

(1994) 08 GUJ CK 0014

In the Gujarat High Court

Case No : Spl. Civil Application No. 5957 of 1987

Gujarat Bottling Co. Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-08-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 57A
Constitution of India, 1950 — Article 14, 226

Citation : (1996) 81 ELT 58 : (1995) 1 GLR 738

Hon'ble Judges : Rajesh Balia, J;A.P. Ravani, J

Bench : Division Bench

Advocate : Kamal Mehta, for H.V. Chhatrapati, for the Appellant; H.M. Mehta, Sr. Central Govt. Standing Counsel and Ketan Dave, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

A.P. Ravani, J.—The petitioner is a private limited company engaged in the business of manufacturing aerated waters and soft drinks. The

petitioner challenges the legality and validity of Notification No. 203 of 1987, dated September 9, 1987. By this notification the Central

Government has withdrawn the "modvat" benefits granted to aerated waters. Earlier, by Notification No. 83 C.E., dated March 1, 1987

"Modvat" benefit was granted to aerated water also, along with other articles. The petitioner also challenges the legality and validity of letter dated

October 28, 1987 written by the Superintendent of Central Excise, AR II, Division III, Ahmedabad. By this letter the petitioner has been asked to

reverse the "modvat" credit taken by it on inputs lying in stock as on 30.9.1987/1.10.1987. As stated in the letter the "Modvat" credit so taken by

the petitioner amounted to Rs. 11,26,995.64 (Rupees eleven lacs twenty six thousand nine hundred ninety five and paise sixty four). By this letter

the petitioner has also been asked to comply with the same by making debit entry and inform the Department immediately.

2. It is an undisputed position that by notification dated March 1, 1987 the "modvat" benefit was granted to aerated waters. However, by the

impugned Notification No. 203 of 1987 dated September 9, 1987 the "modvat" benefit granted to aerated water has been withdrawn. The

petitioner contends that similar benefit was given to other articles by notification dated March 1, 1987. The benefit given to other articles has been

continued, while the benefit given to aerated water has been withdrawn. Therefore, it is contended that manufacturers of aerated waters have been

treated with hostile discrimination.

3. There is no substance in the aforesaid contention. The Hon'ble Supreme Court, in the case of East India Tobacco Co. Vs. State of Andhra

Pradesh, , has inter alia 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. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any

classification, that it would be violative of Article 14.

4. In this connection, reference may be made to a decision of the Supreme Court in the case of Hind Plastics and Another Vs. Collector of

Customs, Bombay and Another, . In para 15 of the reported decision it is inter alia observed by the Hon'ble Supreme Court as follows :

What should be taxed is a matter not to be decided by the Courts, but by appropriate instrumentalities or functionaries.

In view of the aforesaid settled legal position, the contention that the impugned notification is discriminatory and, therefore, it is violative of Articles

14 of the Constitution of India has no merits and the same has got to be rejected.

5. Reference may be made to an order passed by Division Bench of the Delhi High Court (Coram : Yogeshwar Dayal, C.J., as he then was, G. C.

Jain, J.) in C.W.P. No. 3032 of 1987, decided on October 30, 1987. This very notification was under challenge before the Delhi High Court. The

Delhi High Court has rejected the petition by passing the following order :

By the impugned order dated 9th September, 1987 the Government of India has

withdrawn the Modvat benefit to aerated waters which benefit

was extended to them by notification dated 1st March, 1987. This is a matter of policy, whether the benefit should be extended or withdrawn. It is

not a fit case for examination under Article 226 of the Constitution of India. With these remarks the petition is dismissed.

6. Learned Counsel for the petitioner contends that in respect of subordinate legislation also there should not be arbitrariness. He submits that the

Government was estopped from withdrawing the benefit granted to the manufacturers of aerated waters. In support of this submission reliance is

placed on decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . In that case the doctrine

of promissory estoppel was invoked against the Government in view of the letter dated 24th May, 1976 issued by the Central Board of Excise and

Customs. In the instant case, there is no such representation made by the Government. The principle of Promissory Estoppel has been stated by

the Supreme Court in the case of Godfrey Phillips India Ltd. (supra). In para 9 of the reported decision the Hon'ble Supreme Court has observed

as follows :

The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise

or representation which is intended to create legal relations or affect 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 or representation is made and it is in fact so acted upon by the other party, the promise or

representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to

do so, having regard to the dealings which have taken place between the parties.

