

(1992) 09 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 3004 of 1982

Barium Chemicals Ltd.

APPELLANT

Vs

Union of India.

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4
Customs Act, 1962 — Section 15, 15(1), 159, 25, 25(1)

Citation : (1993) 63 ELT 209

Hon'ble Judges : S.P. Kurdukar, J;A.V. Savant, J

Bench : Division Bench

Advocate : Ms. C.N. Korde and Mr. Babu Yohannan, instructed by M/s Ramesh Shroff and Co, for the Appellant; Mr. K.R. Bulchandani, Mr. V.G. Rege, Mr. H.V. Mehta and Mr. K.C. Sidhwa, for the Respondent

Judgement

A.V. Savant, J.—By this petition, the petitioners-Barium Chemicals Limited, and a shareholder of the said company have inter alia prayed for the following reliefs in the petition :

(d) make a declaration that Section 3(2) of the Customs Tariff Act, 1975 is ultra vires the Constitution of India and the Bill of Entry (Forms) Regulations, 1972 in so far as the same are based on the said section are ultra vires the Constitution of India;

(e) issue a direction for determining the value of the goods imported by the first petitioner company on the basis of the value of the like goods u/s 4 of the Central Excises and Salt Act, 1944 after deducting all the expenses that are deductible u/s 4 of that Act;

(f) issue a writ of mandamus directing the respondents not to load the assessable value by including therein the packing charges or landing charges or by loading any post importation charges including customs duty and surcharge to the value of the goods imported by first petitioner company for the purpose of

levying the countervailing duty (C.V.D.) u/s 3(1) of the Customs Tariff Act, 1975 and surcharge; and

(g) issue a writ of prohibition or any other appropriate writ, order or direction prohibiting the respondents from loading the assessable value as set out in the prayers hereinabove.

2. However, Shri Korde, the learned Counsel appearing for the petitioners fairly stated that as far as the reliefs claimed in the above terms by prayers (d), (e), (f) and (g) of the petition are concerned, the issues are concluded against the petitioners in view of two Division Bench judgments of this court in the case of (i) Ashok Traders v. Union of India and Another, reported in 1967 (32) E.L.T. 262 (Bom) and (ii) Polyset Corporation and others Vs. Collector of Customs, Bombay and another, . In view of this position, it is not necessary for us to cool with these contentions which have, admittedly, been concluded against the petitioners by the said two decisions referred to above. However, what survives for our consideration is the question of the plea of promissory estoppel which arises in the following facts.

3. The first petitioner (for short "the Company") carries on business as the manufacturer of chemicals and deals in chemicals. In the course of its business the Company imports chemical known as "Polyvinyl Chloride Resins" (for short, PVC resins) which is marketed as P.V.C. as a raw material for the manufacture of the products of the Company. The said chemical is chargeable to duty under entry No. 39.01/6 in the first schedule of the Customs Tariff Act, 1975. The customs duty payable on P.V.C. resins before the Finance Act, 1980 was 100% ad valorem and, in addition, u/s 47 of the Finance Act, 1981 the auxiliary duty at 25% ad valorem was payable. The said Finance Act also enabled the Government to grant exemption in respect of auxiliary duty levied u/s 47 of the said Act. By Notification Nos. 341-Cus. and 342-Cus. both dated 2nd August 1974 as amended by various notifications upto 16th February 1982, in case of imports of goods specified therein which included PVC resins of Romanian origin covered by Heading 39.01/06 in the First Schedule to the Tariff Act, the duty payable on PVC resins was reduced by 50% of the standard rate. Under Notification No. 30/82-Cus., dated 28th February 1982 (Exh. C to the Petition), issued in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government, on being satisfied that it was necessary in the public interest so to do, exempted certain goods falling under Heading No. 39.01/06 of the First Schedule to the Customs Tariff Act, 1975 specified in column 2 of the Table from so much of that portion of the duty of customs leviable thereon which was specified in the said first schedule, as was in excess of the rate of duty specified in the corresponding entry in column (3) of the said table which is reproduced below for the ready reference :

-----			Sr. Description of		
goods	Rate	of	duty	No.	
-----				1.	2. 3.

----- 1. Polyester skips
140 per cent ad valorem. 2. All others 100 per cent ad valorem.

In view of the notifications referred to earlier, the position on the issuance of the notification, Exh. C, dated 28th February 1982 was that the Company had to pay 50% of the duty levied under the Tariff Act in respect of the import of the PVC resins from Romania.

