Act provides for tax on payment for admission to entertainment. It is this tax which is known as entertainment tax which is subject-matter of the Scheme in question. It is also the subject-matter of dispute of the present petition. The principal object of underlying the Scheme is to provide incentive to the entrepreneurs who have established Multiplex Theatres as per the provisions of the Scheme, in the form of exemption from payment of this entertainment tax. In other words, the eligibility criteria defined under Clause 6 of the said Resolution needs to be satisfied before claiming the benefit of exemption from payment of tax, leviable under Sec. 3 of the Act for a period of 10 years or till the eligible capital investment of the concerned unit is set off, whichever event occurs earlier.

18. Under the Scheme in question, the amount of tax payable by the members of the petitioner-Association is required to be appropriated for setting off the eligible capital investment of the concerned member till the entire amount of eligible capital investment is set off. If, however, this amount of capital amount is set off before the expiry of period of 10 years prescribed under the Scheme, the benefit made available to the concerned member in the form of exemption from payment of entertainment tax would stand terminated on the date the amount of eligible capital investment is totally set off and the member concerned will be required to pay entertainment tax with effect from that date. On the faith of the Scheme in question and benefits made available to the members of the petitioner-Association, under the said Scheme, the members have invested crores of rupees and even running Multiplex Theatres in and around city of Ahmedabad and other parts of the State of Gujarat. Right from the beginning, all the members of the petitioner-Association were given to understand that they will not be required to pay any tax for the period of 10 years or till their eligible capital investment was fully set off. This was on the faith of this solemn promise held out by the authorities in the Government that the members of the petitioner-Association have invested crores of rupees in establishing their respective entertainment complexes in and around the city of Ahmedabad and other parts of the State of Gujarat.

19. Mr. Nanavati further submitted that Under Secretary to the Government of Gujarat, Information and Broadcasting department, addressed a letter to the Entertainment Commissioner, Gujarat State, Gandhinagar on 23-11-2000 whereby he required the Entertainment Commissioner to mention in the certificate of exemption from payment of tax that the amount of tax is not included in the ticket charges and that the members of the public are not required to pay the amount of entertainment tax. The respondent-State thereafter had published a

Notification dated 5/7-12-2000 whereby it sought to withdraw the benefits already availed of by the members of the petitioner-Association. Having come to know about this action of the respondent-State, the office-bearers of the petitioner-Association made several representations to the authorities in the Government and requested them to look into the matter and withdraw the said Circular and the Notification and to continue the benefits made available to them under the said Scheme. The office-bearers of the petitioner-Association also approached the concerned Minister on several occasions and on each occasion, they were promised to look into the matter and do the needful in the matter. However, for quite a long time, the petitioner-Association did not receive any positive response from the authorities concerned despite the fact that several representations and reminders were made. The petitioner-Association, therefore, sought legal opinion on the point and as per such legal opinion, the action of the respondent-State is considered to be an arbitrary, discriminatory and violative of the rights of the petitioner-Association guaranteed under Art. 14 of the Constitution of India. Despite this opinion, the petitioner-Association again made representation on 22-9-2003 to the State Finance Minister requesting him to look into the matter and to do justice to the members of the petitioner-Association, in the context of the policy of the State Government and the relevant provisions of the Act and also considering the fact that the members of the petitioner-Association had acted to their prejudice on the faith of the promise held out in the said policy of the State Government. The petitioner-Association, thereafter made a representation dated 7-10-2003 to the Chief Secretary to the Government of Gujarat. The main contents of the said representation are that :

(i) the action of the respondent-State in considering the entire amount of the value of the ticket as the capital value for the purpose of setting off the capital investment of the concerned member of the petitioner Association is arbitrary, discriminatory and violative of the fundamental rights guaranteed to the members of the petitioner-Association under Art. 14 of the Constitution of India.

(ii) It is also contended that if the entire amount of the value of the ticket is permitted to be appropriated by the respondent State towards the capital value for the purpose of setting off the eligible capital investment, instead of earning any profit, the concerned Members of the petitioner-Association would be incurring losses of huge amount, and in that case, he would not be able to exercise his right to settle in any part of the country.

(iii) It is further contended that if the entire amount of the value of the ticket is permitted to be appropriated by the respondent State towards capital value for the purpose of setting off the entire eligible capital investment, by notionally calculating the tax benefit as provided under the Scheme, instead of earning any profit, the concerned Member of the petitioner Association would be incurring losses of huge amount, and in that case, he would not be able to carry out any occupation, trade or business.

(iv) It is further contended that the impugned action would result into deprivation of the right of the members of the petitioner-Association to hold

property save by authority of law enshrined under Art. 300A of the Constitution of India.

(v) It was also contended that it was never the intention of the respondent-State in declaring the incentive policy contained in the Resolution.

(v) It is further contended that by declaring the policy in question, the respondent-State had held out a promise to the members of the petitioner-Association and others that the entire benefit of tax exemption would be made available to them. The members of the petitioner-Association were given to understand that no tax would be recovered from them on the income derived by them out of the capital investment in setting up the Multiplex Theatres. Its members were also given to understand that out of the income of 100% being the value of one ticket, an amount equivalent to 50% of the said value, being the amount of entertainment tax would not be considered as income while computing the eligible capital investment of the members. In view of the impugned Circular letter and the Notification, the entire amount of Rs. 100/- per ticket is sought to be considered as income of the members of the petitioner-Association and the same is sought to be appropriated as income of the members of the petitioner-Association while setting off the eligible capital investment of the members of the petitioner Association and if that is permitted to be done, the amount of eligible capital investment will be set off within a period of only 2 or 3 years, and thereafter, the members of the petitioner-Association would not be entitled to avail of any exemption for the remaining period of 7 or 8 years.

Mr. Nanavati, therefore, contended that the doctrine of promissory estoppel would come into play in this case and the respondent cannot be permitted to act contrary to the promise held out by them to the members of the petitioner-Association.

20. Mr. Nanavati further contended that as per the Scheme contained in the Resolution, the exemption made available under the said Scheme falls within Sec. 29(1)(b) of the Act whereby in public interest, for giving fillip to prospective Multiplex owners, who are induced to invest huge capital in the State, the Scheme of exemption has been framed, and therefore, the benefit of tax holiday/exemption has necessarily to go to those Multiplex owners who have been induced on the faith of the promise held out under the policy to invest huge amount of capital and who have been persuaded to bring into existence such Multiplex Theatres in the State of Gujarat. It is, therefore, contended that on proper interpretation of Clause 8 read with relevant provisions of the Scheme and the Act and also in light of the conditions set out in the exemption Notification dated 14-2-1997, the authorities are required to notionally assess the entertainment tax which would have been otherwise payable in specie by such Multiplex Theatre owners on the amount of the value of the ticket which they might have received from the spectators.

21. Mr. Nanavati further contended that the direction contained in the Circular dated 23-11-2000 proceeds on a basic misconception that the exemption under the Scheme is made available for the benefit of the spectators and not

the Multiplex Theatre owners. As a matter of fact, on the conjoint reading of the relevant Clauses of the policy and the exemption notification, it is clear that the exemption is made only for the benefit of the Multiplex Theatre owners who would be induced to invest crores of rupees towards cost of constructing Multiplex Cinema Theatres in view of the benefit made available to them under the Scheme. Even in the Preamble of the Scheme itself, it is made clear that the objective of the Scheme is to give a boost to Tourism Sector by attracting higher investment in the areas with tourism potential. This objection is also supported by the fact that the amount of incentive is required to be computed with reference to the amount of investment made by the concerned Multiplex Theatre owners. It is, therefore, contended that the impugned action on the part of the respondent-State amounts to indirect withdrawal of the benefit that was made available to the members of the petitioner-Association under the said Scheme.

22. It is in the above context, Mr. Nanavati urged before this Court to quash and set aside the impugned Circular dated 23-11-2000 and the Notification dated 5/7-12-2000.

23. In support of his submissions, Mr. Nanavati relied on the decision of the Hon'ble Supreme Court in the case of *M/s. Liberty Talkies & Ors. v. State of Gujarat & Ors.*, 1971 (1) SCC 471 wherein it is held that the provisions in Secs. 3, 4, 6 leave no room for doubt that liability for payment of duty is imposed upon the proprietor and not upon the visitors to the theatre. The proprietor does not act as an agent of the Government for the collection of the duty. The appellant was liable to pay duty computed in the manner provided by Sec. 3(1)(b)(ii) on the total amount received by the proprietor. The method of levy of entertainment duty from the proprietors involves some hardship. It is implicit in the Act that the proprietor is entitled to pass on the liability "for payment of entertainment duty" to the visitors. But the visitor only pays the amount represented by the stamp affixed on the ticket. A proprietor paying entertainment duty on the total amount received by him from the visitor will never be able to collect the full entertainment duty from the visitor. A part of the duty payable by him will have to come out of the amount received by him as net charge for the ticket. A question of hardship cannot justify departure from the statutory provision.

24. In *Hansraj Gordhandas v. H. H. Dave, Assistant Collector and Central Excise & Customs, Surat & Ors.*, AIR 1970 SC 755, it is held that it is well established that in a taxing statute, there is no room for any intendment. The entire matter is governed wholly by the language of the notification. If the tax payer falls within the exemption, it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority.

25. In *Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore,* 1971 (28) STC 331, under Sec. 4 of the M. P. General Sales Tax Act, 1958 (prior to the introduction of Sec. 7A therein in 1963), liability to pay sales tax is that of the dealer. The purchaser has no liability to pay tax. There is no provision in the Act which gives any statutory power to collect

sales tax as such from any class of buyers. If the dealer passes on his tax burden to his purchasers he can only do it by adding the tax in question to the price of the goods sold. In that event, the price fixed for the goods including the tax payable becomes the valuable consideration given by the purchasers for the goods purchased by him. If that be so, the tax collected by the dealer from his purchasers becomes a part of the "sale price" fixed, as defined in Sec. 2(o) of the Act. Unless the price of an Article is controlled, it is always open to the buyer and the seller to agree upon the price payable. While doing so, it is open to the dealer to include in the price the tax payable by him to the Government. If he does so, he cannot be said to be collecting the tax payable by him from his buyers. The levy and collection of tax is regulated by law and not by contract. So long as there is no law empowering the dealer to collect tax from his buyer or seller, there is no legal basis for saying that the dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers can only be considered as valuable consideration for the goods sold.

