

(1992) 03 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeals No's. 2832-2833 of 1979

Amrit Banaspati Co. Ltd. and another

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 05-03-1992

Acts Referred:

Contract Act, 1872 — Section 2, 23

Punjab General Sales Tax Act, 1948 — Section 12, 30

Citation : AIR 1992 SC 1075 : (1997) 68 ECR 551 : (1992) 59 ELT 13 : (1992) 2 JT 217 : (1993) 1 LW 236 : (1992) 1 SCALE 540 : (1992) 2 SCC 411 : (1992) 2 SCR 13 : (1992) 85 STC 493 : (1992) 1 UJ 599

Hon'ble Judges : S. Mohan, J;R. M. Sahai, J

Bench : Division Bench

Advocate : Kapil Sibal, U.K. Khaitan, Praveen Kumar and Vivek Sibal, for the Appellant; D.S. Mehra, Jayshree Anand, Arun Mehra, Sanjay Bansal and G.K. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—Promissory estoppel, its extent and applicability, apart, one of the important issue, that arises for consideration in this appeal, directed against the judgment and order of a Division Bench of the Punjab and Haryana High Court exercising jurisdiction under Letters Patent and setting aside order of the learned single Judge directing refund of sales tax and inter-State sales tax, is if the Government of a State could agree expressly or impliedly to refund sales tax realised by a manufacturer.

2. Facts, found by the learned single Judge, which were sufficient to direct the government to honour its commitments of refunding sales tax to the appellant on principle of promissory estoppel were announcement of policy by the Government to refund sales tax, as an incentive to those who were willing to set up large scale selective industries in the focal points, letter of the appellant seeking details of policy as he was willing to set up a Vanaspati manufacturing unit, favourable response from the Director of Industries followed by exchange of

letters and meetings between appellant's representatives and Secretary of Industries extending assurance that the incentives shall be available to the appellant acting on which it purchased land, machinery etc., laying of foundation stone by the Governor and issuance of notification declaring the land, on which unit was established, in focal point. The order was set aside in appeal and it was held that even though rule of equitable estoppel should be observed by all government and public authorities but its scope was restricted and it could not be extended, too widely so as to bind a government even where its officials in excess of their authority or against the interest of the Government extended the promise. The Bench drew inference against the appellant from its letters seeking written assurance that the concession would be extended to it which came, as well, in June, 1969 but before that the policy had, already, undergone change in May, 1969. The Bench further felt mystified that even though there was a decision of Cabinet Sub-Committee as far back as 1966 not to give any refund of sales tax yet the Government officials acting contrary to it issued the brochure and corresponded with the appellant in, wholly, unauthorised manner therefore their action could not create any right in favour of the appellant. It also negated the claim of appellant, as refund of an amount paid as sales tax by the appellant, would be raising revenue by the Government not for itself or for public but for a private person which would be contrary to Articles 265 and 266 of the Constitution of India.

3. Law of Promissory Estoppel which found its 'most eloquent exposition' in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., crystallised in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, as furnishing cause of action to a citizen, enforceable in a court of law, against government if it or its officials in course of their authority extended any promise which created or was capable of creating legal relationship, and it was acted upon, by the promisee irrespective of any prejudice. It was reiterated in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and was taken further when it was held that no duty of excise was assessable on cigarettes manufactured by assessee by including, cost of corrugated fiberboard containers, when it was clearly represented by the Central Board of Excise and Customs in response to the submission made by the Cigarette Manufacturers' Association- and this representation was approved and accepted by the Central Government- that the cost of corrugated fibreboard containers would not be includible in the value of the cigarettes for the purpose of assessment of excise duty. In Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), it was held.

All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damages, detriment or prejudice to the party asserting the estoppel.

4. What, therefore, requires to be examined, is if any promise was made by the Government or its officials to the appellant that sales tax shall be refunded to it and if the appellant acting on it altered its position. For this it is necessary to narrate few facts even though both the learned Single Judge and Division Bench have dealt with it elaborately. Admittedly, a brochure was issued in December 1966 by the Government of Punjab announcing its 'New Policy' declaring that incentive and concession, one of them being refund of sales tax, would be available to those persons who set up selective large scale industries in the focal point. Whether this brochure was authorised or not and its legal effect on rights of parties shall be adverted to later. But it is undisputed that acting on it the appellant's representative met the Chief Minister of the State personally and found that he was interested in encouraging Vanaspati Manufacturing unit in the State, therefore, its Manager wrote a letter in June, 1968 to the Chief Minister expressing willingness to set up the unit provided the concessions were made available to it which was replied by the Director of Industries on 2nd July, 1968 assuring the appellant that the concession as announced shall be available and further informed the appellant that the Government was willing to consider such additional concession which the appellant may require for implementation of the scheme. It was followed by exchange of correspondence and various meetings between appellant's representative and officials of the Government. Outcome of it is recorded in the note submitted by the Secretary of Industries on 1.4.1969 to Finance Department, on certain queries made by it, relevant portion of which reads,

