

(2002) 04 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (Civil) Nos. 1470, 1525, 1609, 1881, 2397, 2854 and 3045 of 2001

Dharampal Satyapal Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 5A(1), 5A(1)
Constitution of India, 1950 — Article 14, 14

Citation : (2002) 1 GLT 419

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : A.K.Goswami, K.N.Choudhary, K.Lahiri, G.N.Sahewalla, D.Senapati, D.Barua, M.Bhuyan, A.K.Saraf, M.Choudhary, A.K.Ganguli, A.Barua, B.Sartna, Shanti Bhusan, M.B.Sharma, S.Saikia, S.Agarwal, P.K.Goswami, P.Bora, Md.Aslam, Advocates appearing for Parties

Judgement

A.K. Patnak, J.—In these batch of writ petitioners, the petitioners have challenged the Notification No. 6/2001CE of the Government of India, Ministry of Finance, Department of Revenue in so far as by the said notification exemption from central excise granted to the petitioners by Notification No. 327 1999CE has been withdrawn, and appropriate writs/directions have been prayed on the Central Excise authorities to grant exemption from Excise Duty under Notification No. 32/1999CE to the petitioners for the full period of 10 years as contemplated by the said Notification No. 32/1999CE.

2. The facts briefly are that on 24.12.1997, the Government of India, Ministry of Industry, Department of Industrial Policy and Promotion issued an Office Memorandum on New Industrial Policy and other concessions in the North Eastern Region. In the said Office Memorandum, it was, inter alia, stated that in view of the continuing backwardness of North East Region, the need for a new and synergetic incentive package was widely felt to stimulate development of industries, and that the Government had approved the new industrial policy and

other concessions in the North Eastern Region. The new industrial policy and other concessions so approved by the Government included fiscal incentive to new industrial units and their substantial expansion. Paragraph CI, which relates to fiscal incentives and is relevant for these batch of writ petitions, is quoted hereinbelow:

"C. Fiscal incentives to new industrial units and their substantial expansion

1. Government has approved for converting the growth centres and IIDs into a total Tax Free Zone for the next 10 years. All industrial activity in these zones would be free from Income Tax, Excise for a period of 10 years from the commencement of production. State Government would be requested to grant exemption in respect of Sales Tax and Municipal Tax."

Thus, under the aforesaid paragraph C.I of the office memorandum dated 24.12.1997, growth centres and integrated infrastructure development centres were to be converted into a total tax free zone for 10 years and all industrial activity in these zones were to be free from taxes including excise for a period of 10 years from the date of commencement of production. The aforesaid office memorandum requested the Ministry of Finance, etc. to amend the Rules/ Notifications, etc and issue necessary instructions for giving effect to the decisions contained in the said office memorandum. Thereafter, on 8.7.1999, the Government of India, Ministry of Finance, Department of Revenue, issued Notification No. 32/1999CE granting new industrial units which commenced their commercial production on or after 24.12.1997, and the existing industrial units which had increased their installed capacity by not less than 25% on or after 24.12.1997 exemption on goods cleared from units located in the Growth Centre or Integrated Infrastructure Centre or Export Promotion Industrial Park or Industrial estates or Industrial Area or Commercial estate specified in the Annexure appended to the said notification. The said notification dated 8.7.1999 is quoted hereunder:

"New Delhi, dated the

8th July, 1999

Notification

No. 32/99 Central Excise

GSR (E) In exercise of the powers conferred by subsection (1) of Section 5 A of the Central Excise Act, 1944 (I of 1944), read with subsection (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and subsection (3) of Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978, (40 of 1978), the Central Govt, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (1 of 1986) and cleared from a unit located in the Growth Centre or Integrated Infrastructure Development Centre or Export Promotion Industrial

Park or Industrial Estates or Industrial Area or Commercial Estate, as the case may be, specified in Annexure appended to this notification, from so much of the duty of excise or additional duty of excise, as the case may be, leviable thereon under any of the said Acts as is equivalent to the amount of duty paid by the manufacturer of goods from the account current maintained under Rule 9 read with Rule 173G of the Central Excise Rules, 1944.

2. The exemption contained in this notification shall be given effect to in the following manner, namely,

(a) The manufacturer shall submit a statement of the duty paid from the said account current to the Assistant Commissioner of Central Excise or Duty Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid from the account current.

(b) The Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall refund the amount of duty paid from the account current during the month under consideration to the manufacturer by fee 15th of the next month.

(c) If there is likely to be any delay in the verification, the Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, shall refund the amount on provisional basis by the 15th of the next month to the month under consideration, and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refunds admissible to the manufacturer.

3. The exemption contained in this notification shall apply only to the following kind of units, namely,

(a) New Industrial units which have commenced their commercial production on or after the 24th day of December, 1997,

(b) Industrial units existing before the 24th day of December, 1997, but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty five per cent on or after the 24th day of December, 1997.

4. The exemption contained in this notification shall apply to any of the said units for a period not exceeding ten years from the date of publication of the notification in the official gazette or from the date of commencement of commercial production whichever is later."

The exemption was to be for a period not exceeding 10 years from the date of publication of the notification in the official gazette or from the date of commencement of commercial production whichever was later. The case of the petitioners in these batch of writ petitions is that they acted on the promise and assurance held out in the aforesaid office memorandum dated 24.12.1997, and the Notification No. 32/1999CE dated 8.7.1999 that the goods manufactured in the units would be exempted from Excise Duty for a period of 10 years, and set

up new industrial units after 24.12.1997.

3. The petitioner in writ Petition (Civil) No. 1470/2001 has stated in the writ petition that it set up a Zafrani Zarda manufacturing plant at Arundhati Nagar, Agartala which is an Industrial Estate of the State of Tripura listed in the Annexure to the Notification No. 32/1999CE, and also set up a Pan Masala containing Tobacco unit at Bamunimaidan in Guwahati which is an Industrial Estate listed in the Annexures to the Notification No. 32/1999CE, and while the unit at Agartala commenced production with effect from 29.11.1999, the unit at Guwahati commenced production with effect from 17.11.2000.

The petitioner in Writ Petition (Civil) No. 1525/2001 has stated in the writ petition that it has set up a Zafrani Zarda manufacturing plant at Arundhati Nagar, Agartala, Tripura, which is one of the Industrial Estate listed in the Annexure to the Notification No. 32/1999CE, and the said unit commenced commercial production with effect from 25.11.1999.

The petitioner in Writ Petition (Civil) No. 1609/2001 has stated in the writ petition that it has set up a Gutkha (Pan Masala containing Tobacco) manufacturing plant at the Industrial Estate at Jorhat, Assam, which is one of the Industrial Estate listed in the Annexure to the Notification No. 32/1999CE, and the said unit commenced commercial production with effect from 12.9.2000.

The petitioner in Writ Petition (Civil) No. 1881/2001 has stated in the writ petition that it has set up a Zafrani Zarda manufacturing plant in the Industrial Estate at Agartala which is one of the Industrial Estate listed in the Annexure to the Notification No. 32/1999CE, and the said unit commenced commercial production with effect from 8.8.2000.

The petitioner in Writ Petition (Civil) No. 2397/2001 has stated in the writ petition that after obtaining provisional registration for a Small Scale Industrial Unit on 29.7.1999 it has set up a Pan Masala and Gutkha (Pan Masala containing Tobacco) manufacturing unit in North Guwahati which is one of the Commercial Estate listed in the Annexure to the Notification No. 32/1999CE.

The petitioners in Writ Petition (Civil) No. 2854/2001 have stated in the writ petition that they have set up a plant for manufacturing flavoured chewing Tobacco under the brand name "Gopal Zarda" in the Industrial Complex at Bonda, Guwahati, which is one of the Industrial Estates listed in the Annexure to the Notification No. 32/1999CE and that commercial production in the said unit has commenced with effect from 2.5.2000.

The petitioner in Writ Petition (Civil) No. 3045/2001 has stated in the writ petition that it has set up a plant for manufacturing Pan Masala and Gutkha in Bamunimaidan Industrial Estate, Guwahati, which is one of the Industrial Estates listed in the Annexure to the Notification No. 32/1999CE, and that commercial production in the said plant has commenced with effect from 30.1.2001. During the pendency of the writ petition, the said plant, however, has been sold to the

petitioner in Writ Petition (Civil) No. 1470/2001.

4. After setting up the plants, the petitioners (except petitioner in W.P.(C) No. 2397/2001) manufactured goods in the said plants and availed exemption under the Notification No. 32/1999CE from Excise Duty on the goods cleared from the plants by first making payment of Central Excise Duty on the goods and thereafter getting refund of the said Central Excise Duty from the Central Excise authorities. The further case of the petitioners in the writ petitions is that they had legitimate expectation that they would be allowed to avail the exemption under Notification No. 32/1999CE for the entire period of 10 years as stipulated in the said notification, but on 31.12.1999, Notification No. 45/1999CE was issued excluding the goods falling under Chapter24 or Heading No. 21.06 of the First Schedule or the Second Schedule, as the case may be, to the Central Excise Tariff Act, 1985 from the exemption Notification No. 32/1999CE. Chapter24 covers Tobacco and manufactured Tobacco substitutes, and heading No. 21.06 covers Pan Masala not containing Tobacco, Notification No. 457 1999CE dated 31.12.1999, however, was challenged before this Court in W.P.(C) No. 136/2000 by Newzone India Private Limited and Sri S.L. Ajitsaria, and this Court on 7.1.2000 while issuing notice of motion to the respondents in the said writ petition stayed the Notification No. 45/1999CE. On 17.1.2000, Notification No. 1/2000CE was issued including the goods falling under Chapter24 and Heading No. 21.06 in the exemption Notification No. 32/1999CE.

