

(2002) 12 GAU CK 0032

In the Gauhati High Court

Case No : WA No's. 219 to 222 of 2002 in WP (C) No's. 1470, 1525, 1881 and 2854 of 2001

Dharampal Satyapal Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 5A, 5A(1)

Citation : (2003) 2 GLR 358 : (2010) 1 GLT 744 : (2002) 1 GLT 419

Hon'ble Judges : P.P. Naolekar, C.J.;B.B. Deb, J

Bench : Division Bench

Advocate : Bharatji Agarwal, Vinod A. Bobde, A.K. Saraf, K.K. Lahiri, M. Bhuyan, S. Sarthia, D. Baruah and S.K. Agarwal, for the Appellant; K.N. Choudhury, B.P. Sarma, A.C. Buragohain, B.P. Katokey and M.R. Pathak, for the Respondent

Judgement

P.P. Naolekar, C.J.—In this group of appeals, identical grievance is made by the appellants, who are manufacturers of Pan Masala containing Tobacco. Their grievance is that by Notification dated 8th July, 1999, the Central Government, in exercise of its power conferred by Sub-section (1) of Section 5A 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 in pursuance of the policy decision taken by the Central Government dated 24.12.1997 held out a promise to new industries to exempt the industry set up in the scheduled area from exemption from the excise duty. The Department of Central Government had prematurely withdrawn concession of such exemption by issuing a notification dated 1.3.2001. It is this notification, which is impugned to these proceedings.

2. Various writ petitions were filed in the High Court challenging the said impugned notification. In the forefront, it was submitted that the Central Government is bound by the principles of promissory estoppel to continue excise exemption to the new industries set up for a period of 10 years as integrated in

the exemption notification from the date of establishment of the industry and consequently, the Central Government could not have arbitrarily withdrawn the said excise exemption prior to expiry of 10 years period available to the industries concerned under the exemption notification and the policy decision of the Government. The new Industrial Policy dated 24.12.1997 framed by the Government of India, after Expert Groups/Committees concretized the initiatives to be offered and after Inter-Departmental Meetings were held having remained in force and has not been altered by the Government, the Ministry of Finance is incompetent to unilaterally withdraw the concessions that was given by it in pursuance of the policy.

3. As questions involved were identical in all these writ petitions all the writ petitions were disposed of by the learned Single Judge by common judgment dated 11th April, 2002, therefore, all these appeals arise out of the common judgment of the learned Single Judge, and hence, they are being disposed of by this common judgment,

4. 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 including fiscal incentives to New Industrial Units and their substantial expansion. Para C-1, which relates to fiscal incentives and is relevant for these batch of writ appeals, is reproduced hereunder :

"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."

In this memorandum, 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 to amend the Rules/ Notifications, etc., and issue necessary instructions for giving effect to the decisions contained in the said office memorandum.

5. In accordance with the Industrial Policy Decision of the Union of India, the

Government of India, Ministry of Finance, Department of Revenue, issued a Notification No. 32/1999-CE, dated 8th July, 1999, 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 8th July, 1999, is reproduced hereunder :

New Delhi, dated the 8th July, 1999

NOTIFICATION

No. 32/99-Central Excise

GSR(E) - In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and Sub-section (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 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 173-OC 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 Deputy 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 amount 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 the 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."

From the above notification, it is manifest that the excise exemption was to be for a period of 10 years from the date of application of the notification in the Official Gazette or from the date of commencement of commercial production, whichever was later. The exemption contained in the notification was applicable only to the New Industrial Units, which has commenced commercial production after 24.12.1997.

6. The appellant in WA 219/2002 (petitioner in WP(C)No. 1470/2001) had stated in the writ petition that it set up a manufacturing plant at Arundhati Nagar, Agartala, which is an Industrial Estate of the State of Tripura listed in the Annexure to the Notification No. 32/1999-CE, and also set up a Pan Masala containing tobacco unit at Bamunimaidan in Guwahati, which is an Industrial Estate listed in the annexure to the Notification No. 32/1999-CE, 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 appellant in WANO. 220/2002 (petitioner in WP(C) No. 1525/2001), had stated in the writ petition that it has set up a manufacturing plant at Arundhati Nagar, District Agartala (Tripura), which is one of the Industrial Estates listed in the annexure to the Notification No. 32/99-CE, and the said unit commenced commercial production w.e.f. 25.11.1999.

The appellant in WANO. 221/2002 (petitioner in WP(C) No. 1881/2001) has stated in the writ petition that it has set up a manufacturing plant at the Industrial Estate at Agartala, which is one of the Industrial Estates listed in the Annexure to the Notification No. 32/1999-CE, and the said unit commenced commercial production with effect from 8.8.2000.

The appellants in WA No. 222/2002 (petitioner in WP(C) No. 2854/ 2001) had 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/ 1999-CE, and the said unit commenced commercial production with effect from 2.5.2000.

