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(1994) 10 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal No''s. 4336 of 1983.

Kasinka Trading and another, etc. etc. — APPELLANT

Vs

Union of India and another — RESPONDENT

Date of Decision : 18-10-1994

Acts Referred:
Customs Act, 1962 — Section 12, 156, 25, 57
Customs Tariff Act, 1975 — Section 2

Citation : AIR 1995 SC 874 : (1995) 50 ECC 31 : (1994) ECR 637 : (1994) 74 ELT 782 : (1994) 7 JT 362 : (1994) 4 SCALE 806 : (1995) 1 SCC 274 : (1994) 4 SCR 448 Supp

Hon'ble Judges : M. N. Venkatachaliah, C.J.;A. S. Anand, J

Bench : Division Bench

Advocate : Ashok H. Desai, Harish N. Salve, S. K. Dhokakia, Ravindra Narain, Ashok Sagar and Amita Mitra, for the Appellant; D.N. Dwivedi, A.K. Ganguli, A. Subba Rao, Sushma Suri and Dilip Tandon, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Anand, J.—Leave granted in (C.A. Nos. 6983, 6984 & 6985 of 1994) SLP (c) Nos. 7370, 12304/83 and 725/84.

2. These two batches of appeals by special leave are directed against the judgment of the High Court of Delhi dismissing the writ petitions filed by the appellants, challenging the action of the Union of India in withdrawing a time bound exemption Notification No. 66 dated 15.3.1979 for the import of PVC resins. Notification No. 66 dated 15.3.1979 reads as follows:

NOTIFICATION

PVC resins are exempt from basic import duty. 66 - Cus. Dt. 15.3.1979 as amendment by 1780Cus. Dt. 29.8.79, 37 - Cus. dt. 25.3.80.

G.S.R. - In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962). and in supersession of the Notification of

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the Government of India in the Ministry of Finance, Department of Revenue, No. 145 - Customs dated 27th July 1978, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts polyvinyl chloride resins, falling within chapter 39 of the First Schedule to the Customs Tariff Act 1975 (51 of 1975) when imported into India, from the whole of the duty of Customs Leviable therein which is specified in the said First Schedule.

This Notification shall be in force upto and inclusive of 31st March 1981.

3. Before the expiry of the time fixed in the Notification i.e. 31.3.1980 the withdrawal notification bearing No. 205 dt. 16.10.80 was issued which reads as follows :

New Delhi the 16th Oct. 1980 24th Asvina 1902 (SAKA)

NOTIFICATION CUSTOMS

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

Sd/- (K. Chandramouli) Under Secretary to the Govt. of India

No. 205/F. No. 355/141/89/Cus. 1.

Attested (V.K. Mulick) Asstt. Collector of Customs, Correspondence Deptt.

4. The appellants, in these appeals, invoking the doctrine of promissory estoppel have urged that the Central Government could not have withdrawn the exemption before 31.3.1981, because relying on the exemption Notification, the appellants had placed orders for the import of PVC resin on the understanding that the PVC resin was totally exempt from customs duty. It is argued that the Government must be held bound by the representation it had made in the exemption Notification and it was estopped on the basis of the promissory estoppel to go back on its promise. Reliance has been placed on various judgments of this Court in support of the argument that the doctrine of promissory estoppel can be invoked to bind the Government to its promise. We shall refer to the judgments at the appropriate place in this Judgment.

5. The respondents have supported the judgment of the High Court and urged that though the doctrine of promissory estoppel can in appropriate cases be invoked against the Government to bind it to its promise, the doctrine, however, has no application to the present appeals because to the exemption had been withdrawn in 'public interest' and the individual interest must give way to the

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public interest. It is urged that the doctrine, being a product of equity, most give way when equity so demands. Argued Mr. Ganguli, learned senior counsel appearing for the respondents, that the doctrine of promissory estoppel cannot operate against the State to the detriment of the society at large. If the Government after a review of its policy finds that modification, alteration or supersession is required, in its earlier policy, in the larger public interest, the courts cannot debar it from reviewing its policy, except in cases, where the subsequent act of the Government can be shown not to be in public interest. The Government, it is urged, must be given a free hand to determine the priorities and unless it can be established that while functioning in its sovereign, government or public capacity, as distinct from its executive or commercial capacity, its action is not bonafide or is actuated extraneous consideration, the courts will not allow a party to invoke the doctrine of promissory estoppel against the Government. It is submitted that the Notification No. 66 of 1979 had been superseded in the public interest for good and valid reasons and the judgment of the High Court did not call for any interference.