5. But on 22nd January, 2001, a notification was issued excluding cigarettes from the exemption Notification No. 32/1999CE and on 31st March, 2001, Notification No. 6/2001CE was issued excluding goods falling under Chapter24 from exemption Notification No. 32/1999CE. The relevant portion of the impugned Notification No. 6/2001CE which excludes goods falling under Chapter>24 is quoted hereunder:

"Notification No. 6/2001Central Excise New Delhi, dated the 1st March, 2001. GSR (E). In exercise of the powers conferred by subsection (1) of Section 5 A of the Central Excise Act, 1944 (1 of 1944), read with subsection (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and subsection (3) of Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table hereto annexed, shall be amended or further amended, as the case may be, except as respects things done or omitted to be done before such amendment, in the manner specified in the corresponding entry in column (3) of the said Table.

Table

Amendment

SI. No. Notification No. & Date Amendment

(1) (2) (3)

1.

2 *** **

3.

4. 32/99 In the said notification, in the first para graph, for the Central words, figures and brackets "the goods specified in the Excise, first Schedule and the Second Schedule to the Central dated Excise Tariff Act, 1985 (1 of 1986) other than cigarettes the 8th falling under Chapter 24 of the said First Schedule, the

July, 1999 words, figures and brackets "the goods specified in the first Schedule and the second Schedule to the Central Excise Tariff Act, 1985(1 of 1986) othehhan goods falling under Chapter 24 of the said Schedules"1 shall be substituted."

6. The petitioners have challenged the aforesaid impugned Notification No. 6/2001CE mamly on the ground that it is hit by the rule of promissory estoppel and on the ground that it is violative of Article 14 of the Constitution of India.

7. Mr Shanti Bhusan, learned senior counsel appearing for the petitioner in Writ Petition (Civil) No. 1470/2001, submitted that in Motilal Padampat Sugar Mitts VsState of U.P., (1979) 2 SCC 409, the Supreme Court laid down the law relating to promissory estoppel, and the said law still holds good. In the said decision, the Supreme Court has held that where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee acting in reliance of it, alters his position, the Government will be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee. The Supreme Court has further held that in applying this doctrine to the Government, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, and whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. Mr Shanti Bhusan further submitted that in the said decision, the Supreme Court has, however, held that the Government may resist its liability on the ground of public interest, but it would not be enough for the Government just to say that the public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government is required to honour it, and the Government will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether

those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mr Shanti Bhusan argued that as per the law laid down in the said case it is only if the Court is satisfied on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. Mr Shanti Bhusan submitted that the said decision of the Supreme Court clearly laid down that the burden would lie upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise, and the Court would insist on a highly rigorous standard of proof in the discharge of this burden.

8. Mr Shanti Bhusan submitted that the said decision of the Supreme Court in *Motilal Padampat Sugar Mills*" case and in later cases including *Kasinka TradingVsUnion of India*, (1995) 1SCC274, and *Shrijee Sales CorporationVsUnion of India*, (1997) 3 SCO 398, were discussed at length by the Supreme Court in *Pawan Alloys & Casting Pvt. Ltd.VsUP S.E.B*, (1997) 7 SCC 251, in which the Supreme Court quoted the observations of the Bench of two Judges in *Kasinka Trading* that the principle of promissory estoppel is applicable against the Government but in case there is a supervening public equity, the Government would be allowed to change its stand, and it is the Court which has to determine whether the Government should be held exempt from the liability of the promise or representation. He pointed out that in the said decision of *Pawan Alloys & Casting Pvt. Ltd. (supra)*, the UP State Electricity Board sought to withdraw the incentive development rebate made available earlier by it to new industries as the High Power Tariff Realisation Committee had advised its Board that for maintaining its profit, rebate had to be withdrawn, but the Supreme Court has held that withdrawal of the incentive development rebate in the said case was not on the ground of general public interest, but solely on the ground of commercial interest of the Board. The Supreme Court in particular held in the said case that when no public interest was sought to be pressed into service by the Board for withdrawal of incentive rebate, the equity which had arisen in favour of the appellants remained untouched and undisturbed by any overwhelming and superior equity in favour of the Board entitling it to withdraw this development rebate in a premature manner leaving these promisees high and dry before the requisite period of three years earlier guaranteed to them by way of development rebate had got exhausted, and, accordingly, directed the UP State Electricity Board to give full credit to the appellants in that case in their respective running account for the disputed amount of development rebate charges.

9. Mr Shanti Bhusan also cited the decision of the Supreme Court in *State of BiharVsSuprabhat Steel Ltd.* (1999) 1 SCC 31, for the proposition that where the State Government in its industrial incentive policy declares some incentive and benefits for some industries, in exercise of its power under Section 7 of the Bihar

Finance Act it would not be permissible to the State Government to deny any benefit which is otherwise available to a unit under the incentive policy itself. In the said decision, the Supreme Court has held that industrial incentive policy was issued by the State Government after such policy was approved by the Cabinet itself and the issuance of the notification under Section 7 of Bihar Finance Act was by the State Government in the Finance Department which notification was issued to carry out the objectives and the policy decisions taken in the industrial policy itself, and any such notification if found to be repugnant to the industrial policy declared in a Government resolution, then the said notification must be held to be bad to that extent.

10. Mr Shanti Bhusan argued that the New Industrial Policy and Other Concessions in North Eastern Region declared by the Government of India, Ministry of Industry, Department of Industrial Policy and Promotion in the office memorandum dated 24.12.1997, expressly held out a promise that all industrial activity in the Growth Centre and Integrated Infrastructure Development Centre in the North Eastern Region would be free from excise for a period of 10 years from the date of commencement of production, and pursuant to the said New Industrial Policy and other concession in the North Eastern Region declared by the Government of India under Notification No. 32/99CE dated 8.7.1999 was issued granting exemption from Central Excise on goods manufactured and cleared from new industrial units located in the areas specified in the Annexure to the said notification and which have commenced production on or after 24.12.1997. The said exemption Notification No. 32/99CE also contains a promise that the said exemption would be granted for a period of 10 years from the date of publication of the said notification in the official gazette or from the date of commencement of production whichever is later. He referred to the averments in the writ petition as well as rejoinder affidavit to show that the petitioner had acted on the said promise and invested a huge amount of money on plant, machinery, land, building, fixtures, office equipment, vehicles, etc., and set up one plant at Arundhati Nagar, Agartala, Tripura, and another plant at Bamunimaidan Industrial Estate, Guwahati, Assam, for manufacturing Zafrani Zarda and Pan Masala containing Tobacco respectively. He argued that since the petitioner has acted on the promise held out by the Government of India in the aforesaid office memorandum dated 24.12.1997 and the Notification No. 32/99CE that the goods manufactured and cleared from the said two units would be exempted from Excise Duty for a period of 10 years from the date of commencement of commercial production in the said two units, the Government of India cannot withdraw from the said promise causing substantial prejudice to the petitioner as per the law laid down in the aforesaid decisions of the Supreme Court. Mr Shanti Bhusan further submitted that although the Union of India in its counteraffidavit has taken a stand that the impugned notification withdrawing the exemption of Central Excise for goods under Chapter 24 of the First Schedule is on the ground of public interest, it has not been shown that there was some supervening, overriding or overwhelming public interest justifying withdrawal of

said exemption. According to Mr Shanti Bhusan, loss of revenue cannot be a ground for withdrawing the said exemption to a promisee under the rule of promissory estoppel and the public interest justifying withdrawal of exemption granted to a promisee earlier should be public interest of overriding or overwhelming nature different from loss of revenue. He argued that adequate facts and materials have not been placed by the Union of India in its counteraffidavit on which the Court would be satisfied that overriding public interest requires that the Government of India should not be held bound by its promise to exempt the goods from Central Excise for a period of 10 years made in office memorandum dated 24.12.1997 and the Notification No. 32/1999CE.