As Government investment had taken place in Rajpura the Sub-Committee appointed for allotment of industrial plots was very much concerned to allot the same but it was finding difficulty in getting suitable parties. In October, 1968 Shri Khaitan of Amrit Banaspati Factory of Ghaziabad approached me and the D.I. for location of their vanaspati plant of 100 tonnes capacity per day in Punjab. These people since they were already very much in the business and since their vegetable ghee was meeting 20 to 25% of Punjab's needs of vanaspati it was felt that if we encourage these people to come to Punjab it will give great boost to industrial growth. These people were attracted mainly to Punjab on account of the availability of raw material, i.e., groundnut which are in plenty around about. They consequently asked for a plot in Dhandari Kalan. At that stage we had 2-3 applications for setting up of vanaspati plants at Ludhiana and since our Rajpura Estate was very much neglected it was decided that we persuade this party to locate its factory at Rajpura as by their coming there, it was felt that several small and ancillary units would also get located and our plots would be sold. In fact Shri Khaitan, during the course of his discussions with me mentioned that his project which would be costing nearly Rs. 1.5 crores would necessitate setting up of the other smaller units-tin makers-who would come over from U.P. and settle up at Rajpura. Taking all these factors into consideration I mentioned this matter to Mr...and also informally to FS also at that stage and it was decided that we get this party located at Rajpura. Unfortunately, the demand of land by

this party was in one place to the tune of 15 to 20 acres and since our plots were only of 1-1.5 acres of size it was decided that they may be allowed to locate their plot near about our Focal Point so that it could be integrated finally in our future expansion of the Industrial Estate at Rajpura which yet shows no sign of life and consequently it was felt that by bringing this party more industries of allied nature would come here. In plan for 1969-70 the F.D. are aware that we have very little money set aside for further acquisition of land. Realising this, we, therefore, suggested to this party to go in for purchase of land themselves as we were not sure whether we would be able to have enough funds to acquire more land at Rajpura particularly when our earlier plots had not been sold out. This party was keen to come in as it wanted to do into production from November, 1969. The party has purchased that piece of land which has approval of the Town and Country Planning department, it has also submitted its plan for construction of buildings etc.

5. It is, thus, obvious that there was representation to the appellant that it would be entitled to concession and incentives announced by the Government if it set up its unit in the focal point. Whether such representation resulted in binding agreement is different issue but the representation coming from Industries Secretary and Director of Industries in pursuance of Government policy cannot be held to be unauthorised or beyond the scope of authority. The Government functions through its officials and so long they are acting bona fide in pursuance of Government policy the Government cannot be permitted to disown it as a citizen can have no means to know if what was being done was with tacit approval of the Government. And if it is found that the representation made by the official concerned was such that any reasonable person would believe it to have been made on behalf of the Government then unless such representation is established to be beyond scope of authority it should be held binding on the Government. It is another matter that even if it is binding it may be contrary to law and therefore unenforceable. In *Motilal Padampat Sugar Mills* (supra) the Government was held bound to grant exemption from sales tax to the sugar mill even though the manufacturer had written letter to the Director of Industries on a news item published for grant of exemption from sales tax, based on a statement issued by the Secretary of Industries which was favourably replied first by the Director of Industries endorsed later by the Chief Secretary informing the manufacturer that Government was willing to consider the request and necessary form etc. may be obtained from Secretary Industries. As is clear from the noting of the Secretary the appellant purchased the land, privately, on assurance of the Secretary which by a notification issued by Government was included in focal point. It was not denied that by January, 1969 the appellant had purchased the land and various other materials at a cost of 15 lakhs and had placed an order for purchase of plant and machinery of value of Rs. 35 lakhs which was intimated by a telegram sent on 11th January, 1969. Even rules were framed in February, 1969 by sanction of the President of India which provided for refund of sales and purchase tax to new and expanding industries. All this

indicates that the promise was made on behalf of the Government by its officials in pursuance of and in line with the declaration of policy by the Government that a new unit shall be entitled to concession. Acting on the assurance, both express and implied, the appellant invested substantial amount in setting up the unit requesting, in the meanwhile, for grant of written sanction from the Government which, too, came. But even if it would not have it would not have made any difference in law as the equity arose in favour of appellant not by the letter dated 16th June, 1969 but by altering its position on assurance given by authorities. In Godfrey Philips (*supra*) it was observed,

Now the doctrine of promissory estoppel is well-established in the administrative law of India, It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped into mitigate the rigour of strict law.