26. In *Joint Commercial Tax Officer, Division III, Madras v. M/s. Spencer and Company & Ors.*, 1975 (2) SCC 358, it is held that it is clear from Sec. 21A of the Madras Prohibition Act, 1937 that the sales tax which the Section requires the seller of foreign liquor to collect from the purchaser is a tax on the purchaser and not on the seller. This is what makes the authorities on which Counsel for the appellants relied inapplicable to the cases before us. Under Sec. 21A the tax payable is on the price of the liquor and that tax is to be paid by the purchaser. The seller is required to collect the tax from the purchaser which he has to pay over to the Government. Section 21A makes the seller a collector of tax for the Government, and the amount collected by him as tax under this Section cannot therefore be a part of his turnover. Under the Madras General Sales Tax Act, 1959 the dealer has no statutory duty to collect the sales tax payable by him from his customer, and when the dealer passes on to the customer the amount of tax which the former is liable to pay, the said amount does not cease to be the price for the goods although "the price is expressed as X plus purchase tax". But the amounts collected by the assesses concerned in these appeals under a statutory obligation cannot be a part of their taxable turnover under the Madras General Sales Tax Act, 1959.

27. In *Cynides Chemicals Company v. State of Gujarat*, 2000 (118) STC 228, this Court has held that the unit opting for exemption incentive was exempted from payment of tax altogether up to the limit within the period of exemption and at the same time he was not entitled to charge or collect tax on the sales made by it, *i.e.*, no part of sale price charged by it constituted any element of tax payable on such sales. There was also no room for determining taxable turnover because tax was not actually payable by the unit. Rule 50 did not have any role to play where tax was not actually payable but was to be determined notionally for some other purpose *i.e.* of computing tax leviable to find out the extent of exemption enjoyed by the unit to be adjusted against the exemption limit. The result of giving effect to Rule 50(ii) as suggested by the assessee

would be altering the very edifice of the exemption spell out in the Scheme. Therefore, the Tribunal was right in holding that since the assessee's sales were tax-free the provisions of Rule 50 of the Gujarat Sales Tax Rules, 1970 and Sec. 8A of the Central Sales Tax Act could not be invoked.

28. In *Madras Rubber Factory Ltd. v. Union of India & Ors.*, 1981 ELT 804 (Delhi), it is held that if the exemption notification does not contain a condition that its benefit should be passed on to the consumer, the manufacturer can retain the benefit of exemption notification. It is further held that the conditions for availment of exemption notification should be a part of that notification and cannot be altered by administrative directions, guidelines, press notes or trade notices.

29. In *State of Jharkhand & Ors. v. Tata Cummins Ltd. & Anr.*, 2006 (145) STC 340, it is held that an exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly. However, when an assessee is promised tax exemption for setting up an industry in a backward area as a term of industrial policy, the implementing notifications have to be read in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability.

30. In *State of Karnataka v. Balaji Computers & Ors.*, 2007 (2) SCC 743, it is held that from the case-law, it is clear that the language employed in the exemption notification and items in respect of which exemption had been given, had to be understood in the context in which exemption notification came to be issued. In case there is any doubt that the language employed in exemption notification admits of two views and is not clear and ambiguous, it would be proper and reasonable to place the construction which is beneficial to the assessee by exempting levy of tax on parts of computer and computer peripherals.

31. An affidavit-in-reply is filed by the Deputy Commissioner of Entertainment Tax, Gujarat State on 10-9-2004. Based on this affidavit and dealing with the submissions of Mr. Nanavati, Mr. Kamal B. Trivedi, learned Advocate General, *inter alia*, submitted that under the Tourism policy of the State of Gujarat, 11 Multiplex Cinema Halls being enjoyed the availment of merely Rs. 100 crores upto June, 2004. There are other cases of Multiplex Cinemas also. The petition involves two main questions :- (1) the amount of availment offered by the Tourism department is very less, and (2) the calculation of availment by the Commissioner of Entertainment Tax is improper. Under Sec. 29 of the Gujarat Entertainment Tax Act, 1977, (for short 'Entertainment Act') any entertainment or any class of entertainment can be wholly or partly exempted from the payment of tax. Thus, tax exemption has been given and not a tax benefit. This mean that the tax exemption as in the present case would be tax free as per the grant of the State, meaning thereby, that no tax should be collected from the spectators. Thus, if the Multiplex collects their tax from the spectators and does not pass it on to the State Government, then it would amount not only acting against public interest, but also unjust enrichment and illegal extraction of money from

all concerned, *inter alia* the spectators. Since, this is the case pertaining to exemption as granted by the State, the question of any bifurcation under the head of anything, would be irrelevant and what would be relevant is that the Theatre can only charge ticket price per sale without any other taxation or duty component since there is no question of doing so.

32. Mr. Trivedi further contended that Sec. 3(1) of the Entertainment Act provides for levy and payment of tax to the State Government for every payment or admission to an entertainment. As per the Act, 45% tax is leviable for city/ town/places having population less than 1 lac and where the population exceeds 1 lac, the tax levy is 50%. Sub-section (4) of Sec. 3 of the Entertainment Act mandates that unless provided for in the Act, every ticket, pass etc. shall state therein the amount of payment for admission and the amount of tax payable Under Sec. 3. This being the statutory position and a requirement and the very fact that the Statute is not challenged in this petition, obviously, the components of price of tax have to be stated, but as in the present case, since exemption is granted as provided for under the Act, obviously it would constitute availment, and thus, there could not be any other interpretation. It is further contended that Sec. 29 of the Entertainment Tax Act specifically provides that the State Government may by notification in the Official Gazette exempts either wholly or partly, any entertainment or class of entertainment from payment of tax. Thus, by virtue of G.R. dated 20-12-1995 read with the notification dated 14-2-1997 issued by the State Government under Sec. 29 of the Entertainment Tax Act, Multiplexes are exempted from payment of entertainment tax for the amount permitted or the period specified, whichever is earlier. It is, therefore, contended that reading of Sec. 3 read with Sec. 29 of the Entertainment Tax Act makes it very clear that the owners of the Theatres can never charge what is permissible under the Act. If the tax amount is exempted by virtue of Notification, the owner shall neither be eligible to levy tax or collect or charge the tax amount once the exemption is claimed nor will they be able to provide for in a manner whereby any calculation or interpretation of availment is made in relation to any tax in view of the tax exemption claimed.

33. Mr. Trivedi further contended that if the contention of the Multiplex Theatre owners that Rs. 100/- is charged being payment for admission including the tax amount of Rs. 50/- is accepted as true, then it would definitely take the Multiplex Theatre owners outside the ambit of benefit of tax exemption because tax which is exempted, can never be collected, and consequently, avail in the terms of the incentive scheme of exemption. Thus, the amount of Rs. 100/- which is collected by the Theatre owners would only tantamount to purely admission charges of the ticket price which does not contain any component of any tax or due or cess or any other outgoing in the nature of taxation. It should not be so even in view of Sec. 3(4) of the Act read with Circular dated 5-12-2000. The Multiplex Theatre owners while claiming benefit of exemption cannot say that condition Nos. 1 and 2 of the notification have to be ignored to avail exemption benefit. It is compulsory for the Multiplex Theatre owners to follow within the four corners of the entertainment tax and Notification and

comply with the condition stipulated therein. Any breach of any condition or non-compliance of Statute, Notification and Circular would result into denial and/or termination of exemption granted. It is, therefore, contended that where the exemption is claimed under Government Resolution/notification/ Circular under the Entertainment Tax Act and where for example, Rs. 100/- is charged for admission, then it has to be taken as a payment by an individual to the proprietor/owners of the Multiplex Theatre as payment for admission excluding tax.

34. Mr. Trivedi further contended that the members of the petitioner-Association were given to understand the mode and manner which was also made known to the public. The petition is, therefore, not maintainable and the issue framed does not take the petitioner anywhere and the petitioner cannot take shelter of anything and unjustly enrich themselves etc. There cannot be any estoppel against law and it is also contended that there is no question of linking of the investment made to the mode and manner of enjoyment of exemption. So far as content of the exemption is concerned, it is not effected in any manner whatsoever and the State has not reduced or curtailed the content of exemption to be enjoyed. It is, therefore, contended that there is no violation of any right much less fundamental right of the petitioner, and hence, the petition deserves to be dismissed.

35. Mr. Trivedi further referred to the affidavit-in-reply filed on behalf of the respondent No. 4 raising preliminary objection as to the maintainability of the petition, inasmuch as the petitioner-Association alleged to be representing its various members to the petition, which is filed in a representative capacity for and on behalf of its members. Each of the members of the petitioner Association is owned either by a partnership or a Company and each one of them could have filed a substantive petition giving all the details. It is only in response to this objection, subsequently, separate petitions were filed by the members of the petitioner-Association.

36. Mr. Trivedi further contended that in the year 1995, Government of Gujarat in its Information, Broadcasting and Tourism department *vide* Resolution dated 20-12-1995 introduced the package scheme of incentives for Tourism projects 1995-2000 wherein Tourism has been accorded the status of an 'industry' with a view to making them all fiscal and non-fiscal incentives. One of the main objects of the new Tourism policy was to give push to the Tourism sector by attracting higher investment in the areas with Tourism potential and to generate employment opportunities. Thereafter, the State Government has issued two Resolutions dated 23-11-2000 and 5-12-2000. The policy underlying the Resolution dated 5-12-2000, subsequently lays down the eligibility criteria, categories of Tourism units, incentives available to the said units and the period of eligibility for the said incentives.

37. Clause 7 of the said Resolution provides for categories of Tourism units, wherein sub-clause (2) provides that units which have a fixed capital investment of more than 90 lacs would be in the category of large-scale tourism units and the period of eligibility and/or number of years of tax holidays would be

8 years. Clause 11 of the said Resolution contemplated the procedure for claiming incentives and the manner of temporary registration certificate by the Director of Tourism. It is further contended that Sec. 3 of the Act envisages the rate of tax which is to be levied on the payment for admission to the entertainment. There is 50% tax holiday for the city having population of more than 1 lac and 45% for the city having population less than 1 lac. All the entertainment units are charging Rs. 100/- towards payment for admission to entertainment only. An illustration is given under which payment of admission to entertainment is of Rs. 200, less 50% of tax as per Sec. 3(1), chargeable amount remains Rs. 100/-. It is, therefore, contended that if the payment for admission is Rs. 200/- less 50% of tax is deducted, the net chargeable amount comes to Rs. 100/- which is not collected by virtue of the provisions of the Act, Tourism policy 1995-2000 and Notification.

38. Mr. Trivedi, therefore, contended that the owners of the Multiplex can only charge what is permissible under the Act towards payment for admission to entertainment and if tax amount is exempted by virtue of the notification, the owner shall not be eligible to levy or collect or charge the tax amount. By exemption from payment of entertainment tax, the spectators directly get the benefit of tax exemption and likewise the owners of the entertainment unit get the benefit of more spectators because more people will be attracted towards the entertainment unit because of the tax exemption. It is further contended that under Sec. 29 of the Act, any entertainment or any class of entertainment can be wholly or partly exempted from the payment of tax. Thus, only tax exemption for a particular period has been given and the same cannot be termed or considered as tax benefit. This means that the tax exemption as in this case would be tax-free as per the grant of the State, meaning thereby, no tax should be collected from the spectators. If the entertainment units collect the tax from the spectators and does not pass it on the State, then it would amount not only acting against the public interest, but also unjust enrichment.