11. Mr Shanti Bhusan submitted that the materials on record rather show that the public interest will suffer if the exemption from Central Excise granted under Notification No. 32/1999CE is withdrawn from new industrial units manufacturing Pan Masala containing Tobacco. He placed before the Court the letter dated 6.3.2001 of Sri P.K. Mahanta, the then Chief Minister of Assam, to the Prime Minister, Sri Atal Behari Vajpayee, copy of which has been annexed to the rejoinder affidavit filed on behalf of the petitioner as AnnexureP/12, in which it has, inter alia, been stated that the action of the Government of India in withdrawing Excise Duty exemption on Pan Masala has shattered the confidence of the investors and many investors who have already set up industries or are in the process of setting up of industries are apprehending that the Government of India may in future withdraw Excise Duty exemption even on cosmetics, paint and other industries set up in the North Eastern Region. In the said letter, Sri Mahanta has requested the Government of India to at least restore the duty exemptions on Pan Masala containing Tobacco. He also referred to the letter dated 3.3.2001 of Sri Manik Sarkar, Chief Minister, Tripura, to the Prime Minister, Sri Atal Behari Vajpayee, copy of which has been annexed to the rejoinder affidavit filed on behalf of the petitioner as AnnexureP/11. In the said letter dated 3.3.2001, Sri Sarkar has stated that the State of Tripura had put in considerable efforts to invite the investors from outside the State for setting up new industries and it had received a very favourable response from them, especially from the manufacturers of Tobacco products and the major proposals received in the State of Tripura since the Notification No. 32/ 1999CE dated 8.7.1999 would lead to investment of about 500 crores and direct employment to about 3000 persons. But the action of the Government of India in excluding Tobacco and Tobacco products like chewing Tobacco from the scheme of Excise Duty exemption applicable to the North Eastern States without any consultation with the concerned States was arbitrary and detrimental to the efforts of industrialisation in the North East and has also directly affected the units that had already come up after the announcement of the exemption, and would clearly dissuade Tobacco companies from setting up their units in the State and would affect the process of employment generation as well as investment in the State adversely. Mr Shanti Bhusan referred to the letter dated 4.11.1999 of Sri PA Sangma, Member of Parliament, (Lok Sabha), to the Prime Minister which was

written when it was apprehended that the exemption from Central Excise granted under Notification No. 32/1999CE would be withdrawn. Copy of the said letter has been annexed to the rejoinder affidavit filed on behalf of the petitioner as AnnexureP/13. In the said letter dated 4.11.1999, Sri Sangma has stated that he was given to understand that some section of industry was trying to pressurise the Government to dilute the policy package for the region and has expressed his view that withdrawal of Excise Duty exemption would have an adverse effect on the confidence of the prospective investors. According to Sri Sangma, investing in a troubled region such as the North East is an act of faith and the Government must not take such action that would shake this faith. In reply to the said letter dated 4.11.1999, Mr Shanti Bhusan pointed out, the Minister of Commerce and Industry, Government of India, Sri Murasoli Maran, informed Sri Sangma that the Government of India had not proposal under consideration to modify any of the provisions of the policy/ financial package for the North East. Mr Shanti Bhusan further referred to the letter dated 23.12.1999 of Sri Tarun Gogoi who was then a Member of Parliament, (Lok Sabha), addressed to Finance Minister, Sri Yashwant Sinha. A copy of the said letter has been annexed to the rejoinder affidavit filed on behalf of the petitioner as AnnexureP/19. The said letter was also written at the time when there was apprehension that the exemption Notification No. 32/1999CE would be withdrawn. In the said letter dated 23.12.1999, Sri Gogoi has written that any attempt to modify the said notification would have an adverse effect on the confidence of those who wanted to invest in the neglected area. Besides, Sri Tarun Gogoi, 13 other Members of Parliament also appear to have signed the said letter dated 23.12.1999. He referred to similar letters addressed by the All Assam Students' Union to the Prime Minister, the Finance Minister, and the Home Minister in December, 2000. Mr Shanti Bhusan also referred to the letters dated 29.8.2001 of Sri Shanta Kumar, Minister, Consumer Affairs, Food and Public Distribution, Government of India, to the Prime Minister, Sri Atal Behari Vajpayee and to the Finance Minister, requesting them to restore the excise exemption withdrawn by the impugned notification dated 1.3.2001, otherwise industrial development of North East would be very difficult to undertake and the people would not be able to get employment due to lack of employment avenues. He also referred to an article published in Business India, September, 316, 2000 issue, in which the withdrawal of Central Excise Duty exemption under the impugned notification has been criticised for various reasons. According to Mr Shanti Bhusan, these materials would show that the public interest would suffer if the Excise Duty exemption under Notification No. 327 1999CE is withdrawn from the new industries set up in the North Eastern Region.

12. Mr Shanti Bhusan next submitted that there may have been some misuses and abuses of the exemption of Central Excise granted under the Notification No. 327 1999CE by cigarette industries newly set up in the North Eastern Region. He referred to copy of the letter dated 28.9.2001 of the Finance Minister, Sri Yashwant Sinha, to Sri Pyarelal Khandelwal, General Secretary, Bharatiya Janata

Party, copy of which has been annexed to the application in Misc. Case No. 1560/2001 as AnnexureK, in which the Finance Minister has stated that Excise Duty exemption in respect of cigarettes led to certain manipulations, misuses and abuses of the duty concession, and while the Government had to forego large amount of revenue in view of the high rate of Excise Duty applicable to cigarettes, the benefit in terms of real investment, employment generation, etc. was not commensurate. In the said letter dated 28.9.2001, the Finance Minister has further stated that on careful review of the exemption scheme, it was decided to exclude cigarettes and Pan Masala containing Tobacco as also other Tobacco products from the purview of exemption scheme and this was done to avoid undesirable sacrifice of revenue without commensurate social benefits that are expected from any such exemption scheme. Mr Shanti Bhusan argued that there were no such manipulations, misuses and abuse of duty concession by the units manufacturing Pan Masala containing Tobacco as in the case of the units manufacturing cigarettes. He explained that in the cigarette units newly set up in the North Eastern Region there was hardly any investment made on plant and machinery, and there was hardly any employment, but in Pan Masala units, heavy investment in plant and machinery was made by the petitioner and large number of people have been employed. He referred to the details of investment and employment given in the rejoinder affidavit filed on behalf of the petitioner and annexures thereto. He submitted that Excise Duty payable by the cigarette units is more than 100% ad valorem, and it was for this reason that cigarette industries have rushed to the North Eastern Region to claim exemption of Excise Duty without making any substantial investment and without generating adequate employment. But in the case of Pan Masala containing Tobacco, total of all the duties payable on Pan Masala containing Tobacco is 60% ad valorem, and there was no reason whatsoever for the Government of India to treat Pan Masala containing Tobacco on the same footing as cigarette and withdraw the exemption under the Notification No. 32/1999CE for Pan Masala containing Tobacco. Mr Shanti Bhusan pointed out that by the impugned Notification No. 6/ 2001CE dated 1.3.2001, the exemption under Notification No. 32/1999CE has been withdrawn from Pan Masala containing Tobacco, but not withdrawn from Pan Masala not containing Tobacco. He pointed out that the Excise Duty leviable on Pan Masala not containing Tobacco is around 55% ad valorem and, therefore, Pan Masala containing Tobacco and Pan Masala not containing Tobacco ought to have been treated on the same footing by the Central Government. The impugned Notification No. 6/2001CE in so far as it withdraws the Excise Duty exemption under Notification No. 32/ 1999CE from Pan Masala containing Tobacco, but does not withdraw the said Excise Duty exemption from Pan Masala not containing Tobacco is discriminatory. The impugned notification, according to Mr Shanti Bhusan, is thus violative of the provision of Article 14 of the Constitution. 13. Mr Shanti Bhusan finally submitted that the State of Tripura and the State of Assam have filed their separate affidavits in opposition stating therein that the withdrawal of Excise Duty exemption under Notification No. 32/1999CE to goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff

Act, 1985 has adversely affected the growth of industries in the respective States. In the affidavit in opposition filed on behalf of the State of Assam, it has further been stated that the impugned notification withdrawing the excise duty exemption under Notification No. 32/1999CE dated 8.7.1999 was issued without any consultation with the State Government. Mr Shanti Bhusan submitted that this would go to show that by their affidavit in opposition, the States of Tripura and Assam have been supported the case of the petitioner, and yet the affidavit in opposition filed on behalf of the Union of India is stated to be filed on behalf of all respondents including the State of Tripura and the State of Assam opposing the case of the petitioner, and in the said affidavit in opposition, it has been stated that the State Government of North East have expressed reservation regarding actual impact of the exemption notification on the growth of industries manufacturing Tobacco products in the North Eastern Region. According to Mr Shanti Bhusan, the affidavit in opposition filed on behalf of the Union of India is one containing false averments and should not be relied on by the Court.

