
(1986) 08 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2012 of 1985

J.K. Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-08-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 8, 8(1)
Central Excises and Salt Act, 1944 — Section 3, 4
Constitution of India, 1950 — Article 299
Industries (Development and Regulation) Act, 1951 — Section 11, 13

Citation : (1987) 12 ECC 389 : (1987) 10 ECR 307 : (1986) 26 ELT 703 :
(1986) 2 WLN 612

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

Bench : Single Bench

Advocate : Ashok Desai, S. Ganesh, H.M. Parekh and A.N. Haksar, for the Appellant; Chandrashekhra and J.P. Joshi, for the Respondent

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has challenged the Notification No. 150/85-CE dated 15th July, 1935 (Annexure-P)." It has further been prayed that the respondents may be directed not to modify or alter the excise duty relief as postulated under Notification No. 107/81-CE and No. 88/84-CE.

2. The petitioner No. 1 is an existing company and it has its registered office at 7, Council House Street, Calcutta. The petitioner established two factories at Kankroli in the district of Udaipur for manufacturing tyres. By this writ petition the principal grievance is the withdrawal of the excise relief scheme which was issued for a specified period by the Central Government in order to encourage "the new investment in tyre industry and to partially off-set the high cost of such new investment. Mr. Desai, learned counsel for the petitioner made two principal submissions that once the excise relief is given by the Central Government and on that basis the petitioner Company acted and made an investment then the Government cannot be allowed to revoke this excise exemption because they are

estopped from doing so because of promissory estoppel. Secondly it has been submitted that once a Notification has been issued then same cannot be retrospectively withdrawn so as to divest the vested right created under the Notification.

3. Mr. Chandrashekhra, appearing for the Union of India submitted that there is no question of estoppel applicable in the matter because the power of exemption was exercised by the Government in the exercise of its legislative function and same have been revoked therefore there cannot be any estoppel against the legislative Act. The learned counsel further submits that the Notification specially cancelling the Notification No. 88/84 dated 6th April, 1984 is not applicable to the petitioner as it has been decided by the authorities and for which a writ petition is already pending before the Delhi High Court. The learned counsel further submits that since the Notification No. 88/84 dated 6th April, 1984 is not applicable to the petitioner, therefore we need not go into the question of promissory estoppel. In the background of these two questions I need to state few facts which are necessary for disposal of the matter.

4. In the end of year 1974 there was an acute shortage of tyres in India. This was on account of the fact that the production of tyres was controlled and confined to only seven old established tyre companies. Out of these old established tyre companies, four of the bigger and major tyre companies belong to Multi National Groups, namely, Dunlop, Firestone, Ceat and Goodyear India Limited. The remaining three companies namely, Madras Rubber Factory (MRF), Prirnier tyres limited and Incheck Tyres Limited had collaboration with well established companies namely, Mansfield Tyre and Rubber Company, Uni Royal and Foreign Export Corporation of Czechoslovakia.. On account of the limited production of tyre the price of tyres had considerably increased. In order to establish new investment for setting up tyre company huge investment of over 40 crores was required with a capacity of about 5 lakh tyres per annum. This investment was many a times more than the investment initially made by the existing and established companies. In 1976, an excise relief scheme was introduced in order to give incentive to new units and also in order to encourage investment in tyre industries. This incentive scheme was given statutory effect by an exemption notification being No. 198/76 dated 16th June, 1976. As a result of the incentive of the Government, four new companies came into tyre industries, namely, Modi Rubber Limited, Apollo Tyres Limited, Vikrant Tyres Limited and the petitioner Company. The 1976 scheme was modified in 1978 and the said scheme came to an end in February, 1980. With the, end of the scheme, the new tyre companies, who had set up factories at a substantially high investments of over Rs. 30 crores per plant, approached the Central Government for providing relief in order to off-set the high cost of investment incurred by these companies.

5. The Central Government favourably considered the representations by these new companies and the Minister of State for Industries in the Lok Sabha on 24th

April, 1981 made the statement which reads as under :

"I now come to Tyre Industry. In 1976, Government had announced a scheme for Excise Duty Relief for Tyre and Tube manufacturing Industry for achieving higher levels of production. The duty relief was given in the form of exemption from excise duty to the extent of 25% of the duty leviable on clearances in excess of base clearance with reference to base periods. This scheme was discontinued on 14th July, 1978, and was replaced by a new scheme. Thernain features of the new scheme were as follows :

(i) Tyre units were divided into two categories namely, those established before 1st April, 1976, and those established after that date. For the pre-1976 units, excise duty relief at 12.5% of the duty leviable was provided, while for the post - 1976 units, the relief was at 25%.