39. Mr. Trivedi further contended that if the contention of the petitioner-Association is accepted that Rs. 100/- is charged being the payment for admission including the tax amount of Rs. 50/- is true, then it would definitely take the Multiplex Theatre owners outside the ambit of the benefit of exemption for the reasons that once the tax exemption is given, the same cannot be charged and/or collected. What is lost sight of is that the exemption from the payment of entertainment tax is granted to the viewers and/or spectators and not to the entertainment units, since the said benefit is in the interest of public at large so as to see that more and more viewers are attracted, and thereby, the units are encouraged more.

40. Mr. Trivedi further contended that in view of the provisions of Sec. 3, entertainment tax is computed by treating the charge for payment of admission to an entertainment as gross or composite *i.e.* the amount received by the proprietors from the viewers both in respect of admission to the Cinema Theatre as also on account of entertainment tax and to such composite amount, the statutory percentage is applied to arrive at the amount of entertainment tax

payable. When tax is required to be computed though notionally, and debited against the amount of incentive available, the method of computation to be resorted to need not be different because even for computing notionally an amount of exemption availed of, entertainment duty will have to be calculated by treating payment for admission as notionally inclusive of the tax levied, so that after deduction therefrom of 50% of such amount towards entertainment tax, the proprietor is left with 100% which he charges for admission.

41. Mr. Trivedi further contended that if any entertainment unit is desirous of availing any benefit of the policy and notifications, then in that case, the entertainment units will have to fall in line with requirements provided in the said Policy and notifications. The entertainment units will have to strictly adhere to the conditions mentioned in the notification and once having accepted the terms and conditions of the said notification, for the purpose of availing of the tax exemption, they cannot now back out under the guise that what the entertainment units are charging towards entertainment tax cannot be recovered by the State Government. Any breach of any condition or non-compliance of any of the provisions of the Statute, Notifications and Circulars would result in termination of exemption granted. It is further contended that the petitioner Association cannot misread the conditions of the Resolutions to suit their convenience and unjustly enrich its alleged members under the guise of tax exemption. There cannot be any estoppel against law, and there is no question of linking of the investment made to the mode and manner of assessment and calculation of exemption. The members of the petitioner-Association are avoiding tax liability which they are even otherwise liable to pay since their units have already reached the limit of tax holiday.

42. Mr. Trivedi, therefore, contended that on proper interpretation of Clause 8 of the Policy 1995-2000, document read with the relevant provisions of the Scheme and the Act and also in light of the conditions set out in the exemption Notification *vide* Resolution dated 14-2-1997, the authorities below are required to notionally assess the entertainment tax which would have been otherwise payable in specie by the Multiplex Theatre owners on the ground of the value of the ticket which they might have received from the spectators as alleged or that the same amounts to an advance taken on such entertainment tax till the amount of eligible capital investment is set off or till the expiry of the fixed period, whichever is earlier, as alleged or otherwise.

43. An affidavit-in-rejoinder is filed on behalf of the petitioner-Association. Based on this rejoinder-affidavit and while giving reply to the submissions of Mr. Trivedi, Mr. Nanavati in rejoinder submitted that the Notification dated 20-12-1995 introducing ‘a New Package Scheme of Incentive for Tourism Project for the period between 1995-2000’ was issued by the State Government based on new Tourism policy wherein Tourism has been accorded the status of an ‘industry’. All the members of the petitioner-Association have established entertainment complexes within the State of Gujarat by investing crores of rupees based upon the aforesaid Tourism policy whereby the State Government has introduced a package Scheme of incentives for Tourism projects. Under the said

Notification, incentives in the form of tax holiday of 5 to 10 years is made available to the units in respect of the entertainment tax and other taxes leviable by the State Government upto 100% of the capital investment. The liability to pay entertainment duty is on the proprietor of the entertainment complexes. Incidence of tax is not on the cinegoers. The purchaser of the ticket, is therefore, not paying the entertainment duty inasmuch as the liability to pay the entertainment tax under the Act is on the proprietor. In light of these facts, it is contended that the impugned Circulars dated 23-11-2000 and 5-12-2000 issued subsequent to the notification declaring new package Scheme of incentives are absolutely illegal. It is further contended that the entertainment complexes which have been put up pursuant to the said Scheme is entitled to a complete tax holiday for a period of 5 to 10 years and the said incentives are available to the entertainment complexes under the Tourism policy. The object behind the said incentive policy is to encourage investments in the Tourism Sector. As a matter of fact, the Preamble of the Scheme itself declares that the objective of the Scheme is to give a boost to Tourism Sector by attracting higher investments in the areas with Tourism potential. Furthermore, the quantum of exemption is linked to the investment made which also indicates the object of the policy which is to benefit the investor. The impugned Circular proceeds on the incorrect assumption that the tax exemptions should go directly to the spectators. The impugned Circulars, are therefore, illegal and *ultra vires* since it runs against the object of the policy, and therefore, deserves to be quashed and set aside. It is further contended that even otherwise the controversy in the present petition is limited to the interpretation of Sec. 3(a) which *inter alia* provides for tax for admission to an entertainment complex. The said Section has been interpreted to mean that the liability to take entertainment duty is that of the proprietor which would mean that whatever amount the proprietor collects by way of admission will have to be treated as per the rate mentioned in Sec. 3 of the Act. In the present case, however, the amount so calculated is to be notionally deducted from the available incentive. It is the contention of the respondent-authorities that the proprietor of the entertainment complex is recovering tax from the spectators in spite of the fact that there is an exemption from payment of tax, and therefore, the proprietor is liable to pay tax inasmuch as, according to the respondent-authorities, the exemption from the payment of entertainment tax is available to the viewers and/or spectators and not to the entertainment units. This argument is not in consonance with the basic policy of the State Government whereby benefit of the incentive is granted to the proprietor and not to the spectators and is *de hors* the provisions of the Act inasmuch as the liability to pay tax is on the proprietor, whether he recovers it from the spectators or not. It is, therefore, contended that the impugned Circulars issued subsequent to the policy are illegal and deserve to be quashed and set aside.

44. Mr. Nanavati further contended that the formula upon which the State Government is trying to notionally deduct the tax from the incentive available to the members of the petitioner-Association is illegal and would amount to denying the benefit which is otherwise available under the Scheme. An exemption Notification has to be construed in the light of the contents thereof. The only

condition attached to get the incentive of the tax holiday was to put up a Tourism project (entertainment complex) in the area defined under the policy by investing an amount as specified in the said notification. Based upon the aforesaid policy and relying upon the unequivocal and publicly declared promise of granting incentives as held out by the respondents, the members of the petitioner-Association have put up entertainment complex in the different parts of the State by investing crores of rupees.

45. Mr. Nanavati further contended that the new package scheme for incentives for Tourism 1995-2000, *inter alia,* provides for incentives upon satisfying the conditions enumerated in sub-clauses (a), (b) and (c) of Clause 3 of the said Notification. It is not in dispute that all the said conditions have been complied with by the members of the petitioner Association and have invested crores of rupees upon the said declared policy. None of the conditions of the said Scheme dated 20-12-1995 have been breached by the members of the petitioner-Association. It is, therefore, not open for the respondent-authorities to deny the benefit of the Scheme by relying upon the Circulars issued subsequent to the declared policy. When a concession of a benefit or an exemption in the nature of tax holiday is granted on fulfilment of certain conditions and such conditions are fulfilled by the party, to whom such benefit or concession or exemption is given, such person cannot be denied such benefit or concession or exemption merely on the basis of Circulars issued subsequent to the said policy. The respondent-authorities are trying to wriggle out from the promises made to the investment based upon which crores of rupees are invested by the members of the petitioner-Association. The impugned Circulars cannot overreach the basic object and spirit of the Scheme. The objective of the Scheme as stated above is to provide tax holiday for a period of 5 to 10 years depending upon the type of unit. The internal instructions in the form of the impugned Circulars which has the effect of taking away the benefit granted by the policy, are therefore, illegal and deserves to be quashed and set aside.

46. Mr. Nanavati further contended that Sec. 3 of the Act provides for the rate of tax to be calculated on the admission price which is defined under Sec. 2(g) of the Act. It includes all payment required to be made by a visitor as a condition for enabling him to attend or continue to attend the entertainment. Therefore, the tax is payable on the gross collection *i.e.* the price of the ticket + tax and not on the net collection *i.e.* the price of the ticket *simpliciter*. Furthermore, the liability to pay entertainment duty under Sec. 3 is that of the proprietor. In view of this, if the proprietor is charging Rs. 100/- for a ticket, he will be liable to pay Rs. 50/- by way of tax @ 50% of tax as stipulated under Sec. 3 of the Act read with Sec. 2(g). The respondent-authorities, are however, collecting Rs. 100/- by relying on the impugned Circulars wherein it is stated that the benefit of tax exemption is for the viewers. The said action of the respondent-authorities is *de hors* the declared policy and the provisions of the Act.

47. Mr. Nanavati further contended that Rule 3(1) which *inter alia* provides for manner and condition of issuing a ticket in Form 1 of the Gujarat Entertainment Tax Rules, 1979 is unreasonable, arbitrary and discriminatory.

The said Rule requires the proprietor to issue a ticket for admission to an entertainment in Form 1 which, *inter alia*, mandates even a proprietor who is enjoying a tax holiday, to mention various details on the ticket including the details of the tax paid, which are not applicable. It is, therefore, contended that the Rules and the Form are *ultra vires* of the Act.

48. Further affidavit was filed on behalf of the respondent No. 4 on 22-9-2008. Based on this affidavit, Mr. Trivedi submitted that as per sub-sec. (4) of Sec. 3 of the Act, it is incumbent on the part of the owner of the Multiplex unit to see that every ticket, pass or other document which is issued for admission to an entertainment in his Multiplex unit, shall state therein (i) the amount of payment for admission to such entertainment, and (ii) the amount of tax payable on such payment for admission. There are no other provisions under the said Act relieving the owner of the Multiplex unit from the said obligation. In the normal circumstances, any viewer in order to be admitted to entertainment in any Multiplex unit, purchases a ticket, which may be issued to him on payment of the admission charges + entertainment tax + surcharge, if any. Out of the amount so collected, a portion thereof representing the admission charges is retained by the owner, whereas the remaining amount collected by way of entertainment tax, has to be paid over to the State Government by the Multiplex unit. Thus, for all practical purposes, the entertainment tax is just like excise/ customs duty payment which is in the nature of indirect taxation inasmuch as the burden thereof is taken care of by the viewer and not by the Multiplex unit owner. If the Multiplex unit wants to charge Rs. 120/- as admission charges, he will also charge equal amount *i.e.* Rs. 120/- by way of entertainment tax, so that out of the sum total thereof, *i.e.* Rs. 240/-, he can pass on 50% entertainment tax *i.e.* Rs. 120/- to the State Government and the remaining amount may remain with him. In other words, when the rate of tax is 50% of gross amount, equal amount of Rs. 120/- has got to be notionally added to the basic net ticket rate of Rs. 120/- and it is that notional tax component of Rs. 120/- which would qualify for benefit and would be liable to be adjusted in terms of the notifications and Government Resolutions in question. Mr. Trivedi submitted that in the present case, admittedly, the parties, who are eligible for the incentive benefits of the policy in question, were exempt from payment of entertainment tax by virtue of the Notification issued in that behalf under Sec. 29 of the Act, meaning thereby, such parties were not supposed to be paying any entertainment tax to the Government, and resultantly, not supposed to be recovering any entertainment tax from the viewers. When tax is required to be computed notionally and debited against the amount of incentive available, the method of computation to be resorted to, need not be different because even for notionally computing the amount of exemption availed of, entertainment tax will have to be notionally calculated as equal to the amount of admission charges, so that after deduction therefrom of 50% of such amount towards entertainment tax, the proprietor is left with the charges for admission.