6. The Customs Act 1962 consolidates and amends the law relating to customs spread over in the Sea Customs Act 1878, the Land Customs Act 1924 and the Indian Aircraft Act 1934. The Act with came into force on February 1, 1963 seeks to codify the entire law relating to sea, land, and air customs into a single comprehensive measure. Customs duties or tariffs are legal duties levied on the transit of goods from one country to another. They are both the source of revenue to the State as well as regulatory measures to protect and promote indigenous industries and trade. The Customs Tariff Act 1975, was enacted by the Parliament, with a view to consolidating and amending the law relating to customs duties as complimentary to the Act. Section 57 of the Customs Act confers upon the Central Board of Excise and Customs the power to make regulations consistent with, and the rules to generally to carry out the purposes of, the Act. Sub-section (2) thereof particularises certain matters with respect to which regulations can be made. The specification of certain matters in Sub-section (2) is of course without prejudice to the generality of the power conferred by Sub-section (1). Section 156 of the Act confers upon the Central Government the power to make rules consistent with the Act generally to carry out the purposes of the Act and Sub-section (2) of Section 156 specifies the matters with respect to which rules can be made. The specification in Sub-section (2) is also without prejudice to the generality of the power conferred by Sub-section (1).

7. The Parliament has designated two authorities i.e. Central Government and the Central Board of Excise and Customs to make rules/regulations to carry out the purposes of the Act generally. The character of rules and the regulations made under Sections 156 and 157 respectively is the same, namely, they constitute delegated legislation.

8. Section 12 of the Customs Act, which is the charging section, provides that duties of customs shall be levied at such rates as may be specified under the

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Customs Tariff Act 1975 or any other law for the time being in force on the goods imported into India. Section 2 of the Customs Tariff Act 1975 read with the First and Second Schedule thereto lays down the rates at which duties of customs shall be levied under the Customs Act on various goods imported into India. Section 25 of the Act, with which we are primarily concerned in this batch of appeals, confers powers on the Central Government to grant exemptions from levy of duty in "public interest". Sub-sections (1) and (2) of Section 25 which are relevant for our purposes provide as under :

Power to grant exemption from duty -

(1) If the Central Government is satisfied that it is necessary in the public interest so to do it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable therein.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional natural to be stated in such order, any good on which duty is leviable.

9. The power to grant exemption from duty, wholly or in part, on the plain language of Section 25 (supra) is contingent upon the satisfaction of the Government that it would be in "public interest' to do so. Thus, "public interest" is the guiding criteria for exercising the power u/s 25 (Supra).

10. Having noticed the background and the relevant provisions as also two Notifications, it shall now be appropriate to refer in brief to the facts of the cases before us. For the sake of convenience, we shall refer to the facts of the case as appearing in the Paper Book of Kasinak Trading and Ors. v. Union of India and Ors. C.A. No. 4336/93. The appellants are importers of P.V.C. resins which at the relevant time were chargeable to basic customs duty under Tariff Entry No. 39. 01/06 of the Customs Tariff Act Act 1975 read with Customs Act 1962. In addition to it, the import of PVC resins is also chargeable to auxilliary duty, additional duty and special duty of customs. Respondent No. 1 issued Notification No. 66 dated 15.3.1979 u/s 25 of the Customs Act 1962, exempting PVC resins from the whole of the basic customs duty payable on the import of PVC resins till 31st March 1981. The appellants say that they had placed indents with their indenting agents for the import of PVC resins on the basis of the representation that the exemption as granted by the Notification dated 15th March 1979 would continue to remain effective till 31st March 1981, but Respondent Nos. 2 issued another Notification bearing No. 205 dated 16th October 1980 (supra) (hereinafter withdrawal Notification) purporting to supersede Notification No. 66 dated 15th March 1979, before its expiry date i.e. before 31st March 1981. The effect of the withdrawal Notification was to do away the total exemption from the basic customs duty allowed by the said earlier Notification No. 66 dated 15th

