CNR No. SKHC01-000068-2025

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH : THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE

WP(C) No.23 of 2025

Lupin Limited,
A Company having its factory at
4th Mile, Bhasmey,
Kamarey-Bhasmey Block, Duga - Ilaka,
P.O & P.S. Rangpo, Sikkim,
Through its signature authorized representative
Shri Sandeep Agarwal. ... **Petitioner**

versus

1. **Union of India,**
Through the Secretary,
Ministry of Commerce & Industry,
Department of Industrial Policy and Promotion
Udyog Bhawan, Rajpath Area,
New Delhi.

2. **The Director,**
Commerce and Industries Department,
Government of Sikkim,
Gangtok, Sikkim.

3. **State of Sikkim,**
Through the Chief Secretary,
Government of Sikkim,
Gangtok, Sikkim. ... **Respondents**

Petition under Articles 226 and 227 of the Constitution of India

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Appearance:

Mr. Prakash Shah, Senior Advocate (through VC) with Ms. Menuka Gurung, Advocate for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India with Mr. Amit Kumar Sharma, Advocate for the Respondent No.1.

Mr. S. K. Chettri, Government Advocate for the Respondent Nos.2 and 3.

Judgment Reserved on : 03.09.2026
Judgment Pronounced on : 10.09.2026
Judgment Uploaded on : 10.09.2026

JUDGMENT

(A. Muhamed Mustaque, C.J.)

1. The Writ Petition is filed by the Petitioner, Lupin Limited, having an industrial unit in the State of Sikkim. The Petitioner is aggrieved by the denial of the full benefit of the Central Capital Investment Subsidy Scheme (CCISS) under the North-East Industrial and Investment Promotion Policy, 2007 (hereinafter referred to as the "NEIIP, 2007"), introduced by the Government of India.

2. Under the NEIIP, 2007, a Central Capital Investment Subsidy (CCISS) of 30% on plant and machinery was provided to new industrial units and existing industrial units undertaking substantial expansion, subject to the fulfillment of the conditions prescribed under the Policy, including commencement of commercial production within the stipulated period. The NEIIP, 2007 was introduced with effect from 01.04.2007 and was to remain in force until 31.03.2017.

3. The Union Government suspended the NEIIP vide Notification dated 01.12.2014. Subsequently, the scheme was modified and, vide Notification dated 22.11.2016, the subsidy available to new industrial units was restricted to a maximum of ₹5 crores per industrial unit operating in the manufacturing sector and ₹3 crores per industrial unit operating in the service sector.

4. The Petitioner executed a 99-year lease deed on 27.05.2008 and commenced the process of establishing its factory in Sikkim. The Petitioner commenced commercial production on 10.02.2017. However, it applied for registration with the District Industries Centre (DIC) only on 23.02.2017, and registration was granted on 08.03.2017.

5. The Petitioner thereafter applied for the CCISS benefit on 05.02.2018. After certain proceedings and hearings concerning the delay in registration, an amount of ₹5 crores was ultimately credited to the Petitioner's account on 22.05.2024.

6. The Petitioner claims that it is entitled to a subsidy of ₹13,65,75,271/- (Rupees thirteen crores sixty-five lakhs seventy-five thousand two hundred and seventy one only) under the terms of the NEIIP, 2007. According to the Petitioner, substantial investment had already been made prior to the Notification dated 22.11.2016 and the establishment of the industrial unit had commenced much earlier, pursuant to the incentives promised under the NEIIP, 2007. The Petitioner therefore contends that the subsequent reduction of the subsidy to ₹5 crores cannot be applied to its case.

7. The principal question for consideration is whether the Petitioner is entitled to claim the CCISS benefit in accordance with the NEIIP, 2007, notwithstanding the subsequent amendment dated 22.11.2016, or whether the Petitioner is governed by the revised policy on account of its registration having taken place in the year 2017.

8. The Petitioner relies upon the doctrine of legitimate expectation and promissory estoppel, contending that it had undertaken substantial expenditure on the basis of the incentives contemplated under the NEIIP, 2007. It is stated that substantial expenditure had been incurred towards land, plant and machinery and other expenses prior to the Notification dated 22.11.2016. The Petitioner therefore contends that it had a legitimate expectation of receiving the subsidy under the original policy.

9. The Petitioner further contends that the Notification dated 22.11.2016 creates an arbitrary classification between industrial units based upon the date of registration, despite the fact that certain units had already made substantial investments or had commenced the process of establishing their industrial units under the NEIIP, 2007. According to the Petitioner, such classification does not bear a reasonable nexus with the object sought to be achieved and is therefore violative of Article 14 of the Constitution of India.