49. Mr. Trivedi highlighted this aspect by producing copies of the tickets in case of (i) Multiplex unit of one of the members of the petitioner, and

(ii) ordinary cinema Theatre, side by side. While comparing the rates mentioned in the said two tickets, as per his submissions, it becomes very clear that in case of ordinary cinema Theatre where exemption from entertainment tax is not available, the following was the position at the material time as regards the charges :

Admission Rate :	Rs. 14-50
Entertainment Tax :	Rs. 14-50
Surcharge :	Re. 1-00
Total	Rs. 30-00

50. These rates make it very clear that the ordinary cinema theatre owner who is not exempted from payment of entertainment tax, for carrying to admission charges of Rs. 14-50 per ticket for himself, is to charge 50% entertainment tax *i.e.* of equal amount of Rs. 14-50. In other words, if exemption from entertainment tax is made applicable to him, then in that case, he would not have recovered the said amount of entertainment tax of Rs. 14-50 from the viewers.

51. Mr. Trivedi submitted that if this analogy is applied in case of Multiplex units, from the ticket, the following position appears as regards the charges being recovered from the viewers where there is exemption from payment of entertainment tax :

Admission Rate :-	Rs. 120-00
Entertainment Tax :-	Rs. 00-00
Surcharge :-	Rs. 00-00
Total	Rs. 120-00

This information suggests that a Multiplex unit is not recovering any amount by way of entertainment tax and carries for himself only net rate of Rs. 120/- towards admission charges. If the exemption from entertainment tax had not been made available to him, he would have charged another Rs. 120/- to the viewers by way of entertainment tax so that it becomes 50% of the total amount of Rs. 240/-, and therefore, when such a Multiplex unit is operating under incentive Scheme in question, it is required to adjust an amount of Rs. 120/- per ticket against its accumulated eligible capital investment. It does not lie in the mouth of the petitioner to say that one should count 50% of Rs. 120/- *i.e.* Rs. 60/- for adjusting the same against the said eligible capital investment.

This was also explained to the Court by production of a copy of Form No. 3 *i.e.* return filed by the said members of the petitioner-Association under the provisions of the Act for the period from 1-4-2005 to 7-4-2005 to the Prescribed Officer and Mamlatdar in respect of various details including the amount of admission charges recovered (as shown in Column No. 4 thereof) and the amount of tax liable to be paid, but adjusted the cost of exemption (as shown in Column No. 5). A mere perusal of the details mentioned in Column Nos. 4 and 5 clearly suggests that even the petitioner had notionally computed

and adjusted that tax liability against the eligible capital investment exactly in same fashion in which it has been discussed. It is, therefore, contended that press note dated 20-10-1999 or a Circular dated 5-12-2000 which are already on record of this writ petition, are nothing but a reiteration of the policy of the State Government in respect of notional calculation of tax liability in case of those Multiplex units which are exempted from payment of entertainment tax.

A copy of the eligibility certificate dated 19-6-2000 granting exemption from entertainment tax in Gujarati film called '*Saacho Sathvaro Sajan No*' along with the copy of the statutory Form No. 17 dated 25-6-2000 are produced before the Court wherein details mentioned in Columns relating to gross receipt and amount of tax payable to Government are mentioned which clearly suggests that the mode of adjusting amount of tax is the same, more particularly, when there is an exemption from payment of entertainment tax.

52. Mr. Trivedi further contended that the stand of the petitioner-Association for counting 50% of the admission charges of Rs. 120/- which comes to Rs. 60/- per ticket to be adjusted against the accumulated eligible capital investment cannot be accepted as in that case, the petitioner would go on enjoying the benefit of exemption of entertainment tax for a very long period, which will not only be against the consistent practice and legal provisions, but also against the public interest whereby public exchequer of the State will be adversely affected, and hence, such a situation may not be countenanced by this Court. Thus, even while assuming without admitting that the members of the petitioner are entitled to incentive benefits of exemption of entertainment tax, then in that case also, the notional calculation of the tax liability and the adjustment thereof against the eligible capital investment are required to be effected as per the past practice and the provisions of law, as notified by the State Government from time to time.

53. An affidavit-in-rejoinder of the petitioner Association to the further affidavit filed on behalf of the respondent No. 4 is filed on 23-9-2008. Based on this affidavit, Mr. Nanavati submitted that Sec. 3 of the Bombay Entertainment Duty Act, 1923 which is *pari materia* with Sec. 3 of the Entertainment Tax Act has been interpreted by the Hon'ble Supreme Court in the case of *Liberty Talkies*, reported in 1971 (1) SCC 471. In that case, the Hon'ble Supreme Court has held that the liability for payment of duty under the Act is imposed upon the proprietor and not upon the visitors to the theatre. The proprietor does not act as agent of the Government for the collection of the duty. The entertainment duty is a payment which the proprietor is required to make as a condition for enabling visitors to attend or continue to attend the entertainment. The plain reading of Sec. 3 sub-sec. (1), which is a charging Section of the Gujarat Entertainment Tax Act would make it clear that the tax is to be levied and paid to the State Government on every payment for admission to an entertainment. Payment of admission has been defined under Sec. 2(g)(ii) of the Act to mean any payment made by a person for seat or other accommodation in a place of entertainment.

54. In view of this provision, Mr. Nanavati submitted that the tax is to be paid on every payment for admission to an entertainment. In the case of all the members of the petitioner Association, the payment of admission charge, is therefore, to be reckoned as the receipt upon which the tax is to be calculated. For example, if a multiplex Theatre owner is charging Rs. 100/- by way of admission charge and is showing Re. 0/- towards entertainment tax, the amount for the purposes of calculating tax, in terms of the charging Section would be Rs. 100/- only. The interpretation which is sought to be canvassed by the State Government by notionally computing the ticket price and the tax has no legal basis. Sec. 3 of the Entertainment Tax Act and other provisions provide that there shall be levied and paid to the State Government on every payment for admission to an entertainment, a tax at the rate of 50% or 45% (for the year 2005-2006). In view of this, if the owner of the Multiplex is jointly collecting admission charges and entertainment tax of Rs. 100/- from a person, who is coming for entertainment, then in absence of any exemption in his favour, he would be required to charge Rs. 50/- as tax on the admission fee of Rs. 50/-, to make the cost of ticket Rs. 100/-. It would be incorrect to say that because the owner of the Multiplex theatre is not charging any entertainment tax, but is charging Rs. 100/- as the admission fees, he is pocketing Rs. 100/- and as such, he will have to pay Rs. 100/- as tax on the admission fee of Rs. 100/-. The contention raised by the State Government that when the rate of tax is 50% of the gross amount, equal amount of Rs. 100/- has got to be notionally added on the basic net ticket rate of Rs. 100/- is *de hors* the provisions of the Act and has, therefore, no legal basis.

55. Mr. Nanavati further contended that the entire argument of the State Government appears to be on the basis that the benefit of the exemption from payment of entertainment tax is to go to the viewer and not to the Multiplex owner. This is also contrary to the provisions of the Act and the incentive policy, and therefore, not tenable at law. The incentive policy was declared by the State Government with a view to make available all fiscal and non-fiscal benefits, reliefs and concessions available to industries. Based on the tourism policy and in order to give boost to Tourism Sector by attracting higher investment areas with tourism potential and to generate employment opportunities, the State Government had introduced the 'new package Scheme of incentive for Tourism Projects'. Clause 8 of the policy envisages a tax holiday ranging from 5 to 10 years upto 100% capital investment. The entire policy envisages benefit of tax exemption going to the investor. As a matter of fact, even as per the provisions of the Act, since the tax is the payment, which the proprietor is required to make as a condition for enabling viewers to attend or continue to attend the entertainment, the exemption from payment of tax would necessarily be available to the owner of Multiplex.

56. Mr. Nanavati further contended that the exemption notification *i.e.* the policy of the State Government is clear and unambiguous. The policy envisages grant of benefit to an investor. The provisions of the Act make it clear that the payment of entertainment tax is on the entrepreneur. The impugned Circulars are

contrary to the provisions of the exemption Notification and are travelling beyond and counter to the exemption, thereby restricting the scope of exemption. This is not permissible under the law. The exemption Notification clearly envisages grant of benefit to the investor *i.e.* the Multiplex owner and the impugned Circulars dated 23-11-2000 and 5/7-12-2000 purportedly issued for clarifying the exemption notification, are illegal and contrary to the exemption notification inasmuch as it retrospectively restricts the scope of the exemption notification. In a similar situation, the Hon'ble Supreme Court in the case of *State of Madhya Pradesh & Ors. v. G. S. Dall and Flour Mills*, reported in 1992 (Supp.) (1) SCC 150 has held that executive instructions/Circulars cannot go against the statutory provision so as to whittle down the effect of such provision.

57. Mr. Nanavati further contended that even on merits, the impugned Circulars deserve to be quashed and set aside. Form 17 which is the form of register of tickets not being complementary tickets, issued when tax is payable under Sec. 3 of the Act, clearly stipulates mention of price of ticket including entertainment tax under Column 2, which also goes to show that the entertainment tax is payable on the gross receipt and there is no question of notionally calculating the tax. The returns submitted by few members of Multiplex Association would show that they have been showing the price of the ticket inclusive of tax and seeking exemption on the basis of the rate applicable by calculating tax on the receipt. Since beginning, the members of the Association have been filing monthly returns on the basis of tax calculated on the receipt made and the respondent-authorities have been accepting the same without any objection. In the case of M/s. Inox Multiplex, the Mamlatdar, Vadodara has passed an assessment order by calculating tax on the total receipt *i.e.* for example for the period between 19-9-2003 and 25-9-2003, the gross collection is Rs. 10,30,746/-. The Mamlatdar has assessed Rs. 5,15,373/- as net tax payable at the rate of 50%. M/s. Inox Entertainment Limited, Vadodara was issued an *ad hoc* eligibility certificate for an amount of Rs. 554.45 lacs. For the purposes of calculating the amount of tax till the limit of Rs. 554.45 lacs, the Mamlatdar has considered 100% of the gross collection *i.e.* on gross collection of Rs. 4,32,268/-, the Mamlatdar has assessed a tax on Rs. 4,32,268/-.

