

(1981) 06 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 6101, 6513 and 6514 of 1980 and 200 and 1073 of 1981

Feno Plast Pvt. Ltd. and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 30-06-1981

Acts Referred:

Constitution of India, 1950 — Article 229
Customs Act, 1962 — Section 25, 25(1)

Citation : (1984) 17 ELT 97

Hon'ble Judges : B.P. Jeevan Reddy, J

Bench : Single Bench

Advocate : J. Chalmeswar, for the Appellant; K. Subrahmanya Reddy for the Central Government, for the Respondent

Judgement

1. Section 25 of the Customs Act, 1962 empowers the Central Government, if it is satisfied that it is necessary in the public interest so to do, to exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of the duty of customs leviable thereon under the Act. In exercise of this power, the Central Government issued notification No. 66/79 dated 15th March, 1979 which is to the following effect :-

"In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 145-Customs, dated the 27th July, 1978, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts polyvinyl chloride resins, falling within Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from the whole of the duty of customs leviable thereon which is specified in the said First Schedule.

This notification shall be in force upto and inclusive of the 31st August, 1979."

By a subsequent notification the date "31st August 1979" was substituted by the words "31st March, 1980" and by another notification No. 37/80 dated 25th March, 1980 the words "31st March, 1981" were substituted for the words "31st March, 1980. However on 16th October, 1980 the Central Government issued another notification bearing No. 205/F. No. 355/141/80 Customs 1, impugned herein, modifying the earlier notification. It reads :

"In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 66-Customs, dated the 15th March, 1979, the Central Government being satisfied that it is necessary in the public interest so to do hereby exempts polyvinyl chloride resins, falling within Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of forty per cent ad valorem".

2. The petitioners herein are manufacturers of certain products involving the use and consumption of polyvinyl chloride resins. Polyvinyl chloride resin, according to the petitioners, has to be mainly imported from abroad. Though according to Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the customs duty leviable is 100% of the value, the Central Government under notification No. 66/79 dated 15th March, 1979, referred to above, exempted these goods from the customs duty altogether. The petitioners say that in view of the said notification they placed orders abroad for import of the said product and that it was actually imported into India and sought to be removed from the concerned warehouse well before 31st March, 1981. (The customs duty, as held by the Supreme Court, on imported goods is levied and becomes payable when the goods are sought to be removed from the warehouse. However, by the date the petitioners sought to remove the goods from the warehouse, the impugned notification dated 16th October, 1980 had come into force and accordingly the customs authorities demanded customs duty to the extent of 40% of the value of the goods as a pre-condition for premitting the goods to be removed from the warehouse. The petitioners then approached this Court. Their case is that they had placed the order for the import of the PVC Resin only in view of and acting upon the exemption notification aforesaid which clearly stated that it is operative till 31st March, 1981. They made arrangements for importing the goods and for removing them from the warehouse well before that date. But the impugned notification was issued after they placed orders for the import and furnished Bank guarantee for the price thereof, as is the practice in the import trade and before the goods were actually imported into India and sought to be removed from the ware-house. In such a case, the Central Government is estopped from giving effect to the impugned notification on the principle of promissory estoppel. Having represented that the exemption shall be effective till 31st March, '81 thereby inducing the petitioners to import the goods, the Central Government is precluded from revoking the exemption, even partially since such a course of

conduct if permitted, is likely to cause grave prejudice and loss to the petitioners. Reliance is placed upon the well known decisions of the Supreme Court in *Union of India v. Anglo Afghan Agencies* AIR 1968 S.C. 718; *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, . On the other hand it is contended by Shri K. Subrahmanya Reddy, the learned Standing Counsel for the Central Government, that there is no room for applying the rule of promissory estoppel or equitable estoppel in this case. He submits that the exemption notification is one issued by the Central Government in exercise of a statutory power and that the impugned notification is also one issued under the same power. There can be no estoppel against statute or exercise of statutory power. Merely by mentioning the date 31st March, 1981 as the date until which the exemption was operative, no representation is involved that it would not be rescinded or modified before that date. The fact that the exemption notification has been issued u/s 25(1) of the Customs Act and because the very same power is available for rescinding or modifying such a notification, the petitioners ought to have known that the said notification was liable to be revoked or modified at any time. The impugned notification has been issued in public interest and since no representation was even made to the petitioners to any effect by the Central Government, the plea of promissory estoppel is not available against the Central Government. The learned standing counsel for the Central Government placed strong reliance upon the decision of the Supreme Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, and submitted that the decisions relied upon by the counsel for the petitioners do not in any manner run counter to his propositions.