10. The Petitioner also challenges the manner in which the subsidy was determined. It is contended that although the Petitioner's claim was for ₹13,65,75,271/-, the Respondents merely credited ₹5 crores to its account on 22.05.2024 without passing a reasoned or speaking order explaining why the balance amount was denied. The Petitioner submits that this action is contrary to the principles of natural justice and procedural fairness, particularly as no specific hearing was afforded on the applicability of the Notification dated 22.11.2016 to the quantum of subsidy.

11. Learned Deputy Solicitor General of India, appearing for the Respondents, submits that the Petitioner cannot claim the benefit of the NEIIP, 2007 since the Petitioner had not obtained registration prior to the revision of the scheme. It is submitted that the Petitioner applied for registration only on 23.02.2017, after the Notification dated 22.11.2016 had already come into force, and was therefore rightly treated as a "new industrial unit" governed by the revised norms.

12. The Respondents further contend that the Government possesses the power to modify its policies in public interest and that the Petitioner cannot claim an absolute right to the continuation of the earlier policy merely because it had commenced investment prior to the amendment. According to the Respondents, the Petitioner was required to satisfy the conditions applicable on the date on which it sought registration and claimed the benefit. The Respondents rely upon the ***Union of India & Anr.*** **v.** ***M/s V.V.F. Ltd. & Anr.***[1] wherein the Hon'ble Supreme Court held that the doctrine of promissory estoppel is not absolute and cannot operate to restrain the Government from modifying or withdrawing a policy where such change is necessitated by public interest or protection of public revenue. Similarly, in ***M/s Sidhbali Steels Ltd. & Ors.*** **v.** ***State of U.P. & Ors.***[2] it was held that the doctrine of promissory estoppel cannot be invoked to challenge statutory action, and that the Government retains the power to alter its policies whenever public interest so demands. Further, in ***Hero MotoCorp Ltd.*** **v.** ***Union of India***[3] the Hon'ble Supreme Court reiterated that a promise or representation by the Government granting a tax exemption does not confer an indefeasible or perpetual right upon the beneficiary to continue enjoying such exemption where it is subsequently withdrawn by a valid statutory provision or policy decision.

13. The Petitioner, however, submits that the investment had already been substantially made before the revised Notification and that the subsequent modification cannot retrospectively defeat the rights and legitimate expectations arising from the earlier policy. The Petitioner relies upon ***MRF Ltd.*** **v.** ***Assistant Commissioner (Assessment)***

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[1] (2020) 20 SCC 57.
[2] (2011) 3 SCC 193.
[3] 2022 SCC OnLine SC 1436.

Sales Tax[4] that legitimate expectation may arise from a government promise, representation or consistent past practice. It is based on Article 14 and fairness. However, it does not automatically create a substantive legal right; departure from a legitimate expectation must be justified by an overriding public interest; ***Bannari Amman Sugars Ltd.* v. *Commercial Tax Officer***[5] that a person may have a legitimate expectation of being treated in a particular manner even without a private-law right. If the expectation is defeated, the authority must act fairly and justify the departure by sufficient public interest, ***Union of India* v. *Hindustan Development Corporation***[6] that legitimate expectation is an aspect of fairness under Article 14. It does not itself confer an enforceable right, but where the expectation is disappointed, the authority must show an overriding public interest for the departure. Further, the Petitioner relies upon ***Motilal Padmapat Sugar Mills Co. Ltd.* v. *State of Uttar Pradesh***[7] which deals with the principle of estoppel and public interest.

14. The contention of the Petitioner that it acquired a vested right merely by reason of the existence of the NEIIP, 2007 cannot, however, be accepted unless the Petitioner establishes that it had fulfilled the conditions necessary for claiming the subsidy under the said Policy.

15. The fact that the NEIIP, 2007 contemplated a period of ten years within which commercial production was required to commence does not, by itself, confer an indefeasible or vested right upon every industrial unit to claim the subsidy in accordance with the terms of the original policy irrespective of subsequent amendments. The existence of a time period for commencement of production cannot be treated as dispensing with the other eligibility conditions prescribed under the Policy.

16. A vested right is a right which is fixed and is not dependent upon the fulfillment of a future contingency. In ***MGB Gramin Bank* v. *Chakrawarti Singh***[8], while referring to the principle laid down in ***Mst.***

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[4] (2006) 8 SCC 702.
[5] (2005) 1 SCC 625.
[6] AIR 1994 SC 988.
[7] (1979) 2 SCC 409.
[8] (2014) 13 SCC 583.