58. Mr. Nanavati further contended that even according to the authorities of the State Government, once a unit exhausts its limit, the tax is calculated on the gross receipt *i.e.* if a unit who has exhausted its limit, is charging Rs. 100/- as entrance fee, and if the rate of tax is 50%, the authorities are assessing only Rs. 50/- as entertainment tax. Moreover, insofar as the Multiplex Theatres which are admittedly not enjoying any benefit of the exemption notification, are also charging Rs. 100/- and the tax assessed and paid is only on the gross receipt *i.e.* if the tax rate is 20%, the tax assessed on Rs. 100/- is Rs. 20/- *i.e.* net Rs. 80/-, entertainment tax Rs. 20/- admission Rs. 100/-. Moreover, factually also, on an average ticket price of Rs. 60/- (*i.e.* Rs. 40 - 60 - 80, total Rs. 180/- divided by 3 = Rs. 60), total average expenses per ticket comes to Rs. 75/- insofar as one of the members *i.e.* Devi Multiplex is concerned. Similarly, in so far as one another member, M/s. Wide Angle Multiplex is

concerned, on an average ticket price of Rs. 108/-, the said member is required to spend an amount of Rs. 105/- per ticket. If the argument canvassed by the State is accepted, then a Multiplex owner all of whom are working on the similar pattern will necessarily have to pay an equal amount out of their pocket or an equal amount would be adjusted from their available limit, which means that the exemption granted would be reduced by 50% or by such percent depending upon the rate of tax.

59. *An addendum* to the propositions dated 22-9-2008 of the State was filed on 26-9-2008. Based on this, Mr. Trivedi submitted that the Government Resolutions dated 20-12-1995 and 28-6-2000 had never envisaged as to how would the quantum of exemption from entertainment tax would be adjusted (*i.e.* notionally or otherwise) against the eligible capital investment. In that view of the matter, the argument of the petitioners to the effect that having provided for the quantum of benefits in the said resolutions, it was not permissible to the Government to reduce the said quantum by way of communication dated 23-11-2000 and Circular dated 5-12-2000, pales into insignificance, inasmuch as, what came to be provided by the said two documents is nothing but a clarification and/or reiteration of the existing policy and/or practice of notionally counting the quantum of the amount of exemption from entertainment tax (*i.e.* 50% of gross amount) for adjusting the same against the eligible capital investment, which was in vogue right from 1977 when the Gujarat Entertainments Tax Act, 1977 came to be enacted replacing the Bombay Entertainments Duty and Advertisements Tax Act, 1923. The aforesaid aspect is very much discernible from the further affidavit of the State filed in the present petition as well as from the petitioner's rejoinder. Thus, it is factually incorrect to contend that the aforesaid clarification has cut down the scope of earlier resolutions. It is, therefore, contended that there is no question of applying various judgments such as the judgment reported in *2008 (2) SCC 777* relating to invocation of doctrine of promissory estoppel in cases where the Government had announced a particular quantum of benefit for specific period and before expiry of the said specific period, the quantum of benefit is reduced. The present case is not the case where any quantum of benefit is reduced or the calculation thereof is changed.

60. Mr. Trivedi further contended that the provisions contained in Sec. 2(g) read with Sec. 3(4) of the Gujarat Entertainment Tax Act, 1977 were never there in the Bombay Entertainment Duty and Advertisements Tax Act, 1923. Hence, the said judgment relating to the provisions of the later enactment cannot be pressed in service.

61. Mr. Trivedi further contended that with effect from 1-10-2005, there took place amendment in Sec. 2(g) dealing with the aspect relating to 'payment for admission' wherein instead of the words 'payment involving tax' came to be changed to read as 'payment without tax'. In view of this, the earlier method of notionally considering the amount of admission charges as equivalent to tax for the purpose of adjustment thereof against the eligible capital investment, came to be changed. In view of this, *w.e.f.* 1-10-2005, the practice being followed is counting the rate of 50% of the net amount mentioned in the ticket, which

percentage came to be further reduced to 25% with effect from 1-4-2006. In other words, prior to 1-10-2005, there was notional calculation of tax component for adjusting the same against the eligible capital investment (*i.e.* 45% or 50% of the gross amount mentioned in the ticket) which came to be given a go-bye with effect from 1-10-2005, introducing the method of counting fixed percentage of net amount mentioned in the ticket. In this view of the matter, it is contended that the petitions deserve to be dismissed with a direction to all the petitioners to forthwith make the payment of requisite amount of entertainment tax.

62. Having heard the learned Counsels appearing for the parties and having considered their submissions in light of the materials available on record and decided case-law on the subject, what is emerged to the Court is that on 20-12-1995, Government of Gujarat issued a Scheme of incentives for tourism projects giving tourism a status of industry and extending various fiscal and non-fiscal incentives with a view to "attracting higher investment in the areas with tourism potential and to generate employment opportunities". Annexure A to the Scheme enlist about 100 types business projects as tourism projects. Entertainment projects which include Multiplex cinema complex is one of the tourism projects covered by the Scheme. Some of the members of the petitioner Association applied for these incentives under the Scheme and have been found to be eligible and are granted benefit of the incentive Scheme. Clause 8 of the Scheme declares that "tax holiday of 5 to 10 years" will be available in respect of various taxes including "exemption from entertainment tax upto 100% of capital investment". The said clause provides that the assessee *viz.* the proprietor of an entertainment complex is exempted from paying the tax, payable by him under the Act, till tax is 100% set off against the 100% value of the eligible capital investment made by the proprietor. The question which has arisen in the present petition is how the amount of "tax" should be determined for set off against the available tax incentives *i.e.* 100% of the eligible capital investments. The issue has arisen in context of the legal provision of the Gujarat Entertainment Tax Act. Section 3 of the Act is held to be a charging Section. It is held that liability for payment of duty is imposed upon the proprietor and not upon the visitors of the Theatre. The proprietor does not act as an agent of the Government for collection of duty. The entertainment duty is a payment which the proprietor is required to make as a condition for enabling visitors to attend or continue to attend the entertainment.

Section 3 which levies tax provides for levy on "gross" payment received from consumer as is clear from the words of Sec. 3 and also as interpreted in *Liberty Talkies*, 1971 (1) SCC 471.

The assessable value for determination of the tax liability is the payment received, irrespective of the break-up of this amount, charged for admission to entertainment and tax payable thereon.

The entertainment tax being a taxing measure, and Sec. 3 being a charging Section, it has to be strictly construed, and therefore, liability to pay tax cannot be enlarged beyond what is provided in the Act.

The Multiplex cinemas in the ticket issued show that nothing is received in the name of or on account of entertainment tax from the viewers. Therefore, in case of Multiplex cinemas, the amount would be taxed under Sec. 3. In the tickets issued, payment of admission is shown as admission to entertainment, tax is shown as "0", service charges shown as "0" and total amount recoverable by and payable to the proprietor is Rs. 100/-. Tax liability has to be, therefore, calculated on this amount *i.e.* Rs. 100/- which would be at 50% payment for admission received from the viewers.

Under the incentive, there is no special method of calculation of the tax liability prescribed as a condition of exemption for the purpose of setting off such tax liability against the incentive limit. This method is prescribed for the first time by the impugned Circulars in November/December, 2000.

63. The contention raised on behalf of the State Government is on an assumption that payment for admission to entertainment would be Rs. 240/-. On that, the notional liability of tax at 50% is determined at Rs. 120/-. However, when the payment for admission is Rs. 120/-, tax liability at the rate of 50% of the payment would be Rs. 60/- as net Rs. 120/- is received. Thus, there is no question of a notional payment for admission, notional addition of tax payable thereon, notional gross payment by adding it to a notional tax liability and then calculating the tax liability if set off against incentive limit that would be violative to the charging Section contained in Sec. 3 and basis of the incentive Scheme.

64. The two impugned Circulars, therefore, cannot be read to provide for a method of calculating tax liability which is inconsistent with Sec. 3. If it is an improvement over the original Scheme that is not permissible and would be hit by the principles of promissory estoppel laid down by the Hon'ble Supreme Court in *2008 (2) SCC 777* and *1992 (Supp.) (1) SCC 150*. The proprietors of entertainment have made investments acting on the terms of the notification and calculating the benefit available to them in terms of Sec. 3 of the Act. On the principles of promissory estoppel, the Government is estopped from changing the basis of calculation of tax liability for calculating set off against amount of incentive available. It would also amount to breach of public faith.

65. The contention of the State that the benefit of exemption is intended to be passed on to the consumer though appears to be sound, does not fit in the context of the exemption notification. It is well settled that unless the exemption notification contains such specific condition, such condition cannot be implied.

66. The tickets which are issued by the proprietors are approved by the authority. When ticket issued as approved by the authorities show that tax element is "0", it necessarily means that the authorities are satisfied that nothing is being recovered as and by way of tax from spectators. There is, therefore, no scope for assumption that any amount is received by way of tax from the spectators. Such an exercise is not permissible. Addition of notional tax and ascertainment of notional gross amount for incentive of tax is not contemplated by exemption notification or by provisions of the Act. What needs to be noted is that

(i) there is no statutorily fixed price for entertainment, and therefore, the question of deducting a component of tax from such statutorily fixed standard rate of admission which would show that the benefit is passed on to the viewers does not arise (ii) All the Multiplex cinemas have gone into commercial operation only after the incentive scheme was declared and claiming benefit of the incentives. Therefore, there is no benchmark of earlier price for granting admission to entertainment available for comparison with which it could be shown that benefit of exemption is not retained and is passed on to the viewers by reducing the rate of admission, (iii) the right for admission entirely depends on what price the buyer or spectator is prepared to offer for seeking admission to the entertainment and the market forces. In absence of such a yardstick when the proprietor declares that nothing is received as entertainment tax, that is sufficient with the condition of exemption notification. The Circulars which mandate the petitioner to take notional price inclusive of notional tax liability as an assessable value and to calculate tax liability for the purpose of set off, is illegal, contrary to the provisions of the Act and the exemption notification and is hit by the principles of promissory estoppel. The petitioner-Association, therefore, succeeds to this extent.

67. This takes us to the second important issue raised in this group of petitions. In Special Civil Application No. 18692 of 2005 and other allied matters *i.e.* Special Civil Application Nos. 18689 to 18691, 18693 to 18699 and 18776 & 14394 all of 2005, the petitioners have challenged common order dated 20-7-2005 passed by the Commissioner of Tourism refusing to grant extension of time under Clause 10 of the "New Package Scheme of Incentives for Tourism Projects, 1995-2000". The said decision was challenged on the ground of non-application of mind and that it takes into account extraneous facts not relevant for the purpose of considering the application of extension made by the petitioners and the same decision is conjectural and not based on established facts.