4. The petitioners stated that on the basis of the representations contained in the aforesaid notification, Exh. C, they entered into four contracts, all dated 26th July 1982 with M/s. P. D. Dastur, Bombay, and indenting agent of Chimimport Export, Foreign Trade Co., (A Government of Romania Organisation) of Romania for import of 5000 metric tonnes of PVC resins. On 28th August 1982 the Union Bank of India opened a letter of credit in favour of the said supplier at the instance of the first petitioner. The supplier from Romania issued the invoice dated 9th December 1982 and the Bill of Lading in respect of the said goods is dated 10th December 1982. On reaching India, the vessel was granted entry inwards on 29th December 1982 and Bill of Entry in respect of the goods entered for home consumption u/s 46 of the Customs Act, 1962 was presented on December 30, 1982. There is no controversy before us that for the purpose of Section 15(1)(a) of the Customs Act, 1962 the relevant date for the purpose of rate of duty and Tariff valuation in respect of the imported goods would be December 30, 1982.

5. However, the controversy arises because of the intervening event, viz. the issuance of the impugned notification dated 4th November 1982 (Exh. F to the Petition). Under the said notification Exh. F issued in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 the Central Government on being satisfied that it was necessary in the public interest to do so, made some further amendments in the earlier notification of the Government of India, viz. Notification No. 30/82, dated 28th February 1982 (Exh. C to the Petition). The amendment made by the impugned notification. Exh. F, in so far as it is relevant reads as under :

"2. Nothing contained in this notification shall apply to :

(a)(i)

to

(xi)

(b) Polyvinyl Chloride resins."

The result of the impugned notification, Exh. F, is that the exemption granted under Exh. C in respect of the import of PVC resins from Romania stood withdrawn with effect from 4-11-1982. As a result of the impugned notification, therefore, the petitioners became liable to pay the customs duty at the rate of 75% ad valorem instead of 50% ad valorem which was payable before the

issuance of the impugned notification, Exh. F. It is this notification Exh. F, dated 04-11-1982 which is the subject matter of the controversy that now survives in the present petition.

6. We have heard both the learned Counsel at length viz. Shri Korde appearing for the petitioners and Shri Bulchandani appearing for the respondents. Shri Korde's contention is that having regard to the sequence of events mentioned earlier above, viz. that the exemption notification, Exh. C, was issued on 28-02-1982, the contracts were entered into on 26-07-1982, and the fact that the letter of credit was opened on 28-08-1982, in view of the doctrine of promissory estoppel the respondents cannot deny the benefit of the exemption notification, Exh. C. It is contended that in the representation made by the respondents in their notification, Exh. C, dated 28th February 1982, the respondent had made a clear and unequivocal promise which was intended to create legal relations or effect of legal relationship in future knowing or intending that it would be acted upon. It is further contended that the representation made by the respondent in Exh. C was in fact acted upon by the petitioners and, therefore, the said representation and promise made by the respondents in the said notification, Exh. C, was binding upon the respondents and they were not entitled to go back upon the same and it would be inequitable to permit the respondents to go back upon the said promise having regard to the dealings which had taken place between the parties. In the Petition, the petitioners have made specific averment setting out the ingredients of the doctrine of promissory estoppel which, according to the petitioners, have been fully satisfied in the facts of the present case. In support of his contention that it was not open to the respondents to withdraw the promise and representation made in the notification, Exh. C., dated 28th February 1982 Shri Korde has invited our attention to the following decisions.

7. In the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , a news item was published in the local newspaper which state that the State of Uttar Pradesh had decided to give exemption from sales tax for a period of three years under certain provisions of U.P. Sales Tax Act to new industries. The news item was based upon a statement made by the Secretary in the Industries Department of the U.P. Government. On the basis of the news item, the appellants before the Supreme Court had informed the U.P. Government that it intended to set up a new plant and sought a confirmation that it would be entitled to sales tax holiday for a period of three years from the date it commence production. The Directors of Industries confirmed this position which was also confirmed by the Chief Secretary to the U.P. Government. Later on, when the U.P. Government sought to go back upon the representation, on the basis of the plea of promissory estoppel, the appellants contended that the Government could not go back upon the representation made by it. It was held that it was clear from the letter of the respondent dated 23-01-1969 that a categorical representation was made by the respondent on behalf of the Government that the proposed Vanaspati factory of the appellants would be