7. After setting up the plants, the appellants (except appellant/petitioner in WP(C) No. 2397/2001) manufactured goods in the said plants and availed exemption under the Notification No. 32/1999-CE from excise duty on the goods cleared from the plants by first making payment of central excise duty on the goods cleared from the plant. As per the procedure laid down, the excise duty cleared, from the first payment of central excise duty on the goods and thereafter getting refund of the said central excise duty from the Central Excise Authorities. As per the procedure prescribed under the Notification No. 32/1999-CE, dated 8.7.1999, where under the manufacturers were required to submit a statement of the duty paid from the account current to the Assistant Commissioner, Central Excise or Deputy Commissioner of the 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. Thereafter, 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 the 15th of the next month. If there is likely to be any delay in verification, the Assistant Commissioner or the Deputy Commissioner of the 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. Thus, under the notification, the excise duty paid is refundable by 15th of the next month by the Excise Department. Under the notification, the manufacturers are required to deposit the excise duty on goods cleared first and thereafter, the said excise duty would be refunded back to the manufacturer under the Exemption Notification.

8. On 31.12.1999, the excise exemption given to the appellant's units was withdrawn by issuance of impugned notification, where under the exemption of Central Excise was withdrawn by Ministry of Finance from goods falling under Chapter 21.06 - Pan Masala and Chapter 24 - Tobacco and Tobacco substitutes which includes Cigarettes and Chewing Tobacco. However, within 17 days, another notification was issued on 17th January, 2000 by the Central Government, whereby exemption benefit of central excise on Pan Masala and Tobacco was restored back. The excise benefit initially granted to the appellant's industrial units to be established in Assam and Tripura was further extended to different States and benefit of exemption was extended to Meghalaya on 1.3.2000. The benefit of exemption was extended to Mizoram on 21.7.2000, to Nagaland on 28.8.2000 and Manipur on 9.11.2000. By notification dated 22.1.2001, the benefit of exemption was withdrawn on Cigarettes. On 1.3.2001, Pan Masala containing Tobacco was brought under Chapter Heading 24 of the Central Excise Tariff. By notification No. 6/2001 dated 1.3.2001, the benefits of

exemption of central excise was withdrawn on Pan Masala containing Tobacco and Chewing Tobacco.

9. Aggrieved by the aforesaid notification No. 6/2001, issued on 1.3.2001, the appellants (petitioners in the writ petitions) had challenged the action of the Central Government before the learned Single Judge, withdrawing the excise exemption given to the appellants.

10. The learned Single Judge, by order dated 11.4.2002, has held that by Office Memo 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 centers and IIDCs into a total tax free zone for the next 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. The learned Single Judge has further held that by office memorandum dated 24.12.1997, a promise was held out by the Government of India that all industrial activities 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 N. E. 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. 32/1999-CE dated 8.7.1999 exempting goods cleared in units located in the growth centre of integrated infrastructure development center or Export Promotion Industrial Park or Industrial Estates or Industrial Area of Commercial Estate in the North Eastern Region as specified in the Annexure to the notification from excise duty in the manner indicated therein.

The learned Single Judge has further held that the exemption under the notification No. 32/1999-CE 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. 32/1999-CE will have to be read consistent with the promise made in the office memorandum dated 24.12.1997 that all industrial activities in the zone would be free from excise for

a period of 10 years from the commencement of production.

It has also been held by the learned Single Judge that the notification No. 32/1999-CE 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. 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 unit for manufacturing tobacco products other than cigarettes has not been disputed by the Union of India in their affidavit-in-opposition.

Thus, the learned Single Judge has recorded the findings in favour of the appellants (petitioners) to the effect that the Government of India has held out the promise that all industrial activities shall be free from excise for a period of 10 years from the commencement of production and the appellant(s) has/have acted upon the said promise by setting up new industry. It has also been held that the exemption under the notification dated 8.7.1999 was granted pursuant to the industrial policy approved by the Government of India as contained in office memorandum dated 24.12.1997, inter alia, granting exemption from excise duty and Income Tax for a period of 10 years for all industrial activities in the industries falling within the scheduled area.

11. However, the learned Single Judge has recorded a finding that there was an overwhelming and supervening public interest equity, involved in the case and on these findings, the learned Single Judge has dismissed the writ petitions filed by the petitioners and took a view that the appellants could not derive any benefits on the ground of promissory estoppel, as by compelling overriding public interest. The Central Government was justified and was well within its power to withdraw the notification granting exemption to the appellants' industrial units.

12. Aggrieved by the order of the learned Single Judge, the present appeals have been filed. It is submitted by Shri Bharat Agarwal with Shri Vinod A. Bobde, learned counsel for the appellants, that doctrine of promissory estoppel prevents the Government in the present case from withdrawing the concessions. It is settled law that the Government is bound by its promise. Only overwhelming public interest would justify going back from the promise. Such an interest has to be established by the Government before the Court with relevant material. Mere ipse dixit of the Government is not enough. The respondent/Government has failed to produce any material before the Court on the basis of which promise made to the appellants could have been withdrawn. It is further urged by the learned counsel for the appellants that even though the learned Single Judge has rightly held that the Central Government was bound by the principles of promissory estoppel in the light of the policy decision taken by the Central Government on 24.12.1997 and the notification dated 8.7.1999 issued by it granting excise exemption to the new industries set up in the North East Region covered by the notification dated 8.7.1999 failed to see that consequently, the

notification withdrawing the excise exemption dated 1.3.2001 was hit by principles of promissory estoppel.

