(2005) 10 GAU CK 0014

In the Gauhati High Court

Case No : Civil Rule No. 3598 of 1998

Shree Sanyeeji Ispat Pvt. Ltd. and Another APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 4(1), 4(5), 4A, 5, 65A
Assam Sales Tax Act, 1947 — Section 7
Central Excise Rules, 1944 — Rule 8
Constitution of India, 1950 — Article 299
Customs Act, 1962 — Section 25
Evidence Act, 1872 — Section 115

Citation : (2006) 3 GLR 870 : (2006) 2 GLT 397 : (2006) 147 STC 146

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : A.K. Saraf, M.L. Gope, N. Hawelia and S. Chetia, for the Appellant; H.K. Mahanta, Government Advocate and D. Saikia, for the Respondent

Judgement

I.A. Ansari, J.—In consequence of an industrial policy of the State Government inviting setting up of industries promising, in return of setting up of industries, exemption from payment of sales tax on the raw materials to be used by the industry as well as on the finished product of the industry for a specified period of time, when a person sets up an industry, can the Finance Department of the State Government refuse to exempt the industry from payment of sales tax on the ground that until requisite notification is issued under the relevant statute, the industry, in question, would not be entitled to exemption from payment of sales tax ? Can, in such a case, the State Government take the stand that since no notification, in terms of the promises made by the Government, has been issued under the relevant statute, the industry is not eligible to claim exemption from the sales tax? Can, in such a case, the promisee, who has set up the industry acting upon the promises made by the Government, seek enforcement of the promise against the Government ? Is it necessary for the doctrine of promissory estoppel to be applicable that the promise shall not only be permissible under the law to be made by the Government but that the promise must have been made by the Government in terms of the procedure prescribed by the relevant statute ? For application of the doctrine of promissory estoppel, whether existence of legal relationship between the promisor and the promisee is a condition precedent ? Can, in the interest of public, the Government resile from the promise made by it under an industrial policy and if so, what are the limitations on the exercise of such a choice by the Government? Is it enough if the Government decides that in the interest of the public, the Government shall resile from the promise or is it the court, who has the ultimate responsibility to determine if the public interest is so overriding that such public interest shall prevail upon the promise made by the Government and shall permit the Government to withdraw from the promise that it had made ? Can a mere plea that the overriding public interest permit the Government to resile from the promises made by it is sufficient or the Government has the onus to produce requisite materials before the court to satisfy its judicial conscience that the public interest is so overwhelming that the Government shall be allowed to resile from the promises made by it ? In the absence of public interest, is it possible for the Government to resile, under any circumstances, from the promise that it had made ? If so, when such act of withdrawal of the promise would be permissible ? Can, under the scheme of governance, which the Constitution of India perceives, the Finance Department of a Government or even the State Government be permitted to act contrary to the industrial policy announced by the Government or can the Government seek to resile from the promises that it had made on the ground that since no notification has been issued in terms of the relevant statute, the promise made by it has not become irrevocable ? Can, in such a case, the Government take the plea that the promisee ought to have known that the promise made by the Government would not be enforceable against it until requisite notification, in terms of the promises made under the industrial policy, is issued under the relevant statute ?

These are some of the vital questions, which the present writ petition has raised.

2. Before my quest for determining the answers to the questions posed above commences, let me take note of the material facts and chronological events, which have led to the making of the present writ petition.

3. The material facts and the chronology of events, which have led to the present writ petition, may, in brief, be set out as follows:

(i) By notifications, dated April 6, 1991 and July 1, 1992, the Government of Assam announced its Industrial Policy of 1991 with the object of encouraging growth and promotion of industries in Assam. With this object in view, the said Industrial Policy of 1991, offered, inter alia, incentives by way of full sales tax exemption for a period of seven years to, amongst others, the new industrial units, which may be set up in Assam on or after April 1, 1991. The exemption from payment of sales tax were made available on the sale of finished products as well as on the purchase of raw materials to be used in the manufacture of finished products.