(ii) The excise relief was admissible upto a level of 75% of the licenced capacity. Only those tyre units were eligible for excise relief whose licensed or installed capacity did not exceed 5 lakh tyres and tubes.

The new scheme introduced in July, 1978 was continued upto March, 1980, but was not extended during the year 1980-81. The whole question of giving excise relief to tyre industries has been reviewed. It is felt that it is necessary to formulate an excise duty relief scheme for tyre units as a means to neutralise the comparatively higher capital cost of the newer plants as well as to encourage fresh investment in this industry. Accordingly, an excise duty relief scheme for the tyre industry has been formulated in consultation with Ministry of Finance, the salient features of which are that unit which commenced or would commence clearance of tyres on or after 1.4.1976 but before 1.4.1984 scheme for tyres for a period of five years, from the date of first excise clearances of tyres from the respective units. The excise duty relief would be at the rate of 25% of the duty leviable and would be admissible upto a level of 75% of the initial licenced capacity during each financial year. The period for which these units might have enjoyed the benefit of excise duty exemption under the 1976 and 1978 Schemes will, however, be taken into consideration in computing the period of five years. The total duty relief under this scheme including the relief, if any earned under the earlier schemes, will be subject to a ceiling of 30% of the initial investment on plant and machinery installed in respective unit so that no tyre unit may get undue financial advantage,

The statutory Excise notification giving effect to these decisions will be issued shortly and copies of the same will be placed on the Table of the House in due course."

6. It is clear from the statement of the Hon"ble Minister on the floor of the House that a new scheme was introduced as a means to neutralise the hardship to all the new established tyre factories and a new scheme came to be issued by the notification No. 107/81 dated 24th April, 1981, which reads as under :-

"TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY DATED THE 16TH JULY, 1985

25 ASADHA, 1907 (SAKA) GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) ... New Delhi, the 16th July, 1985
----- 25 Asadha, 1907 (Saka) NOTIFICATION
----- No. 159/85 CENTRAL EXCISE GSR. 572 (E) In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Rules, 1944, the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 88/84-Central Excises, dated the 6th April, 1984.

Sd/- (K.S. VENKATAGIRI) UNDER SECRETARY TO THE GOVERNMENT OF INDIA.
F.No. 331/3/84-TRU

EXPLANATORY NOTE : The aforesaid notification rescinds notification No. 88/84-CE dated 6.4.84 as applicable to tyres falling under Tariff Item 16 of the C.E.T."

By this notification new tyre factories which commenced production between 1.4.1976 and 31.3.1984 were granted an exemption from 25% of the duty of excise already payable on tyres. This exemption was available for a period of five years from the first clearances and was subject to a maximum of 30% of the investment made in plant and machinery by the said units. The Notification granted relief for a specified period of 5 years from the date of first clearance. In pursuance of this exemption by the Notification No. 107/81 dated 24th April, 1981 the petitioner company encouraged to set up a new company for manufacture of tyres. The petitioner company made huge investment approximately of Rs. 49.03 crores on plant and machinery. After this notification the petitioner company also made a loan application to the Financial Institutions of Central Government for a long term loan for financing the new factory. It also took necessary steps towards the establishment of factory and incurred investment of approximately Rs. 32 crores of the loan granted by the financial institutions. This loan is repayable to the financial institutions from 1986. If the petitioner company failed to repay the loan within the stipulated time, an additional amount of 2% has to be paid by way of penalty by the petitioner company. The petitioner company made an application for grant of industrial licence and same was allowed by the Central Government on 28th July, 1982 (Annexure F). But without notice to the petitioner company the Central Government modified the excise duty relief scheme. This modified scheme was notified by the Central Government by the impugned notifications Nos. 267/82-CE and 268/82-CE dated 13th November, 1982. Both the notifications reads as under :-

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY DATED THE 13TH NOVEMBER, 1982

22 KARTIKA, 1904 (SAKA) GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) New Delhi, the 13th November, 1982.

----- 22 Kartika, 1904 (Saka) NOTIFICATION
----- No. 267/82-CE NTR I EXCISES

GSR.692(E) In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 107/81-Central Excises, dated the 24th April, 1981.

