**(2002) 01 J&K CK 0004**

**In the Jammu And Kashmir High Court**

Kashmir Spices — APPELLANT

Vs

State of J&K & Ors. — RESPONDENT

**Date of Decision :** 01-01-2002

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2002) KashLJ 712

**Hon'ble Judges :** S.K.Gupta, J and T.S.Doabia, J

**Bench :** Division Bench

**Advocate :** M.A.Ganai, M.A.Bhat, Advocates appearing for the Parties

## Judgement

1. Two decades back exemption was granted from payment of sales tax. This exemption was withdrawn. This withdrawal of exemption was

subject matter of challenge in a writ petition. Writ petition was dismissed. Withdrawal was held to be valid. An appeal has been preferred.

Notification granting exemption lost its efficacy by efflux of time. Period of 10 years for which exemption was granted expired on 17.12.1989.

Merit of controversy are however, still required to begone into as judgment of learned single Judge was stayed: a stay order operates.

2. Facts be noticed

Exemption was granted from payment of the General Sales Tax vide SRO No 671 issued on 18^12.1979. This was with regard to the goods

manufactured and sold by the appellant. This exemption was withdrawn by SRO No 118 dated issued on 31.3.1984. The withdrawal of this as

indicated above led to filing of writ petitions. This withdrawal was held to be valid by a learned single judge of this court. This happened 17 years

ago. An appeal was preferred. This was admitted. Stay was granted subject to the appellant furnishing undertaking that in the event of appellant

failing, the amount of tax becoming payable by virtue of the withdrawal of the exemption shall be deposited and the unit in question shall not be put

to sale, transfer or otherwise disposed of.

3. The respondent State of J&K State, it is stated encouraged, allured and attracted enterpreneurs from within and outside the State of J&K to set

up Industrial Unit in the State. Policy deci sions were taken as early as in the year 1971. Various incentives including ex emption from tax as

leviable on the raw material and finished goods were granted from time to time. The first such incentive is said to have been given on 11.4.1972.

By this the enterpreneurs were assured that they would exempted from payment of sales tax and levy of additional tool tax for the initial period of

five years from the date the unit went into production. It is further stated that vide SRO No 267 dated 15.5.1978 incentives were further extended

to the existing and new small Scale Industrial Units established or to be established in the State of Jammu and Kashmir. Respondent State, it is

stated, vide Govt order No 391lnd of 1972 announced the package of incentives in the nature of grant of toll0tax and sales tax on import of raw

material and sale of finished goods for a period of five years from the date the unit went into production. This notification was issued on 21.6.1972.

The Industries Department is also said to have published pamphlets on 6.3.1978 and 9.9.1978 granting exemption from sales tax and toll tax for a

period of ten years. The pamphlets so published assured the various Small Scales Industrial Units that exemption from sales tax and toll tax will be

available for a period of 10 years. This situation continued. The executive authority of the State through Chief Minister and Industries Minister were

occasionally holding meetings with the industrialists and entrepreneurs and were encouraging them to set up the industries within the State of Jammu

and Kashmir. It is stated that on 18.12.1979 SRO No: 671 was issued. Exemption from payment of sales tax on the finished goods manufactured

by the Small Scale Industrial Units in the State, registered with the Industries Department or with the Directorate of Handicarafts and Handlooms

were granted. These benefits were given and exemptions were being granted by the concerned assessing authorities in a prescribed proforma

prescribed as SCI. It is submitted that yet another Notification SRO No: 434 of

 

1983 was issued on 22.8.1983. By this SRO No 671 of 1971

was superseded. The effect of this supersession was that the exemption allowed from payment of tax on the finished goods manufactured by the

manufacturing units was withdrawn. Yet another Notification was issued on 31.3.1984. This is vide SRO No 118 of 1984. By this exemption from

payment of sales tax on the finisfied goods manufactured by the manufacturing units was withdrawn. This was challenged by preferring writ

petitions in this court. The grounds of challenge be noticed.

4. The basic argument raised was that SRO No 118 issued on 31.3.1984 is unconstitutional and discriminatory. Shel ter was taken behind the

concept of promissory estopple. This challenge was contested by the State. It was pleaded that no promise was ever extended for granting

exemption for all times to come and therefore, the question of applicabil ity of principle of promissory estoppel would not arise. The basic

argument which was put across by the State was that the question as to whether the exemption is to be granted or not and whether it was to be

continued or not is a legislative function of the State and no chanllenge can be made to this. It was stated that the policy qua exemption could be

changed at any time and this change of policy would not attract Arti cle 14 of the Constitution of India.