68. Mr. Nanavati for the petitioners submitted that the Commissioner of Tourism, without considering the provisions of the Scheme, has passed a common order dated 27-2-2005 which is unduly delayed. The request for extension of time made by the petitioners on the ground of delay in completion of the project (i) due to earthquake that took place in the State on 26-1-2001, and (ii) large-scale communal riots which took place in the State from 28-2-2002, has been rejected by the Commissioner of Tourism by a common order dated 27-2-2005 passed pursuant to the directions issued by this Court in Special Civil Application No. 5574 of 2004, which was filed by the petitioners through its Association. The reasons for rejecting the application for extension of time as set out in the common order dated 27-2-2005 are (i) sufficient time/extension has already been given for starting commercial activities of the project, (ii) further extension of time-limit would lead to undue burden on the State's exchequer, and (iii) multiplicity of multiplexes beyond the requirement in the State.

69. Mr. Nanavati further submitted that while rejecting the request for extension of time made by the petitioners under Clause 10 of the said Scheme, the facts of individual cases justifying extension have not at all been considered

and all the applications for extension of time have been rejected by the Commissioner of Tourism by taking into account extraneous factors not relevant for the purpose.

70. Mr. Nanavati further submitted that the ground that sufficient time extension has already been given is factually incorrect since in none of the 13 cases, except 2, *i.e.* Devi Multiplex and City Pulse Fun World Pvt. Ltd., extension of time beyond the initial period of Temporary Registration Certificate (T.R.C. for short) is given. In any event, the competent authority for grant of extension of time under the said Scheme is admittedly State Level Committee which after examining individual cases and after considering the fact that there was a justifiable reason in completing the projects, due to earthquake and communal riots, recommended extension of time in its meetings held on 4-4-2002, 21-9-2002 and 19-2-2003. As a matter of fact, in its meeting held on 19-2-2003, the State Level Committee recorded that in the matter of considering extension of validity period to pipeline cases, Principal Secretary, Industries & Mines Department informed the Committee that the Government is in process of taking decision on relaxing last date of completing the project, which was set as 31-7-2002 vide G.R. dated 28-6-2000, for pipeline cases.

71. Mr. Nanavati further submitted that the ground that further extension of time would lead to undue burden on the exchequer is also misconceived and unjustified, more particularly when admittedly, no extension of time is given to 11 multiplexes. In any event, once having granted the T.R.C., it is not open to the authorities to reject the extension application on such a ground. Even factually, far fewer multiplexes than envisaged under the resolution have been set up, and therefore also, there is no question of extension of time-limit leading to a burden on the exchequer. At the relevant time around 108 T.R.Cs. were issued out of which only 22 Multiplexes have started commercial operations. This fact is not controverted by the State Government.

72. Similarly, the ground that Multiplexes beyond the requirement in the State have been set up is vague and not substantiated by any facts. In any event, the said ground is inconsequential and irrelevant for grant of extension.

73. The State Government in its reply has tried to justify the said rejection of extension application by contending that the Resolution dated 28-6-2000 expressly provides for time-limit in sub-clauses of (3) and (4) of Clause (B) with a categorical rider to the effect that no further extension or relaxation will be available to pipeline units and that the pipeline units failing to complete the projects within the prescribed time-limit (31-7-2002) shall not be eligible for any incentives, *ad hoc* or final, as per the Policy of 1995-2000".

74. Mr. Nanavati submitted 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. The Commissioner of Tourism, while rejecting the application for extension of time, did not refer to the said Resolution dated 28-6-2000 and has not rejected the applications for extension of time, on the said ground. It is, therefore, not

open for the State Government to justify its decision on the ground not mentioned in the impugned order.

75. Mr. Nanavati further submitted that even otherwise, the impugned decision dated 20-7-2005 is unduly delayed and it would be unjust and inequitable to enforce against the petitioners. The petitioners continue to make representations/ applications to the authorities for extension of time to complete the projects, mainly delayed due to the earthquake which took place in the State of Gujarat on 26-1-2001 and communal riots took place on 28-2-2002. The said applications/ representations were not rejected and as a matter of fact, were stated to be under consideration. All the petitioners, therefore, continued to make substantial investments in anticipation of the grant of extension and completed their projects and commenced commercial operations. This is relevant more particularly in view of the fact that the State Level Committee, which is the competent authority under the said Scheme in its meetings held on 4-4-2002, 21-9-2002 and 19-2-2003, in terms recommended extension of time after considering the physical progress of individual projects and considering the fact that the delay occurred due to earthquake and communal riots. Since, the said recommendations were made admittedly, after 28-6-2000, the competent authority *i.e.* S.L.C. was aware about the same despite which it recommended extension of time. This clearly establishes the fact that the time for completing the project is extendable under Clause 10 of the Scheme. As a matter of fact, in the cases of Devi Multiplex and City Pulse Fun World Pvt. Ltd., the S.L.C. has actually extended time for six months under Clause 10 of the said Scheme. Mr. Nanavati further submitted that the decision dated 20-7-2005 is hit by the principles of promissory estoppel. For this purpose, he relied on the decisions of (1) *U.P. Power Corporation Ltd. v. Sant Steels & Alloys (P) Ltd.*, 2008 (2) SCC 777, (2) *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & Ors.*, 2007 (5) SCC 447 and (3) *State of Punjab v. Nestle India Ltd.*, 2004 (6) SCC 465.

76. Mr. Nanavati further submitted that the petitioners are entitled to the extension of time and the benefits flowing from the said Scheme. Only upon relying on the promises held out by the State Government to give incentives, the petitioners have invested crores of rupees for the projects. It was only due to the unforeseen circumstances like earthquake that took place on 26-1-2001 in the State of Gujarat and communal riots that took place on 28-2-2002, beyond the control of the petitioners that the projects could not be completed within the time stipulated. Assuming that there is a built-in time schedule within which commercial activities have to start, the State Government, in any event, has power to extend such time-limit. Such powers should be exercised because the delay is due to the act of God or reasons beyond the control of the petitioners. The State Government had issued a Circular dated 27-3-2001 to the effect that all construction activities would be subject to the regulation that would be framed. The said regulations in terms of the said Circular were framed and issued only on 18-5-2002 and the building plans were thereafter, sanctioned after almost 3 to 4 months. In between, there were large-scale communal riots on 28-2-2002. There are units which are right in the epicenter of earthquake that is

Gandhidham and right in the most affected riot areas *i.e.* Naroda. The project of the petitioners and other similarly situated projects, are therefore, entitled to exclusion of the said period. For this purpose, Mr. Nanavati relied on the decisions of (1) *Industrial Finance Corporation of India Ltd. v. Cannanore Spinning & Weaving Mills Ltd. & Ors.*, 2002 (5) SCC 54, (2) *Hitech Electrothermics & Hydropower Ltd. v. State of Kerala & Ors.*, 2003 (3) SCC 716, (3) *Mohammed Gazi v. State of M.P. & Ors.*, 2000 (4) SCC 342, (4) *Bareilly Development Authority v. Methodist Church of India,* 1988 (Supp.) SCC 342, (5) *Rajkumar Dey & Ors. v. Tarapada Dey & Ors.*, 1987 (4) SCC 398, (6) Spl.C.A. No. 24233 of 2007 - *Essar Oil Ltd. v. State of Gujarat & Ors.*, decided on 22-4-2008, (7) *Express Hotels v. State of Gujarat & Ors.*, Special Civil Application No. 4977 of 2006 decided on 18-10-2007 and (8) *Rolcom Engg. Co. Ltd. v. State of Gujarat & Ors.*, Special Civil Application No. 2033 of 2004 decided on 2-3-2006.

77. Mr. Nanavati further contended that out of the 13 purported pipeline cases, according to the petitioners, 9 Multiplexes do not fall into the category of pipeline cases, and therefore, the time schedule stipulated in the Circular dated 28-6-2000 is not applicable to them. The Government had in mind two kinds of cases (i) cases where temporary registration certificates have been issued, and (ii) cases where temporary registration certificates that will be issued. Clause (B) applies only to units to whom T.R.Cs. have already been issued before 28-6-2000. Sub-clause (2) of Clause (B) defines pipeline cases to be in units to whom T.R.C. has been issued and have not commenced commercial activities on or before 31-7-2000. Sub-clause 6 also applies to units to whom T.R.Cs. have been issued on or before 28-6-2000. The Government, has therefore, used the word "the validity period of the T.R.C. issued." If it was contemplated to include even those units, for whom T.R.Cs. were to be issued, the words used would have been T.R.Cs. issued and T.R.Cs. that may be issued hereafter. Omission of T.R.Cs. that may be issued hereafter would clearly show that as on the date of 28-6-2000, the Government had in mind only those cases to whom T.R.Cs. were issued and had not commenced commercial activities.

78. Mr. Nanavati further contended that the Multiplexes had applied for T.R.C. before 31-7-2000 and were issued T.R.Cs. varying from 10-7-2000 to 18-12-2001. These 9 Multiplexes are not covered by the definition of pipeline cases and the purported time schedule contained in the Resolution dated 28-6-2000, would therefore, not be applicable to the said 9 Multiplexes. The said Scheme itself extensively prescribes the procedure for extension of time in case of delay in implementation of the project. Clause 10 of the said Scheme, *inter alia,* provides for procedure for registration of Tourism units for incentives. The said Clause provides that a Tourism unit eligible for the Scheme will apply to the Director of Tourism and he will scrutinize the application and will issue temporary and permanent registration. Sub-clause (a) of Clause 10 provides that the Director of Tourism shall give provisional registration in the first instance upto two years to the eligible units. It is further provided under sub-clause (b) that if such a unit is not in a position to start commercial operation during

the initial validity period, the unit will have to apply with the progress report to the State Level Committee which is authorized to grant extension upto six months at a time for a total period of two years, after examining the difficulties experienced by the individual unit in implementing the project. Sub-clause (c) *inter alia* provides for a situation where if a unit is unable to go into operation after it has been given extension under Para (b), will have to inform to Government the reasons of delay. Such application will have to be forwarded to the Director of Tourism who will carry out physical inspection of projects and report to the Government for decision. If the Director of Tourism is satisfied that the steps to implement the projects are adequate, he shall inform the Government. Upon such report, the State Government is empowered to take a decision to either extend or reject the registration depending upon the merits of the case.

79. Mr. Nanavati further submitted that the respondent-authorities have tried to whittle out from the assurance and the promises given to the petitioners by denying them the incentives which are legally available to them under the Scheme. As a matter of fact, the State Level Committee, in its meetings held on 4-4-2002, 21-9-2002 and 19-2-2003 did take a decision of granting extension of time. In spite of the said decision of the State Level Committee, which is empowered and authorized to grant extension, the Commissioner of Tourism passed the impugned order dated 20-7-2005 rejecting the application for extension of time. The decision of the Commissioner of Tourism is taken on the extraneous grounds and is without authority of law. When an assessee is promised with a tax exemption for setting up an industry or a tourism project, as a term of the industrial policy, the implementing Notification has to be read and interpreted in the context of the industrial policy. In the instant case, the policy envisages grant of exemption to the entertainment complexes with an in-built mechanism of time schedule and extension of time. In such cases, as held by the Hon'ble Supreme Court, the exemption notifications have to be read liberally keeping in mind the object envisaged by the industrial policy. The decision of not to extend the period for commencement of commercial operations would also be hit by the principles of promissory estoppel. There is a right accrued in favour of the petitioners for grant of extension of time under Clause 10 of the Scheme, which could not have been taken away by the State Government by issuing a resolution dated 28-6-2000.