Sd/- (V. LAKSHMI KUMARAN) UNDER SECRETARY TO THE GOVERNMENT OF INDIA F. No. 331/3/82-TRU"

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY DATED THE 13TH NOVEMBER, 1982.

----- 22 KARTIKA, 1904 (SAKA) GOVERNMENT OF INDIA
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) New Delhi, the 13th
November, 1982 ----- 22 Kartika. 1904 Saka NOTIFICATION
----- No. 268/82-CENTRAL EXCISES

GSR. 693 (E) In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts tyres (excluding tubes and flaps) falling under item No. 16 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise leviable thereon u/s 3 of the said Act as is in excess of the amount calculated at the rate of seventy-five per cent, of the rate of duty leviable on such tyres under the said First Schedule read with any notification issued under Sub-rule (1) of rule 8 of the said rules and in force for the time being :

Provided that such tyres are manufactured in a factory which is a new industrial undertaking licensed u/s 11 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and from which the clearances of tyres are effected for the first time during the period commencing on the 1st day of April, 1976, and ending with the 31st day of March 1984:

Provided further that the exemption contained in this notification shall not apply to clearances of tyres effected after the expiry of a period of seven years from the date of the first clearance of tyres from any factory:

Provided also that the exemption contained in this notification shall apply to first clearances of tyres for home consumption during any financial year only upto a total quantity not exceeding seventy-five per cent. Of the initial annual licensed capacity of tyres as certified by the Development Officer of the Directorate-General of Technical Development:

Provided also that the exemption contained in this notification shall not apply to such of the clearances of tyres as are in excess of the clearances of tyres in respect of which the aggregate of the amount of exemption under this notification and the amount of exemption, if any, availed in respect of clearances of tyres, under all or any of the notifications of the Government of India in the Department of Revenue and Banking No. 198/76-Central Excises dated the 16th

June, 1976, or in the Ministry of Finance (Department of Revenue) No. 142/78-Central Excises, dated the 14th July, 1978, or in the Ministry of Finance (Department of Revenue) No. 107/81-Central Excises, dated the 24th April, 1981, equals fifty per cent of the sum-total of the value of the capital investment made on plant and machinery in the said factory for the manufacture of tyres prior to the date of the first clearance of tyres as certified by the Development Officer of the Directorate-General of Technical Development.

Explanation I. - For the purposes of computing the period of seven years from the date of the first clearance, the period commencing on the 1st day of April, 1980, and ending with 23rd day of April, 1981, shall not be taken into account.

Explanation II. - For the purposes of computing the first clearances of tyres for home consumption during any financial year, the clearances of tyres which are exempted from the whole of the duty of excise leviable thereon under the said Act by any notification issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and for the time being in force, shall not be taken into account.

Explanation III. - For the purposes of this notification, the "amount of exemption" shall be the difference between the amount of duty payable (including special duty of excise, if any, payable thereon) but for this notification or the aforesaid notification No. 198/76-Central Excises, or No. 142/78-Central Excises, or No. 107/81-Central Excises, as the case may be, and the amount of duty paid on tyres (including special duty of excise, if any, paid thereon) at the concessional rate prescribed under this notification or the aforesaid notification No. 198/76-Central Excises, or No. 142/78-Central Excises, or No. 107/81-Central Excises, as the case may be respectively.

Explanation IV. - The amount of duty payable" in Explanation 111 shall be the amount calculated by applying the rate of excise duty leviable on tyres, but for this notification No. 198/76-Central Excises, or No. 142/73-Central Excises, or No. 107/81-Central Excises, as the case may be, to the assessable value of tyres as approved by the proper officer for the purposes of this notification or the aforesaid notification No. 198/76-Central Excises, or No. 142/78-Central Excises, or No. 107/81-Central Excises, as the case may be, respectively.

Explanation V. - The expression "assessable value" in Explanation IV means the value as determined in accordance with the provisions of Section 4 of the said Act.

Explanation VI. - For the purposes of computing the sum-total of the value of the capital investment made on plant and machinery for the manufacture of tyres, the face value of the capital investment at the time when such investment was made only shall be taken into account, but the value of the investment made on plant and machinery which have been removed permanently from the said factory or rendered unfit for use prior to the date of the first clearance of tyres, shall be excluded.