14. Mr P.K. Goswami, learned senior counsel appearing for the petitioner in W.P. (C) No. 1525/2001, adopted the aforesaid arguments of Mr Shanti Bhusan. He further submitted that it would be clear from the office memorandum dated 24.12.1997 of the Government of India, Ministry of Industry, Department of Industrial Policy & Promotion that a tax free zone for 10 years was contemplated for promoting industrial activities in the North Eastern Region, and in case exemption of Excise Duty under Notification No. 32/1999CE is withdrawn for industries manufacturing Tobacco products, the entire scheme of the Government of India for having a tax free zone for promoting industrial activities in the zone would be frustrated. He argued that the ingredients of promissory estoppel in this case are fulfilled inasmuch as there was a clear promise in the office memorandum dated 24.12.1997 and the exemption Notification No. 32/1999CE that goods manufactured in the new industries commencing commercial production on or after 24.12.1997 would be exempted from Excise Duty, and the petitioner had acted on the said promise by setting up such new industry in which commercial production commenced after 24.12.1997. He submitted that no supervening or new circumstances have been indicated in the affidavit in opposition filed on behalf of the Union of India for withdrawing the said Excise Duty exemption. In the absence of such supervening or new circumstances justifying withdrawal of exemption in the public interest, the Court should enforce the aforesaid promise by issuing appropriate writ/directions to the Union of India and the Central Excise Authorities. He referred to the judgment of the Supreme Court in *Motilal Padampat Sugar Mills Vs State of UP*, (supra), (1979) 2 SCO 409, to show that the basis of the doctrine of promissory estoppel is morality and it is only to enforce this morality that the Court issues appropriate writ and directions to enforce the promise made by the Government or public bodies to the promisee. He also cited the decision of the Supreme Court in *Indian Express Newspapers (Bombay) Vs Union of India*, AIR 1986 SC 515, wherein it has been held that the power exercisable under Section 25 of the Customs Act, 1962

is no doubt discretionary, but it is not unrestricted. Mr Goswami referred to the observations of Lord Denning MR in *BreenVsAmalgamated Engineering Union*, (1971) 2 QB 175, quoted in the said decision of the Supreme Court, that the discretion of a statutory body is never unfettered and has to be exercised according to law, and that means the statutory body must be guided by relevant considerations and not by irrelevant considerations, and if its decision is influenced by extraneous considerations which it ought not to have taken into account then the decision cannot stand. He argued that the Central Government in issuing the impugned Notification No. 6/2001CE dated 1.3.2001 withdrawing excise exemption from goods covered under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985, has exercised its statutory power on irrelevant and extraneous considerations and, therefore, the impugned notification cannot stand and is liable to be quashed. Mr Goswami also referred to the decision of the Supreme Court in *Khudiram DasVsState ofWB*, AIR 1975SC 550, for the proposition that where the authority comes to a conclusion so unreasonable that no reasonable authority could ever have come to it, then the legitimate inference may fairly be drawn either that the authority did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts, and the power of the Court to interfere in such a case is not as an appellate authority to override a decision taken by the statutory authority, but as a judicial authority which is concerned, and concerned only to see whether the statutory authority has contravened the law by acting in excess of the power which the legislature has confided in it. According to Mr Goswami, on the facts of the present case as available from the materials on record* the decision of the Central Government in withdrawing the Central Excise exemption by the impugned Notification No. 6/2001 CE was so unreasonable that no reasonable authority could ever have taken such a decision, and this is a fit case in which the Court should quash the impugned notification. Dr Ashok Saraf, learned senior counsel appearing for the petitioners in W.P.(C) No. 1609/2001, Mr Kishore Kumar Lahiri, learned counsel appearing for the petitioner in W.P.(C) No. 1881/2001, and Mr Manojit Bhuyan, learned counsel appearing for the petitioner in

W.P.(C) Nos. 2854/2001 and 2397/2001 adopted the aforesaid contentions of Mr Shanti Bhusan and Mr P.K. Goswami. Mr G.N. Sahewalla, learned senior counsel appearing for the petitioner in W.P.(C) No. 3045/2001, submitted that the petitioner has sold its industrial unit to the petitioner in W.P.(C) No. 1470/2001.

15. Mr A.K. Ganguly, learned senior counsel appearing for the Union of India respondents, assisted by Mr K.N. Choudhury, learned senior counsel, and Mr B. Sarma, learned Additional Central Government Standing Counsel, submitted that there is no promise or assurance in the Notification No. 32/1999CE dated 8.7.1999 that the exemption from Central Excise under the said notification would be for a minimum period of 10 years from the date of publication of the notification in the official gazette or from the date of commencement of commercial production. Paragraph 4 of the said exemption notification stated that the exemption contained in the notification shall apply to any of the units

mentioned therein "for a period not exceeding 10 years" from the date of publication of the notification in the official gazette or from the date of commencement of commercial production whichever is later. The said paragraph 4 of the exemption notification, therefore, laid down the maximum period or the outer limit for which the exemption under the notification would be available to the industrial units mentioned therein. He argued that the decision of the Supreme Court in *State of Bihar Vs Suprabhat Steel* (supra), (1999) 1 SCG 31, cited by Mr Shanti Bhusan, has no application to the present case. He explained that in *State of Bihar Vs Suprabhat Steel*, (supra), even though the industrial policy announced by the State Government declared old units which had come into production prior to 1.4.1993 and whose investments in plant and machinery did not exceed Rs 5 crores as on 1.4.1993, eligible for the benefit of tax exemption, the State Government while issuing the exemption notification dated 4.4.1994 under Section 7 of the Bihar Finance Act had excluded such old industrial units from the benefits of the Sales Tax exemption. The notification dated 4.4.1994 issued under Section 7 of the Bihar Finance Act was challenged and the Supreme Court held that the exclusion of old industrial units was bad, and that they were also entitled to incentive granted under the industrial policy of the State of Bihar. Mr Ganguly submitted that in the present case, the language of the Notification No. 32/1999CE dated 8.7.1999 issued by the Central Government under Section 5A of the Central Excise Act, 1944, was clear that the exemption would apply to industrial units mentioned therein for a period not exceeding 10 years, and further the validity of the said notification has not been challenged. According to Mr Ganguly, since no promise or assurance had been made in the Notification No. 32/1999CE that exemption would be for a minimum period of 10 years, it was always open to the Central Government to withdraw the exemption at any time before the expiry of the said period of 10 years if it was of the view that such exemption should be continued in the public interest.

16. Mr Ganguly next submitted that in the affidavit in opposition filed on behalf of the Union of India respondent, it has been stated that after the exemption Notification No. 32/1999CE dated 8.7.1999 was issued, the North Eastern Region became a haven for cigarette and other Tobacco industries the owners of which gained large tax advantage without providing corresponding benefit to the State, supervening circumstances, Mr submitted, called for a sometime in the last 2000, and it was decided that the unintended benefit flowing to these kind of manufacturers was thoroughly disproportionate to the benefit which the State would get from this fiscal revenue foregone by the Centre, and in the public interest, the Central Excise exemption was withdrawn from the manufacturers of the impugned notification. Mr Ganguly in particular referred to paragraph 21 of the which were taken into withdrawing the exemption from Tobacco and Tobacco products have been detailed.

17. Mr Ganguly also referred averments in paragraphs 11 and 12 of the affidavit in opposition filed on behalf of Union of India to show that from the commencement of commercial production till February, 2001, manufacturers of

Gutkha/Zarda had taken refund of Excise Duty in accordance with the exemption Notification No. 32/1999CE several times more than the investments made by them on plant and machinery. He argued that this fact would show that there are no equities in favour of such manufacturers of Gutkha or Zarda so as to justify the Court issuing appropriate writs for granting the exemption to the petitioners for the entire period of 10 years from the date of commencement of commercial production. He submitted that the Court should decline to interfere in the matter as the impugned Notification No. 6/2001CE dated issued by the Central for advancing the public interest.

18. According to Mr Ganguly, since the power to grant exemption is vested in the Central Government by the Parliament under Section 5A of the Central Excise Act, 1944, the said power is legislative in character. Similarly, the power under Section 5 A of the said Act, 1944, read with the General Clauses Act to rescind or modify an exemption notification is also a power vested in the Central Govt. by the Parliament, and such power is legislative in character. Thus, the notifications granting exemption or the notifications rescinding or modifying the exemption notifications issued under Section 5 A of "the Central Excise Act, 1944, have attributes of law made by the Parliament, and no promissory estoppel can be pleaded against such notifications made by the Central Government in exercise of its legislative powers. He cited the decision of the Supreme Court in *Excise Commissioner v. Ram Kumar*, (1976) Suppl. SCR 532. In the said decision, the Supreme Court has held that the fact that the sales of country liquor had been exempted from Sales Tax by notification dated 6.4.1959 could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the revenues of the State which are required for execution of the plans designed to meet the ever increasing pressing needs of the developing society. In the said decision, the Supreme Court has held that it is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers.

19. Mr Ganguly submitted that the doctrine of promissory estoppel has been further explained by the Supreme Court in *Kasinka Trading v. Union of India*, (supra), and it has been held therein that the doctrine cannot be pressed into aid to compel the Government or the 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." In the said decision, the Supreme Court has further held that the doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do enquiry and the fundamental principles of equity must for ever be present to the mind of the Court, while considering the applicability of the doctrine. The Supreme Court has further held that the doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the

case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. The appellants in the case of Kasinka Trading, (supra), were manufacturers of certain products requiring PVC resin and one of the raw material for the manufacturing process. PVC resin was manufactured in India and imported from abroad. With a view to equalising sale prices of the indigenous and the imported material and to make the commodity available to the consumer at a uniform price, keeping in view the trends in the supply of the material, the Cabinet decided to issue the exemption Notification No. 6671979 under Section 25(1) of the Customs Act, 1962 exempting PVC resin from Customs Duty when imported into India. Subsequently, what it was found and realised that the international prices of the product were falling and consequently the import prices than the exfactory ; indigenous material, the matter was examined by the Government and it was decided in the public interest to withdraw the exemption notification. The Supreme Court found that the Union of India had disclosed the circumstances under which the exemption was initially granted as well as the change of circumstances which warranted the withdrawal of the exemption notification, and the Supreme Court held that the reasons given by the Union of India justifying withdrawal of the exemption notification were not irrelevant to the exercise of the power in public interest nor were the same shown to be insufficient to support the exercise of that power. The Supreme Court further held that it was futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption. Mr Ganguly submitted that the said decision was rendered by a Bench of two Judges of the Supreme Court, and the same was considered and approved by a larger Bench of three Judges of the Supreme Court in Shrijee Sales Corporation Vs Union of India, (supra), (1997) 3 SCC 398. In the said case, the Supreme Court held that the principle of promissory estoppel is applicable against the Government, but in case there is a supervening public equity, the Government would be allowed to change its stand, and the Court must satisfy itself that such a public interest exists. In the said case of Shrijee Sales Corporation, the Supreme Court has further held that once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been indicated. In that case also the notification of withdrawal of exemption of customs duty on import of PVC resin which was challenged in the case of Kasinka Trading was challenged by the Shrijee Sales Corporation and another, and the Supreme Court held that the judgment in Kasinka Trading was based on correct analysis of facts and law, and dismissed the appeal filed by Shrijee Sales Corporation and another.