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March 1979, and instead to direct levy of 40% basic customs duty on the imports of PVC resins. The grievance of the appellants is that they had placed orders for the import of PVC resins on the basis of the exemption granted under Notification No. 66 dated 15th March 1979 which was to remain in force till 31st March 1981 and had so adjusted their affairs, that if they are compelled to pay basic customs duty at the rate of 40% ad valorem in respect of their orders for the import of PVC resins they would suffer a great loss since their goods arrived in India before 31st March 1981 but after the date of withdrawal of the exemption Notification by the Notification dated 16.10.1980. Aggrieved by the issuance of notification dated 16th October 1980 superseding the Notification dated 15th March 1979, the appellants filed a writ petition (CWP No. 1671 of 1980) in the High Court of Delhi invoking the doctrine of promissory estoppel and praying for a direction to quash the withdrawal Notification to the extent that it superseded the earlier Notification before, the expiry of the date i.e. 31st March 1981 and a Division Bench of the Delhi High Court vide its judgment and order dated 16th March 1983 dismissed the same.

11. Can the appellants invoke the doctrine of promissory estoppel in the facts and circumstances of these cases, is therefore, the pivotal question requiring our consideration?

12. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance of the promise would be acted upon by the other party to whom it has been 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 dealing, which have taken place or are intended to take between the parties.

13. It has been settled by the Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, 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." There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the

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doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspect including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

14. The ambit, scope and amplitude of the doctrine of promissory estoppel has been evolved in this country over the last quarter of a century through successive decision of this Court starting with Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., . Reference in this connection may be made with advantage to Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, : Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, : Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, : Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., : I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) : Pournami Oil Mills and Others Vs. State of Kerala and Another, : Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, : Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, : Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, and Union of India and others Vs. Hindustan Development Corpn. and others, . In Godfrey Philips India Limited (supra) this of Court opined:

We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have they have transpired, it would be inequitable to hold the Government or Public authority to the promise of representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or Public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or Public authority should be bound by the promise or representation made by it.

In Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, four learned Judges of this Court observed :

The fact that sales of country liquor had been exempted from sales tax vide Notification No. ST 1149/X-802 (33)- 51 dated April 6,1959 could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the Revenues of the State which are required for execution of the plans designed to meet the ever increasing pressing needs of the developing society. It is now well settled by

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catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers.

Prof. S.A. De Smith in his celebrated treatise "Judicial Review of Administrative Action", 3rd Edn. at p.279 sums up the position thus : "Contracts and Covenants entered into by the Crown are not to be construed as being subject to implied terms that would exclude the exercise of general discretionary powers for the public good : On the contrary they are to be construed as incorporating an implied term that such powers remain exercisable. This is broadly true of other public authorities also. But the status and functions of the Crown in this regard are of a higher order. This Crown cannot be allowed to tie its hands completely by prior undertakings is as clear as the proposition that the Courts cannot allow the Crown to evade compliance with ostensibly binding obligations whenever it thinks fit: If a public authority lawfully repudiates or departs from the terms of a binding contract in order to have been bound in law by an ostensibly binding contract because the undertakings would improperly fetter its general discretionary powers the other party to the agreement has no right whatsoever to damages or compensation under the general law, no matter how serious the damages that part may have suffered.

15. In Subhash Photographics and Others Vs. Union of India (UOI) and Others, . Jeevan Reddy, J. Speaking for the Bench observed :

In Statutes like Customs Act and Customs Tariff Act one has also to keep in mind that such legislation can be properly administered only by constantly adjusting it to the needs of the situation. This calls for a goods amount of discretion to be allowed to the delegate. As is often pointed out 'flexibility is essential (in law-making) and it is one of the advantages of rules and regulations that they can be altered much more quickly and easily than can Acts of Parliament." We have pointed out hereinbefore the necessity of constant and continuous monitoring of the nation's economy by the Government (and its various institutions) and the relevance of these enactments as a means of ensuring a proper and healthy growth.