Bibi Sayeeda and Others* v. *State of Bihar and Others[9], the Hon'ble Supreme Court observed as follows:

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> **11.** The word "vested" is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:
> "Vested.—fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.
> Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights'."
> **12.** In Webster's Comprehensive Dictionary (International Edition) at p. 1397, "vested" is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide Bibi Sayeeda v. State of Bihar- and J.S. Yadav v. State of U.P.°)
> **13.** Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.
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> .... "

17. The distinction between an existing accrued right and a mere expectation assumes particular significance in matters concerning industrial incentives. In ***Mahabir Vegetable Oils (P) Ltd. and Another* v. *State of Haryana and Others***[10], the Hon'ble Supreme Court held that where a statutory provision had already conferred rights upon the industrial units, subsequent amendments could not retrospectively take away such accrued rights. The Court specifically recognised the distinction between vested rights and accrued rights and held that the rights already conferred could not be taken away with retrospective effect.

18. Similarly, in ***Manjushree Extrusions Ltd. and Anr.* v. *State of Assam & Ors.***[11] the Gauhati High Court considered an industrial incentive policy under which existing industrial units had undertaken expansion, modernisation and diversification on the basis of the incentives promised by the Government. The Court held that the principle of promissory estoppel, being an equitable doctrine, cannot be invoked to confer a benefit where the claimant had no underlying entitlement to such benefit under the governing scheme. Thus,

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[9] (1996) 9 SCC 516.
[10] (2006) 3 SCC 620.
[11] 1998 SCC OnLine Gau 219.

promissory estoppel cannot be used to create a right which had not otherwise accrued in favour of the claimant. At the same time, the Supreme Court has made it clear that the mere existence of an incentive policy does not invariably create an indefeasible vested right. In ***State of Rajasthan and Another*** **v.** ***J.K. Udaipur Udyog Ltd. and Another***[12] the Court held that Government may modify or revoke an exemption granted under a scheme, subject to the doctrine of promissory estoppel and considerations of equity and public interest. The mere continuation of a concession does not, by itself, create an indefeasible right to its continued enjoyment. Exemptions are defeasible concessions and not indefeasible rights.

19. Thus, the decisive question in the present case is not merely whether the Petitioner had made substantial investments under the NEIIP, 2007, but whether, before the Notification dated 22.11.2016 came into force, the Petitioner had acquired an accrued or vested right to the specific quantum of subsidy claimed by it. The Petitioner had admittedly commenced establishment of its industrial unit and incurred substantial expenditure, but its application for registration was made only on 23.02.2017 and registration was granted on 08.03.2017, after the impugned Notification had come into force. Therefore, unless the Petitioner establishes that registration was not a condition precedent to the accrual of the subsidy entitlement under the NEIIP, 2007, or that its right had otherwise accrued before 22.11.2016, the mere fact of prior investment may not, by itself, be sufficient to constitute a vested right immune from the subsequent policy amendment.

20. The material placed before the Court shows that the Petitioner applied for registration only on 23.02.2017, and registration was granted on 08.03.2017. By that time, the Notification dated 22.11.2016, restricting the subsidy for new industrial units in the manufacturing sector to ₹5 crores, was already in force.

21. Therefore, notwithstanding the fact that the Petitioner had commenced the establishment of its industrial unit and had made substantial investments prior to the amendment. The Petitioner must demonstrate compliance with the mandatory conditions prescribed for

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[12] (2004) 7 SCC 673.

eligibility under the NEIIP, 2007 before claiming that a vested right had accrued in its favour.

22. In the absence of fulfillment of the mandatory eligibility condition relating to registration, the Petitioner cannot claim an absolute vested right to the subsidy under the unamended NEIIP, 2007 merely on the basis that the investment had commenced earlier or that commercial production was commenced within the period contemplated under the original Policy.

23. Consequently, the Petitioner has failed to establish that a vested right to receive the subsidy of ₹13,65,75,271/- had accrued in its favour under the NEIIP, 2007 and that such right was subsequently taken away by the Notification dated 22.11.2016.

24. Accordingly, the challenge to the denial of the subsidy claimed under the NEIIP, 2007, cannot be sustained on the ground of violation of any vested right. The Petitioner is therefore not entitled to claim the balance subsidy solely on the basis of the unamended Policy.

25. Accordingly, this Writ Petition fails and is dismissed.

Chief Justice

Approved for Reporting: Yes

ami/arc