

M/s Hero Motocorp Ltd. v. Union of India & Ors. (with the connected appeal of Sun Pharma Laboratories Ltd.)

Case number: Civil Appeal Nos. 7405 and 7406 of 2022, arising out of SLP (C) Nos. 12397 of 2020 and 11978 of 2021 respectively

Citation: 2022 INSC 1100; [2022] 13 S.C.R. 592

Decision date: 2022-10-17

GST transition: withdrawal of area-based excise exemptions, budgetary support and promissory estoppel

Court: Supreme Court

Bench: B.R. Gavai and B.V. Nagarathna, JJ.

Decision stage: Final common judgment

01 Facts

The common judgment concerns the transition of industrial investment incentives into the GST regime. Hero Motocorp established a motorcycle manufacturing unit at Haridwar, Uttarakhand, which began commercial production on 7 April 2008. It relied on the Central Government's 7 January 2003 industrial policy and Notification No. 50/2003-C.E. of 10 June 2003, promising eligible new or substantially expanded units ten years of outright excise-duty exemption. Sun Pharma's connected case concerned two units commencing production on 20 April 2009 and 14 April 2014. Its historical benefit was a full refund of central excise duty under a separate 17 February 2003 Office Memorandum and 25 June 2003 notification. After GST commenced on 1 July 2017, the earlier exemptions were rescinded and the Central Government introduced budgetary support for eligible units for their residual incentive period. The judgment records support at the Central share of 58% of CGST and 29% of IGST. The appellants sought 100% CGST reimbursement for the remaining period, relying on the earlier assurance and their investment in response to it. They also sought exercise of the exemption power under section 11; Sun Pharma alternatively argued for extending the support period. The Delhi and Sikkim High Courts had dismissed their respective writ petitions. The Supreme Court had to decide whether the earlier promise survived the changed statutory regime so as to justify the additional reimbursement or a mandamus compelling exemption. This is a GST-transition decision materially applying the CGST Act, although the underlying investment incentives originated under excise law.

Pinpoint: Paragraphs 2-6.12, 8-12, 15, 26-31 and 59; official PDF pages 1-15, 22-26 and 56-57. Separate Sun Pharma scheme and commencement dates: paragraph 6.4, pages 5-6.

02 Court Discussion

The Court accepted that the 2003 policy contained an unequivocal incentive promise, but held that the GST transition changed the governing law. Section 174(2)(c) generally saves accrued rights and privileges on repeal; its proviso specifically denies continued privilege to an investment-incentive tax exemption where the notification is rescinded on or after the appointed day. Notification No. 21/2017-C.E. had rescinded the earlier exemptions. Enforcing the old promise despite that statutory provision would make the proviso ineffective. After examining the differing strands of earlier promissory-estoppel decisions, the Court identified their consistent proposition that estoppel cannot prevent the legislature from exercising legislative functions or compel action contrary to statute. It rejected the appellants' estoppel claim on that basis. It also relied on the principle that a policy change in the larger public interest, including the changed

GST regime here, may justify withdrawal even of an incentive originally promised for a specified period. The Court did not lay down that every executive promise can be disregarded merely by labelling a decision 'policy'. It distinguished the authorities on arbitrary withdrawal, delayed implementation or enforcement of benefits while the relevant statutory provision remained in force. On mandamus, the Court discussed both enforceable public duties and review of failure or unlawful exercise of discretion, ultimately finding no duty requiring the Union to reimburse 100% of CGST. Section 11 vested an exemption discretion exercisable on GST Council recommendations; the Court would not compel its exercise in the particular manner sought. Fiscal policy remained reviewable for palpable arbitrariness and irrationality, but the appellants' claim did not succeed. Separately, the Court acknowledged that investment made in reliance on the policy gave the appellants a legitimate expectation that their claim deserved due consideration. The Council's 2016 deliberations contemplated tax payment under GST followed, where the relevant government chose to continue incentives, by budgetary reimbursement. The judgment referred to the then 58:42 Central/State devolution division and Jammu and Kashmir's 2017 reimbursement notification. Those matters supported its request for further policy consideration by States and the Council, rather than an adjudicated entitlement to the balance.

Pinpoint: Paragraphs 26-31 (statutory transition), 33-58 (estoppel and public-interest withdrawal), 59-71 (mandamus, distinguished authorities and section 11), and 72-79 (legitimate expectation and Council deliberations); official PDF pages 22-72. Core holdings: paragraphs 54-58, 64 and 71, pages 52-56, 61 and 64-66.

03 Decision

Both appeals were dismissed, save for the observations in paragraphs 72-80. The claim to compel the Union to provide 100% CGST reimbursement, or to issue the requested section 11 exemption, was rejected. Paragraph 80 permitted the appellants to make representations to their respective State Governments and the GST Council, and requested those bodies to consider any such representations expeditiously in light of the preceding observations. Paragraph 79 suggested that the States consider corresponding reimbursement from devolved revenue and that the Council consider appropriate recommendations. The operative result did not order payment of the remaining 42%, direct any State to adopt a reimbursement scheme, fix a representation-disposal deadline, extend the incentive period, or award a refund. It also did not remand the dismissed claims for a fresh judicial merits decision. Pending applications were disposed of, with no order as to costs.