6. Basic ingredients of promise by the Government, belief of the appellant that it was true and if acted upon shall, entitle it to refund of sales tax, and finally altering its position by investing substantial amount were thus established to invoke promissory estoppel against government.

7. Vehement argument of the learned Counsel, for the State of Punjab, that in absence of any assurance by a competent authority on behalf of the State the promise if any was incapable of giving rise to any equity, cannot be accepted in absence of any positive material to show that the Government either disassociated itself from the letter sent by the Secretary or Director of Industries or acted contrary to what was alleged to have been, represented or assured by them. On the other hand the notings of the Secretary, extracted earlier, demonstrate unmistakably that the authorities were not only assuring the appellant but were making every effort that the unit be established in consonance with the policy of Government as it would result in industrialisation and development of the State. Such painstaking effort of responsible and senior officers of the State was neither unauthorised nor beyond scope of their authority. In fact the letter dated 16th January, 1969 and the notification declaring the land where the unit of appellant was established to be in focal point to enable it to avail of the concession were only follow up action which demolish any such conclusion as was canvassed by the learned Counsel.

8. Effort was, also, made to advanced an innovative submission of offer, counter offer and recounter offer. It was submitted that policy of the Government announced in the brochure was only an offer. And letter of the appellant sent on 25th October, 1968 was a counter offer which was under consideration of Government which made another counter offer on 16th June which was accepted by the appellant who thereafter applied for registration and the Government issued a notification declaring the factory in the focal point. All that can be said is that the submission was advanced without any foundation, in complete is regard

of facts and misapprehension about the law of offer and counter offer. Letter dated 25th October, 1968 was written, to the Secretary of Industries pursuant to letter dated 2nd July, 1968 and with reference to the interview held between appellant's representative and the Secretary of Industries at Chandigarh on 16th October, 1968 undertaking to set up a factory at Rajpura, a site approved by the department within area covered by the layout plan of industrial estate with assurance that the plot shall be in focal point at Rajpura and if necessary steps shall be taken to include it in focal point. The letter mentioned that according to the policy the concession available to the appellant would be refund of purchase and sales tax including inter-state sales tax for a period of five years. In paragraph 6 of the letter the appellant wanted clarification that the period of five years shall be counted from the date of production Paragraph 7 of the letter read,

7. We would very much like to spend money on further industrial development, staff and labour welfare activities, housing for staff and labour, research and development of agricultural products for use in industry in the State of Punjab. In order to enable us to do so, it is requested that instead of refunding the amount of the purchase and sales tax including inter-state sales tax as such an amount equivalent to the amount of purchase and sales tax including inter-state sales tax to be paid by us every quarter is paid to us as Capital grant quarterly for a period of five years commencing from the date of production. If our request is accepted, we on our part undertake to utilise the same for all or any of the said purposes as we feel proper in the State of Punjab. You will appreciate that after all the State will benefit if the concessions are utilised for advancement of industry and research and staff and welfare in the State and this will be possible if our request is considered favourably.

9. Request for confirmation of the concession mentioned in the letter dated 25th October, 1968 were reiterated in a telegram sent on 11th January and letters dated 3rd, 13th and 23rd January, 1969. It would be too much to read the letter dated 25th October, 1968, as counter offer. It was intimation by the appellant that it had decided to set up the unit as it has been assured that the concessions as announced would be available to it. The request that the period of five years for refund should be calculated from the date of production, and capital grant may be made every quarterly equivalent to the amount of sales tax are impossible to be read as declining of availing the offer made by the Government. What was requested was that if instead of refunding of the sales tax or purchase tax an amount equivalent to it was paid to them every quarter for a period of five years it would enable them to utilise the same for the benefit of the State itself. It was this request which was reiterated in the telegrams and letters but at no point of time the appellant made any request that if capital grant was not paid it shall not avail of the concession in respect of sales tax. The request was to change the nature of payment and not the refund. It could not be termed as counter offer, also, because the appellant not only undertook to establish the unit but as agreed went on to purchase land and machinery etc. Nor is there any merit in the submission that after considering proposal of appellant the