13. It is further contended by the learned counsel for the appellants that the new Industrial Policy dated 24.12.1997 framed by the Government of India after expert committees concretised the initiatives to be offered and after Inter-Departmental Meetings were held, still remains in force, unchanged and have not been altered or withdrawn by the Government and in view of this, the Ministry of Finance was incompetent to unilaterally withdraw the concession that was given by in pursuance of and as a consequence of the policy. The decision taken by the Government of India has resulted in industrial policy of 24.12.1997 and any notification issued by the Government of India in exercise of the power, it is found to be repugnant to the industrial policy shall be bad in law. The notification dated 1.3.2001 issued by the Ministry of Finance, Govt. of India is repugnant to industrial policy of the Government of India as incorporated in office memorandum of 24.12.1997 and is bad in law. Learned counsel for the appellants has placed reliance on the decision of the Supreme Court in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, On the other hand, the submission of Shri K.N. Choudhury, learned counsel for the Union of India is that there was no promise made by the Government to the appellants and power to grant exemption from the payment of excise duty u/s 5A of the Excise Duties Act, which is a legislative in character, carried with the power to modify, rescind, revoke or to withdraw the same. Supersession or deviation of the exemption notification in the public interest is an exercise of legislative power of the State by the Executives and it is a power, which has been conferred by the Act itself. Moreover, u/s 21 of the General Clauses Act, the Authority, which has power to issue a notification, has an undoubted power to rescind or modify the Notification in the like manner.

14. In the light of the aforesaid rival contentions, the points for consideration are :

(a) whether the Central Government from the doctrine of promissory estoppel was liable to be restrained from enforcing the impugned notification dated 1.3.2001 against the appellants so far the unexpired period available to them under the earlier notification dated 8.7.1999 granting excise exemption ?

(b) whether the policy decision taken by the Central Government granting exemption on 24.12.1997 having remained in force unchanged, the Department of Industrial Policy and Promotion has authority and jurisdiction to bring about change in the policy decision, taken by the Cabinet of the Central Government ?

It is now well settled by series of decisions of the Apex Court that the State and the State authorities can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of statutory prohibition, absence of power and authority of the promisor and is

otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise. If the statutory authority or an executive authority of the State functioning on behalf of the State in exercise of its legally permissible powers had held out any promise to a party, who relying on the same has changed its position not necessarily to its detriment, and if this promise does not offend any provision of law or does not fetter any legislative or quasi-legislative power inhering in the promisor, then on the principle of promissory estoppel the promisor can be pinned down to the promise offered by it by way of representation containing such promise for the benefit of the promisee. Reliance is placed on the decision of *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*,

15. In the office memorandum dated 24.12.1997 which has declared New Industrial Policy and other concession in the North Eastern Region, the Government clearly held out a promise for giving the tax incentives to new industries by way of tax holidays or tax exemption. In view of the continuing backwardness of the North Eastern Region, the Government felt need for a new and synergetic incentive package or stimulate development of industries and it was though proper that new incentive would be announced for industrial development of the North Eastern Region as declared by the hon'ble Prime Minister on 27th October, 1996 at Guwahati. Expert Groups/Committees were constituted by the Ministry of Industry and the Planning Commission to concretize the initiatives. The Government has approved for converting the growth centres and IIDCs into total tax free zone for the next 10 years. All industrial activities in these zones would be free from Income Tax, excise, for a period of 10 years from the commencement of production. The State Government would be requested to grant exemptions in respect of sales tax and municipal tax.

16. In pursuance of the policy decision of the Central Government, a notification was issued on 8.7.1999 where under the Industrial Units, which have commenced the commercial production on or after 24.12.1997 and the Industrial Units existing before 24.12.1997, but which have undertaken substantial expansion by way of increase in installed capacity not less than twenty-five per cent on or after 24.12.1997, were granted excise exemption as contained in the notification. The Industrial Units set up in the scheduled area, the exemption, so granted, was for 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.

17. There is no denial of the fact that the appellants have set up their industries in the zone for which the excise exemption notifications are applicable and spent huge amount of money for establishment of infrastructure, entered into various agreements for carrying out the work of manufacturing units and have, therefore, necessarily alter their position relying on representations set up in the

Policy Decision taken by the Central Government as well as in the notification issued. This investment in setting up factory and commencement of manufacturing process of Pan Masala, tobacco, was undertaken relying on the representation, thinking that they would be assured at least 10 years period granting them excise exemption in toto.

18. The Government has also given effect to the policy decision taken by the Central Government and the concession declared under notification dated 8.7.1999 by giving excise refund to the appellants' Units till the impugned notification was issued by the Government. A bare reading of the policy decision taken by the Central Government and the notification clearly indicates that the promise was made to the appellants and they have set up the industries in pursuance of the promise made to them. We have no hesitation in confirming the findings arrived at by the learned Single Judge that the Government is bound by the principles of promissory estoppel.