3. The rule of promissory estoppel has become fairly well settled in India. As stated by Bhagwati J. in *M.P. Sugar Mills v. State of U.P.*, (supra) "it is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel", it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence... .. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is

necessary is only that the promisee should have altered his position in reliance on the promise." It is held that this doctrine is enforceable even against the Government notwithstanding the fact that there is no contract executed in the form required by Article 299 of the Constitution or that there is no consideration for the promise. The statement of law was affirmed by another Bench of the Supreme Court in *M/s. Jit Ram Shiv Kumar v. State of Haryana* (supra). However both the decisions have recognised certain exceptions to this rule. Kailasam, J., stated those exceptions in the latter decision, in the following terms :-

(1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.

(2) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.

(3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the unauthorised acts of its officers.

(4) The officer would be justified in charging the terms of the agreement to the prejudice of the other part on special considerations, such as difficult foreign exchange position or other matters which have a bearing on general interest of the State."

4. The first question that arises in these case is, whether any representation of promise was made by the Central Government to the petitioners. Now, according to the above statement of law, there must be "a clear and unequivocal promise which is intended to create legal relations, or effect a legal relationship to arise in the future". Counsel for the petitioners say that the exemption notification which was specifically stated to be operative till 31st March, 1981, does constitute a representation or promise, as the case may be, while the learned Standing Counsel for the Central Government says that it does not constitute any such representation or promise. How, it is beyond dispute that (i) a representation or promise need not be to a particular individual; it can be to a class of persons. A scheme enunciated by the Government, or a notification issued by it in exercise of its executive power, may constitute such representation; (ii) the Government cannot be bound by any promise not to do a particular thing which it is obliged, under law, to do. Nor can it promise to do anything which it is prohibited from doing. But the situation is different where it has power to do, or not to do, a particular thing. In such a case, it may be open to the Government to make a promise or representation, as the case may be, and it would be bound by such promise or representation, if the other ingredients of the rule are satisfied. But the question in this case is, whether the earlier notification granting the exemption does amount to a "representation" or "promise", made by the Central Government, intended to be acted upon by the petitioners and other similarly situated persons, and whether the rule of estoppel can be founded upon such

promise or representation. I am of the opinion that it is not. It was not a notification designed or intended to induce the petitioners to import P.V. resins, nor was it intended to encourage the import of the said goods. It was one conceived in a larger interest, viz., public interest. May be, it also benefited the petitioners; but that was not the intendment or the objective of the notification. The petitioners, therefore, cannot say that it was meant to be, or can be treated as a representation, much less a promise, made to them. A reading of section 25 of the Act makes it clear that it is the public interest that is the dominant factor. If the public interest demands, the Centre Government shall have to issue a notification exempting the specified goods from whole or part of the Customs duty. Similarly, if the public interest demands, the same can be lifted or modified, as the case may be. The power to exempt though not a delegated power and termed as "conditional legislation" (see *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*), yet it is a statutory power conferred upon the Government to be exercised in accordance with the demands of public interest. The petitioners do not challenge the impugned notification on the ground that it was not called for in public interest. Though a faint suggestion to this effect is made in some of the writ petitions, no much argument is addressed before me. The petitioners, it must be noticed, did not start the industry because of, or in the light of the said exemption. They are manufacturers of certain products requiring P.V. resins as one of the raw materials. P.V. resins are also manufactured in India, and partly imported from abroad. It is not the case of the petitioners that only because of the exemption notification they placed orders abroad and that, but for the said notification, they would have purchased it in the home-market at a lesser price. I am, therefore, of the opinion that the exemption notification cannot be made a basis for founding a promissory or equitable estoppel, and the Government should not be bound by its notifications once issued, and that it should be left free to modify or rescind them as and when the public interest so demands. This power of exemption is granted to the Government with a view to enable it to regulate, control and promote the industries and industrial production in the country.

5. I may now refer to the decision of the Supreme Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, which is strongly relied upon by the learned Standing Counsel for the Central Government. In this case, Excise auctions were held in February and March, 1969 for grant of licences to sell country spirit in retail, during the excise year 1969-70. The terms and conditions of auction were duly notified; but this notification did not say anything about the exemption notification issued under the U.P. Sale Tax Act, in force on that date. (As far back as 1959, the Uttar Pradesh Government had issued a notification dated 6th April, 1959, u/s 4 of the the U.P. Sales Tax Act, 1948, exempting the country spirit from Sales Tax.) The auctions were held, and the respondents before the Supreme Court were the successful bidders, and became licensees. Their licences were effective from 1-4-1969. On 2-4-1969 the Government of Uttar Pradesh issued another

notification in supersession of the notification dated 6-4-1959, and imposing Sales Tax on the turnover of country spirit at the rate of 10 paise per rupee, at the point of retail sale, with effect from the date of the said notification. One of the questions which arose for consideration before the Supreme Court was, whether the Government was estopped from enforcing the notification dated 2-4-1969 and collecting Sales Tax thereunder, in the circumstances of the case. The Supreme Court observed :