entitled to the exemption from the sales tax in respect of the sale of Vanaspati effected in U.P. for a period of 3 years from the date of commencement of the production. The letter dated 23rd January 1969 clearly showed that the respondent made this representation in his capacity as a Chief Secretary of the Government and it was, therefore, a representation on behalf of the Government. The appellants relying upon the representation of the Government had borrowed moneys from various financial institutions, purchased the plant and machinery and had set up a factory at Kanpur. It was, therefore, held that the facts necessary for invoking the doctrine of promissory estoppel were clearly present and the Government was bound to carry out its promise and exempt the appellants from sales tax in respect of the sale of Vanaspati effected by the appellants in U.P. for a period of 3 years from the date of commencement of the production.

8. Our attention was then invited to the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., where it was held that the doctrine of promissory estoppel is applicable to Government in exercise of its governmental, public or executive functions and doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. It was further held that, of course, there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It was equally true that promissory estoppel cannot be used to compel the government or public authority to carry out the representation or promise which was contrary to law or if it was outside the authority or power of the officer of the Government or public authority to make. It was further held that the doctrine of promissory estoppel being an equitable doctrine, must yield when equity so demands. The Court would not raise any equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the government or public authority in such a situation. Doctrine of promissory estoppel would be misplaced in such a case, because on facts, equity would not require that the government or public authority may be held bound by the promise or representation made by it.

9. In the case of Pournami Oil Mills and Others Vs. State of Kerala and Another, it was observed that by notification dated 11-04-1979 Small Scale Industries set up after 1-4-1979 were exempted by the State Government from the payment of sales tax for a period of five years from the date of production. The second notification dated 29th September 1980 was issued by the State Government in exercise of the powers conferred upon it by Section 10 of the Kerala General Sales Tax Act. The second notification altered the concession given by the earlier notification to the detriment of the small scale industries and it stated that it should be deemed to have come into force with effect from 1-4-1979. The Supreme Court found that both the notifications had been issued under the provisions of Section 10. This was a case of grant of exemption for a stated

period of five years from the date of production. It was held that all parties, who in response to the first notification had set up their industries within the State of Kerala prior to the date of publication of the second notification, would be entitled to the exemption promised under the first notification and such exemption would continue for the full period of five years from the date they started production.

10. Lastly, Shri Korde placed strong reliance on the Division Bench decision of this Court in the case of Bharat Commerce and Industries Ltd. and another Vs. Union of India and others, . This was also a case where the question was as to whether the plea of promissory estoppel was available to the party aggrieved when a notification issued under the statutory powers granting exemption from the duty or tax for a stated period was superseded during that period. In Bharat Commerce & Industries" case, on 5-1-1979 a notification was issued by the Central Government u/s 25(1) of the Customs Act exempting certain goods imported into India from certain duties. The notification specified that it shall be in force upto and inclusive of 31st December 1979. By the second notification dated 30th October 1979, also issued u/s 25(1) of the said Act, the Central Government amended the first notification and the result was that the exemption granted earlier was withdrawn. The second notification thus ran contrary to the representation made in the first notification that upto 31st December 1979 additional duty on certain goods would be charged at a lesser rate. It was found that the appellants had acted upon the first notification and had imported the goods but since the goods had reached Bombay subsequent to the date of second notification, the appellants were called upon to pay the additional duty at the rate of Rs. 2.37 per kg. as against the concessional rate of Rs. 1.32 per kg. which would have been the rate but for the issuance of the second notification. The learned Single Judge had rejected the plea raised on behalf of the appellants. However, on an appeal, the Division Bench of this Court accepted the contention of the appellants based upon the plea of promissory estoppel and further held that the plea of promissory estoppel could be sustained having regard to the equities of the case. Bharucha J. (as he then was) reviewed the law on the subject as laid down in the case of (i) Union of India and Others v. M/s. Anglo Afghan Agencies etc., AIR 1968 S C 718 ; (ii) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; (iii) Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , and (iv) Pournami Oil Mills and Others Vs. State of Kerala and Another, . The Division Bench observed that as far as M. P. Sugar Mills and Godfrey Philips case was concerned, the representation was contained in a letter or a circular of the Government or its officers. These two cases, therefore, did not cover the situation where the Government was exercising the powers conferred upon it by statute or powers of subordinate legislation in acting contrary to the terms of the representation it had made earlier. Reiterating that the doctrine of promissory estoppel was not available against the legislative power which was plenary, the learned Judge observed thus in Para 19 of the report at page 1987 (32) E.L.T 49 . :