19. The next question, which requires consideration, is whether the respondents are entitled to resile from the promise and to withdraw the concession on the ground of supervening or overriding public interest. The Central Government in exercise of its statutory power, had earlier decided to grant exemption from excise duty on the goods manufactured and in exercise of the same statutory power, it was open to the Central Government to withdraw the said concessions on the ground of public policy and the doctrine of promissory estoppel cannot be pressed into service to thwart such exercise by the Government. Sri K.N. Choudhury, learned counsel for Union of India arguing on this point has placed reliance on the case of *Kasinka Trading v. Union of India* (1995) 1 SCC 275. The Apex Court was required to consider the question whether the notification issued u/s 25 of the Customs Act, 1962, granting complete exemption from payment of customs duty to PVC resin imported into India by manufacturers of certain products requiring the said resin as one of the raw materials, which was issued in public interest and which had stated that it would remain in force up to the inclusive of 31.3.1981, could be withdrawn before the expiry of the said period by fresh notification issued by the Government in exercise of the very same power u/s 25 of the Customs Act. The Apex Court took the view that as the said notification was issued in public interest, it could be withdrawn even before the time fixed therein for its operation also in public interest and while issuing such a notification no promise can be said to have been held out or any representation made to the importers in general on the basis of which they could insist on the doctrine of promissory estoppel that the customs duty exemption granted earlier by the first notification could not be reduced by the second one.

The aforesaid decision was considered by the Apex Court itself in the matter of *Pawan Alloys & Casting Put. Ltd.* (supra) and the Court has said that the notification which was impugned, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said notification was not even intended as an incentive for import. The notification on the plain language of its

was conceived and issued by the Central Government being satisfied that it was necessary in the public interest so to do. Strictly speaking, therefore, the notification could not be said to have extended any "representation" much less a "promise" to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It must, therefore, be held that the aforesaid decision had clearly proceeded on the basis that by issuing the earlier notification u/s 25 of the Customs Act, no promise was held out to any of the importers that the notification's life will not be curtailed earlier. The Apex Court further held that the said decision is not an authority for the proposition that even if a claim of exemption from import duty was resorted to in public interest by way of an incentive for a class of importers and even though such public interest continued to subsist during the currency of such an exemption notification and that promises for whose benefit such exemption was granted had changed their position relying on the said exemption notification, it could still be withdrawn before the time mentioned therein even though public interest did not require the said exercise to be undertaken and even though there were subsisting equities in favour of the promisee importers.

20. On the facts of the present case, the decision in the case of Kasinka Trading (supra) does not apply for the reasons given in the judgment of the Apex Court in Pawan Alloys & Casting Pvt. Ltd. (supra), wherein it has been held that there was no promise made and that the decision is not an authority for the proposition that the promise may be withdrawn before the period mentioned therein even though the public interest does not require such exercise. The said decision, therefore, cannot be any real assistance to proposition placed before us by the learned counsel for the respondents. In the present case, as we have seen earlier a clear cut scheme of incentives for new industries was put forward by the Central Government presumably so that more and more industries could be attracted to the North East Region and acting on that promise appellants set up their industries in the Region.

21. In *Shrijee Sales Corporation and Another Vs. Union of India (UOI)*, A.M. Ahmadi, Chief Justice as he then was, speaking for the Bench, has held that it is not necessary for us to go into a historical analysis of the case law relating promissory estoppel against the Government. Suffice it to say that the principle of promissory estoppel is applicable against the Government but in the case there is a supervening public equity, the Government would be allowed to change its stand, it would then be able to withdraw from representation made by it which induced persons to take certain steps which may be gone adverse to the interest of such persons on account of such withdrawal. However, the Court must satisfy itself that such a public interest exists.

22. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, the law on this aspect has been emphatically laid down as under:

"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. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is to 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. But, even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, provided of course, it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable, vide Emmanuel Ayodeji Ajayi v. Briscoe."

"4. Two propositions follow from the above analysis :

(1) The determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or "public interest".

(2) It is the Court, which has to determine whether the Government should be held exempt from the liability of the "promise or representation".

In the present case the first notification exempting the customs duty on PVC itself recites Central Government being satisfied that it is necessary in public interest to do so. In the notification issued later, which gave rise to the present cause of action, the same recitation is present."

23. It is, therefore, apparent that even though it may be found that the Government or any other competent authority had held out any promise on the basis of which the promisee might have acted, if public interest required recall of such a promise and such a public interest outweighed the interest of the promisee then the doctrine of promissory estoppel against the Government would lose its rigour and cannot be of any avail to such promisee. Once the public interest is accepted as the superior equity which can overriding individual equity, the principle should be applicable even in cases where a period has been indicated. It would be competent for the Government to resile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation, which cannot be rectified. Where there is no such overriding public interest, it may still be within the competence of the Government to resile from the promise on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, provided, of course, it is possible for the promisee to restore the status quo ante. If however, the promisee cannot resume his position, the promise would become final and irrevocable.