A learned Single Judge of this court was of the opinion that the doctrine of promissory estoppel would not be attracted. The writ petitions stand

dismissed.

5. The basic argument which has been urged in this appeal is that once the exemption came to be granted vide SRO No 671, which was issued on

18.12.1979 and exemption from payment of sales tax was granted for a period of 10 years from the date of the commencement of the

manufacture of goods this benefit could not be withdrawn. The augument was resisted by the State. It was urged that the principles of natural

justice are not attracted and opportunity of hearing was not necessary and exemption could be withdrawn and this was rightly withdrawn.

6. Before proceeding to take notice of the arguments which have been put across it would be apt to notice the contents of SRO No 671 and other

notifications issued from time to time. For facility of reference these are being reproduced below:

 

(1) Government Order No 391Ind of 1972 dated 21.6.1972 In supersession of Government Order No 206Ind of 1968 dated 5.7.1968, 213Ind

of 1968 dated 1.8.68, 499Ind of 1971 dated 4.6.1971 and 179ind of 1972 dated 28.4.1972 and Government Order No. 346Ind of 1969 dated

28.8.1969, 302Ind of 1972 dated 14.6.1972 the following package scheme of incentives will now be applicable to the existing and new Small

Scale industrial Units established or to be established by entrepreneurs, including Technocrats (diploma/degree holders in any branch of

Engineering) and unemployed Graduates in any Science or Arts:

XXX XXX XXX XXX

XXX XXX XXX XXX

XXX XXX XXX XXX

16. Taxation.

(a) XXX XXX XXX XXX

XXX XXX XXX XXX

(b) State Sales Tax:

The existing units and new units will be exempted from payment of State Sales tax paid on and products for three years from the date of this order

and five years from the date production respectively. This exemption wilt be applicable to industries notified from time to time.

(ii) SRO267: In exercise of the powers conferred by section 5 of the Jammu and Kashmir General Sales Tax Act 1962 (XX of 1962) (hereinafter

referred to as the Act), the Government hereby exempt from payment of tax all the dealers operating Small scale manufacturing units in the State

which are registered with the Department of Industries & Commerce and are specified in annexureI to this Notification subject to the following

restrictions and conditions namely:

XXX XXX XXXX

XXXX XXX XXXX

XXXX XXX XXXX

XXXX XXXX XXXX

(Vii) Notwithstanding anything contained in the foregoing clause a dealer :

XXXX XXX XXXX

 

The exemption hereinabove granted shall be available for a period of ten years from the date of registration with the department of Industries and

Commerce or the date of the manufacture/production of goods, whichever is earlier and shall be deemed to have been in force from 5.8.1968.

7. This notification shall be and shall always be deemed to have come into force on 1st April 1977.

(iii) SRO 671. In exercise of the powers conferred by section 5 of the Jammu and Kashmir General Sales Tax Act 1962 (XX of 1962)

(hereinafter referred to as the Act) and in supersession of notification SRO 267 dated 15.5.78 the Government hereby exempt from payment of

tax the finished goods manufactured at the units of the dealers operating Small Scale Manufacturing Units in the State which are registered with the

Department of Industries and Commerce or with the Directorate of Handicrafts and Handlooms and are specified in AnnexureI to this Notification

subject to the following restrictions, namely ;XXX XXX XXX XXXXXX XXX XXX XXX

XXX XXX XXXX XXX

(IV) No unit shall be entitled to exemption for a period exceeding 10 years from the date of commencement of manufacture of goods inclusive of

the period in respect of exemption was admissible before 1st April 1977 under Notification SRO 468 dated 1.8.1977 or any other Notification in

this behalf.

By order of the Government of Jammu and Kashmir.

Notification SRO 118 which was issued on 31.3.1984 be also noticed. This reads as under:

9. The impugned notification Annexure P5 SRO 118 dated 31st March 1984 is also reproduced as under:

SRO 118: in exercise of the powers conferred on it under section 5 of the Jammu and Kashmir General Sales Tax Act 1962 (Act No XX of 1962

) and in suppression of notification SRO 671 dated 18.12.1979 the Government hereby direct that goods manufactured by a dealer operating old

or new small scale Industrial Unit, having its place of business in the State and registered with the Department of Industries and Commerce.