20. Mr Ganguly next cited the decision of the Supreme Court in Sales Tax Officer Vs Shree Durga Oil Mills, (1998) 1 SCC 572. In that case, pursuant to Industrial Policy Resolution dated 18.7.1979 of the Government of Orissa, the State Government initially issued an exemption notification under Section 6 of the Orissa Sales Tax Act, but subsequently decided to withdraw the exemption

notification in respect of some of the industries which had commenced production after 1.4.1977, and the Supreme Court held that the State Government was fully competent to do so under the provisions of Section 6 of the Act which empowered the State Government to issue a notification .granting exemption from Sales Tax and also empowered the State Government to withdraw, amend or modify any such notification as and when it thought necessary to do so. The Supreme Court further held that when the respondent in that case set up its oil mill and was granted exemption from Sales Tax, it should have known that the notification granting exemption of tax under Section 6 could be withdrawn at any point of time and, therefore, the case of promissory estoppel was without any basis, and there could not be any estoppel against statute. In the said decision, it has further been held that any Industrial Policy Resolution can be changed if there is an overriding public interest involved, and the State of Orissa has stated on affidavit that after a package of incentives was given to the industries, the Government was faced with severe resource crunch and on a review of its financial position, it was felt that for the sake of the economy of the State, it was necessary to limit the scope of exemption granted to various industries. The Supreme Court held that withdrawal of the notification was in the public interest, and the Court would not interfere with any action taken by the State Government in the public interest, and the public interest must override any consideration of private loss or gain.

21. The last decision cited by Mr Ganguly in *State of RajasthanVsMahaveer Oil Industries*, (1999) 4 SCC 357. In that case, some Sales Tax incentives were given by the State of Rajasthan to new industrial units by way of exemption from Sales Tax under the Rajasthan Sales Tax Act, 1954, and exemption from Sales Tax under the Central Sales Tax Act. By notification dated 23.5.1987, the exemption under the Rajasthan Sales Tax Act was from 5.3.1987 to 31.3.1992, and the same was extended upto 31.3.1997. By notification dated 7.5.1990 issued under the Rajasthan Sales Tax Act and the Central Sales Tax Act, the earlier exemption notifications dated 23.5.1987 were amended, and as a result of such amendment, the benefits of incentive scheme were withdrawn from oil extracting and manufacturing industries both in respect of Rajasthan Sales Tax Act and the Central Sales Tax Act. The State of Rajasthan contended that it was open to it in the public interest to withdraw any concessions which it may have granted to oil extracting units under the incentive scheme, whereas the respondent Mahaveer Oil Industries contended that by framing the incentive scheme, the State of Rajasthan had held out a promise that the benefit of the scheme would be available for all new industries set up during the period from 5.3.1987 to 31.3.1992, and relying upon the said promise the respondents had taken all effective steps to set up the new industrial unit within that period, and hence the doctrine of promissory estoppel would be attracted in the present case, and it would not be open to the State of Rajasthan to withdraw the benefits of the scheme during the subsistence of the said scheme. The Supreme Court held that public interest required that the State be held bound by the promise held out by

it in such a situation, but this did not preclude the State from withdrawing the benefit prospectively even during the period of the scheme, if public interest so required. The Supreme Court further held that even in a case where a party had acted on the promise, if there was any supervening public interest which required that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel.

22. Mr Ganguly submitted that the decision of the Supreme Court in Pawan Alloys case cited by Mr Shanti Bhusan had no application to the facts of the present case. In Pawan Alloys case, he pointed out, the State Electricity Board and the Consumers had entered into a contract for supply of electricity. He argued that though the State Electricity Board was empowered under Section 49 of the Electricity (Supply) Act, 1948, to fix uniform tariff for sale of electricity to the consumers and such fixation of tariff was a quasilegislative function, it was also a matter of contract between the consumers and the Board, and exercise of the power by the Board under Section 49 of the Electricity (Supply) Act, 1948, was not comparable to the exercise of powers by the Central Government under Section 5A of the Central Excise Act, 1944. He further submitted that in the said judgment in the case of Pawan Alloys, the Supreme Court found that the withdrawal of the rebate earlier promised by the Board to the consumers was not on the ground of general public interest but solely on the ground of commercial interest of the Board as such withdrawal had been made on the advice of the Higher Power Tariff Realisation Committee for maintaining the profits of the Board. But, in the present case, withdrawal of Central Excise exemption by the impugned Notification No. 6/2001CE by the Central Government was in the public interest. Referring to the decision of the Supreme Court in Bakul Oil IndustriesVsState of Gujarat, (1987)1 SCC 31, he submitted that the observations in the said decision of the Supreme Court that power of withdrawal of an exemption was subject to rule of promissory estoppel does not any longer hold good in view of the subsequent decisions of the Supreme Court in Kasinka Trading, Shrijee Sales Corporation, State of RajasthanVsMahaveer Oil Industries and Sales Tax OfficerVsShree Durga Oil Mills (supra), cited by him. Mr Ganguly further submitted that it is now wellsettled by the Supreme Court in a series of decisions that in the matters of taxation laws the Court must allow the State a greater latitude than other matters and, therefore the contention that the impugned Notification No. 6/2001CE withdrawing Excise Duty exemption from Tobacco and Tobacco related products should not be interfered with by the Court lightly on the ground of violation of Article 14 of the Constitution.

23. The first question to be decided in these batch of writ petitions is whether the impugned Notification No. 6/2001CE dated 1.3.2001 is hit by the rule of promissory estoppel. As discussed above, in the office memorandum dated 24.12.1997 of the Government of India, Ministry of Industry, Department of Industrial Policy and Promotion, the Government clearly announced and declared that the Government has approved for converting the growth centres and IIDCs into a total Tax Free Zone for the next 10 years and all industrial activity in these

zones would be free from excise for a period of 10 years from the commencement of production. This announcement was made because as has been indicated in the opening paragraph of the office memorandum dated 24.12.1997 that there was need for a new and synergetic incentive package to stimulate development of industries in the backward North Eastern Region. By the office memorandum dated 24.12.1997, therefore, a promise was held out by the Government of India that all industrial activity in the zone was to be free from excise for a period of 10 years from the commencement of production, and since the office memorandum was notified by a notification so that new industries may come up in the North Eastern Region, it was also intended by the Government of India that the said promise would be acted upon by entrepreneurs intending to set up new industries. The office memorandum dated 24.12.1997 also stated that the Ministry of Finance was requested to amend rules/notifications, etc. and issue necessary instructions for giving effect to the decisions in the said office memorandum. Pursuant to office memorandum dated 24.12.1997, accordingly, the Ministry of Finance, Government of India, issued Notification No. 32/199/CE dated 8.7.1999 exempting goods cleared in units located in the Growth Centre or Integrated Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estates or Industrial Area or Commercial estate in the North Eastern Region as specified in the Annexure to the notification from Excise Duty in the manner indicated therein. Paragraph 3 of the said exemption notification indicates that the exemption under the said notification would apply to new industrial units which had commenced commercial production on or after 24.12.1997 and the existing industrial units undertaking substantial expansion by way of increase in installed capacity by not less than 25% on or after 24.12.1997. The fact that the exemption under the Notification No. 32/1999CE has been granted to new industrial units which have commenced commercial production on or after 24.12.1997 and the existing industrial units which have undertaken substantial expansion by way of increase in installed capacity on or after 24.12.1997 indicates that the exemption under the said notification had been granted pursuant to the promise held out in the office memorandum dated 24.12.1997 that all industrial activity in the zone would be free from excise for a period of 10 years from the commencement of production. Paragraph 4 of the exemption Notification No. 32/1999CE will have to be read consistent with the promise made in the office memorandum dated 24.12.1997 that all industrial activity in the zone would be free from excise for a period of 10 years from the commencement of commercial production. Moreover, the said paragraph 4 of the exemption notification states that the exemption would apply to the units for a period not exceeding 10 years from the date of publication of notification in the official gazette or from the date of commencement of production whichever was later. This would mean that where the date of commercial production of the unit is later, the exemption was to be available for a period of 10 years from the date of commercial production and not from the date of publication of the exemption notification. All this would go to show that the Notification No. 32/1999CE read with the office memorandum

dated 24.12.1997 contains a promise that industrial units mentioned in the said notification would enjoy the exemption under the said notification for a period of 10 years from the date of commencement of commercial production. That the petitioners in these batch of writ petitions have acted on the said promise by making investment in plant, machinery, etc. and by setting up new industrial units for manufacturing Tobacco products other than cigarette has not been disputed by the Union of India in their affidavit in opposition. The plea of the Union of India is that in view of the supervening public interest the Court should not issue any writ/ direction enforcing the promise, if any, in the Notification No. 32/1999CE read with office memorandum dated 24.12.1997 that new industrial units commencing production on or after 24.12.1997 would be exempt from Excise Duty on the goods cleared from the units for a period of 10 years from the date of commencement of commercial production.