Government gave a counter offer on 16th June, 1969 forgetting that issuance of letter was not an isolated action of the Government but it was preceded, apart, from earlier notings of the Secretary extracted earlier, by a meeting which took place on 2nd May between various officials in which the decision was taken, 'that the concession and incentives applicable to focal point will be given to M/s. Amrit Banaspati Co. Ltd. only in respect of 12 acres of land to be utilised by them for setting up the ghee industry'. Letter dated 16th June, 1969 was faithful reproduction of the decision taken on 2nd May, 1979 informing the appellant that, 'the State Government have agreed to give the concessions and incentives admissible to a unit in the focal point of industrial growth to the unit proposed to be set up by you for the manufacture of Vanaspati Ghee'. The entire argument founded an offer and counter offer, thus, was misconceived.

10. Two reasons were given, by Division Bench of the High Court, to permit the Government to escape from rigour of the principle of promissory estoppel one that the brochure itself was unauthorised and other that when the decision of the Government came the policy had already undergone change. Neither appear to be well founded. Cabinet Sub-Committee's decision of 15th December, 1968 which formed the basis for the finding that the brochure was unauthorised, are minutes of a decision of a Committee comprising of the Industries Minister and Secretary Industries which did not see light of the day till it was filed by way of supplementary affidavit before the Division Bench. As against it, the Chief Minister and Industries Minister in an inaugural speech of Conference of Industries at Chandigarh after five days of its, that is, on 20th December, 1968, announced that concession and incentive shall be offered to new units set up in focal points details of which were mention in the booklet issued by the Government in December, 1966, which provided of refund of sales tax as claimed by the appellant.

11. A citizen of a State can have no means to ascertain that announcement by the Chief Minister and the Industries Minister of State that concession made in the booklet would be available was not the government policy as the Cabinet Sub-Committee earlier had taken some other decision. The Government cannot be permitted to go back on its promise by producing some documents lying in its file which was neither known, nor announced, nor acted upon as it would be unjust and unfair, therefore, illegal. Factually the Division Bench read too much in the minutes of 15th December, 1968 but it is not necessary to deal with it. Suffice it to say how the Government understood and wanted others to understand its policy was mentioned in the brochure. Even the Secretary who was a member of the Sub-Committee understood it in the manner in which it was printed in the booklet. In the note submitted to the Finance Department it was stated,

...The Entire Matter of giving concessions was discussed at the Cabinet level and all these factors (namely exemption from sales tax) were taken into consideration when the Government took a decision to give such attractive concessions to the industry. I would like this case to be seen by D.M. also as he

had enquired about this case from me. The Amrit Banaspati people as I.N. and F.S.R are aware, have already gone for construction of their building and according to their plan they propose to go into product in November 1969. They are anxious that the Government takes an early decision granting concession to their unit also. As it is a big industry we should take an immediate decision as by so doing the possibility of bringing in ancillary can be explored thereby ensuring that our industrial estate gets fully developed at the earliest....

12. As stated earlier the letter dated 16th June, 1969 was founded on notings of 27th May, 1969 which was based on decision arrived on 22nd May, 1969. The finding of the Division Bench, was thus, factually and legally incorrect. It was not justified in holding that the Government officials had extended promise, unauthorisedly and beyond scope of their authority. Reliance on *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, was not apposite as the Estate Manager at whose instance the lessee had deposited the amount for grant of tenancy after reconstruction was authorised to collect rent only. Further the letter indicated that if the lessee complied with conditions he would recommend to the Board for grant of lease. And recommendation was made. But it was not accepted.

13. Nor there is any merit in the finding that by the time the Government agreed, in writing, to grant concession the policy had undergone change, therefore, the appellant was entitled to the concession under the new policy only, Estoppel arose against Government not by the letter dated 16th June, 1969 but by the promise made by it in December, 1968 to those who were willing to set up new unit, assurance by its officials both in writing and oral leading appellant to belief that it was intended to create an agreement that sales tax paid shall be refunded as a result of which it not only purchased land, machinery and other parts much before the policy went into any change but the Government issued notification as well declaring the area where the factory was established to be in focal point. Rights of parties were therefore governed by the old and not new policy. The appellant was never intimated that the Government had changed its policy in respect of refund of sales tax at any point prior to filing of the counter affidavit in the High Court. Even the letter dated 16th June, 1969, did not mention that the concessions would be available as provided in the new policy. In *Pournami Oil Mills and Others Vs. State of Kerala and Another*, the Government was not permitted to go back on its earlier promise of wider exemption from sales tax in pursuance of which the industries had been set up on principle of promissory estoppel and the Notification issued after one year curtailing exemption was held to apply to industries set up thereafter. To same effect is the decision in *Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others*, .