Pinpoint: Paragraphs 55, 58, 64 and 71 (rejection of claimed relief); paragraphs 79-83 (precise disposition); official PDF pages 53-56, 61, 64-66 and 71-73. Paragraph 80 is on page 72; paragraphs 81-83 and the signed date are on page 73.

04 In Favour Of

Union of India on merits; appellants permitted to make representations for expeditious policy consideration

In favour of the Union of India on the substantive entitlement and exemption claims: the final dismissal left the challenged restriction of Central budgetary support undisturbed. The appellants obtained the limited benefit of express permission to submit representations, together with the Court's recognition of a legitimate expectation of due consideration and its request for expeditious consideration. That qualification must accompany the outcome, but it is not a monetary victory, an order for 100% reimbursement, or a finding that the respective States owe the missing 42%.

Pinpoint: Paragraphs 64, 71-73 and 79-83; official PDF pages 61, 64-66 and 71-73.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: For an area-based incentive claim affected by GST, identify the exact policy, implementing notification, eligible unit, commercial-production date and unexpired benefit period. Hero's outright excise exemption and Sun Pharma's refund-based exemption arose under distinct instruments; their eligibility details should not be treated as interchangeable. Separate any right accrued under the former regime from a claimed right to continue an exemption after rescission, and identify the actual statutory saving or restriction. A general reliance argument cannot override the proviso to section 174(2)(c). For a budgetary-support claim, independently check the applicable Central and State scheme, eligible tax/payment base, claim procedure, limitation and subsequent amendments. The judgment's figures describe the historical scheme before it; they are not universal GST reimbursement rates or a guarantee that all taxes paid are reimbursable. If seeking additional policy support, assemble evidence of the promise, investment, eligibility, residual period, support already received and the applicable State policy for a focused representation. Distinguish that request for consideration from an accrued, enforceable entitlement under an existing scheme. Paragraph 73 should not be cited as an award of the balance, and paragraphs 79-80 should not be turned into a mandatory State-payment direction. Conversely, rejection of these claims does not place every unlawful exercise of discretion beyond judicial review: the judgment itself discusses reviewable failures of public duty and the limit for arbitrary fiscal policy. No subsequent representation outcome, State policy response, review disposal or current claim eligibility is established by this note.

Pinpoint: AKHB analysis based on paragraphs 6.1-6.10, 28-31, 54-64 and 71-81; official PDF pages 3-9, 23-26, 52-61 and 64-73. The practical evidence and claim-check recommendations are AKHB analysis, not additional directions of the Court.

Sources and limitations

Relevant provisions

Central Goods and Services Tax Act, 2017: sections 11 and 174(1), 174(2)(c), particularly the proviso concerning rescinded investment-incentive exemptions

Constitution of India: Articles 246A, 269A and 279A; Constitution (One Hundred and First Amendment) Act, 2016; Article 226 mandamus principles

Central Excise Act, 1944: section 5A; Notification No. 50/2003-C.E. dated 10 June 2003; Office Memorandum dated 7 January 2003

Sun Pharma historical incentive: Office Memorandum dated 17 February 2003 and exemption notification dated 25 June 2003, as recorded in paragraph 6.4

Notification No. 21/2017-C.E. dated 18 July 2017; Budgetary Support Scheme notified on 5 October 2017; GST Council meeting of 30 September 2016, as considered in the judgment

Statutory note

Historical-period qualification: this note addresses the 2003 industrial incentives, their rescission during the 2017 GST transition, and the Budgetary Support Scheme considered in the judgment of 17 October 2022. Section 174(1) contains an express exception concerning goods within Entry 84 of the Union List; the judgment should not be paraphrased as abolishing every central excise levy. The 58% CGST, 29% IGST and 42% devolution references are historical scheme/context figures. This review has not independently audited later versions of the Central or State schemes, tax-devolution shares, eligibility conditions, computation rules or deadlines. Verify the operative instruments for the relevant unit and claim period before applying the decision to a present claim.

Treatment note

Primary judgment and official eSCR identity checked on 12 October 2026. A limited official-domain web-index search was also attempted; it did not establish a subsequent order or the absence of later treatment. No comprehensive search for review proceedings, later judgments, overruling, amendments, State responses or representation outcomes has been completed, and current precedential treatment is not certified. This is an AI-assisted, primary-source-based AKBH research note; it does not claim human legal review. It is for general information, is not legal advice and is not a substitute for a qualified professional's assessment of the reader's facts and the law applicable to the relevant period.

Scope of source review

Complete 73-page official common judgment, paragraphs 1-83, including subparagraphs 6.1-6.12. The cover verifies Civil Appeal Nos. 7405 and 7406 of 2022 and their SLP numbers; the signature page verifies the bench and date. The neutral and SCR citations are verified against the official eSCR result recorded on 12 October 2026; neither is printed on the signed rendition. One common decision covers both appellants. Paragraph 3 prints the Delhi writ number as 505 of 2022, while paragraph 6.10 prints 505 of 2020; this note relies on the unambiguous Supreme Court appeal identity and does not silently reconcile that discrepancy.

Primary source

Source description: Supreme Court of India official signed common judgment dated 17 October 2022

Official source: [Open source document](#)

AKHB source PDF: [Open source document](#)

Judges: B.R. Gavai; B.V. Nagarathna

Outcome kind: final

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