Sd/- (V. LAKSHMI KUMARAN) UNDER SECRETARY TO THE GOVERNMENT OF INDIA F.No. 331/1/82-TRU".

7. By the Notification No. 267/82-CE dated 13th November, 1982 the Central Government rescinded the Notification No. 105/81 dated 24th April, 1981. By Notification No. 268/82 dated 13th November, 1982 the incentive scheme was confined to new undertakings licenced u/s 11 of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as "the Act of 1951"). As a result of this change the major departure took place was that this was made applicable only to new undertakings. It further provided the excise relief from 3096 upto 50% of the total cost of plant and machinery investment. The period of limitation was extended from 5 years to 7 years. As mentioned above, this notification deprived the benefit to these old units for their substantial expansion. There as representation was filed by the petitioner company and it was pointed out that the earlier scheme allowing the benefits to all units whether they are set up by way of new units or by way of substantial expansion of the units. It is alleged that discussions took place in the office of Finance Ministry, but in the meantime the company acted on the basis of the old Notifications commenced its production and cleared the goods on 31st April, 1984 which the date postulated for eligibility of the relief under the original scheme. In fact the petitioner company made all efforts to commence the production within the stipulated period in order to get the benefit of the excise relief as afforded by the earlier scheme.

8. After great amount of persuasion the petitioner company could be able to persuade the Central Government that the excise exemption granted to new industries shall also be available to units which were set up as a new "factory by substantial expansion. The Central Government issued Notifications being No. S7/34-CE and 88/84-CE dated 6th April, 1984. Both the Notifications reads as under :-

"TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY DATED THE 6TH APRIL, 1984
----- 17 TH CHAITRA, 1906 (SAKA) GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) New Delhi, the 6th April, 1984 17th Chaitra, 1906 (Saka) NOTIFICATION
----- No. 87/84-CENTRAL EXCISES

GSR. In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 268/82-Central Excises, dated the 13th November, 1982,

Sd/- (K.S. VENKATAGIRI) UNDER SECRETARY TO THE GOVERNMENT OF INDIA F.No.331/7/82-TRU." "TO BE PUBLISHED IN PART II, SECTION 3,SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY DATED THE 6TH APRIL, 1984 17TH CHAITRA, 1906 (SAKA)

NOTIFICATION No. 88/84-Central Excises

GSR. In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts tyres (excluding tubes and flaps) falling under item No.76 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise leviable thereon u/s 3 of the said Act as is in excess of the amount calculated at the rate of eighty per cent of the rate of duty leviable on such tyres under the said First Schedule, read with any notification issued under Sub-rule (1) of rule 8 of the said rules and in force for the time being :

Provided that such tyres are manufactured in a factory which is an industrial undertaking licensed u/s 11 of Section 13 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and from which the clearance of tyres was effected for the first time during the period commencing on the 1st day of April, 1976 and ending with the 31st day of March, 1984 (hereinafter referred to as the said first clearance of tyres) :

Provided further that where such tyres are manufactured in a factory which is an industrial undertaking licensed u/s 11 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) (hereinafter referred to in this proviso as the said factory), the exemption contained in this notification shall not apply to such of the clearances of tyres -

(i) as are in excess of clearances of tyres in respect of which the aggregate of the amount of exemption under this notification and the amount of exemption, if any, availed in respect of clearances of tyres under all or any of the notifications of the Government of India in the Department of Revenue and Banking No. 198/76-Central Excises, dated the 16th June, 1976, or in the Ministry of Finance (Department of Revenue) No. 142/78-Central Excises, dated 14th July, 1978, or in the Ministry of Finance (Department of Revenue) No. 107/81-Central Excises, dated 24th April, 1981, or. in the Ministry of Finance (Department of Revenue) No. 268/82-Central Excises, dated the 13th November, 1982, equals an amount which is the aggregate of -

(a) fifty per cent of the sum-total of the value of capital investment made on plant and machinery in the said factory for the manufacture of tyres prior to the date of the said first clearance of tyres as certified by the Development Officer of the Directorate-General of Technical Development or the General Manager of the Industrial Development Bank of India, and

(b) thirty per cent of the sum-total of the value of capital investment made on plant and machinery in the said factory for the manufacture of tyres on or after the date of the said first clearance of tyres but upto the 31st March, 1984 as certified by the Development Officer of the Directorate-General of Technical