14. But Promissory Estoppel being on extension of principle of equity, the basic purpose of which is to promote justice founded on fairness and relieve a promisee of any injustice perpetrated due to promisor's going back on its

promise, is incapable of being enforced in a court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to binding contract is statutorily prohibited or is against public policy. What then was the nature of refund which was promised by the govt? Was such promise contrary to law and against public policy? Could it be enforced in a court of law? Taxation is a sovereign power exercised by the State to realise revenue to enable it to discharge its obligations. Power to do so is derived from entries in Lists I, II and III of the Seventh Schedule of the Constitution. Sales tax or purchase tax is levied in exercise of power derived from an Act passed by a State under Entry 54 of List II of VIIth Schedule. It is an indirect tax as even though it is collected by a dealer the law normally permits it to be passed on and the ultimate burden is borne by the consumer. But 'the fact that the burden of a tax may have been passed on to the consumer does not alter the legal nature of the tax' (Halsbury's Laws of England, Vol. 52, paragraph 20.04). Therefore even a legislature, much less a government, cannot enact a law or issue an order or agree to refund the tax realised by it from people in exercise of its sovereign powers, except when the levy or realisation is contrary to a law validly enacted. A promise or agreement to refund tax which is due under the Act and realised in accordance with law would be a fraud on the Constitution and breach of faith of the people. Taxes like sales tax are paid even by a poor man irrespective of his savings with a sense of participation in growth of national economy and development of the State. Its utilization by way of refund not to the payer but to a private person, a manufacturer, as an inducement to set up its Unit in the State would be breach of trust of the people amounting to deception under law.

15. Exemption from tax to encourage industrialisation should not be confused with refund of tax. They are two different legal and distinct concepts. An exemption is a concession allowed to a class or individual from general burden for valid and justifiable reason. For instance tax holiday or concession to new or expanding industries is well known to be one of the methods to grant incentive to encourage industrialisation. Avowed objective is to enable the industry to stand up and compete in the market. Sales tax is an indirect tax which is ultimately passed on to the consumer. If an industry is exempt from tax the ultimate beneficiary is the consumer. The industry is allowed to overcome its teething period by selling its products at comparatively cheaper rate as compared to others. Therefore, both the manufacturer and consumer gain, one by concession of non-levy and other by non-payment. Such provisions in an Act or Notification or orders issued by Government are neither illegal nor against public policy.

16. But refund of tax is made in consequence of excess payment of it or its realisation illegally or contrary to the provisions of law. A provision or agreement to refund tax due or realised in accordance with law cannot be comprehended. No law can be made to refund tax to a manufacturer realised under a statute. It would be invalid and ultra vires. The Punjab Sales Tax Act provided for refund of sales tax and grant of exemption in circumstances specified in Sections 12 and 30 respectively. Neither empowered the Government to refund sales tax realised

by a manufacturer on sales of its finished product. Refund could be allowed if tax paid was in excess of amount due. An agreement or even a notification or order permitting refund of sales tax which was due shall be contrary to the statute. To illustrate it the appellant claimed refund of sales tax paid by it to the State Government of sale made by it of its finished products. But the tax paid is not an amount spent by the appellant but realised on sale by it. What is deposited under this head is tax which is otherwise due under provisions of the Act. Return or refund of its or its equivalent, irrespective of form is repayment or refund of sales tax. This would be contrary to Constitution. Any agreement for such refund being contrary to public policy was void u/s 23 of the Contract Act. The constitutional requirements of levy of tax being for the welfare of the society and not for a specific individual the agreement or promise made by the government was in contravention of public purpose thus violative of public policy. No legal relationship could have arisen by operation of promissory estoppel as it was contrary both to the Constitution and the law. Realisation of tax through State mechanism for sake of paying it to private person directly or indirectly is impermissible under Constitutional scheme. The law does not permit it nor equity can countenance it. The scheme of refund of sales tax was thus incapable of being enforced in a court of law.

17. Fallacy of such constitutionally inhibited policy, sacrificing public interest resulting in illegal private enrichment is exposed by claim of refund for nearly Rs. 2 crores, for a period of three years, only, when total investment in establishing the unit was Rs. 1.5 crores, Levy of tax to raise revenue for promoting economic growth of the State reduced itself in enhancing the profit margin of the manufacturer and the sales tax stood converted into income of the appellant. Such contrivance of law even though bona fide is legally unenforceable,

18. In the result this appeal fails and is dismissed with cost.