"The cases aforementioned do not cover a situation where Government exercises powers conferred upon it by statute or the powers of subordinate legislation in acting contrary to the terms of a representation it had earlier made. In other words, the Supreme Court has not in its enunciation of the situations where the doctrine of promissory estoppel will not be available said that it will not be available when Government exercises either powers conferred on it by statute or powers of subordinate legislation. In the context of the powers of legislation, the Supreme Court has very carefully stated that the doctrine is not available against "the Legislature in the exercise of its legislative functions". Thus, legislation may be enacted by the legislature contrary to the terms of Government's representation. In a case such as the present the legislature could also resolve under the provision of Section 159 of the Customs Act to abrogate Government's representation. The legislature's legislative powers are plenary and cannot be cut down. They certainly cannot be cut down because Government has made a representation. Government cannot bind the legislature or trammel its plenary powers".

11. Reading with the case of Pournami Oil Mills (supra), the Division Bench observed in Para 22 at page 50 of the report that this was a case of exemption from payment of sales tax for a specified period of five years from the date of production. Though it was in exercise of the legislative powers, the initial exemption granted itself being in pursuance of such an exercise of legislative powers and being for a stated period of five years from the date of production, it was held that the plea of promissory estoppel was available to the appellant. The Division Bench observed thus at Para 24 on Page 51 of the report :

"24. The judgment in Pournami Oil Mills" case leaves us in no doubt and we must hold that the plea of promissory estoppel is available to the appellants".

12. It must be borne in mind that in case of Bharat Commerce & Industries before the Division Bench the notification was issued u/s 25(1) of the Act and it was specifically stated that it would be in force upto and inclusive of 31st December 1979. This was a representation made in the first notification of 05-01-1979 and the exemption and/or concession was sought to be withdrawn by the second notification, issued in a like manner on 30-10-1979. Both in Pournami Oil Mills" case before the Supreme Court as also in the case of Bharat Commerce & Industries before the Division Bench of this Court, the exemption granted was specifically stated to be for a particular period of time and relying upon such representation, the parties had entered into certain contracts. It was in these peculiar circumstances that the Division Bench in Bharat Commerce & Industries" case came to the conclusion that the plea of promissory estoppel was available to the appellants.

13. Incidentally, we may mention that in Para 19 of the Division Bench Judgment of this Court in the case of Bharat Commerce & Industries, which has been reproduced above in Para 10 of this judgment, there is a reference to the distinction between the legislative powers of the legislature and the powers of

subordinate legislation exercised by the Government. However, since this aspect of the matter has not been argued before us, we need not express any opinion on that aspect of the matter.

25th Sept., 1992 14. Relying upon these decisions, Shri Korde contended that in the facts of the present case, the plea of promissory estoppel would be available to the petitioner. He further contended that if the plea of promissory estoppel was available, it could be sustained having regard to the equities of the case. He invited our attention to the observations of the Supreme Court in Para 24 at pages 643 and 644 of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and contended that the burden was entirely on the government to show that, in view of the facts which have transpired since the making of the promise, public interest would be prejudicated if the government were required to carry out the promise. The Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the government and then determine which way the equity lies. Shri Korde further invited our attention to the observations of the Supreme Court in Para 14 of the Judgment, appearing at 815 of the report in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, , in support of this contention that it was for the government to show that it would be inequitable to hold the government or public authority to the promise or representation made by it. Inasmuch as no affidavit-in-reply has been filed by the respondents, the learned Counsel contended that if it was held that the plea of promissory estoppel was available to the petitioner, the same must be sustained having regards to the equities in the present case. Lastly, it was faintly suggested by Shri Korde that withdrawal of the concession granted under notification, Exh. "C", was arbitrary and hence, the impugned notification, Exh. "F", was liable to be struck down as being arbitrary.