Development or the General Manager of the Industrial Development Bank of India; or

(ii) as are effected after the expiry of a period of seven years from the date of the said first clearance of tyres from the said factory:

Provided also that where such tyres are manufactured in a factory which is an industrial undertaking licensed u/s 13 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) (hereinafter referred to in this proviso as such factory), the exemption contained in this notification shall not apply to such of the clearances of tyres -

(i) as are in excess of the clearances of tyres in respect of which the aggregate of the amount of exemption under this notification and the amount of exemption, if any, availed in respect of clearances of tyres, under all or any of the notifications of the Government of India in the Department of Revenue and Banking No. 198/76-Central Excises, dated the 16th June, 1976, or in the Ministry of Finance (Department of Revenue) No. 142/78-Central Excises, dated the 14th July, 1978 or in the Ministry of Finance (Department of Revenue) No. 107/81-Central Excises, dated the 24th April, 1981, or in the Ministry of Finance (Department of Revenue) No. 268/82-Central Excises, dated the 13th November, 1982, equals thirty per cent of the sum-total of the value of capital investment made on plant and machinery in such factory for the manufacture of tyres prior to the date of the said first clearance of tyres as certified by the Development Officer of the Directorate-General of Technical Development or the General Manager of the Industrial Development Bank of India:

(ii) as are effected after the expiry of a period of seven years -

(a) from the date of the said first clearance of tyres from such factory; or

(b) from the date of the first clearance of tyres at any point of time from any other factory in which the manufacture of tyres is being or has been carried on by the industrial under- taking referred to in this proviso: Which is earlier.

Explanation I. - For the purposes of this notification, in computing the said period of seven years, the period commencing on the 1st day of April, 1980, and ending with the 23rd day of April, 1981, shall not be taken into account.

Explanation II. - For the purposes of this notification, the "amount of exemption" shall be the difference between the amount of duty payable (including special duty of excise, if any, payable thereon) but for this notification or the aforesaid notification No. 198/76-Central Excises, or No. 142/78-Central Excises, or No. 107/81-Central Excises, or 268/82-Central Excises, as the case may be, and the amount of duty paid on tyres (including special duty of excise, if any, paid thereon) at the concessional rate prescribed under this notification or the aforesaid notification No. 198/76-Central Excises, or No. 142/78-Central Excises, or No. 107/81-Central Excises, or No. 268/82-Central Excises, as the case may be, respectively.

Explanation III. - The "amount of duty payable" in Explanation II. -

(i) in the case of tyres where duty of excise is chargeable under the Central Excises and Salt Act, 1944 (1 of 1944) with reference to value, shall be the amount calculated by applying the rate of excise duty leviable on tyres, but for this notification or the afore said notification No. 198/76-Central Excises or No. 142/78-Central Excises, or No. 107/81-Central Excises, or No. 268/82-Central Excises, as the case may be to the assessable value of the tyres as approved by the proper officer for the purposes of this notification or the aforesaid notification No. 198/76-Central Excises, or No. 142/78-Central Excises, or No. 107/81-Central Excises, or No. 268/82-Central Excises, as the case may be respectively; and

(ii) in the case of tyres where the rate of excise duty is chargeable under the Central Excises and Salt Act, 1944 (1 of 1944) not with reference to value, shall be the amount calculated by applying such rate, but for this notification.

Explanation IV. - The expression "assessable value" in Explanation LI means the value as determined in accordance with the provisions of Section 4 of the Central Excises and Salt Act, 1944 (1 of 1944).

Explanation V. - For the purposes of computing the sum-total of the value of the capital investment made on plant and machinery for the manufacture of tyres, the face value of the capital investment at the time when such investment was made only shall be taken into account, but the value of the investment made on plant and machinery which have been removed permanently or rendered unfit for use shall be excluded.

2. Nothing contained in this notification shall apply to tyres cleared by or on behalf of a manufacturer by whom or on whose behalf clearance of tyres from any one or more factories was effected for the first time before the 1st day of April, 1976.

Sd/- (K.S. VENKATAGIRI) UNDER SECRETARY TO THE GOVERNMENT OF INDIA
F.NO.331/7/82-TRU."