Directorate of Handicrafts of Jammu and Kashmir Handloom Development corporation, shall subject to the condition specified below, be exempt

from payment of tax to the extent and for the period specified column (2) and

 

(3) of the Schedule forming annexure 'A' and 'B' to this notification.

The relevant Annexure for the purpose of the present appeal is annexure D with the writ petition.

Thus SRO 118 issued on 31.3.1984 withdraws the exemption granted to the manufacturing units.

8. The legal position vis:avis promissory estoppel may now be noticed in brief.

9. The consideration of equity and the desire to avoid injustice has led to the evolution of doctrine of promissory estoppel. In Black's Law

Dictionary the term estoppel and promissory estoppel has been defined at page 571 of VII Edi tion as that which arises when there is a promise

which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of promisee and which

does induce such action or forbearance and such promise is binding if injustice can be avoided only by enforcement of promise.

10. The doctrine of promissory estoppel and the theory of legitimate expectations which was first enunciated by the Supreme Court in Union of

India v Anglo Afghan Agencies AIR 1968 SC 718 and which has been further elaborated made applicable in some cases and not applicable in

other cases be examined.

11. The existence of a declaration or a promise which induced a party to whom the promise was made to alter its position to its disadvantage is the

foundation for invoking the concept of promissory estoppel. Lord Denning in Central London Property Trust Ltd v High Trees House Ltd 1947

KB 130, stated that a promise intended to be binding, in tended to be acted upon and infact acted upon is binding.... is the basis of above

principle. Lord Denning again took note of this principle is another decision re ported as Central Newbury Car Auction Ltd v Unity Finance Ltd

(1956) 3 All ER 905. In this decision he made reference to the views of an Australian Jurist Dixon J in Grundt v.Great Boulder Pty Gold Mines

Ltd (1939) 59 CLR 641. In the above case, the learned judge had made following observations:

It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement

is correct and leads to misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or

abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the

change of position if the assumption were deserted that led to it.

Lord Denning in an article written by him which is titled as Recent Developments in the Doctrine of consideration, Modern Law Review Vol 15

expressed himself as under:

A man should keep his word. All the more so when the promise is not a bare promise but is made with the intention that the other party should act

upon it. Just as a contract is different from tort and from estoppel so also in the sphere now under discussion promises may give rise to a different

equity from other conduct.

12. The difference may lie in the necessity of showing 'detriment'. Where one party deliberately promises to waive modify or discharge'his strict

legal rights, intending the other party to act on the faith of promise and the other party actually does act on it, then it is contrary not only to equity

but also good faith to allow the promisor to go back on his promise. It should not be necessary for the other party to show that he acted to his

detriment in reliance on the promise. It should be sufficient that he acted on it.

This doctrine was in voked in the case of Anglo Afghan Agencies (supra) in the above case, it was interalia held that even though the case may not

fall within the parameters of section 115 of the Evidence Act. It may be still open to the party who had acted upon a representation made by the

Government to claim that the Government should be bound to carry out the promise made by it even though the promise was to recorded as a

formal contract as required by Art 299 of the Constitution, Statement of law to this effect stands reiterated in later decisions reported as Century

Spinning and Manufacturing Co. Ltd v Ulhasnagar Municipal Council AIR 1971 SC 1021 and Radhakrishna Agarwal v. State of Bihar (1977) 3

SCC 457. Motilal Padampat Sugar Mills Co Ltd v. State of U.P is another decision of the Supreme Court of India which reiterates the above

principles.

13. Some other decisions where the rule of promissory estoppel was discussed, explained and elaborated are Union of India v Godfrey Philips

 

India Ltd (1985) 4 SCC 369, Delhi Cloth & General Mills Ltd v Union of India (1988) 1 SCC 86. Darshan Oils (P) Ltd v Union of India (1995)

1 SCC 345. Shabi Construction Co v City & Industrial Development Corporation (1995)4 SCC 301, Kasinka Trading v Union of India (1995) 1

SCC 274, Shrijee Sales Corporation v Union of India (1997) 3 SCC 398 and Pawan Alloys & Casting (P) Ltd v U.P SEB (1997) 7 SCC 251.