80. Mr. Nanavati further submitted that insofar as the Multiplexes shown in Group-B is concerned, in any event, though they are treated as pipeline cases, the time schedule stipulated under the Resolution dated 28-6-2000 cannot be made applicable on the principles of promissory estoppel. The said four petitioners shown in Group-B have invested substantial amount of money on anticipation of the grant of extension of time in terms of the original Scheme Clause 10. The original Scheme providing for extension of time created a right in favour of the petitioners to approach S.L.C. for extension of time under certain circumstances, which could not have been taken away retrospectively by Resolution dated 28-6-2000. The principles of promissory estoppel, would

therefore, be applicable since the petitioners altered their position pursuant to the recommendations of the competent authority, which were made in terms of Clause 10 of the said Scheme. The petitioners' right to get extension under Clause 10 of the said Scheme is an accrued right, which could not have been taken away by any subsequent stipulation as in the Resolution dated 28-6-2000. The petitioners have acted upon the Resolution dated 20-12-1995 and have made substantial investments on that basis. The said Resolution contemplated commencement of commercial operations beyond the initial validity period of the T.R.C., and therefore, conceivably even after the period of operation of the Scheme *i.e.* 31-7-2000. Any subsequent stipulation as in the resolution dated 28-6-2000 curtailing the time-limit for the purpose or providing that no further extension would be available, would be invalid on the doctrine of the promissory estoppel as well as unreasonable, irrational and unconstitutional. In any event, the competent authority has granted extension beyond 28-7-2002, and therefore, it is permissible for the respondent to rely upon the said resolution.

81. Mr. Nanavati further submitted that pursuant to the direction of this Court, the State Government has produced on record letter dated 24-9-2002 issued by the Commissioner of Tourism to the Principal Secretary, Industries & Mines Department. The said letter dated 24-9-2002 in terms recognizes the need for extension of time in view of earthquake and communal riots and recommends amendment in Government Resolution dated 28-6-2000. Along with the said letter, the Government has also produced on record a letter dated 20-7-2005 of Under Secretary, Industries & Mines Department addressed to the Commissioner of Tourism. From reading the said letter dated 20-7-2005, it appears that the Government's decision is not to extend the Scheme. When there is extension of the Scheme, the question of extending the period of completion of project does not arise, because it stands automatically extended. The issue of extension of period for commencement of commercial operation, however, has to be decided independent of extension of the operative period of the Scheme under Clause 10 of the Scheme. This power of extension of period for commencement of commercial operation, in any event, is available with the S.L.C. and the same ought to have been exercised in view of the events that took place during the said period *i.e.* earthquake on 26-1-2001 and communal riots on 28-2-2002. Non-exercise of discretionary power available under the Scheme on extraneous considerations is also illegal, and therefore also, the action of not extending the period for commencement of commercial operation is illegal. The purported decision contained in the said letter dated 20-7-2005, in any event, is not the basis for issuing the impugned order dated 20-7-2005.

82. Mr. Nanavati further submitted that the decision of the State Government of not extending the operative period of the Scheme beyond 30-11-2000 only for Multiplexes is also discriminatory and is hit by Art. 14 of the Constitution of India. After the Government Resolution dated 28-6-2000, time and again, resolutions were issued extending the operative period of the entire Policy/Scheme. As is evident from the said Scheme, the incentive of tax exemption/tax holiday is available to Tourism units, on the basis of the 100% of the investment made

for the period ranging between 5 to 10 years. After 28-6-2000, the Government issued two resolutions dated 31-7-2000 and 30-9-2000 *inter alia*, extending the operative period of the Scheme for a period upto 30-9-2000 and 30-11-2000 respectively. Thereafter, resolutions were issued on 31-3-2001 and 12-7-2001 extending the operative period of the Scheme upto 30-6-2001 and 30-9-2001 respectively for all the aforesaid tourism projects, except Multiplex cinemas. Thus, two resolutions were issued because of the earthquake that took place on 26-1-2001. Though, all the petitioners' projects are falling in the category of either "Prestigious Tourism Units" or "Large-Scale Tourism Units", which require considerable time to implement the projects, the Government issued resolutions extending the benefit to all Tourism Projects may be it a hotel, a water park, a golf course or theme park, etc. except the Multiplex Theatres. The action of the State Government of neither exercising the powers under Clause 10 of the Scheme nor extending the policy only for the Multiplex Theatres is discriminatory and requires to be interfered with by this Court by issuing appropriate directions to that effect.

83. Based on the above facts and settled legal position, Mr. Nanavati strongly urged that the decision of the State Government of not granting extension of time for commencement of commercial activities is absolutely unjust, improper, illegal and deserves to be quashed and set aside.

84. Mr. Kamal Trivedi, learned Advocate General appeared in all these petitions. An affidavit-in-reply is filed in almost all petitions. He strongly opposed to the issuance of any direction to the State Government for extension of time in relation to commencement of commercial activities. He submitted that *vide* Resolution dated 20-12-1995, a Tourism policy called "New Package Scheme of Incentives for Tourism Projects, 1995-2000" came to be introduced by clearly specifying that its period of operation will start from 1-8-1995 to 31-7-2000. Under the said policy, eligible Multiplex Units were entitled to incentive of exemption from payment of entertainment tax for the aforesaid period upto 100% of its eligible capital investment.

85. Section 2(g) of the Gujarat Entertainment Tax Act, 1977 defines a term 'Payment for admission' to include any payment made by person having been admitted to the place of entertainment, involving tax whereas Sec. 3(4) of the said Act mandates that save as otherwise provided in the said Act, every ticket, pass, etc. shall state therein, the amount of payment for admission and the amount of tax payable under Sec. 3. Thus, entertainment tax is in the nature of indirect tax wherein the tax paid by the Multiplex unit is being reimbursed by recovering the same from the spectators. In view of this, the unit getting exemption from the said tax would motivate the entry of more spectators since the amount of tax is not to be collected from the same.

86. *Vide* another Resolution dated 28-6-2000, the Government tried to take care of belated cases as 'pipeline cases', wherein Temporary Registration Certificate (T.R.C.) was issued but commercial activities have not commenced before the expiry of the aforesaid policy *i.e.* initially on 31-7-2000, and thereafter, on 30-11-2000, or cases where application for T.R.C. was made latest

by 31-7-2000 with compliance of the requisite effective steps. The said Resolution dated 28-6-2000, expressly laid down the time-limit in sub-clauses (3) and (4) of Clause B thereof with a categorical rider reading to the following effect.

> "No further extension or realization will be available to pipeline units and the pipeline units failing to complete the projects within the prescribed time-limit, shall not be eligible for any incentives, *ad hoc* or final, as per the Policy of 1995-2000."

Apart from this, sub-clause (6) of Clause (B) of the said Resolution dated 28-6-2000 categorically suggests that the validity period of T.R.C. issued under the said Policy of 1995-2000 shall be two years from the date of issue of T.R.C. or from the date on expiry of the operative period of the said Policy, whichever is earlier.

87. *Vide* further Resolution dated 31-7-2000, the State Government extended the time-limit of the aforesaid Policy - 1995-2000 upto 30-9-2000, which was further extended upto 30-11-2000 *vide* another Resolution dated 30-9-2000.

88. *Vide* Circular dated 5-12-2000, the State Government clarified in the matter of assessment and calculation of entertainment tax in relation to exempted units. These aspects are already discussed in earlier part of this judgment.

89. As such, the policy decision taken vide the second Resolution dated 28-6-2000 is distinct and independent of the earlier policy decision taken *vide* first Resolution dated 28-12-1995. The reference of the said earlier policy decision mentioned in the Resolution dated 28-6-2000 is only with a view to identifying the available incentive benefits. In that view of the matter, the petitioners are not entitled to any relief for extension of the period for commencement of the commercial activities for the period of four years from the date of issuance of T.R.C., *i.e.* upto 9-10-2005 and/or any date beyond 30-11-2002.

90. Having considered these rival submissions, the Court is of the view that combined reading of the First Government Resolution dated 20-12-1995 along with Second Resolution dated 28-6-2000 together with last Resolution dated 30-9-2000 clearly suggests that the operative period of the policy in question came to be finally over on 30-11-2000 and the time-limit for completing the project and commencing the commercial activities in case of pipeline units, could, at the best, be said to have been extended only upto 30-11-2002.

91. If the T.R.C. issued in case of a Multiplex unit is dated 10-10-2001 in a given case, then in that event, as per sub-clause (6) of Clause (B) of the second Resolution dated 28-6-2000, the validity of the said T.R.C. would not have been extended :

(1) beyond the period of two years from the date of issue of the T.R.C., *i.e.* 9-10-2003; or

(2) beyond the date of expiry of the operative period of the said policy *i.e.* 30-11-2002, whichever is earlier. In other words, the validity period in such a case would never have gone beyond 30-11-2002.

92. A combined reading of the Resolutions referred to above further suggests that the said policy was initially to come to an end on 31-7-2000. However,

for pipeline cases, the time-limit for commencement of commercial operation came to be extended upto 31-7-2002 in case of large-scale and prestigious projects *vide* the Second Resolution dated 28-6-2000. The said time-limit got further extended in view of further extension of the said policy *vide* later Government Resolutions dated 31-7-2000 and 30-9-2000.

93. Thus, the time-limit for commencing commercial activities in case of pipeline cases and of large-scale and prestigious projects came to be fixed upto 30-11-2002 and that the said time-limit was never extended thereafter. The interpretation of the resolutions in question as sought to be canvassed by the petitioners seeks to extend the time-limit for commencing commercial activities upto different dates in different cases. These different dates are admittedly beyond the aforesaid last extended time-limit of 30-11-2002. In support of the said interpretation, the petitioners appear to be relying upon the provisions of Clause 10 of the first Resolution dated 20-12-1995 by alleging that the Government is bound to extend the validity period of T.R.C. for the aggregate period of 4 years within which commercial activities in case of pipeline units would be commenced. For this purpose, the petitioners contended that in their case, T.R.C. was issued on 10-10-2001 and counting a period of 4 years therefrom, the same would be upto 9-10-2005 whereas they had already commenced commercial activities on 27-6-2003 or 25-6-2004.