The learned Judge went on to opine :

The Parliament has appointed two authorities i.e., Central Government and the Board to make rules/regulations to carry out the purposes of the Act generally. The character of Rules and of the Regulations made under Sections 156 and 157 respectively is the same - both constitute delegated legislation. The Regulations are subject to an additional limitation viz., they should not be contrary to the Rules made u/s 156. The purpose of Sub-section (2) in both the sections is inter alia to allocate certain matters to each of them exclusively; subject to these Sub-sections, both the delegates can exercise the power vested in them for carrying out the purposes of the Act. No established legislative practice of any consideration duration has been brought to our notice to read any further limitation into the regulation-making power u/s 157, assuming that a legislative

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practice can be read as a limitation.

16. In M.P. Sugar Mills case (supra) it was observed 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 of legislative power.

17. Coming now to the facts of the cases before us, we shall first take up for consideration whether any enforceable promise had been held out to the appellants, through Notification No. 66 dated 15.3.1979, and whether the Union of India can be estopped from superseding that Notification by Notification No. 205 dated 16.10.1980, withdrawing the exemption granted by the 1979 Notification.

18. The appellants in this batch of cases are manufacturers of certain products, requiring PVC resin as one of the raw material for the manufacturing process. PVC resin, it is not disputed, is manufactured in India and is also imported from abroad. In the counter to the Writ Petition filed by the Union of India in the High Court, the justification for the issuance of the exemption Notification No. 66/79 in the "public interest" was spelt out by the respondents. It was stated that it was with a view to equalising sale prices of the indigenous and the imported material and to make the commodity available to the consumer at a uniform price, keeping in view the trends in the supply of the material, that the Cabinet had decided to issue the exemption Notification No. 66 of 1979 u/s 25(1) of the Act. Subsequently, when it was found and realised that the international prices of the product were falling and consequently the import prices had become lower than the ex-factory prices of the indigenous material, the matter was examined by the Government of India and it was decided in "public interest" to withdraw the exemption Notification. Thus, the Union of India has disclosed the circumstances under which the exemption was initially granted as well as the change of circumstances which warranted the withdrawal of the exemption notification. The reasons given by the Union of India justifying withdrawal of the exemption notification, in our opinion, are not irrelevant to the exercise of the power in 'public interest', nor are the same shown to be insufficient to support the exercise of that power. From the material on the record it is apparent that the exemption Notification issued u/s 25(1) of the Act, in "public interest", was designed to off set the excess price which the local entrepreneurs were required to pay for importing PVC resin at a time when the difference between the indigenous product and the imported product was substantial. No importer could be expected to import PVC resins after paying duty and incur losses. The exemption Notification, was therefore, issued with a view to off set losses to the extent possible. The exemption Notification was not issued as a potential source of extra profit for the importer. Again, at the time when the Notification was withdrawn by the Government there was no scope for any loss to be suffered by the importers as was clearly stated in the counter filed by the Union of India and which contention has remained unrebutted. From the counter filed by the Union

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of India in the High Court it is abundantly clear that the necessity for the continuation of the exemption, in view of the changed circumstances, was no longer necessary. The exemption Notification did not hold out to the appellants any enforceable promise.

19. The facts of the appeals before us are not analogous to the facts in Anglo Afgan Agencies (supra) or M.P. Sugar Mills (supra). In the first case the petitioner therein had acted upon the unequivocal promises held out to it and exported goods on the specific assurance given to it and it was in that fact situation that it was held that Textile Commissioner who had enunciated the scheme was bound by the assurance thereof and obliged to carry out the promise made thereunder. As already noticed, in the present batch of cases neither the Notification is of an executive character nor does it represent a scheme designed to achieve a particular purpose. It was a Notification issued in public interest and again withdrawn in public interest. So far as the second case (MP Sugar Mills case) is concerned the facts were totally different. In the correspondence exchanged between the State and the petitioners therein it was held out to the petitioners that the industry would be exempted from sales tax for a particular number of initial years but when the State sought to levy the sales tax it was held by this Court that it was precluded from doing so because of the categorical representation made by it to the petitioners through letters in writing, who had relied upon the same and set up the industry.

20. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued u/s 25 of the Act had the effect of suspending the collection of Customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty etc., wholly or partially and subject to such conditions as may be laid down in the Notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification, in the "public interest", is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government u/s 25 of the Act, it follows that the same is with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country. Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said Notification was not even intended as an incentive for import. The Notification on the plain language of it

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was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do." Strictly speaking, therefore, the Notification cannot be said to have extended any "representation" much less a "promise" to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon as such by the party to whom the same was made. A Notification issued u/s 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said Notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption.

21. The argument on behalf of the appellants, vehemently pressed by Mr. Ashoke Desai and Mr. Harish Salve, their learned senior advocates, is to the effect that since the Notification 66/79 had itself indicated that it shall be operative till 31st March 1981, the Government could not withdraw the same before the expiry of the date. It was argued that the appellants had placed orders for the import of PVC resin relying upon the exemption Notification on the understanding that it was to remain operative till 31st March 1981 and had made arrangements for importing the goods accordingly and they could not be prejudiced by the withdrawal of that Notification before 31st March 1981. We cannot persuade ourselves to accept this submission of the learned Counsel. Merely by mentioning the date as 31st March 1981, as the date upto which the exemption Notification No. 66/79 was to be operative, no unequivocal representation could be said to have been made that it could not be rescinded or modified before that date even if the Government was satisfied that it was necessary in the public interest to rescind it. Since, the Notification had been issued u/s 25(1) of the Act, the very same power was available to the authority for rescinding or modifying that Notification and the appellant ought to have know that the said notification was capable of or liable to be revoked, modified or rescinded at any time even before the expiry of 31st March 1981 if the 'public interest' so demanded. To hold that after the Government had issued the notification 66/79 indicating that it was to remain operative till 31st March 1981, it could not be rescinded or modified before the expiry of that date would amount to prohibiting the Government from discharging its statutory obligation u/s 25(1) of the Act, if it was satisfied that it was in the "public interest" to withdraw, modify or rescind the earlier Notification. The plain language of Section 25 of the Act is indicative of the position that it is the public interest and public interest alone which is the dominant factor. It is not the case of the appellants that the withdrawal of Notification 66/79 by the impugned Notification was not 'public interest'. Their case, however, is that relying upon the earlier Notifications they had acted and the Government should

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not be permitted to go back on its assurance as otherwise they would be put to huge loss. The courts have to balance the equities between the parties and indeed the courts would bind the Government by its promise "to prevent manifest injustice or fraud." The following observations from Malhotra & Sons v. Union of India AIR (1976) J & K 41 have been noticed with approval by this Court in Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, and in M.P. Sugar Mills case (supra) :

The courts will only bind the Government by its promises to prevent manifest injustice or fraud and will not make the Government a slave of its policy for all times to come when the Government acts in its governmental, public or sovereign capacity.

22. The burden of customs duty etc. is passed on to the consumer and therefore the question of the appellants being put to a huge loss is not understandable. No injustice has been done much less fraud practised by the Government in withdrawing the exemption.

23. The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the Notification had been issued. The withdrawal of exemption "in public interest" is a matter of policy and the court would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The courts, do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bonafides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption Notification u/s 25(1) of the Act.

24. It needs no emphasis that the power of exemption u/s 25(1) of the Act has been granted to the Government by the Legislature which a view to enabling it to regulate, control and promote the industries and industrial productions in the country. Where the Government on the basis of the material available before it, bonafide, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so. We are unable to agree with the learned Counsel for the appellants that Notification 66/79 could not be withdrawn before 31.3.1981. First, because the exemption Notification having been issued u/s 25(1) of the Act, it was implicit in it that it could be rescinded or modified at any time if the public interest so demands and secondly it is not permissible to postpone the compulsions of "public interest" till after 31st March 1981 if the Government is satisfied as to the change in the circumstances before that date. Since, the Government in the instant case was satisfied that the very public interest which had demanded a total exemption from payment of customs

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duty now demanded that the exemption should be withdrawn it was free to act in the manner it did. It would bear a notice that though Notification 66/79 was initially valid only upto 31st March 1979 but that date was extended in "public interest", we see no reason why it could not be curtailed in public interest. Individual interest must yield in favour of societal interest.