(ii) The petitioner-company, which is a private limited company, set up an industrial unit in the district of Kamrup, the industrial unit being a re-rolling mill for manufacture of different steel rolled products. The petitioner-company was registered as a small-scale industry with the Department of Industries, Government of Assam, and was granted, in this regard, a provisional registration certificate, dated April 30, 1992, and a permanent registration certificate, on October 12, 1993, by the Director of Industries, Government of Assam, the first commercial production of the petitioner-company''s new unit having been started, on September 17, 1993, in terms of the permanent registration certificate, dated October 12, 1993 aforementioned. The petitioner-company received sanction of power load to the tune of 300 KB by order dated August 10, 1992, issued by the Chief Engineer, Assam State Electricity Board but before the commercial production of the petitioner-company''s said new industrial unit was started on September 17, 1993, a notification was published, on February 18, 1993, by the Department of Industries, Government of Assam, making certain industries ineligible from receiving the said Government incentives promised under the said Industrial Policy of 1991, the withdrawal of the said incentives being with effect from April 1, 1991. In terms of the notification, dated February 18, 1993, aforementioned, the re-rolling mills, in the sub-division of Kamrup, Jorhat, Dibrugarh, Bongaigaon, Cachar and Tinsukia, became ineligible to receive the promised incentives under the said Industrial Policy of 1991 and in consequence thereof, the petitioner-company''s new industrial unit too became, on account of the fact that the same was a re-rolling mill located in the sub-division of Kamrup, ineligible to receive the said incentives.

(iii) Be that as it may, the Department of Industries, Government of Assam, issued, in supersession of all its earlier notifications, yet another notification, dated April 26, 1994, declaring thereunder, with effect from March 11, 1994, certain industries as non-priority industries for availing the State Government''s incentives embodied under the said Industrial Policy of 1991. In the notification, so published on April 26, 1994, the re-rolling mills, located, amongst others, in the sub-division of Kamrup, were also included in the list of non-priority industries. This notification, dated April 26, 1994, aforementioned, however, made it clear that an industrial unit, which had been declared to be non-priority industrial unit, would still be extended the benefits under the said Industrial Policy of 1991 if the industrial unit is one, which had started its production before the publication of the said non-priority list; but thereafter, no further case shall be considered for extending benefits promised under the said Industrial Policy of 1991. Since the petitioner-company''s said new industrial unit had already started its commercial production on September 17, 1993, i.e., long before the publication of the priority list, dated April 26, 1994, aforementioned, the petitioner-company''s said industrial unit became, again, entitled to the benefits and incentives announced under the said Industrial Policy of 1991.

(iv) On so becoming eligible, by virtue of the notification, dated April 26, 1994, aforementioned, to receive the benefits announced under said industrial policy, the petitioner-company submitted an application, on June 1, 1995, with all relevant documents and papers to the Director of Industries, Government of Assam, seeking grant of eligibility certificate under the said Industrial Policy of 1991 in order to enable it to claim exemption from payment of sales tax in terms of the promises made under the said industrial policy.

(v) In short, before the first commercial production of the said new industrial unit of the petitioner-company commenced on September 17, 1993, the incentives with regard to sales tax exemption promised under the said Industrial Policy of 1991 were withdrawn by notification, dated February 18,1993, rendering the petitioner-company''s re-rolling mill, established in the sub-division of Kamrup, ineligible to receive the incentives promised under the said Industrial Policy of 1991; but with the issuance of notification, dated April 26, 1994, aforementioned, the petitioner-company''s industrial unit became eligible to receive the incentives aforementioned, for, the notification, dated April 26,1994, aforementioned, had clarified that while the re-rolling mills, set up in the sub-division of Kamrup District, had become ineligible to receive the incentives being in the list of non-priority industries, such industrial units would remain eligible to receive the incentives if the commercial production of such an industrial unit had started before the publication of the non-priority list on April 26, 1994. The commercial production of the petitioner-company''s new industrial unit having started on September 17,1993, i.e., long before the publication of the priority list, dated April 26, 1994, aforementioned, the petitioner-company''s said industrial unit became entitled to the benefits and incentives announced under the said Industrial Policy of 1991.