These decisions lead to a conclusion that in order to invoke the doctrine of promissory estoppel, it is necessary for the promisee to show that:

a/he suffered detriment as a result of acting in reliance of the promise;

b/the detriment would mean injustice to the promisee which could result if the promisor was to recede from its promise;

c/that the detriment is not mere some prejudice suffered by the promisee by acting on the promise but the prejudice which would be caused to the

promisee, if the promisor were allowed to go back on the promise.

14. The principle of law is again well settled that the plea of estoppel cannot be permitted to be raised if it would defeat a statutory provision. As a

matter of fact, this principle was laid down by the Privy Council in the earlier thirties in the case of G.H.C Arif v Jadunath Majumdar Bahadur AIR

1931 PC 79. The other decisions on this subject are reported as Mathra Parshad & Sons v. State of Punjab AIR 1962 SC 745 and Rishabh

Kumar & Sons v. State of U.P 1987 Supp SCC 306. A promise contrary to law cannot be enforced. This isagain deep rooted in the system of

administration of justice administered in this country. One such decision is reported as Kasinka Trading and another v. Union of India and another

(1995) 1 SCC 274. This decision was followed in the case of Union of India and others v. Godhawani Brothers and anr (1997) 11 SCC 173. In

the case of Kasinka Trading withdrawal of time bound exemption notification before expiry of period of its operation by another notification issued

under the same statutory provision in public interest was held to be valid. Dr. A.S. Anand Jformer Chief Justice of Indiadealt with the several

judicial precedents on the subject. What was observed by his Lordship can be summarised as under:

a/The basis of the doctrine is that where any party has by his word or conduct made to the party an unequivocal promise or representation by

word or conduct which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the

representation, assurance or the promise would be acted upon by the other party to whom it has ben made and has in fact been so acted upon by

the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted 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 or are intended to take place

between the parties;

b/that the doctrine of promissory estoppel is applicable against the Government also pa rticularly where it is necessary to prevent fraud or manifest

injustice;

c/that the doctrine cannot be pressed into aid to compel the Government or the public authority to carry out a representation or promise which is

contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make that the doctrine of

promissory estoppel would not apply in the teeth of an obligation or liability imposed by law and that there can be no promissory estoppel against

the exercise as legislative power

15. The concept that is there can be no promissory estoppel against a statute was again emphasized in the case of Dr. Ashok Kumar Mahfishwari

v. State of U.P and another (1998) 2 SCC 502. The above was a case arising under the service jurisprudence. The plea of promissory estoppel

was rejected on the ground that bald pleadings cannot be made the basis for invoking the doctrine of promissory estoppel. Promissory estoppel

would again be not available if it is sought to be invoked on the basis of a promise made by a minister. See Union of India & Ors v. Ganesh Rice

Mills and another (1998)9 SCC 630. In Sales Tax Office and another v Shree Durga Oil Mills and another (1998) 1 SCC 572, sales tax

exemption to the new industries was withdrawn in public interest. The Industrial Policy Resolution itself did not grant any exemption but merely

stated that orders would be issued laying down modes of incentives by the concerned department. Sales tax exemption was granted to the new

industries by a notification issued in exercise of power under S. 6 of Orissa Sales Tax Act. This exemption was withdrawn in exercise of same

statutory power. There was nothing to indicate that any industry was set up on the basis of the Industrial Policy Resolution. The principles of

promissory estoppel were held to be not applicable. The view expressed in the case of Kanishka Trading (supra) was relied upon. In Pawan

Alloys and Casting Private Ltd Meerut v. U.P. State Electricity Board and ors. (1997) 7 SCC 251 the view expressed was that before invoking

the concept of promissory estoppel it must be shown that the promise or representation held by the State or its instrumentality was acted upon and

by so acting, the person to whom the promise was made had altered his position. It was observed that the State can withdrawn its promise or

representation even prior to the specified period on the ground of overriding public interest or by giving reasonable opportunity to the promisee of

resuming its earlier position if restoration of status quo ante is possible.