94. The aforesaid interpretation of the petitioners not only defeats the plain intention of the State Government in fixing the time-limit for the availability of specified incentive benefits under the said policy upto a particular point of time, but the same is also likely to create serious consequences, where the time-limit for the operation of the policy would be different in each of the cases, which was never intended by the State Government. This apart, it is not permissible to the petitioners to just rely upon the subsequent Resolution dated 28-6-2000 for being treated as pipeline cases and then to rely upon Clause 10 of the First Resolution dated 20-12-1995 for the purpose of larger extension, without appreciating that Resolution dated 28-6-2000 prohibited any further extension or relaxation in the commencement of the commercial operation beyond the expiry date of the Scheme. In none of the pipeline cases, any of the petitioners is entitled to exemption from entertainment tax.

95. All the petitioners were well aware that they were supposed to commence the commercial activities prior to the deadline fixed by the last Resolution dated 28-6-2000 *i.e.* by 31-7-2002 in such a way that they could have applied for Eligibility Certificate immediately thereafter, for availing of the incentive benefits as stipulated.

96. Pipeline cases like the petitioners cannot be treated at par with those who had acted on the strength of the said policy as contained in the First Resolution dated 20-12-1995 inasmuch as there is a clear-cut distinction between those who had chosen to avail of the benefits relying upon the First Resolution dated 20-12-1995 on the one hand and those who came forward as pipeline cases by virtue of the subsequent Resolution dated 28-6-2000, more particularly

when they were made very much aware as to what is the nature of the conditional assurance and/or promise to be acted upon as per the Second Resolution dated 28-6-2000.

97. When the policies ceased to exist after 30-11-2000, where under the petitioners were supposed to commence their commercial activities before 30-11-2002, and the petitioners having not so commenced their commercial activities, are obviously not entitled to the incentive benefits in question.

98. The order under challenge dated 20-7-2005 cannot be assailed now especially when the petitioners have acted contrary to the provisions of Resolution dated 28-6-2000. The petitioners do not deserve any relief *de hors* the provisions of the resolutions, more particularly, as regards the fixed time-limit.

99. Even otherwise, the petitioners are not entitled to incentive benefits in view of their having contravened the conditions on the basis whereof T.R.C. was issued, which categorically provided that they should commence commercial activities during the existence of Scheme, more particularly, when the petitioners have admittedly started their commercial activities after 30-11-2002.

100. In light of the above factual background, rival contentions and the principles enunciated in the various authorities cited before the Court, the following propositions were emerged :

101. For interpretation of the resolutions in question, one has to apply the very principles which are applicable in case of legislative provisions, wherein it is the cardinal principle that one should make a purposive interpretation and no part thereof should be construed in isolation or the resolutions in question should be criticized on the ground of loopholes, ambiguities, crudities and inequities. Reliance is placed on the decisions in the case of *S. Gopal Reddy v. State of Andhra Pradesh*, AIR 1996 SC 2184, *Tata Consultancy Services v. State of Andhra Pradesh*, 2005 (1) SCC 308, *Promoters & Builders Association v. Pune Municipal Corporation*, 2007 (6) SCC 143.

102. The State Government should not be directed to continue and/or adopt a particular policy since such aspects may not be judicially reviewable. If a policy announced on 20-12-1995 is varied by another policy decision taken on 28-6-2000, whereafter certain clarifications are announced by virtue of the Circular dated 5-12-2000, no fault can be found with the State Government, even if it has faltered in its wisdom or there may be better and wiser policy to be adopted and that there should be greater freedom of play in such joints in matters so long as the same is fair and free from taint of *mala fides* and violation of constitutional guarantees. Reliance is placed on the decision of *Balco Employees Union v. Union of India*, AIR 2002 SC 350.

103. There is no question of application of the principles of promissory estoppel to the instant case inasmuch as this is not a case where the State Government having announced the grant of certain incentive benefits for a specified period, has all of a sudden withdrawn the said benefits before the expiry of the said period to the detriment of those who had altered their position while relying upon the first promise of the Government. These are the cases, where

the petitioners themselves have failed to comply with the conditions of conditional promise as regards the time-limit flowing from the relevant resolutions. The said failure of the petitioners is not attributable to the State Government, directly or indirectly. Reliance is placed on the decision of the Supreme Court in the case of *Kaskinka Trading v. Union of India,* 1995 (1) SCC 274 and *Shrijee Sales Corporation v. Union of India,* 1997 (3) SCC 398.

104. A person invoking exception of exemption from the provision to relieve him from the tax liability, must establish clearly that he is covered by the said provision and in case of doubt or ambiguity, benefit of it must go to the State, since each such exception or exemption increases the tax burden on other members of the community correspondingly. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Novapan India Ltd. v. C.C.E.,* 1994 Supp. (3) SCC 606 and *Liberty Oil Mills (P) Ltd. v. C.C.E.,* 1995 (1) SCC 451.

105. The petitioners have relied upon number of authorities inter alia dealing with the following aspects :-

(i) The State Government is bound by the doctrine of promissory estoppel in extending the benefit of exemption from entertainment tax inasmuch as the petitioners were relying upon the promise held out by the State in terms of relevant Government Resolutions which materially altered their position by making huge investment.

(ii) An act of God shall prejudice no man and nobody should be asked to perform an impossibility, and that therefore, the petitioners should have been granted relaxation and/or extension more particularly in view of the intervening incidents like earthquake, riots, etc.

(iii) Exemption granted by a notification cannot be altered by putting additional conditions by press-notes and trade notices.

The Court has considered the above aspects in earlier part of this judgment. Even otherwise, it is not permissible to pick up any stray observations from the judgment and to highlight the same as the ratio of the said judgment applicable to the facts of the present case. In this connection, the Hon'ble Supreme Court has made very succinct observations reading as under :-

> "In the case of *Haryana Financial Corporation v. Jagdamba Oil Mills,* 2002 (3) SCC 496, Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as *Euclid's theorems* nor as provisions of the Statute. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. Even a single significant detail may alter the entire aspect."

106. In *S. Gopal Reddy v. State of Andhra Pradesh,* AIR 1996 SC 2184, it is held that it is a well-known rule of interpretation of statutes that the tax and the context of the entire Act must be looked into while interpreting any of the expression used in a Statute. The Courts must look to the object which

the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.

107. In *Promoters & Builders Association of Pune v. Pune Municipal Corporation & Ors.*, 2007 (6) SCC 143, it is held that it is a cardinal principle of construction of Statute that when the language of statute is plain and unambiguous, then Court must give effect to the words used in the statute. While interpreting the Statute, effort should be made to give effect to each and every word used by the legislature. Where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences.

108. In *Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad*, 1994 (3) SCC 606, it is held that where exemption from excise duty was claimed in respect of items in exemption Notification, whether a particular goods falls within such an item, it has to be decided and determined and the test to determine is whether the goods in question are treated to be so in the relevant commercial circles and common parlance.

109. Based on the above factual matrix and the legal position, no case is made out for extension of time, and hence, they are not entitled to an exemption under the Scheme in question.

110. It is, however, clarified that the cases of petitioners of Special Civil Application Nos. 3371, 13566 of 2004; 4319, 11971 of 2006 and 15962 of 2006 are slightly on different footing. These petitioners have commenced their commercial activities during the life-time of the Scheme. Their main dispute is with regard to the eligible amount of capital investment. The Court is not inclined to go into the factual details and veracity of their claims. These five matters, are therefore, remanded to the State authorities with a direction to decide afresh an issue of eligible capital investment made by them upto 30-11-2002, in accordance with the provisions contained in the Scheme and to issue the final eligibility certificate and raise the demand or grant refund, as the case may be, preferably, within six weeks from today.

111. In view of the above discussion, we are of the view that the respondent-State is not justified in considering the entire amount of the value of the ticket as the capital value for the purpose of setting off the eligible capital investment of the members of the petitioner-Association. We are also of the view that the amount collected by the members of the petitioner. Association while permitting the viewers to the Multiplex Theatres also includes an element of tax, and hence, the applicable rate of tax so collected by the members of the petitioner-Association are only required to be set off against the eligible investment under the Scheme. The entire amount of the value of the ticket cannot be considered as the capital value for the purpose of setting off the eligible capital investment. We are also of the view that the members who have not commenced their project within the stipulated time-limit *i.e.* on or before 30-11-2002 as envisaged under the subsequent Resolution dated 28-6-2000 by virtue of which those cases have been considered as pipeline cases are not entitled to the benefit under the Scheme and there is no infirmity in the order passed by the respondent-authorities while rejecting their representation for extension of time. We are also of the view that the members who are entitled to the benefit of the Scheme are entitled

to claim only the amount of capital investment made by them within the stipulated time-limit *i.e.* 30-11-2002. If any expenditure incurred by them subsequent to this time-limit or investment made by them in such eligible project after 30-11-2002 cannot be considered as an eligible investment. The respondent-authorities, are therefore, directed to give effect to this judgment and order and decide each case as per the directions issued here in this judgment and raise the demand against the petitioners. The demand so raised will have to be paid by the members of the Association within six weeks from thereof.

112. Subject to the aforesaid directions and observations, all these petitions and/or applications made therein are accordingly disposed of.

(HSS) *Directions given.*

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SPECIAL CIVIL APPLICATION

Before the Hon'ble Smt. Justice Abhilasha Kumari

MANSUKHLAL BACHUBHAI PARMAR v. STATE OF GUJARAT & ANR.*

SERVICE LAW — Termination — Civil Procedure Code, 1908 (V of 1908) — Order 6, Rule 17 — Order of termination of service was passed during pendency of suit seeking relief against termination — Termination of service was an event subsequent to filing of the suit — Permitting plaintiff to amend the suit so as to challenge termination would "not change the basic nature of the suit" — Order of trial Court not allowing amendment of plaint set aside.

Undoubtedly, the order of termination has been passed after the institution of the suit. It is, therefore, an event subsequent to the filing of the suit. The order of termination has been passed during the pendency of the suit, and the apprehension of termination, on which the petitioner filed the suit, has been transformed into reality. The termination of the services of the petitioner is a subsequent event and has a direct bearing on the suit. Such an amendment will not change the basic nature of the suit and if the petitioner can file another suit, there is no justifiable reason why the amendment cannot be granted in the present one, as the cause of actions arose during the pendency of the suit. (Para 5.1)

The unamended provision permits amendment 'at any stage of the proceedings' and provides that 'all such amendments *shall be made as may be necessary* for the purpose of determining *the real question in controversy* between the parties'. By permitting the amendment prayed for by the petitioner, the real question in controversy would be brought on record. As the termination of the services of the petitioner took place during the pendency of the suit, it is a subsequent event, which could not have been incorporated in the plaint at the time of instituting the suit. Such an amendment would not, any manner change the nature of the suit. (Para 5.4)

Rajesh Kumar Aggarwal v. K. K. Modi (1), relied on.

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*Decided on 25-8-2009. Special Civil Application No. 23696 of 2006 praying to quash and set aside order dated 16-3-2006 in Regu. Civil Application No. 38 of 2004.

(1) AIR 2006 SC 1647