25. In our considered opinion therefore, the High Court was perfectly right in holding that the doctrine of promissory estoppel had no application to the impugned notification issued by the Central Government in exercise of its powers u/s 25(1) of the Act in view of the facts and circumstances, as established on the record.

26. So far as the second batch of cases is concerned the facts of C.A. Nos. 4333-34/83 need be noticed. These two appeals have been filed against the judgment and order dated 3rd March 1983 of the High Court of Delhi. The appellants in these two appeals are engaged in the manufacture of aluminium conductors and aluminum conductors steel reinforced which are supplied to the various State Electricity Boards. Aluminum ingots and rods are the basic raw materials used in the production of such conductOrs. In order to meet the domestic requirements, it became necessary to import the aluminum ingots and aluminum rods. The Central Government therefore issued Notification No. 79-Cus. dated 18.4.1980 exempting aluminum wire rods and aluminum ingots from the whole of customs duty as well as the additional duty leviable on it. The notification contained the clause that the notification shall remain in force till 30.9.1980. Simultaneously, another Notification No. 80-Cus. was issued by the Central Government exempting the above items from the whole of auxiliary duty as well. The appellants claim that on the basis of the promises and assurance contained in the two exemption Notifications, they commenced negotiations with the manufacturer and suppliers of the above items for the purchase of these items from aboard. In the meantime, the Central Government issued another Notification No. 174-Cus. dated 29.8.1980, withdrawing the earlier Notification No. 79-Cus. dated 18.4.1980 and on the same date i.e. 29.8.1980 yet, another Notification was issued levying auxiliary duty @ 12 1/2 per cent ad valorem. Barely ten days after the rescind meant of the earlier Notification, the Central Government issued another Notification No. 186-Cus. dated 9.9.1980 once again exempting wire rods and aluminum ingots from the whole of duty of customs. This notification was to remain operative till 31st March 1981 and it has remained in force right through. The grievance of the appellants is that the withdrawal of the exemption Notification on 29.8.1980 was not at all justified and support for this argument is sought from the fact that within 10 days of the withdrawal notification, the Government had itself once again issued a Notification on 9.9.1980, reviving the exemption of customs duty. Learned counsel submitted that during the period of 10 days, the importers whose goods arrived in India, were made liable to pay both the customs duty as well as the auxiliary duty, while those whose goods arrived either after 9.9.1980 or before 29.8.1980 were not required to pay the same.

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27. Indeed, the submission on the fact situation is not controvertible but in the absence of any material placed before, the High Court or even in this appeal to establish that the notification dated 29.8.1980 was issued for any oblique or extraneous consideration and was not "in public interest", it is not possible to find fault with that notification for the reasons we have already given while dealing with the first batch of cases. The appellants, who are in business, have to be prepared for tides in the business. In Poornami Oil Mills (supra), it was the incentive to set up new industry in the State with a view to boost the industrialisation that exemption had been granted and it was in that fact situation that the doctrine of promissory estoppel was held available to the appellant therein. Again in Bakul Oil Industries (supra) it was the incentive to set up industries in a conforming area that the exemption had been granted and the Court held that the Government could withdrawn an exemption granted by it earlier only if such withdrawal could be made without offending the rule of promissory estoppel and without depriving an industry entitled to claim examination for the entire specified period for which exemption had been promised to it at the time to giving incentive. Both these cases therefore cannot advance the case of the appellant and are distinguishable on facts because the exemption notification u/s 25 of the Act which was issued in this case did not hold out any incentive for setting up of any industry to use PVC resins and on the other hand has been issued in exercise of the statutory powers, in public interest and subsequently withdrawn in exercise of the same powers again in public interest. In our opinion, no justifiable prejudice was cause to the appellants in the absence of any unequivocal promise by the Government not to act and review its policy even if the necessity warranted and the "public interest" so demanded. Thus, in the facts and circumstances of these cases, the appellants cannot invoke the doctrine of promissory estoppel to question the withdrawal notification issued u/s 25 of the and Act.

28. As a result of the above discussion, all the appeals fail and are dismissed. No costs.

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