16. Supervening public equity or public interest would give way to the con cept of promissory estoppel and would overrides individual equity or

interest. Such was the view expressed in Shrijee Sales Corporation and another v. Union of India (1997) 3 SCC 398. It was ob served that the

Government can resile from its promise if the public interest so requires and even in the absence of pub lic interest if no one is adversely affected

thereby. It was further observed that by providing reasonable opportunity and by giving reasonable time to the person to whom a promise has

been made, that Government can resile from its promise. In so expressing its opinion the Supreme Court of India placed reliance on the ear lier

decisions reported as Emmanuel Ayodeji Ajayi v Briscoe (1964) 3 A11 ER 556 and Motilal Padampat Sugar Mills Co Ltd v State of U.P (1979)

2 SCC 409.

17. There is yet another excep tion to the applicability of principle of promissory estoppel where something is required to be done in a particular

man ner and it is not done in that particular manner, then the concept of promissory estoppel would not be attracted. The statutory requirement

was that a notifi cation was required to be promulgated by publication. It was only thereafter it could assume a legal colour. This was not done. It

was accordingly observed that the plea of promissory estoppel would not be available Power to grant exemption from payment of tax was treated

as a serious matter and granting exemption without complying with the procedural safeguards was held to be a matter which would confer no benefit on the person seeking assistance of the principle of promissory estoppel. See (1996) 6 SCC 634 I.T.C Bhadrachalam Paperboards and

anr v. Mandal Revenue Officer A.P and ors.

18. Letter of intent was issued. Conditions precedent were not fulfilled. This was cancelled. The principle of promissory estoppel was held to be

not at tracted to such a case. See (1996) 10 SCC 405, Rajasthan Cooperative Dairy Federation Ltd v Maha Laxmi Mingrate Marketing Service

Pvt Ltd and others.

19. In (1996) 2 SCC 439 S.B Interna tional Ltd and ors v Asstt Director General of Foreign Trade and ors the concept of promissory estoppel

was held to be not applicable. This was a case dealing with the import and export policy. In (1995) 6 SCC 53 Arvind Industries and others v.

State of Gujarat and ors and Vijay Oil Mills Co v Assistant Commissioner of Sales Tax and others, a notification was issued with a view to grant

some benefit to the new industries. A subsequent notification excluding certain classes of industries from the definition of ' new industry ' was

issued. It was observed that the merefact that an industrial unit had been set up within the specified period on account of original notification would

not be sufficient to seek protection of principle of promissory estoppel, it was observed that in the fiscal fields, this doctrine should be literally used.

20. Legitimate expectation is another doctrine of which assistance is sought. While dealing with this aspect of the matter, S. Saghir Ahmad J in

National Buildings Construction Cooperation v. S. Raghunathan and ors (1998) 7 Sec 66 has summarised the concept in paragraphs 18 to 23.

These are being reproduce below:

18. The doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its departments in administering

the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without

any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of

unreasonableness is akin to violation of natural justice. It was in this content that the doctrine of legitimate expectation was evolved which has today

become a source of substantive as well as procedural rights. But claims based on legitimate expectation have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims, based on promissory estoppel.

19. Lord Scarman in R v IRC ex Preston laid down emphatically that unfairness in the purported exercise of power can amount to an abuse or

excess of power. Thus the doctrine of legitimate expectation has been developed both in the context of reasonableness and in the context of natural

justice.

20. Lord Diplock in Council of Civil Service Unions v Minister for the Civil Service 198,5 AC 374 laid down that the doctrine of legitimate

expectation can be invoked if the decision which is challenged in the court has some person aggrieved either (a) by atterning rights or obligations of

that person which are enforceable by or against him in private law/or (b) by depriving him of some benefit or advantage which either (i) he had in

the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been

communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment or (11) he has received

assurance from the decision maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it

should not be withdrawn.

21. The Indian scenario in the field of legitimate expectation is not dif ferent. In fact this Court in several of its decisions had explained the doctrine

in no uncertain terms.

22. In Navjyoti Coop. Group Hous ing Society v Union of India (1992) 4 SCC 477 the decision of the House of Lords in Council of Civil Service

Unions v Minister for the Civil Service (supra) was followed and that decision was summarized in the following words (SCC p.494 para 15)

It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority

affects him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to

continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

23. This Court further observed as under ( SSC p.49495 paras 15 and 16)

The existence of legitimate expectation may have a number of different consequences and one of such consequences is that the authority ought not

to act to defeat the legitimate expectation without some overriding reason of public policy to justify its doing so. In a case of legitimate expectation

if the authority proposes to defeat a person's legitimate expectation it should afford him an opportunity to make representations in the matter.