9. On account of the original Notification No. 107/81-CE certain dispute arose regarding its interpretation and therefore a writ petition was filed in the Delhi High Court being C.W.No. 1372 of 1981. During the pendency of this writ petition the scheme was restored to original status in 1984. It was contended by the respondents that the excise relief was available to the new company for 7 years from the date of first clearance from the new factory. This issue was adjudicated upon before the Assistant Collector of the Central Excise, Udaipur. The petitioner company in support of its contention filed written submission on 31st January, 1985, alongwith the opinions of two eminent Senior Counsel. The Assistant Collector of Central Excise ignored the written submission of the petitioner company passed the order dated 5th February, 1985 restricting the relief to the extent of 7 years from the date of clearance from the old factory rather than 7

years from the date of clearance from the new factory. This order was challenged by the petitioner company by way of an amendment in the pending writ petition in the Delhi High Court being Civil Miscellaneous Petition No. 567A/85. In sequence of event the Notification dated 15th July, 1985 being Notification No. 159/85-CE was issued withdrawing the earlier relief scheme. The Notification dated 15th July, 1985 (Annexure P) is reproduced herewith :-

"TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY DATED THE 16TH JULY, 1985.

GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

New Delhi, the 15th July, 1985 25 Asadha, 1907 (Saka) NOTIFICATION No. 159/85-Central Excise

GSR.572 (E). In exercise "of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 88/84-Central Excise, dated the 6th April, 1984.

Sd/- (K.S. VENKATAGIRI) UNDER SECRETARY TO THE GOVERNMENT OF INDIA F.NO.331/5/84-TRU".

EXPLANATORY NOTE : The aforesaid notification rescinds notification No. 88/84-CE dated 6.4.84 as applicable to tyres falling under Tariff Item 16 of the C.E.T."

It is this Notification which is being sought to be challenged on the grounds mentioned above.

10. Mr. Desai, learned counsel for the petitioner straneously urged that on account of the Notification No. 107/81 dated April 24, 1981 and Notification No. 87/84 and 88/84-CE dated 6th April, 1984 the petitioner company has acted on the positive assertion of Central Government and made huge investment in establishing tyre factory, therefore the respondents cannot be allowed to withdraw this excise relief, as it is going to operate harshly, they are estopped on the basis of principles of promissory estoppel. I have already narrated the fact that after the Notification dated 107/81 the petitioner company took the exercise of expansion their unit in the hope that the excise relief will be given. After having undertaken all the exercise in the hope of getting the excise relief it is not fair for the Central Government to revoke the same and leave the citizen high and dry. Mr. Desai, learned counsel for the petitioner in this connection placed for my consideration the latest judgment of their Lordships of the Supreme Court where they have laid down the principles of promissory estoppel and urged that present case is squarely covered by this case. I need not go into judicial history of the principles of promissory estoppel as those controversy is no more open after the latest judgment by their Lordships of the Supreme Court in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.,

11. In" this case, the question fell for consideration was that cost of secondary

packing of articles whether includible in the value of articles. In this case while dealing with the question of promissory estoppel Hon^{ble} the Chief Justice observed as under :-

"The doctrine of promissory estoppel represents 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 basis of this doctrine is the interposition of equity which has always true to its form, stepped in to mitigate the rigour of strict law. 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 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 or representation is made 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. The doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of this doctrine.

What has been laid down in Motilal Sugar Mills case in this regard is the correct law. A different view taken in a subsequent decision in Jit Ram v. State of Haryana expressing court's disagreement with the observations made in Motilal Sugar Mills case cannot prevail. A Bench of two-Judges in Jit Ram could not overturn or disagree with what was said by another Bench of two Judges in Motilal Sugar Mills. If the two-Judge Bench in Jit Ram found themselves unable to agree with the law laid down in Motilal Sugar Mills, they could have referred Jit Ram case to a larger Bench."

12. In this background it would be relevant to mention here that Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, made a significant development in law relating to doctrine of the promissory estoppel. It was debated that to what extent the doctrine of promissory estoppel is applicable against the Government. It was held in that case as under :-

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice."

Thus, after discussing all the cases on the subject it was laid down in Motilal Sugar Mills case (Supra) the doctrine of promissory estoppel is applicable to all executive actions of the Government. This was in order to avoid injustice being perpetrated to the other party. The defence of executive necessity by the Government was negated and it was laid down that the Government is not

released from its obligation. It was held in the Motilal Sugar Mills case (supra) that party acted on the basis of the promise/representation made by the Government and altered its position is entitled to enforce the promise/representation against the Government though the promise or representation is not in the form of contract as required by Article 299 of the Constitution.