15. As against this, Shri Bulchandani, the learned Counsel appearing on behalf of the respondents has, first, invited our attention to the provisions of Section 25 of the Customs Act, 1962 dealing with the power to grant exemption from duty. According to the learned Counsel, it is left to the subjective satisfaction of the Central Government, if it was satisfied that it was necessary in the public interest to do so, to issue an exemption notification exempting generally, either absolutely or subjective to such condition as may be specified in the notification, the goods of any specified description from the whole or any part of the duty of customs leviable thereon. Shri Bulchandani contended that the issuance of the notification, Exh. "C", was in exercise of the powers conferred by sub-section (1) of Section 25 of the Act. Similarly, the impugned notification, Exh. "F", has also been issued in exercise of the powers conferred by sub-section (1) of Section 25 of the said Act. Notification, Exh. "F", states that the Central Government on being satisfied that it was necessary in the public interest so to do, made certain amendments to the notification, Exh. "C". What was more important, according to the learned Counsel, was the fact that the impugned notification, Exh. "F",

was placed before each house of Parliament and has been approved by it as required by Section 159 of the Customs Act. Rules and certain notifications issued under some of the sections, including Section 25 which is relevant in the present case, are required to be laid, as soon as may be after they are made or issued, before each house of the Parliament in accordance with Section 159 of the said Act. This having been done, Shri Bulchandani contends, the issuance of the notification, Exh. "F", was a legislative function and hence, there is no question of plea of promissory estoppel being available against the legislative powers.

16. Shri Bulchandani further contended that the first notification, viz. Exh. "C" dated 28th February 1982, was not for a stated period. He sought to distinguish the two cases relied upon by Shri Korde, viz. the case of Pournami Oil Mills and Others Vs. State of Kerala and Another, and the case of Bharat Commerce and Industries Ltd. and another Vs. Union of India and others, . In Pournami Oil Mills" case, notification dated 11-04-1978 granted exemption in respect of taxes payable under the Kerala General Sales Tax Act on the turnover of the sale of the goods produced or sold by the new industrial unit under the Small Scale Industries for a period of five years from the sale of the said goods by the said unit. However, the second notification was issued on 29-09-1980 which altered the concession given by the earlier notification to the detriment of small scale industries and the second notification further stated that it would be deemed to have come into force with effect from 1st April 1979. Similarly, as far as the Division Bench decision of this Court in the case of Bharat Commerce & Industries is concerned, the facts indicate that the exemption granted under the first notification dated 5th January 1979 was to be in force upto and inclusive of 31st December 1979 but the second notification dated 30th October, 1979 amended the first notification and withdraw the concession. Shri Bulchandani, therefore, contended that in both these cases, the exemption granted under the first notification was clearly for a stated period unlike the facts of the present case where the exemption under the notification, Exh. "C", is not for a stated period. He, therefore, contended that the ratio of the decision of the Supreme Court in Pournami Oil Mills" case and the ration of the decision of this Court in Bharat Commerce & Industries" case can have no application to the facts of the present case.

17. Shri Bulchandani further contended that as far as the Supreme Court decision in M.P. Sugar Mills" case was concerned, it was not a case of the exercise of the legislative powers of the State but admittedly this was a case of granting a sales tax holiday for a period of three years and this position was confirmed by the Director of Industries as also the Chief Secretary of the State of Uttar Pradesh. The plea of promissory estoppel was, therefore, not advanced against any legislative action of the State but merely against the subsequent withdrawal by the State in the exercise of its executive powers. Similarly, in the case of Godfrey Philips" the Supreme Court was dealing with a representation in a letter dated 24-05-1976 written by the Central Board of Excise and Customs to

the Cigarettes Manufacturers Association granting certain exemptions which were withdrawn on 02-11-1982 under another letter issued by the said Board. Shri Bulchandani therefore, contended that neither in the case of M.P. Sugar Mills nor in the case of Godfrey Philips, the Supreme Court was called upon to deal with the withdrawal of the exemption and/or concession in exercise of its legislative powers. In both the cases, the learned Counsel contended that, the withdrawal of the earlier exemption and/or concession was purely an exercise of the executive powers of the Government.

18. Shri Bulchandani then invited out attention to the decision of the Supreme Court in Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, . This was a case where the Gujarat Government had issued a notification on 29-04-1970 exempting payment of sales tax or purchase tax in respect of certain specified class of sales and purchase. This notification dated 29-04-1970 was amended by notification dated 11-11-1970 adding a new entry and it was stated that manufacturer shall be entitled to the exemption for a period of five years from the date of commissioning of the industry. By a third notification dated 17-07-1971, however, the second notification dated 11-11-1970 was amended and the concession granted to the industries, like that of the appellants before the Supreme Court, was withdrawn. Dealing with the plea of promissory estoppel, the Supreme Court found on facts that the industry was commissioned on May 17, 1970 i.e. to say, within a period of less than three weeks of the issuance of the first notification dated 29-04-1970. Having regard to the elaborate steps required to be taken for commissioning the industry, it was held that the appellants had not acted pursuant to the representation made even in the first notification dated 29-04-1970. It was found that they had started the work of setting up the industry much prior to the issuance of even the first notification dated 29-04-1970. There was, therefore, no question of the appellants having acted upon the representation made by the government. In facts, therefore, it was found that the plea of promissory estoppel was not at all available to the appellants. However, Shri Bulchandani sought to place reliance upon the observations appearing in Para 9 of the judgment at page 146 of the report which read as under :