In this case, there is no promise held out by the Government nor any such representation made by the Government. It is not even shown that

relying on such promise or representation the petitioner changed his position and acted to his detriment. Therefore, the contention raised on the

basis of the doctrine of promissory estoppel has no merits and the same is rejected.

7. It may be noted that the provision under which the petitioner claims benefit (Rule 57A of the Central Excise Rules, 1944) itself is a piece of

delegated legislation. It grants benefit of modvat only in case when such benefit is to be extended by issue of notification. Section 21 of the General

Clauses Act makes it clear that an authority which has power to issue notification has also the power to rescind the same. Therefore, whatever

promise or assurance was contained in the notification issued under Rule 57A implicitly contained a condition that it can be withdrawn as and when

the authority so desires. This is also well settled that there is no estoppel from withdrawing from a promise or assurance prospectively. As the

impugned notification has been withdrawn prospectively by an authority having power to rescind the benefit conferred by earlier notification, no

question of applying promissory estoppel arises for consideration in the present case.

8. Learned Counsel for the petitioner submits that the impugned notification is a subordinate legislation, but it is not immune from being challenged

on the ground of arbitrariness. In support of this submission reliance is placed on the decision of the Supreme Court in the case of Indian Express

Newspapers (Bombay) Pvt. Ltd. v. Union of India, reported in AIR 1986 SC 515. In the aforesaid decision the Hon"ble Supreme Court has held

that the validity of subordinate legislation cannot be decided by the Court by applying the standard applicable to administrative action. However, it

is liable to be questioned on the ground that it is unreasonable, i.e. manifestly arbitrary. There is no dispute with regard to the aforesaid principle. In

the instant case by no stretch of reasoning it can be said that the withdrawal of modvat benefit granted by the earlier notification dated March 1,

1987 is in any way unreasonable so as to call for interference in exercise of the powers under Article 226 of the Constitution of India. Neither in

the petition nor at the time of argument such manifest unreasonableness has been pointed out.

9. In view of the aforesaid settled legal position the petition as far as the challenge to the legality and validity of the impugned Notification No. 203

of 1987, dated 9th September, 1987, Annexure E to the petition must fail.

10. Learned Counsel for the petitioner submits that once a credit entry is made, the manufacturer would be entitled to claim the "modvat" benefit

irrespective of the fact whether the raw material purchased by it has been used in the manufacture of the article in question or not. This submission

is made in support of the challenge to the letter dated October 28, 1987 written by the Superintendent of Central Excise, AR II, Division III,

Ahmedabad. In our opinion, having regard to the overall facts and circumstances of the case and particularly having regard to the fact that disputed

questions of fact and law are likely to arise, this question can very well be agitated before the departmental forum. In this petition we do not think it

proper to decide the question of legality and validity of letter dated October 28, 1987 produced at Annexure-G to the petition. In our opinion the

ends of justice would be met if the following direction is given with respect to the challenge to the letter Annexure-G, dated October 28, 1987.

11. In the result the petition is rejected as far as the prayer relating to the constitutional validity of Notification No. 203 of 1987, dated September

9, 1987 is concerned. As far as the challenge to the letter dated October 28, 1987 produced at Annexure-G to the petition is concerned, it is

directed that if the petitioner files appeal to the appropriate appellate authority, i.e. Collector (Appeals), Allahabad, on or before September 15,

1994, the same shall be entertained by the appellate authority and will be decided without taking objection as to limitation. It is hoped that the

appeal that may be filed will be decided by the appellate authority concerned as expeditiously as possible. Rule made absolute to the aforesaid

extent only, with no order as to costs.