24. In the light of the aforesaid settled legal position, we, therefore, hold that even though the appellants had succeeded in convincing us that earlier policy decision taken by the Central Government on 24.12.1997, notifications dated 8.7.1999 and 21.3.2001 did contain a clear promise and representation by the Central Government to the prospective new industrialists that once they established their industries in the region within the time specified, they would be assured excise exemption on the goods manufactured for a period of 10 years from the date of commencement of commercial production, the appellants will not be able to enforce the equity by way of promissory estoppel against the Central Government if it is shown by the Central Government that public interest required it to withdraw these incentives of exemption from payment of excise duty, prior to expiry of 10 years as available to the appellants' units. It is also to be held that even if such withdrawal by development rebate, prior to 10 years, is not based on any overriding public interest, if it is shown that by such premature withdrawal the appellants-promisees would be restored to status quo ante and would be placed in the same position in which they were prior to grant of such rebate by earlier notifications, the appellants would not be entitled to succeed.

25. At the very outset, we now examine the case in the light of the settled law and we must, at once, be stated that it is not a case of the respondents that it sought to withdraw the excise exemption made available earlier by it to the new industries on the ground that such premature withdrawals, the appellants-promisees would be restored the status quo ante and would be placed in same position in which they were prior to grant of such rebate by earlier notification. On the facts on record, it is apparent that the Central Government has not given a reasonable opportunity to the appellants to resume their earlier position nor it is shown by the Central Government that it is possible for the appellants-promisees to restore the status quo ante. Once the new industries were established the factory in the region on being assured 10 years tax holidays and acting on the same, once they had established their industries and spent large amount for constructing the infrastructure, for employing necessary labour and for purchasing the raw materials etc. it would be almost impossible for them to restore the status quo ante. In all fairness, it is not suggested by the learned senior counsel for the Central Government. With all such withdrawal of excise due to exempt, the appellants would be able to restore the status quo ante.

26. In *Motilal Padampat Sugar Mills Co, Ltd*, (supra), it is held that 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 and the government would resile from the promise made. The Court would not act on the mere ipse dixit of the Government, and it is for the Court to decide that the Government should be held exempt from liability. The burden to prove such overriding public interest would be upon the Government to show that the public interest would be 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 highly rigorous standards of proof in the discharge of this burden.

27. Let us now examine whether case is made out by the Central Government whereby it can be said that there exists an overriding public interest, which requires that the Government should not held bound by the promise and should be free to act unfettered or unmade it and could withdraw the same.

28. An affidavit-in-opposition was filed on behalf of the respondents by Shri Anowar Hussain, Assistant Commissioner in the Department of Central Excise, stating therein for issuing the withdrawal of excise exemption notification and on which reliance has been placed by the learned Single Judge in arriving at conclusion that there was overriding, supervening public interest, which authorizes the State Government to withdraw the excise exemption contained in paras 13 and 21 of the affidavit-in-opposition, which are reproduced hereunder :

"13. A thorough review was, therefore, undertaken some time in last quarter of year 2000 inter alia in relation to the operation of the exemption with respective products like cigarettes and other tobacco related products and it was decided that the unintended benefits 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. It was, therefore, decided in public interest to discontinue forthwith this exemption, which interest to discontinue forthwith this exemption, which have completely distorted the entire working of this law in the State insofar 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 utilization 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 is denied that the principles of estoppel applied for the withdrawal has affected the survival of the petitioner. In any event, the investment of the petitioner in plant and machinery is not consistent with the benefits received by them. It is further denied that the Industrial Policy Resolution (IPR) by itself created any legal obligation for the Government or any promise upon which the petitioner could have acted. Policy Resolutions are mere statements of intend of the Government and unless these followed up by requisite notification and the respective enactments, these cannot be acted upon. Under the provisions of Central Excise Act exemption from excise duty can be

given only in public interest. It is submitted that insofar as the exemption contained in notification No. 32/99-CE dated 8.7.1999 stated to be available for a period of 10 years as made out by the petitioner. It is denied that the notification grants relief for a period of 10 years for newly established units in specified area. The deponent would crave leave to rely on the contents of the policy for the North Eastern Region, the notifications that have been issued from time to time to contend that no promise as claimed by the petitioner had been made out and in any event the withdrawal of the benefits to the petitioner would be Justifiable in public interest."

29. An affidavit-in-opposition has been filed in WP(C) No. 1470/2001 on behalf of the respondent Nos. 3 and 5, the State of Assam and the Director of Industries and Commerce, Government of Assam, wherein it has been averred that in pursuance of the notification issued by the Government of India No. 32/99 dated 8.7.1999 granting exemption from Central Excise Duty to industries coming up in the State, notified in the notification, for a period of 10 years for all the products falling under the Central Excise Tariff Act, 1985, which includes tobacco. Accordingly, the petitioner has set up a Pan Masala containing tobacco manufacturing unit in Bamunimaidan Industrial Estate and started commercial production on 17.11.2000. Apart from the present petitioner, there are number of industries who set up their units in the State of Assam after the announcement of exemption. The Government of India has withdrawn the exemption vide Notification No. 6/2001 dated 1.3.2001 on tobacco products. The said withdrawal of exemption will encourage the shifting of the existing unit and will discourage other industries to invest in the State. Withdrawal of notification of 8.7.1999 will go to defeat the very purpose of inviting industries to invest and the industrial growth of the State. It has been further stated that withdrawal of the notification dated 8.7.1999 has rendered the much needed boost in the promotion of industrial growth of the State and that the withdrawal of the notification was made without any consultation with the State Government.