"Viewed from another perspective, it may be noticed that the State Government was under no obligation to grant exemption from sales tax. The appellants could not, therefore, have insisted on the State Government granting exemption to them from payment of sales tax. What consequently follows is that the exemption granted by the Government was only by way of concession. Once this position emerges it goes without saying that a concession can be withdrawn at any time and no time limit can be insisted upon before the concession is withdrawn. The notifications of the Government clearly manifest that the State Government had earlier granted the exemption only by way of concession and subsequently by means of revised Notification issued on 17-07-1991, the concession had been withdrawn. As the State Government was under no obligation, in any manner known to law, to grant exemption it was fully within its

powers to revoke the exemption by means of a subsequent Notification. This is an additional factor militating against the contentions of the appellants".

19. Shri Bulchandani has then invited our attention to the decision of a learned single Judge of this Court - Variava J. - in the case of Sohanlal Shantilal and Bros. Vs. Union of India (UOI), . This was also a case where the exemption was not for a stated period. The decision of the Division Bench in Bharat Commerce & Industries" case was cited before the learned single Judge and dealing with this decision, this is what Variava J. observed in Para 8 of the Judgment at Page 213 of the report :-

"A similar question also arise before a Division Bench of our Court in case of Bharat Commerce and Industries Ltd. and another Vs. Union of India and others, . This was a case where an exemption notification laid down that it would remain in force upto a particular period. Before that period was over, the exemption was sought to be withdrawn. On the facts of the case, the Division Bench held that there was a representation that the exemption would be available upto that period. But the Division Bench while upholding this contention, also observed that normally the doctrine of promissory estoppel is not available against the Legislature in exercise of its legislative function".

20. Our attention has then been invited to a Division Bench decision of the Madras High Court in the case of M. Jamal Company Vs. Union of India and Others, . In the case of M. Jamal & Bros., it has been observed that promissory estoppel, as the name itself would suggest, would contain a promise to keep the exemption granted alive upto a certain point of time or indefinitely. If the notification granting alive upto a certain point of time or indefinitely. If the notification granting exemption was not for a stated period, such an exemption, by its very nature, is susceptible of being revoked or modified or subjected to any condition at any point of time, unless, there is an indication to the contrary in the notification itself. In the absence of any promise by the Government to keep the exemption alive, for a particular period, the citizen cannot make a grievance in case of withdrawal of the exemption. The Madras High Court then referred to the Supreme Court decisions on the plea of promissory estoppel and concluded that the plea of promissory estoppel would not be available in the facts of the case before it.

21. Finally, Shri Bulchandani contended that if the plea of promissory estoppel was not available to the petitioner, then having regard to the provisions of Section 15(1)(a) of the Customs Act, the relevant date for determination of the rate of duty and tariff valuation in respect of the imported goods would be the date of entry of the vessel inwards. He contended that in the present case the vessel was granted entry inwards on 29th December 1982. The impugned notification, Exh. "F", has been issued on 4th November 1982 and hence, the relevant date for determination of the rate of duty and tariff valuation in accordance with clause (a) of sub-section (1) of Section 15 would be 29th December 1982. In support of his contention, he sought to place reliance on the

Supreme Court decision in the case of Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another, .

22. Having considered the rival contentions in the light of the several decision referred to above. On the first point as to whether the plea of promissory estoppel is available to the petitioners, our answer is in the negative. We are inclined to accept the submission of Shri Bulchandani. As stated earlier, the exemption notification, Exh. "C", dated 28-02-1982 is not for a stated period. Both in M.P. Sugar Mills" case as also in Godfrey Philips" case, the Supreme Court was dealing with the executive action of the Government. As state earlier, in M.P. Sugar Mills" case, it was a letter of the Director of Industries and the Chief Secretary. In Godfrey Philip"s case, it was a letter of the Central Board of Excise and Customs initially granting some concession and later on withdrawing the same. None of these two cases, with respect, on facts raised the question of the exercise of the legislative powers of the State. In fact, in M.P. Sugar Mills" case, the Supreme Court has clearly stated in Para 28 at page 647 as under :

"It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. Vide State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., ".