13. In this connection it is also relevant to mention another judgment of their Lordships of the Supreme Court in the case of Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, In this case ofcourse a different view was taken from the view taken in Motilal Sugar Mills case. But in Godfrey Philips (supra) it has been clearly laid down that the view expressed in the case of Jit Ram (supra) to the extent it is in conflict with the case of Motilal Sugar Mills case (supra) is not correct and their Lordships reiterated that the view expressed in Motilal Sugar Mills case (supra) is the correct position of law. The present Bench after having referred the case of Jit Ram (supra) reiterated the position as expressed in Motilal Sugar Mills case and confirmed the same.

14. In the light of present state of law, whether the Government can be bound by the principles of promissory estoppel in this case, my answer to this question is in positive. The Central Government cannot revoke the notification by Notification No. 159/85 dated 15th July, 1985, revoking the concession which has been granted to the tyre industries to the petitioner and other industries by the Notification No. 107/81 and 88/84.

15. It may also be relevant to mention here that these exemption notifications were issued by the Central Government in the exercise of its statutory power under Rule 8 of the Central Excise Rules, 1944 (hereinafter referred to as "the Excise Rules") which reads as under :-

"Rule 8 - Power to authorise exemption from duty in special cases. -

(1) The central Government may from time to time by notification in the Official Gazette, exempt (subject to such conditions as may be specified in the notification) any excisable goods from the whole or any part of duty leviable on such goods.

(2) The Central Board of Excise and Customs may by special order in each case exempt from the payment of duty, under circumstances of an exceptional nature, any excisable goods."

All these notifications granting exemptions were issued by the Central Government in its purported exercise of power under Rule 8 of the Excise Rules. Thus, it is clear that the Central Government made a specific representation to its citizen that certain excise concession will be given to the units which commenced the production within the time stipulated in the notifications. In pursuance of this the petitioner company had made all its efforts and obtained the licence, make arrangement for huge sum of money in establishing the factory and kept the schedule of its production so as to come within the four corners of

both the notifications i.e. 107/81 and 88/84-CE. Thus having acted positively in response to the exemption of excise concession it is not open for the Government to revoke the excise relief suddenly to the prejudice of citizen. Such action of the Government is absolutely illegal because of the principles of promissory estoppel.

16. There is although more reason that if Government is allowed to revoke its promises made so lightly then people will lose faith in the institution. In democratic set of our country it is not permissible that bona fide promises made by Government should be observed in breach. It is irrelevant whether it is petitioner company or poor citizen if promises made are breached then people will lose faith and it is not compatible with democratic social set up.

17. Learned counsel also cited before me an unreported judgment of Kerala High Court (S.B.C.W. No. 11078 of 1985) *Sri Chakra Tyres v. U.O.I and Anr.* decided on 25.3.86. In this case learned Judge in identical situation upheld the plea of promissory estoppel. I am in respectful agreement with his views.

18. In this connection, I would also like to refer the argument raised by the respondent. The learned counsel for the respondents submitted that firstly the concession granted by the various notifications and the revocation of these notifications were in the legislative exercise of the powers by the Government and the principles of promissory estoppel is not applicable to the legislative act. It is true that legislature is not bound by promissory estoppel as it is supreme in its field. This is one of exception which has been laid down in *Motilal Sugar Mills case* (supra) and same is reiterated in the *Godfrey Philips*. But the question is whether the grants of exemptions and revocation of the same were in the exercise of legislative function or not. In this connection learned counsel invited my attention to *Bakul Cashew Co. and Others Vs. Sales Tax Officer Quilon and Another*, wherein their Lordships of the Supreme Court laid down the principle that for the applicability of the promissory estoppel against the Government it must be established (1) that there was a definite representation by the Government and (2) that the persons to whom the representation or promise was made in fact altered their position by acting upon such representation or promise; (3) that they suffered some prejudice sufficient to constitute an estoppel. But on the facts it was found that no definite or certain promise was made by the Minister to such persons. However, on the question of issuance of the notification that whether there is power to grant exemption with retrospective effect, it was held that such power can only be conferred on the delegate by the statute. It was found that the notification granting exemptions retrospectively by the Government u/s 10(1) of the Kerala General Sales Tax Act, 1963 prior to its amendment by Kerala Act 19 of 1980 no such power existed to issue retrospective notification. Therefore subsequent cancellation of notification was found to be valid.

