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**(1993) 11 BOM CK 0058**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 1495, 1496, 1498, 1539 and 1540 of 1986

Popular Colour Lab Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 05-11-1993

**Acts Referred:**

Customs Act, 1962 — Section 156, 157, 159

**Citation :** (1993) ECR 202 : (1993) 68 ELT 544

**Hon'ble Judges :** S.P. Kurdukar, J;M.L. Dudhat, J

**Bench :** Division Bench

**Advocate :** Shri N.R. Kantawala, instructed by M/s. Kantawala and Co, for the Appellant; Shri I.S. Vyas and Shri R. Ashokan, for the Respondent

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**Judgement**

1. This is a batch of writ petitions wherein the petitioners have raised a plea of promissory estoppel. For the purposes of this judgments, we may refer to the averments contained in writ petition No. 1495 of 1986 and indicate as to how the issue of promissory estoppel has been raised in these writ petitions.

2. The petitioners are a private limited company registered under the Partnership Act and are inter alia dealing in photographic and other processes. There does not seem to be any dispute that the Customs duty for such goods imported into India is chargeable under the provisions of the Customs Act, 1962. Prior to 28th February, 1986 the customs duty was charged as per the rates mentioned against the appropriate items mentioned in the first Schedule to the Customs Tariff Act, 1965 (hereinafter referred to as "C. T. A. "). It is averred by the petitioners that Tariff Item No. 84 as it stood prior to 28th February 1986, dealt with the items under heading "Boilers", Machinery, Mechanical Appliances, parts thereof". Under the said heading sub-item No. 84.66 dealt with all items of machinery popularly known as "Project Imports". The Central Board of Excise and Customs in exercise of powers u/s 157 of the Customs Act issued regulations to regulate and prescribed the manner for registration of such Project Imports. The regulations prescribed under the said entry were known as "Project

Imports" (Registration of Contract) Regulations 1965. It is then averred by the petitioners that as per the provisions of the said regulations read with Tariff Item No. 84.66, it was necessary for every importer who wants to claim the benefit thereunder, to apply in writing for the registration of the contract before clearance of the goods. Under the said regulation, importer was required to give certain information as prescribed under the proviso to the Tariff Item No. 84.66. The said tariff item was passed by the act of Parliament in 1975 and called the Customs Tariff Act, 1975.

3. It is then averred by the petitioners that on 28th February, 1986 under the Finance Act the Schedule to the Customs Tariff Act was replaced. The tariff entry No. 84.66 as it stood prior to 28th February 1986 was recast by dropping the proviso as it stood in the earlier tariff entry No. 84.66 and was made into entry No. 98.01 attracting the same rate of duty viz. 40%.

4. It is the petitioners claim that as per the regulations then in force prior to 28th February 1986 and prior to recast and change of Tariff Entry No. 84.66 the petitioners relying upon the instructions contained in then existing regulations framed u/s 157 of the Customs Act and the tariff entry No. 84.66, entered into a contract with M/s. Noritsu Koki Company Ltd., Japan to import one complete set of N. QSS. 603 with accessories and spare-parts on 30th November 1985 for the price of Japanese Yen 10,567,990/-. The petitioners also opened an irrevocable letter of credit dated 29th January 1986 through their bankers viz. Banks of Baroda for the said amount. As per the contract, the delivery of the said labs was to be effected on or before 31st March 1986. Exh. "D" to the petition is the copy of the said proforma invoice and Exh. "E" is the copy of the said L/C confirmation. The petitioners further claimed that they are also a registered S. S. I. unit vide certificate No. 86060 dated 9th April 1986 issued by the Government of Maharashtra, Directorate of Industries. It is then averred by the petitioners that they submitted an application as required under Item No. 2 of regulations 1965 bill of entry was presented. It is true that the petitioners made an application for registration on 19th May 1986 after the bill of entry was presented on 2nd May 1986.

5. On 3rd April 1986, the 1st respondent issued a Notification No. 230 of 1986 under the purported exercise of powers conferred under- section 157 of the Customs Act superseding the earlier regulations of 1965 and brought into force new regulations i.e. Project Import Regulations 1986. Under this new regulations of 1986, the term "Industrial Plant" has been defined. As a result thereof, the scope of the entry relating to Project Imports has been abridged to the detriment of a large number of industries including the photographic industry. By reason of this new change brought about by the definition, the petitioners are adversely affected. Even under the new entry No. 98.01/17 petitioners have been denied the Project Import concessions.