30. In WP(C) No. 1525/2001 the State of Tripura and the Director of Industries and Commerce, Government of Tripura, have filed a joint affidavit-in-opposition contending therein that withdrawal of the notification by the Government of India all of sudden granting exemption shall affect the units already set up on the basis of the uneconomical due to remoteness and backwardness of the Region. The existing units will be compelled to shut down their units for which a number of workers shall be render jobless/unemployed. All the Districts of the State of Tripura has been declared "No Industry District" by the Government of India and therefore continuation of the reimbursement of excise duties in the State is very much essential for the development of industries in the State. It has been further stated that the Union Government did not consider at the time of withdrawal the exemption of excise duty vide notification dated 1.3.2001 what would be the affect of such withdrawal of such benefit in the North Eastern Region, specifically in the State of Tripura. The new industrial policy was/is created the hopes in the minds of the people of North Eastern State that they will be employed in near

future if the new industries are set up in their region, but due to withdrawal of the excise benefits that hopes are again going to be dashed. The State of Tripura wants that the benefits of excise duty provided under the new industrial policy is required to be continued in the interest of the region as well as State of Tripura and for the interest of expansion of source of employment in the Region particularly in the State of Tripura. The Government of India did not consult the State Governments of the North Eastern Region .prior to withdrawal of the excise benefit. That the excise benefit was part of the North Eastern Industrial Policy and while framing the policy, the State Government of the North Eastern States were consulted. Due to withdrawal of the benefit of excise duty, no investors will be interested to invest in the region and as a result the region shall continue to be backward/suffer from development and there will also be unemployment problem. It has also been stated that the petitioner/ appellant-company has made capital investment of about Rs. 1 crore, company also provided employment to 85 number of workers, mostly local and the setting up the unit of manufacturing Zafrani Zarda (Chewing tobacco) by the petitioner-company as well as their associate company Dharampal Satyapal Limited has helped the State of Tripura in the process, creating a climate for industrialization. Not only heavy investments are made and direct employment generated by those companies, but they have also created a climate by generating the direct employment and opportunities in the field of Road Transportation, travel, housing, construction, communication and other allied industries. The quantum of investments made in plant and machinery is not the key factor to adjudicate upon the process of industrialization and economic growth of the State. The key factor to determine the growth of industrialisation is the momentum of the business activities generated.

31. From the averments made in the affidavits filed on behalf of the respondent Union of India, the reason for withdrawal of exemption of excise duty appears to be that after thorough review of the exemption granted, it was found that the unintended benefit flowing to the manufacturers of tobacco related products was thoroughly-disproportionate to the benefit which the State would get from this fiscal revenue foregone by the Centre and consequently the units set up did not generate the necessary employment as anticipated. That there was the aspect of backward and forward linkages to be considered in the context of utilization of raw materials and when it was found that the units manufacturing tobacco products did not advance the objects of the policy envisaged for the North Eastern Region, the exemption of excise duty was withdrawn by the notification dated 1.3.2001.

32. It is apparent from the decision of the Apex Court, that it is only if the Court is satisfied on proper and adequate materials placed by the Government, that the overriding public interest requires that the Government should not be held bound by the promise the Government would be permitted to resile from the promise made, that the Court should not act on the mere ipse dixit of the Government and it is for the Court to decide whether the Government should be held exempt

from the liability. 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.

33. Section 5A(1) was introduced on 1.7.1988 and for the first time in excise law a statutory power was conferred to grant exemptions from excise duty in the "public interest". It cannot be doubted that all tax laws are presumed to be in the public interest because generation of revenue is essential for the survival of the modern State. Thus when the law provides that in the "public interest" exemption from tax may be granted, what is contemplated in Section 5A(1) is a higher and wider public interest than mere fiscal considerations. When the exemption is given u/s 5A(1) it presupposes the fiscal loss to the Central Government, which decision is being taken in the public interest. It is the public interest which was relevant to the exercise of power u/s 5A(1) and it was reflected in the New Industrial Policy declared on 24.12.1997 which was translated into the exemption notification in the interests of a backward region of the Country, viz., North Eastern Region. What was involved was the development of the region and in view of the federal structure of governance, the Union of India rightly considered the interests of public interest and that too in the exercise of a statutory power. The power conferred u/s 5A(1) was exercised in the "public interest". The promise consciously made in the public interest in the exercise of statutory power can be withdrawn if there is overriding public interest over such public interest if such public interest is placed on record by the Government for consideration of the Court. Mere fiscal loss which has already taken care of while granting exemption cannot be a ground for withdrawal of exemption in the public interest and the public interest pleaded by the Government for withdrawal cannot obviously be the loss of revenue. Nor can it be the alleged failure of consideration such as non-fulfilment of policy objectives in the sense that sufficient employment was not generated.