24. In support of the aforesaid plea of supervening public interest, the Union of India in its affidavit in opposition has stated the facts leading to the withdrawal of Excise Duty exemption by Notification No. 6/2001CE in respect of Tobacco and Tobacco related products. Paragraph 13 and the relevant portion of paragraph 21 of the affidavit in opposition of the Union of India are quoted hereunder:

"13. A thorough review was therefore undertaken sometime in last quarter of year 2000 inter alia in relation to the operation of the exemption with respect to products like cigarettes and other Tobacco related products and it was decided that the unintended benefit flowing to these kind of manufactures was thoroughly disproportionate to the benefit which the State would get from this fiscal revenue foregone by the Centre. It was, therefore, decided in public interest to discontinue forthwith this exemption which had completely distorted the entire working of this law in the State in so far as this product is concerned.

21. The said notification has been issued in public interest and specifically withdraws benefits granted to Tobacco and Tobacco products, it would be relevant to state that several factors have been taken into account to advance public interest particularly since Tobacco products apart from being injurious to public health, it was found that the units set up did not generate the necessary employment as anticipated. There was the aspect of backward and forward linkages to be considered in the context of utilisation of raw materials. When it was found that the units manufacturing Tobacco products did not advance the objects of the policy envisaged for the North Eastern Region, it was deemed in public interest to withdraw the benefits granted to units manufacturing Tobacco products. It would also be relevant to state that while the benefits continue with regard to units manufacturing other products, it has been withdrawn only with regard to Tobacco products, and subsequently to Pan Masala (with Tobacco) and other Tobacco related products...."

It would thus be clear from paragraph 13 of the affidavit in opposition, quoted above, that sometime in the last quarter of the year 2000, a review of the operation of the exemption notification in respect of cigarette and other Tobacco

related products was taken up when it was found that the benefit flowing to the manufacturers of cigarettes and other Tobacco related products from the exemption Notification No. 32/1999CE was thoroughly disproportionate to the benefit which the State would get from this fiscal revenue foregone by the Centre. It is also apparent from the portion of paragraph 21 of the affidavit in opposition quoted above that it was found by the Central Government that Tobacco and Tobacco products, besides being injurious to public health, the units manufacturing Tobacco and Tobacco products did not generate the necessary employment as anticipated and that these units did not advance the objects of the policy envisaged for the North Eastern Region. For these reasons, it was decided in the public interest to withdraw the Excise Duty exemption with regard to Tobacco and Tobacco related products including Pan Masala with Tobacco.

25. Mr Shanti Bhusan's contention, however, is that the public interest pleaded by the Central Government as a defence against the liability under the rule of promissory estoppel cannot be based on consideration of revenue, but some other public interest of overriding or overwhelming nature. He referred to paragraph 3.2 of the report of the Comptroller and Auditor General of India for the year ending March 2000, in which the Finance Ministry has defended the exemption Notification No. 32/1999CE for Tobacco products stating that in the Government's assessment, the beneficial impact of the scheme would far outweigh the revenue implication. He also referred to the decision of the Supreme Court in the case of Pawan Alloys & Casting Private Limited, (supra), wherein the Supreme Court has not found the withdrawal of a promise for maintaining profits of the Electricity Board to be a withdrawal on the ground of general public interest. With great respect, I am unable to, accept the said submission of Mr Shanti Bhusan. Section 5A(1) of the Central Excise Act, 1944, empowers the Central Government to exempt goods from Excise Duty "in the public interest". While exercising such power, the Central Government has to compare the revenue loss which it would suffer on account of exemption vis-à-vis the object for which the exemption is proposed to be granted, and if it is satisfied on such comparison that public interest would be advanced more by achieving such object than by loss of revenue on account of exemption, it can grant Excise Duty exemption under the said Section 5A(1) of the Act, 1944. Section 21 of the General Clauses Act, 1897, provides that where, by any Central Act, or regulation, a power to issue notifications, orders, rules or byelaws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or byelaws so issued. Thus, the Central Government can amend or rescind any notification of exemption under Section 5A(1) of the Central Excise Act, 1944, in the like manner and subject to the like sanction and conditions in Section 5A(1) of the Central Excise Act, 1944. The Central Government, therefore, in exercise of its power under Section 5A(1) of the Central Excise Act, 1944, read with Section 21 of the General Clauses Act, 1897,

can amend or rescind a notification of exemption issued under Section 5A(1) of the Central Excise Act, 1944 in the public interest. In exercise of such powers under Section 5A(1) of the Central Excise Act, 1944, the Central Government after balancing the revenue loss which it would suffer on account of exemption and the object of promoting industries in the North Eastern Region, and after being satisfied that the object of promoting such industries would advance the public interest more than the loss of revenue by the exemption, issued Notification No. 32/1999CE dated 8.7.1999 granting new industrial units commencing commercial production on or after 24.12.1997 and the existing industrial units undertaking substantial expansion on or after 24.12.1997, Central Excise Duty exemption on goods cleared from the said units. But, if on a subsequent review made in the last quarter of the year, 2000, as stated in the affidavit in opposition, the Central Government was satisfied on a comparison of loss of revenue with the promotion of industrial units manufacturing Tobacco and Tobacco products that the public interest would be advanced more by withdrawing the Excise Duty exemption from Tobacco and Tobacco related products, the Central Government could amend the Notification No. 32/1999CE excluding Tobacco and Tobacco products from the purview of the said exemption Notification No. 32/1999CE. It appears from para 3.2 of the report of the Comptroller and Auditor General of India for the year ending March, 2000, to which reference was made by Mr Shanti Bhusan, that the notification of exemption No. 32/1999CE dated 8.7.1999 was issued by the Central Government under Section 5A(1) of the Central Excise Act, 1944, covering all goods including Tobacco and Tobacco products, because when the said exemption notification was issued, the Central Government was satisfied that the beneficial impact of the scheme of exemption would farweigh the revenue implication. But it further appears from the affidavit in opposition of the Union of India that on a review of the operation of the scheme in the last quarter of the year 2000, the Central Government was of the view that the revenue loss suffered by grant of exemption to units manufacturing Tobacco and Tobacco products outweighed the beneficial impact of the scheme. The Central Government accordingly issued in the public interest the impugned Notification No. 6/2001CE dated 1.3.2001 excluding Tobacco and Tobacco products from the exemption Notification No. 32/1999CE dated 8.7.1999.

26. The contention of Mr P.K. Goswami is that the promise in the scheme of the Central Government as announced in the office memorandum dated 24.12.1997 was to create a taxfree zone for 10 years in which all industrial activity in the zone would be free from Income Tax and excise for a period of 10 years from the date of commencement of production and, therefore, the loss of revenue cannot be a consideration for the Central Government to withdraw the exemption to units manufacturing Tobacco and Tobacco products, and if the Central Government withdraws the Excise Duty exemption granted to such units manufacturing Tobacco and Tobacco related products, such withdrawal would not be in the public interest. With great respect, I am unable to accept the said

submission of Mr Goswami, because a promise made by the Government cannot prevent the Government to exercise its statutory discretion in .future. The Central Excise Act, 1944, it is true, does not contain a provision prohibiting grant of exemption from excise in respect of any goods; rather Section 5 A of the Act, 1944, confers a power on the Central Government to grant such exemption if it is satisfied that such exemption is necessary in the public interest. Hence, the promise made in the Notification No. 32/1999CE dated 8.7.1999 read with office memorandum dated 24.12.1997 that all industrial activity would be free from excise for a period of 10 years, is not against the law. But the said Section 5A(1) of the Central Excise Act, 1944, read with Section 21 of the General Clauses Act, 1897, also vests a power in the Central Government to rescind or amend the said exemption notification if it is satisfied that it is necessary in the public interest to do so. The Central Government therefore cannot be prevented by any estoppel to exercise such discretion vested in it under Section 5A(1) of the Central Excise Act, 1944, read with Section 21 of the General Clauses Act, 1897, to rescind or amend the notification of exemption if it is satisfied that it is necessary in the public interest to do so. In *Southend Corpn.VsHodgson Ltd.*, (1961) 2 All ER 46, Lord Parker, CJ, observed:

"As I have said, I can see no logical distinction between a case, such as that, of an estoppel being sought to be raised to prevent the performance of a statutory duty and one where it is sought to be raised to hinder the exercise of a statutory discretion. After all, in a case of discretion there is a duty under the statute to exercise a free and unhindered discretion; There is a long line of cases to which we have not been specifically referred which lay down that a public authority cannot by contract fetter the exercise of its discretion. Similarly, as it seems to me an estoppel cannot be raised to prevent or hinder the exercise of the discretion."