6. On the basis of the above averments, the petitioners have pleaded the doctrine of promissory estoppel based upon regulations of 1965 and tariff entry

No. 84.66. The claim of the petitioners is that on the basis of the representations contained in the regulations of 1965 and the concessional rate of duty provided under tariff entry No. 84.66 of Central Tariff Act they sought to import the goods in question from Japan and by reason of change brought about by 1986 regulations defining the "Industrial Plant", the petitioners have been deprived of the concessional rate of duty available under the new tariff entry No. 84.66. The petitioners therefore, prayed that they are entitled for substantive reliefs as prayed in the petition.

7. Shri Anil Kumar, the Assistant Collector of Customs filed the return on behalf of respondents and pleaded that the petitions are not entitled to invoke the doctrine of promissory estoppel. It is further stated that the change brought about by the regulations of 1986 has come into force on and from 3rd April 1986 and the "Tribunal Plant" has been defined excluding the photographic industry. Regulations of 1986 framed u/s 157 of the Customs Act are statutory regulations and promissory estoppel cannot be pleaded against the statute. Various other contentions are also raised but it is not necessary to deal with the same at this stage. Shri Vyas, the learned Counsel appearing for respondents drew our attention to the unreported decision of this Court in writ petition No. 1334 of 1986 since reported in Lazor Colour Prints Pvt. Ltd. Vs. Union of India, rendered by K. Sukumaran and Dr. B. P. Saraf, JJ. on 8th July, 1992. He also drew our attention to another decision of the same Bench in a group of writ petitions viz. Writ Petition No. 27 of 1990 and others Subhash Photographics Vs. Union of India, . This judgment was delivered on 2nd April, 1992. Shri Vyas urged that in view of these two decisions, contentions raised by the petitioners are squarely covered and all these writ petition deserve to be dismissed.

8. The contentions raised in writ petitions before us are identical to the contentions raised in Writ Petition No. 1334 of 1986 Lazor Colour Prints Pvt. Ltd. Vs. Union of India, . On the main contention relating to the doctrine of promissory estoppel, the learned Division Bench in paragraph 4 of the judgment has held as under:-

"There cannot be any estoppel against any statute. Those who plunge in the waters of the trade should be aware about the possible after effects. The drying up process or swelling in the flow or a change of course, are all to be expected, anticipated and guarded against. There is no scope for importing notions of great expectations as against the legislative exercises. The plea of promissory estoppel has to fall in the above circumstances."

9. The learned Division Bench in support of this conclusion in paragraph 5 of the judgment relied upon the Full Bench decision of this Court in Ashwin Prafulla Pimpalwar and etc. Vs. State of Maharashtra and Others, . The Division Bench held that the regulations framed u/s 157 of the Customs Act, 1962 are statute and consequently, the doctrine of promissory estoppel cannot be evoked against the statute. We are prima facie unable to agree with this conclusion. It is not disputed before us that the regulations of 1965 and 1986 were framed by the

Board in exercise of its powers u/s 157 of the Customs Act. It is also not disputed before us that these regulations were not laid before the Parliament. The question therefore is whether such regulations can be said to be statute. If Section 157 is contrasted with Section 156 and 159 of the Customs Act, it appears to us that the regulations framed u/s 157 are the regulations for the purposes of carrying out the object of the Act, unlike the rules framed u/s 159 of the Act. The rules framed u/s 156 and rule and certain notifications issued u/s 159 are laid before the Parliament and only after approval of the Parliament, they become effective and enforceable. We are prima facie of the opinion that there is a distinction between the rules framed u/s 157 and the rules and certain notifications issued u/s 159 of the Act. Regulations framed u/s 157 of the Act therefore do not appear to us on par with rules framed u/s 156 and rules and notification u/s 159 of the Customs Act. The learned Division Bench in its judgment in Writ Petition No. 1334 of 1986, with respect, has not dealt with this aspect. From the discussion in judgment in Writ Petition No. 1334 of 1986 it does not appear that the Division Bench has had any occasion to consider Sections 156 and 159 in contrast with Section 157 of the Customs Act. Learned Counsel for the parties drew our attention to various decisions of the Supreme Court on the issue of doctrine of Promissory estoppel and the binding nature of regulations framed u/s 157 of the Act. We do not wish to express any opinion of the Division Bench in Writ Petition No. 1334 of 1986 relating to doctrine of promissory estoppel needs reconsideration. We accordingly formulate the following point for consideration by a larger bench:-

"Whether regulations framed u/s 157 of the Customs Act can be termed as "statute" and whether doctrine of promissory estoppel can be evoked against such regulations?"

10. We direct the Prothonotary and Senior Master to place the papers of those writ petitions before the learned Chief Justice for appropriate orders.