19. Thus, this authority *Bakul Cashew Co.* (supra) does not help the respondent and nor does it lay down that excise exemption notifications are legislative in

character or not.

20. So far as the case of *Bikram Industry v. State of Jammu and Kashmir-1985 S.T.C. 25* is concerned, suffice it to say that in this case the case of *Godfrey Philips India Ltd. (supra)* was not placed for consideration. The Hon''ble Judges had no occasion to go through the latest decision of their Lordships of the Supreme Court *Godfrey Philips (supra)* and the Hon''ble Court decided the matter on the basis of *Jit Ram's case (supra)*. The principles enunciated in *Godfrey Philips (supra)* were not placed for consideration in the case of *Bikram Industry's case (supra)*, therefore, this case cannot provide any assistance to the respondents.

21. Now, the question is whether the Notification issued by the Central Government in exercise of the powers under Rule 8 of the Excise Rules whether such notifications can be equated with the legislative function or not. My answer to this question is in negative. The clear distinction has to be borne in mind between primary legislation and sub-ordinate legislation and if the legislature passed any Act or laying down any law which is contrary to any earlier notifications then against such legislative function principles of promissory estoppel cannot be pleaded. But if the exemption notification is issued in the purported exercise of sub-ordinate legislation like Rule 8 of the Excise Rules then such sub-ordinate legislation cannot be elevated to the position of primary legislation so as to release the Government of its promise/representation made before the citizen and citizen have acted upon such representations.

22. In the case of *M.P. Sugar Mills (supra)* in fact the concessional assurance was given by the Chief Secretary of the State in the U.P. Sales Tax Act by his letter dated 22nd December, 1968, Similar argument was also raised there that such matter would not constitute promise/representation which can be enforced against the State. It is observed by their Lordships of the Supreme Court that the Government was bound since the U.P. Sales Tax Act and particularly Section 4 contain a provision to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the sales tax. It was observed that taxation is a sovereign of governmental function, but, no distinction can be made between the exercise of sovereign or governmental function and a trading or business activity of the Government so far as the doctrine of promissory estoppel is concerned.

23. Thus, when an exemption has been issued under Rule 8 of the Central Excise Rules such exercise of powers cannot be equated with the legislative function and the promise held by the Central Government to grant exemption in given condition Govt. is bound by it and the obligation cannot be released on the envil of the argument that such exemption is in legislative exercise of its function.

24. In this connection Mr. Chandrashekharan also invited my attention that the notification No. 88/84 is not applicable to the petitioner and this is a subject matter of writ petition before the Delhi High Court. The learned counsel submits

that expression of any opinion in the matter will seriously prejudice the matter before the Delhi High Court. Be that, as it may, I am not going into the question whether Notification No. 88/84 is applicable or not or it is applicable to some extent. Since the question before me is whether the principles of promissory estoppel is applicable or not and I have "answered the question above in positive that the principles of promissory estoppel is fully applicable and the respondent cannot revoke the benefits which have been given by the notification being 88/84. Therefore, the Notification being NO. 159/85-CE is bad and in violation of the principles of promissory estoppel and same deserves to be quashed. It will be open for the respondent that if the Notification No. 88/84 does not benefit the petitioner then this judgment will not make it beneficial to the petitioner, as I am not called upon to decide whether the Notification No. 88/84 is applicable to the petitioner or not or is applicable to some extent.

25. Mr. Desai, learned counsel for the petitioner very candidly submitted before me that since this issue is subject matter before the Delhi High Court therefore he does not want to argue on this issue at all. Thus, this submission of Mr. Chandrashekharan also does not change the position.

26. It was contended by Mr. Desai that the notification being No. 1.59/85, it will have a retrospective operation and it will divest or withdraw the benefits which have been confirmed on the petitioner by virtue of the earlier notification No. 88/84, I am not going into this question for the reason that since I have found that the Government is bound by the principles of promissory estoppel then it is not necessary to enter into the controversy whether such notification will have retrospective operation or not. Once I have accepted the submission of Mr. Desai on the first question then it is not necessary to deal with this aspect.

27. In the result, I allow the writ petition and quash the notification NO.159/85-CE Annexure P dated July 15, 1985.

The parties shall bear their own costs.