Thus, the promise in the Notification No. 32/1999CE read with office memorandum dated 24.12.1997 that new industrial units commencing production on or after 24.12.1997 of existing units undertaking substantial expansion after 24.12.1997 would be exempt from Central Excise Duty on goods cleared from the units for a period of 10 years from the date of commencement of commercial production or from the date of publication of the notification whichever is later cannot fetter the discretion of the Central Government under Section 5A(1) of the Central Excise Act, 1944 read with Section 21 of the General Clauses Act, 1897, to amend the Notification No. 32/1999CE so as to exclude Tobacco and Tobacco related products from the said exemption even during the said period of 10 years so long as the Central Government is satisfied that it is necessary to do so in the public interest.

27. The further contention of Mr Shanti Bhusan and Mr P.K. Goswami is that the public interest indicated in the affidavit* in opposition of the Union of India for withdrawing the exemption from Pan Masala containing Tobacco is not supervening or overriding in nature. The Court must therefore examine whether

the public interest as pleaded in the affidavit in opposition of the Union of India is supervening and overriding in nature. It is stated in the said affidavit in opposition that it was only during the operation of the Notification No. 32/1999CE dated 8.7.1999 that the Central Government on a review sometime in the last quarter of the year 2000 found that the benefit flowing to the units manufacturing cigarettes and other Tobacco related products was thoroughly disproportionate to the benefit which the State would get from this fiscal revenue foregone by the Centre, in the said affidavit in opposition, illustrations have been given to show how the refunds of Central Excise obtained by such units were thoroughly disproportionate to the investments made on plant, machinery, etc. and the employment generated in the units. Obviously, the refunds of Excise Duty in accordance with the exemption Notification No. 32/1999CE were taken by the petitioners after the said notification was issued on 8.7.1999. The Central Government also found that such refunds of huge amount of Excise Duty to the petitioners were thoroughly disproportionate compared to the investments made in the units and the employment generated in the units after the said notification was issued by the Central Government on 8.7.1999. Thus, the circumstances which led to the withdrawal of the exemption to Tobacco and Tobacco related products having taken place after the notification of exemption was issued on 8.7.1999 were supervening in nature. Moreover, the withdrawal of exemption to Tobacco and Tobacco related products was for overriding public interest because the Central Government found that the units manufacturing Tobacco and Tobacco products which were injurious to health did not generate the necessary employment as anticipated, but at the same time took substantial refunds of Central Excise under the exemption notification leading to loss of revenue which were disproportionate compared to the investments made in the units.

28. Mr Shanti Bhusan is right in his submission that burden would lie on the Government to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government, and further it is only if the Court is satisfied on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise that the Court would refuse to enforce the promise against the Government. But, in the affidavit in opposition of the Union of India, the facts and circumstances have been indicated as to why it would be inequitable to enforce the promise held out by the Central Government in the Notification No. 32/1999CE dated 8.7.1999 read with office memorandum dated 24.12.1997 that units commencing production after 24.12.1997 or existing units undertaking substantial expansion after 24.12.1997 would be exempt from Central Excise Duty in the case of units manufacturing Tobacco and Tobacco related products. In the said affidavit in opposition, it has been stated that the benefit flowing from the exemption to units manufacturing Tobacco and Tobacco related products was thoroughly disproportionate to the benefit which the State

would get from this fiscal revenue foregone by the Centre, and examples have been given to show as to how refund of Central Excise in accordance with the exemption notification was far too excessive compared to investments in plant and machinery and employment generated in these units. Thus, the Union of India has been able to show the facts and circumstances which rendered it inequitable to enforce the aforesaid promise made by the Central Government and that it was overriding public interest which has weighed with the Central Government to withdraw from the promise granting exemption from Central Excise for a period of 10 years to Tobacco and Tobacco related products. Further, the aforesaid facts and circumstances as shown in the affidavit in opposition for withdrawal of exemption by the impugned Notification No. 6/2001CE dated 1.3.2001 are not irrelevant or extraneous to the exercise of discretion by the Central Government under Section 5A(1) of the Central Excise Act, 1944, read with Section 21 of the General Clauses Act, 1897. In the present case, the Court is satisfied from the facts and circumstances indicated in the affidavit in opposition that the Central Government has issued the impugned Notification No. 6/2001CE dated 1.3.2001 withdrawing the exemption from Tobacco and Tobacco products on the ground of public interest.

29. Mr Shanti Bhusan and Mr P.K. Goswami, however, have referred to the correspondence of Sri P.K. Mahanta, the then Chief Minister, Assam, with the Prime Minister, Sri Manik Sarkar, Chief Minister, Tripura, with the Prime Minister, Sri PA Sangma, Member of Parliament (Lok Sabha) with the Prime Minister, Sri Tarun Gogoi, The then Member of Parliament, (Lok Sabha) and 13 other Members of Parliament, with the Finance Minister, and Sri Shanta Kumar, Minister, Consumer Affairs, Food and Public Distribution, Government of India, with the Prime Minister, as well as the article published in Business India, September 316, 2000 issue for satisfying the Court that the withdrawal of exemption to units manufacturing Pan Masala containing Tobacco was not in the public interest. Under Section 5A(1) of the Central Excise Act, 1944, read with Section 21 of the General Clauses Act, 1897, it is only if the Central Government is satisfied that it is necessary in the public interest to amend or rescind a notification of exemption earlier issued by it, it can issue such notification rescinding or amending the exemption notification. The satisfaction that it is necessary in the public interest to amend or rescind the earlier notification therefore is that of the Central Government and not that of the Chief Ministers, Members of Parliament and other political leaders. Further, so long as the Court is satisfied that the factors relevant to public interest were taken into consideration by the Central Government while issuing a notification under Section 5A(1) of the Central Excise Act, 1944, read with Section 21 of the General Clauses Act, 1897, amending or rescinding an earlier exemption notification issued by it, the Court would not interfere with such notification rescinding or amending the earlier notification of exemption. This is because, the Court while exercising powers of judicial review under Article 226 of the Constitution does not sit as an appellate authority over the decision of the Central Government in exercise of its statutory

power to amend or rescind an exemption notification, and the duty of the Court is only to see that the Central Government exercised its power or discretion in accordance with law. Since in the present case, as discussed above, the Court has found that the factors which were relevant to public interest have been taken into consideration by the Central Government while issuing the impugned Notification No. 6/2001CE dated 1.3.2001, the contention of Mr Goswami that the impugned notification has been issued on irrelevant or extraneous considerations has no merit. For the same reason, the alternative contention of Mr Goswami that the decision of the Central Government to issue the impugned notification was so unreasonable that no reasonable authority could ever have come to it, also has no merit.

30. The decisions of the Supreme Court cited by Mr A.K. Ganguly, learned senior counsel, appearing for the Union of India, support the aforesaid conclusions. In *Excise Commissioner, UPVsRam Kumar, (supra), (1976) Supp. SCR 532*, the Supreme Court held that an exemption notification could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the revenues of the State which are required to meet the ever increasing pressing needs of the developing society, and there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers. In *Kasinka Trading, (supra)*, the Supreme Court held that the doctrine of promissory estoppel cannot be invoked in the abstract, and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, and that the doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. The Supreme Court further found in that case that the reasons given by the Union of India justifying withdrawal of exemption notification were not irrelevant to the exercise of the power and public interest nor were the same shown to be insufficient to support the exercise of that power. The Supreme Court further observed that if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it was futile to contend that the exemption could not still be withdrawn. In *Shrijee Sales Corporation, (supra)*, the Supreme Court observed that once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been indicated. In *Sales Tax OfficerVsShreeDurga Oil Mills, (supra)*, the Supreme Court held that the State Government of Orissa was fully competent to withdraw the exemption notification in respect of some of the industries which had commenced production after 1.4.1977 and were given incentives under the earlier Industrial Policy Resolution dated 18.7.1979 in exercise of its power under Section 6 of the Orissa Sales Tax Act. The reason given for the said view by the Supreme Court was that there could not be any estoppel against statute, and that any Industrial Policy Resolution can be changed if there is an overriding public interest involved.

and if the Government was faced with severe resource crunch, and on review of its financial position if it was felt that for the sake of the economy of the State, it was necessary to limit the scope of exemption granted to various industries, it could withdraw the exemption and such withdrawal would be in the public interest and the Court would not interfere with such withdrawal by the State Government. In *State of Rajasthan Vs Mafyaveer Oil Industries*, (supra), the Supreme Court held that the public interest required that the State be held bound by the promise held out by it, but this would not preclude the State from withdrawing the benefit prospectively even during the period of the incentive scheme. The Supreme Court further held that even in a case Where a party had acted on the promise, if there was any supervening public interest which required that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel. In *Pawan Alloys & Catering Ltd.*, (supra), cited by Mr Shanti Bhusan, on the other hand, the Supreme Court found that the Electricity Board sought to withdraw from the promise not on the ground of general public interest but on the ground of commercial interest inasmuch as it had been advised to maintain its profit. Considering the aforesaid weight of the judicial authorities that the Court will not enforce a promise against the Government when the Government has satisfied the Court that it would be inequitable to enforce the promise and that it was on account of the supervening public interest that it has withdrawn from the promise, and considering the fact that in its affidavit in opposition, the Central Government has stated all the facts and circumstances showing why it would be inequitable to enforce the promise and showing that the withdrawal from promise in relation to units manufacturing Tobacco and Tobacco related products was in the public interest, I am not inclined to issue any writ or direction either quashing the impugned Notification No. 6/2001CE dated 1.3.2001 or enforcing the promise made to units manufacturing Pan Masala containing Tobacco.