24. It may be indicated here that the doctrine of legitimate expectation imposes in essence a duty on public authority to act fairly by taking into

consideration all relevant factors relating to such legitimate expectation within the conspectus of fair dealing in case of legitimate expectation the

reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy come in.

Again if the doctrine of legitimate expectation is to be invoked then it is to be shown that the person seeking to invoke the doctrine has altered its

position by acting upon the.promise or representation of the promisor. This doctrine was also noticed in an earlier decision reported as Assistant

Excise Commissioner and ors v. Issac Peter and ors (1994)4SCC 104. It was observed that this doctrine cannot be invoked to alter express

terms of contracts which are statutory in nature. This was a case dealing with liquor vends.

25. From the decisions noticed above, it can safely be concluded:

a/that the doctrine of promissory estoppel would apply only in a case where a person who claims that a promise was made to him, has altered his

position to his detriment. See Union of India v. Godfrey Philips India Ltd (1985) 4 SCC 369, Delhi Cloth & General Mills Ltd v Union of India

(1988) 1 SCC 86, Darshan Oils (P) Ltd v Union of India (1995) 1SCC345, Shabi Construction Co. v City and Industrial Development

Corporation (1995) 4 SCC 301, Kasinka Trading v Union of India (1995"") 1 SCC 274, Shrijee Sales Corpn v Union of India (1997) 3 SCC

398 and Pawan Alloys & Casting (P) Ltd v U.P SEB (1997) 3 SCC 398 and Pawan Alloys & Casting (P) Ltd v U.P SEB (1997) 7 SCC 251;

b/that the doctrine is not to operate where a promise has been made against a statute. This not only means that there is no estoppel against a

statute but even where a promise has been made and the same has been acted upon, even there that can be withdrawn if the public interest

requires such an action to be taken, See G.H.C Ariff v Jadunath Majumdar

Bahadur AIR 1931 PC 79, Mathra Parsad & Sons v. State of Punjab

AIR 1962 SC 745 and Rishabh Kumar & Sons v State of U.P. 1987 Supp SCC 306. See also Union of India and ors v Godhawani Brothers

and anr (1997) 11 SCC 173 and Kasinka Trading and anr v Union of India and another (1995) 1 SCC 274;

c/That in some cases this can be withdrawn by giving adequate opportunity to the concerned party so that it may be possible revert back to the

original position. See Shrijee Sales Corpn and anr v Union of India (1997) 3 SCC 398. See also Emmanuel Ayodeji Ajayi v Briscoe (1964) 3 All

ER 556 and Motilal Padampat Sugar Mills Co Ltd v State of U.P (1979) 2 SCC 409;

d/that a benefit in the shape of incentive or exemption can be withdrawn if the public interest so requires. See Kasinka Trading and anrv Union of

India and anr (1995) 1 SCC 274.

26. Taking note of the above principles if Notification SRO No 671 is taken note of it becomes apparent that the Government of Jammu and

Kashmir exempted from payment of tax on finished goods manufactured at the Small Scale Industrial units in the State which were registered with

the Department of Industries and Commerce or with the Directorates of Handicrafts and Handlooms. This exemption could last for a period of 10

years from the date of commencement of the manufacture of goods inclusive of the period in respect of the exemption which was admissible under

SRO No 434. If the words in SRO No 671 are taken note of then there are clear by indicative of the fact that no absolute exemption was given.

The exemption was not for a period of 10 years but the words used are that the exemption would not exceed for a period of 10 years. The

question as to whether the exemption was to run for a period of 10 years or less than 10 years was the discretion of the State and if the State

chose to curtail that period of exemption no exception can be taken.

27. The learned Single Judge of this court rightly came to the conclusion that the State which allowed the exemption could withdraw the same and

if it was withdrawn then the concept of promissory estoppel would not arise. Such is the position noticed in the decisions noticed above.