34. No material is placed before the Court to indicate as to what are the benefits which are not intended to be given to the industries under the exemption policy or exemption notification, which industries have got and then how they are disproportionate to the benefits which State would get on account of excise exemption given to industries. There is no material placed on record except allegations in affidavit of the respondent Union of India to indicate what benefit was achieved by the North Eastern State after the implementation of the policy decision, for the Court to Judge and ascertain whether the benefit appended to the State on account of exemption do not commensurate with the fiscal revenue loss of the Central Government There is nothing placed on record to indicate that there was no industrial growth in the North Eastern Region after the notification dated 8.7.1999, The Central Government has also not produced any document to show that what was the expected employment generation on account of exemption of excise duty nor any papers have been produced before the Court as

to whether any employment was generated after exemption notification was issued or not. There is also no materials on record to show that in the industries that have been set up in pursuance of the notification issued by the Government on 8.7.1999 the raw material utilisation was not to the expected limit considering the backwardness and forward linkages. The Union of India has not even placed on record the material to substantiate the reasons alleged in- the affidavit for the Court to adjudicate upon the overriding public interest. We cannot put a blind eye to the fact that the petitioner/appellants have put up industries which surely must have generated some employment. Can a fact that others have not put up their industries so as to give much employment could be a ground for withdrawal of the exemption for the industries that have already been set up relying the promise made by the Government. The circumstance that several others did not put up industries so as to give employment to large number of persons would not be a ground to withdraw the promise made by the Government to the petitioner. The overriding and supervening interest which has to be pleaded by the Government must be of a such magnitude and create such a compelling necessity that a Government could be satisfied and the Court also could be persuaded to take the view that it is better not to honour promises in order that a higher public good is secured, the superior public interest has to be of such nature wherein the fiscal loss is not the consideration, but the loss of object for which the policy decision was taken itself is hampered. The policy decision taken by the Government for granting exemption of excise duty to the industries set up in the North Eastern Region was specifically to stimulate the development of industries so that the region overcomes the continuing backwardness, if the Government is able to show that the very reason for which the policy decision is taken, viz., setting up industries in the region, the region overcomes its continuing backwardness failed the Government can certainly withdraw the exemption notification. The Government cannot withdraw the Notification if the process is slow or it does not generate revenue as expected. The reason given by the Government for withdrawal of exemption of excise duty by issuing notification dated 1.3.2001 cannot also beheld to be for the reason which reflects an overriding and supervening interest,

35. It is urged by Shri Bharat Agarwal, learned counsel for the appellant that the Central Government having taken a policy decision it is not open to the Ministry of Finance to withdraw the concession given in pursuance of the policy. In other words, the impugned notification dated 1.3.2001 issued by the Ministry of Finance is repugnant to the Industrial Policy of the Government of India as incorporated in the Office Memorandum of 24.12.1997, Reliance is placed on the case in *Suprabhat Steels Ltd. (supra)*. It may be appropriate to consider the case in the light of the facts and circumstances of the present case.

36. The question came before the Apex Court, for consideration, was whether the industrial units which have started production prior to 1.4.1993 and whose investment in plant and machinery does not exceed Rs. 15 crores on 1.4.1993 would be entitled to the facilities of sales tax exemption on the purchase of raw

materials for a period of seven years from 1.4.1993 in accordance with Clause 10.4(i)(b) of the Industrial Incentive Policy, 1993 and whether the notification issued by the Government of Bihar dated 2.4.1994 in exercise of power u/s 7 of the Bihar Finance Act to the extent it indicates "who has not availed of any facility or benefit under any industrial promotion policy" is valid as being contrary to the Policy Resolution of 1993. The State of Bihar introduced a New Industrial Policy in 1993 and Clause 10.4 of the said policy deals with the sales tax exemption, which runs, thus :

"10.4. Sales tax exemption on the purchase of raw materials. - (1) This facility will be admissible to the industrial units mentioned in Annexure V in the following manner :

(a) Industrial units coming into production between 1.4.1993 to whose investment in plant and machinery does not exceed Rs. 15.00 crore shall be entitled for this facility for a period of seven years from the date of production.

(b) Such old industrial units whose investment in plant and machinery does not exceed Rs. 15.00 crore on 1.4.1993 shall be entitled for this facility for a period of seven years from 1.4.1993.

(2) All other industrial units shall continue to enjoy the existing facility of purchase of raw material on concessional rate of tax as announced and made applicable by the Sales Tax Department as before."

37. The State Government issued a notification on 4.4.1994 in exercise of power u/s 7 of the Bihar Finance Act, under which the old industrial units like the respondents who had started production prior to 1.4.1993 but whose investment in plant and machinery did not exceed Rs. 15 crore on 1.4.1993 were denied the facility of sales tax exemption on the purchase of raw materials as those units had availed of some facilities under the prior Policy of 1986. In other words, the units which are otherwise entitled to the sales tax exemption on the policy decision have been denied the exemption on the basis of the fact that those industries have taken some benefit under the prior Policy of 1986. The notification dated 4.4.1994 issued by the State Government was challenged in the High Court and the High Court struck down the notification. The State of Bihar approached the Supreme Court challenging the order passed by the High Court. While dealing with the question, the issuance of notification u/s 7 of the Bihar Finance Act, the Apex Court held that - "it is true that issuance of such notifications entitles the industrial units to avail of the incentives, and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. The industrial incentive policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification u/s 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and

the policy decisions taken in the industrial policy itself. In this view of the matter, any notification issued by Government order in exercise of power u/s 7 of the Bihar Finance Act, if is 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."