23. Similarly, in Godfrey Philip"s case, the Supreme Court in Para 14 of the judgment at Page 815 of the report has observed as under :

"Of course we must make it clear, and that is also laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally try that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being on equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills" case (supra) and we find ourselves wholly in agreement with what has been said in that decision on this

point."

Thus, in our view the ratio of the Supreme Court decision either in *M.P. Sugar Mills*" case or in *Supreme Court or of Bharat Commerce and Industries*" case before the Division Bench of this Court were materially different in the sense that in both these cases the exemption granted was for a stated period. As stated earlier, there is no controversy before us that in this case the exemption was not for a stated period. We, therefore, approve of the view taken by the learned Single Judge - Variava J., in the case of *Sohanlal Shantilal and Bros. Vs. Union of India (UOI)*, . The Division Bench of Madras High Court has also in the case of *M. Jamal Company (supra)* referred to the distinction between the exemption granted for a stated period and the one which is not so granted. It has also come to the conclusion that if the exemption was for a stated period different considerations would apply.

24. We cannot also be oblivious to what the Supreme Court has stated in *Shri Bakul Oil Mills*" case and particularly to the concept of grant of exemption and withdrawal thereof. We have extracted above the observations made by the Supreme Court in para 9 of the judgment appearing at page 146 of the report. What the Supreme Court has emphasised therein is that what consequently follows is that exemption granted by the government was only by way of concession. Once this position emerged it goes without saying that the concession can be withdrawn at any time and no time limit can be insisted upon before the concession is withdrawn. On the first contention of Shri Korde, therefore, we are of the view that since this was not a case of grant of exemption for a stated period under the notification, Exh. "C", plea of promissory estoppel is not at all available to the petitioner.

25. In this view of the matter, it is really not necessary for us to consider the second limb of his argument viz. as to whether, if available, the plea of promissory estoppel should be sustained having regard to the equities of the case. It is no doubt true that the respondents have not filed any affidavit-in-reply. However, the occasion to consider this aspect of the matter does not arise at all, in the view that we have taken on the first limb of the argument of Shri Korde to the effect that the plea of promissory estoppel is not at all available to the petitioners.

26. It is also not necessary for us to elaborate the question of the relevant date for determination of the rate of duty and tariff valuation since, in the absence of the bar of promissory estoppel, it is not even disputed before us that the relevant date would be the date of entry of the vessel inwards. Since the said date of entry inwards, in the facts of the case, is December 29, 1982 and since the impugned notification is of November 4, 1982, Shri Bulchandani is right in his contention that the provisions of Section 15(1)(a) would squarely apply to the facts of the present case. In this view of the matter, the petition is liable to fail. Rule is, accordingly, discharged with costs.

27. At the time of admission of the Petition under the interim order dated 11-01-1983, the petitioners were directed to furnish a bank guarantee of a nationalised bank, before clearance of the goods, for the full disputed amount of additional duty plus interest at 9% p.a. There is no controversy that the petitioners had furnished the said bank guarantee. It appears that on an erroneous statement made at the bar that the issues in the Petition were concluded by another judgment, this Writ Petition was dismissed on 13-07-1988. However by an order dated 04-10-1989 passed in Appeal No. 1001 of 1989 the petition was restored for hearing. In the meanwhile, however, the respondents have encashed the bank guarantee on or about the 26th December 1988. Shri Bulchandani states that the respondents have recovered a sum of Rs. 68,50,835. Having regard to the interim order dated 11-01-1983 the respondents are directed to calculate the exact liability of the petitioners with interest at the rate of 9% p.a. from the date of clearance of the goods till the date of encashment of the bank guarantee. The respondents are directed to make the necessary adjustments, if any. If the respondents have recovered anything in excess, they should refund the said excess amount to the petitioners with 9% interest p.a. from the date of encashment of the bank guarantee, within six weeks from today. If, on the other hand, on verification it transpires that the petitioners are liable to pay any further amount, the petitioners are directed to pay the said amount with interest at 9% p.a. from the date of clearance till the date of payment within a period of six weeks from the date of intimation to the petitioners by the respondents.

28. Rule discharged with costs.