31. What remains is the challenge to the impugned Notification No. 6/2001CE dated 1.3.2001 on the ground that 4Hs discriminatory and is violative of Article 14 of the Constitution. The contention of Mr Shanti Bhusan is that while the impugned notification withdraws the exemption from Pan Masala containing Tobacco it does not withdraw the exemption from Pan Masala not containing Tobacco. He argued that for Pan Masala containing Tobacco excise duties and additional excise duties totalled to about 60% ad valorem whereas for Pan Masala not containing Tobacco, the total duty works out to approximately 55% ad valorem. Thus, the difference between, the duty paid on Pan Masala containing Tobacco and Pan Masala not containing Tobacco is only 5% ad valorem. According to Mr Shanti Bhusan, if the loss of revenue on account of exemption was the object of the impugned notification then the exemption should have been either withdrawn from Pan Masala containing Tobacco and Pan Masala not containing Tobacco or such exemption should have been continued both for Pan Masala containing Tobacco and Pan Masala not containing Tobacco. While this argument of Mr Shanti Bhusan appears to be attractive, the argument

does not stand the test of law laid down by the Supreme Court under Article 14 of the Constitution. In *East India Tobacco Co. Vs State of Andhra Pradesh*, AIR 1962 SC 1733, an amendment to Section 5 of the Madras General Sales Tax Act was challenged, inter alia, on the ground that it was repugnant to Article 14 of the Constitution for the reason that it had singled out Virginia Tobacco for taxation while it exempted country Tobacco from such taxation. The Supreme Court quoted the statement of the law in *Willis on Constitutional Law* with reference to taxing statutes that a State does not have to tax everything in order to tax something and it is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably, and the US Supreme Court has been practical and has permitted a very wide latitude in classification for taxation. In the said decision in *East India Tobacco Co. Vs State of AP*, (supra), the Supreme Court further observed that in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. Portion of the said judgment of the Supreme Court where it has turned down the charge of discrimination in taxing only Virginia Tobacco and not country Tobacco is quoted hereunder:

"It is argued for the appellants that to repel the charge of discrimination in taxing only Virginia Tobacco and not the country Tobacco, it is not sufficient merely to show that there are differences between the two varieties, but that it must further be shown, as held in *Budhan Choudury Vs State of Bihar*, 1955 1 SCR 1045 (AIR 1955 SC 191) and *Ram Krishna Dalmia Vs S.R. Tendolkar*, 1959 SCR 279 (AIR 1958 SC 538) that the differentia has reasonable relation to the object of the legislation. The differences between the Virginia Tobacco and the country Tobacco, as found by the learned Judges are not, it is argued, germane to the levy * of Sales Tax and so there is no valid classification. We are unable to agree with this contention. If a State can validly pick and choose one commodity for taxation and that is not open to attack under Art. 14, the same result must follow when the State picks out one category of goods and subjects it to taxation.

It should, in this connection, be remembered that under the law it is for the person who assails a legislation as discriminatory to establish that it is not based on a valid classification and it is well settled that this burden is all the heavier when the legislation under attack is a taxing statute. In taxation even more than in other fields, it was observed by the Supreme Court of United States in *Madden Vs Kentucky*, (1940) 309 US 83: 84 Law Ed. 590 "Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

32. The aforesaid law laid down by the Supreme Court in *East India Tobacco Co. Vs State of AP* (supra) in a Sales Tax case was also laid down by the Supreme Court in a Central Excise case in *Orient Weaving Mills Vs Union of India*, AIR 1963

SC98. In the said case, Orient Weaving Mills Pvt. Ltd. challenged, inter alia, the notification of exemption issued by the Central Government under Rule 8 of the Central Excise Rules under which cotton fabrics produced by any Cooperative Society were exempted from Central Excise. The contention of Orient Weaving Mills, which was a company registered under the Companies Act, was that the exemption granted only in favour of Cooperative Societies and not granted to Companies registered under the Companies Act was discriminatory and violative of Article 14 of the Constitution. Rejecting the said contention, the Supreme Court has held that it is always open to the State to tax certain classes of goods and not to tax others, and the legislature is the best judge to decide as to the incidence of taxation, as also to the amount of tax to be levied in respect of different classes of goods. The Act recognises and only gives effect to the well established principle that there must be a great deal of flexibility in the incidence of taxation of a particular kind.

The Supreme Court in particular observed:

"It is a function of the State, in order to raise revenue for State purposes to determine what kind of taxes shall be levied and in what manner. Its function, therefore, is to raise revenues for public purposes. The State naturally is interested in raising all the revenue necessary for public purposes, without sacrificing the legitimate interests of persons and groups, who deserve special treatment at the hands of the State for reasons, which the State may determine, entitling them to be placed in a special class."

33. Applying the aforesaid principles as laid down by the Supreme Court to the present case, if by the impugned notification the Central Government has not withdrawn the exemption from Pan Masala not containing Tobacco and has only withdrawn the exemption from Pan Masala containing Tobacco and other Tobacco products under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985, the impugned notification cannot be challenged on the ground that as a result of the impugned notification Pan Masala not containing Tobacco will not be liable to Excise Duty whereas the Pan Masala containing Tobacco will be liable to Excise Duty. As indicated in the aforesaid decisions, the State has wide discretion in selecting the goods which it would tax, and the State can pick out one category of goods and subject it to tax. The Central Government has picked out the category or class of goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985, for withdrawing the exemption from Excise Duty and for levying Excise Duty on such category or class of goods. Moreover, all goods in the said category or class under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 relate to Tobacco and Tobacco related products and they are distinct from Pan Masala not containing Tobacco. The basis of classification is products containing Tobacco and products not containing Tobacco, and if the Central Government by the impugned notification has chosen not to withdraw the exemption from goods not containing Tobacco but to withdraw the exemption from goods containing Tobacco, the impugned

notification cannot be challenged on the ground that it is not based on any valid classification and it is violative of Article 14 of the Constitution. 34. Mr Shanti B"Kusan"s further submission however is that Pan Masala containing Tobacco should not have been grouped with cigarettes inasmuch as the misuse or abuse of their exemption in the case of cigarette does not exist in the case of Pan Masala containing Tobacco and the units manufacturing Pan Masala containing Tobacco and units manufacturing cigarettes ought not to have been treated with equality and uniformity. But in *Khandige Sham BhatVsAgril Officer*, AIR 1963 SC591, the Supreme Court has held:

"If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine vide *Pumshottam GovindjiVsB.M. Desai*, 19552 SCR 887: (S) AIR 1956SC"20) and*. *T. Moopil NairVsState ofKerala*, 19613 SCR 77: (AIR 1961SC552). But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways."

The aforesaid decision was relied on by the Supreme Court in *Tyford Tea Co.VsKerala State*, AIR 1970SCI133, wherein it was contended that a uniform rate of tax per hectare was imposed on the owners of the plantations irrespective of various differences between them and there was no rational classification of plantations and unequals had been treated as equals. The Supreme Court held:

"The burden is on a person complaining of discrimination. The burden is proving not possible "inequality" but hostile unequal treatment. This is more so when uniform taxes , are levied. It is not proved to us how the different plantations can be said to be "hostilely or unequally" treated."

35. Thus, in view of the inherent complexity of fiscal adjustment of diverse elements, the Court has to permit a large discretion to the State in the matter of classification, and the power of the State to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. By the impugned notification, the exemption has been withdrawn from Tobacco and Tobacco products classified under Chapter24 of the First Schedule to the Central Excise Tariff Act, 1985, because the Central Government in exercise of its power under Section 5A(1) of the Central Excise Act, 1944, was of the view that in the public interest all Tobacco and Tobacco related products classified under Chapter24 of the First Schedule to the Central Excise Tariff Act, 1985, should not be allowed the exemption any further. This exercise of discretion by the Central Government cannot be held to be discriminatory and violative of Article 14 of the Constitution unless the petitioners discharge their burden of

showing that the exclusion of Pan Masala containing Tobacco from the exemption was a result of hostile unequal treatment. Except making submissions that there were differences between the units manufacturing cigarettes and units manufacturing Pan Masala containing Tobacco, the petitioners have not produced before the Court adequate materials to prove such hostile unequal treatment to units manufacturing Pan Masala containing Tobacco. Hence the charge of discrimination under Article 14 of the Constitution against the impugned notification also fails.

36. In the result, the writ petitions have no merit and are dismissed, and the interim orders are vacated. Considering however the entire facts and circumstances of the case, the parties shall bear their respective costs.