38. In the case in hand, a new Industrial Policy for the North East Region was declared on 24.12.1997 with its synergetic package of incentives to stimulate development of industries so that the region overcomes its continuing backwardness. This New Industrial Policy came into existence on the basis of the statement made by the Prime Minister on 27th October, 1996 that new initiatives would be announced for the industrial development of the North Eastern Region. Experts groups/committees were constituted by the Ministry of Industry and the Planning Commission to concretize the initiatives. Subsequently Inter-Departmental Meetings were held under the Chairmanship of Member Secretary (Planning Commission) to consider the recommendations and finalise the proposals. Based on these proposals Government approved the New Industrial Policy and other concessions in the North Eastern Region, Clause C of the said Policy deals with the fiscal incentives to New Industrial Units and their substantial expansion reads - "The Government has approved for converting the growth centres and IIDCs 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 Governments would be requested to grant exemptions in respect of Sales Tax and Municipal Tax".

39. In pursuance of this policy decision a notification dated 8.7.1999 was issued in exercise of powers conferred by Sub-section (1) of Section 5A of the Central Excise Act, 1944 giving exemption in the public interest to the goods specified in the in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 and cleared from a unit located in the growth centre or the Integrated Infrastructure Development Centre or Export Promotion Industrial Park, etc., as the case may be specified in Annexure appended to the notification. The exemption notification dated 8.7.1999 was issued in regard to the new industrial units which have commenced their commercial production on or after 24.12.1997 and the industrial units existing before 24.12.1997 which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty-five per cent on or after 24.12.1997. The exemption contained in the said notification was made applicable 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. Under the notification issued new units set up after 24.12.1997 are entitled to excise duty exemption for a period of 10 years from the date of commencement of the commercial production. It is an admitted position that in pursuance of this notification the appellants/petitioners have set up their industries in the Region falling under the notification and commenced their production. Under the policy decision taken by the Government, notification was issued giving tax exemption to the units for a

period often years from the date of publication of the notification or from the date of commencement of commercial production, whichever is later. The Government notification dated 1.3.2001 wherein the benefits of the Central Excise tax was withdrawn on Pan Masala containing chewing tobacco is contrary to the policy decision taken by the Government it is pertinent to mention the Government has not changed nor amended the policy, the policy remains the same of declaring the region as total tax free zone for the industries set up and commence production on or after 24.12.1997 or which have increase in installed capacity on or after that date. The withdrawal of excise exemption from these specified industries by notification is contrary and repugnant to the policy of the Government of India, The withdrawal of the tax exemption granted under the Industrial Policy by notification dated 1.3.2001 is repugnant to the policy decision taken by the Central Government. On the facts of the present case, the decision rendered by the Apex Court in Suprabhat Steels Ltd. (supra) squarely applies and withdrawal of the notification dated 1.3.2001 is bad in law.

40. For the aforementioned reasons stated, the Notification No. 6/2001-CE dated 1.3.2001 is quashed and the appeals are allowed. The impugned judgment and order dated 11.4.2002 of the learned Single Judge is set aside.

41. The next question is, as to what relief the petitioner/appellants are entitled to. The WP(C) No. 1470/01 was filed by the petitioner/ appellant on 5.3.2001 challenging the notification dated 1.3.2001 withdrawing the exemption as contrary to the policy decision of the Central Government and the High Court while issuing notice on 7.3.2001, in the interim, suspended the operation of the impugned notification dated 1.3.2001. By the order dated 7.5.2001 the interim order so passed was modified and the Department was directed to process the refund, but need not refund the excise duty amount paid. In view of the aforesaid order from 7.5.2001 onwards although the Department has started the process of calculating the actual amount to be refunded, the actual refund has not been made as yet. We having quashed the notification dated 1.3.2001 withdrawing the tax exemption, the appellants would now be entitled to the refund of the excise amount which has been deposited by them as per the notification dated 8.7.1999. Under directions issued by this Court, the Central Excise Department was directed to process the refund but did not refund the amount to the appellants. Thus, the amount of excise duty paid by the appellants after 7.5.2001 must have been processed by the Department but not refunded to the appellants. We instead of directing the refund of the amount to the appellants the excise duty paid to the Department after 7.5.2001 till date, we feel that it is in the fitness of things to direct the Central Excise Department to credit this amount to the respective accounts of the appellants concerned and the future excise duty/tax which the appellants may be required to be paid to the Central Government may be adjusted from this credited amount, so that the appellants as manufacture of the goods need not pay excise duty on their goods till the entire credit/outstanding in their respective accounts in this connection gets exhausted. It is however made clear that from the date of this judgment the

appellants/ petitioners shall be entitled to exemption on excise duty as per the notification dated 8th July, 1999.