"Sections 3-A and 4 of the U.P. Sales Tax Act, 1948 clearly authorise the State Government to impose sales tax. The fact that sales of country liquor had been exempted from sales tax vide Notification No. S.T. 1149/X-802(33)-51 dated April 6, 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. 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....."

The Supreme Court, therefore, held - disagreeing with the High Court - that "the Government cannot divest itself of the right incidental to its office by conduct which, in the case of a private person, would amount to estoppel and in characterizing the demand for sales tax made by the appellants as illegal... .." This decision - it is relevant to note - has been affirmed both in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , and *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, , though the last sentence in the above extract, in so far as it says that there can be no question of estoppel against the Government in the exercise of its powers, was explained as too broad. Bhagwati, J., while referring to this case, observed at pp. 647-648 in *M.P. Sugar Mills v. State of U.P.* that in the exercise of auctions case there were no facts which could constitute the basis for a plea of estoppel and that, the last sentence in the aforesaid extract, if read in its proper context, cannot be understood as laying down an absolute proposition that there can be no promissory estoppel against the Government in exercise of its governmental, public or executive powers. Indeed, in *M/s. Jit Ram Shiv Kumar v. State of Haryana*, this decision, including the observations aforesaid, were referred to approvingly.

6. Now, the only difference between the facts in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, , and the cases before me is that, while in that case the exemption notification did not say that the exemption is effective till a particular date, in the present case the exemption notification specifically stated that it shall be operative upto March 31, 1981. The crux of the argument of the petitioners is that the mentioning of this date distinguishes this case from the case before the Supreme Court. the reasoning is : the Government having specifically represented that the exemption shall be

operative till 31-3-1981, is estopped from going back upon that, because on the faith of such representation, they have placed orders for import. Though the force and justification of this argument cannot be ignored, I find myself unable to uphold it. Firstly, the exemption notification having been issued u/s 25(1) of the Customs Act, it is implicit and understood that it can be rescinded or modified at any time if the public interest so demands. The very public interest which demanded a total exemption, may demand that the exemption must be withdrawn either totally, or partially. Accepting the argument of the petitioners would mean that the Government will not be entitled to act even where the public interest demands that it should act. Putting it differently, even where the Central Government is obliged, in public interest, to withdraw an exemption already granted, either wholly or partially, it will be unable to do so. According to the principle of the decisions of the Supreme Court, no estoppel can be pleaded in such a case. It must also be noticed that the exemption notification issued initially was valid only upto 31-3-1979, and the said date was being extended from time to time. Just as the period of operation of the exemption can be extended, it can also be cut down, in public interest. As I have stated earlier, it is not urged before me that the impugned notification is not warranted by public interest, contemplated in Section 25(1) of the Act. The facts of the present cases cannot be held to be analogous to the facts in *Union of India v. Anglo Afghan Agencies* AIR 1968 S.C. 718, or *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . In the first case, the Government had evolved an export promotion scheme in exercise of its executive power which, inter alia, stated that exporters will be entitled to import raw materials of the total amount equal to 100% of the F.O.B. value of the exports. The petitioners therein acting upon the said scheme, exported goods hoping that they would be entitled to import licences in terms thereof. It was, therefore, held that the Textile Commissioner who enunciated the scheme, was bound by the terms thereof and obliged to carry out the promise made thereunder. In the present case, neither the notification is of an executive character, nor did it represent a scheme designed to achieve a particular purpose. It was a notification issued in public interest and again withdrawn in the same public interest. So far as the decision in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, is concerned, the relevant facts there are totally different. There was a good amount of correspondence between the State and the petitioners therein, and a clear promise was made that for a particular number of initial years, the industry will be exempted from sales-tax. But, when the State sought to levy the sales-tax, it was held by the Supreme Court that, in view of the categorical representation made by the State to the petitioners therein, it was precluded from doing so and that, it was bound to exempt the petitioners from the provisions of the Sales-tax Act, in accordance with the representation made by it.

7. For the above reasons, the writ petitions fail and are, accordingly, dismissed; but, having regard to the circumstances of the case, there shall be no order as to costs.