Observation made by the learned single Judge holds good in the light of/latter decision given by the Supreme Court of India. What was observed

by the learned Single Judge in this regard is being quoted below:

 

It is settled law that the principle of estoppel is not applicable against law while exercising the powers under the sales tax Act for imposition of Tax

or withdrawal of exemption under the Sales Tax Act, the State Government is fully empowered to legislate upon the subject Their Lordships of the

Supreme Court in the case of (M/S Jit Ram Shiv Kumar and other Appellants vs State of Harvananand others Respondents) reported in (1981) 1

Supreme Court Cases 11 above held:

The plea of promissory estoppel is not available against the government in exercise of its legislative Sovereign or executive powers of the statutory

functions of the State. The doctrine cannot also be invoked for preventing the Government from discharging its functions under the law.

The Delhi High Court replying on catina of decisions on the subject in a Full Bench Decision of Bombay Conductors and Eiectricals Ltd and

another (supra) is pleased to discuss and consider all the authorities in the context relating to the withdrawal of exemption of customs Duty before

expiry of specified period in public interest, have held that the principles of estoppel is not applicable to tax laws. To quote it is held by their

Lordships of the Delhi High Court in a Full Bench Decision of Bombay Conductors and Etectricals Limited:"" The limits to the right of a public

authority to impose taxes are set by the power that is qualified to do so under the constitutional law. In a democratic system this power is with the

Legislature. In India the doctrine is embodied in Art 265 of the Constitution. Subject to the Constitution, the legislature is omnipotent in the

exercise of the taxing prerogative. Exemption notifications are issued under a general grant of authority by the Legislature.

I am in respectful agreement of the proposition laid down above by their Lordships of the Delhi High Court and find that the present controversy

stands resolved on the simple reason that the Power of exemption in the present case is drived by the Govt in exercise of its legislatives function

under Section 5 of the Jammu and Kashmir General Sales Tax Act 1962, that being a provision relating to tax laws, the doctrine of promissory

estoppel is not applicable to the case of the petitioners units and the SRO No 118 of 1984 issued on 31st of March 1984 does not suffer from any

informity either on the doctrine of promissory estoppel or on the basis of discrimination as argued by the learned counsel for the petitioner. It is manifest from the words of exemption and in the previous SRO No 671 of 1979 dated 18.12.1979 wherein the words:'

It this regard it would be apt to refer to the view expressed by the Division Bench of this Court in LPA (W) No 12/1992 decided on 18.10.1996.

In the above Letters Patent Appeal same notification was being interpreted. Question was as to whether exemption could be granted only to new

Units or to old Units. While dealing with this proposition, it was observed:

It is no more res Integra that grant of exemption in charging of tax is a concession. It cannot be claimed as a matter of right. The State pursuant to

its policy can grant or withdraw such exemption in the public interest and to achieve a specific objective. It is also well settled that such provisions

of the taxing statutes required to be construed liberally keeping in regard the perspective and policy of the State.

Therefore, to say that some vested right came to vest in the appellant to seek exemption for all times to come or for at least for a period of 10

years is an argument which cannot be accepted. The notification issued vide SRO 671 uses the words

the Government hereby exempt from payment of tax, the finished goods manufactured at the Units of the dealers operating Small Scale Industrial

Units in the State."" This notification did not allure any unit. The exemption was available to the existing units and therefore the question of a unit

being put to a disadvantageous situation never arose. There was no promise that exemption shall continue for all time. In any case there was no

allurement to the appellant to set up industry in the State of Jammu and Kashmir. This concession remained a concession and could be withdrawn.

28. The view expressed by the learned Single judge is a view to which no exception can be taken. Thus the policy decision which was taken earlier

could be withdrawn. This could be done after taking into consideration interest of the State. This is paramount. If this was done then concept of

promissory estoppel or legitimate expectation would not arise.

View of the learned Single Judge of this court is accordingly sustained. This appeal is found to be without merit and is dismissed.

29. Before parting with this judgment it be observed that the period of 10 years expired on 17.12.1989. Therefore, ben efit of notification after that

period would not be there.

 

30. Record indicates that Misc. application has been preferred. In this it is stated that the appellant has deposited sales tax under some amnesty

scheme granted by the State. This is a matter which is alien to the issue. As such this is not being commented upon. If appel lant is entitled to some

benefits on ac count of amenesty scheme, he would be at liberty to avail benefit of that scheme. Otherwise this appeal is found to be with out merit

and is dismissed.

 