(vi) In the meanwhile, however, the Assam General Sales Tax Act, 1993 (in short, "the AGST Act, 1993"), was enacted and the same came into force with effect from July 1, 1993. Section 74(3)(f), which was inserted with effect from May 2, 1995, in the AGST Act, 1993, laid down that the provisions of the AGST Act, 1993, shall apply in respect of any exemption of tax by way of grant of relief from any date before the appointed day, i.e., July 1,1993. Section 9(4) of the AGST Act, 1993, conferred powers on the State Government to frame one or more schemes by way of notification for grant of relief to any class of industries within the State by way of full or partial exemption of any tax payable under the AGST Act on the raw materials or other inputs purchased by them within the State or on the manufactured goods sold by them within the State or in the course of inter-State trade or commerce for such period or periods as may be specified.

(vii) The Governor of Assam, in exercise of the powers conferred by Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, framed, vide notification, dated August 16,1995, a scheme named as the Assam Industries (Sales Tax Concessions) Scheme, 1995, granting relief by way of full exemption of sales tax on purchase of raw materials within the State of Assam by the eligible industrial units and on sale of finished products manufactured in such industrial units within the State of Assam or in the course of inter-State trade and commerce. The said scheme was brought into force with effect from April 1, 1991. In the said scheme, in Clause 2(c) of Part I, certain categories of industries were made ineligible for the benefits under the said Scheme. The re-rolling mills, located, amongst others, in the sub-division of Kamrup, were made ineligible to receive the benefits under the said Scheme. The petitioner-company''s said new industrial unit, being located in the subdivision of Kamrup, became, once again, in terms of the notification, dated August 16, 1995, aforementioned, issued under the AGST Act, 1993, ineligible to receive the incentives promised under the said Industrial Policy of 1991. The application made by the petitioner-company to the Director of Industries, Government of Assam, to grant Eligibility Certificate was turned down by the State Level Udyog Sahayak Committee, on June 23,1998, on the ground that as per para II of the Sales Tax Concessions Scheme, 1995, re-rolling mills of Kamrup, Jorhat, Dibrugarh, Bongaigaon, Cachar and Tinsukia District are not eligible for any benefit under the Scheme and since the petitioner-company''s industrial unit is located in the Kamrup district, the committee could not approve the case, for, the petitioner-company''s said unit is not eligible for sales tax exemption. Even the Sales Tax Department did not grant any exemption in respect of sales tax to the said industrial unit of the petitioner-company ; rather, the sales tax was imposed on the petitioner-company. In such circumstances, the petitioner-company has approached this Court, with the help of the present writ petition, seeking, inter alia, issuance of writ(s) commanding the respondents to declare the petitioner-company''s said industrial unit entitled to full sales tax exemption for a period of seven years from the date of commencement of production as per the Industrial Policy of 1991 and to set aside and quash the impugned letter, dated April 28, 1998, issued by the Additional Director (US), Director of Industries, Assam, the case of the petitioner-company being as follows:

The petitioner-company has established its said new industrial unit of re-rolling mills, in the sub-division of Kamrup, inspired by the said Industrial Policy of 1991 and acting and relying upon the promises made by the Government in this regard and, hence, the incentives, announced under the said Industrial Policy of 1991, could not have been withdrawn by the Government. This apart, the first commercial production of the said industrial unit of the petitioner-company having been started on September 17, 1993, the petitioner-company''s said unit became eligible to receive sales tax exemption in terms of the subsequent notification, dated April 26, 1994, aforementioned and in the face of these facts, the petitioner-company ought to have been granted eligibility certificate in respect of its said industrial unit. Further, the petitioner-company''s said industrial unit having been established prior to the framing of the said Scheme of 1995, by the Sales Tax Department, the notification, dated August 16, 1995 could not have been made the basis for denying the incentives, which the petitioner-company''s said industrial unit was, otherwise, entitled to receive in terms of the said industrial policy and the notifications issued thereunder. At any rate, the Scheme of 1995 ought not to have disentitled those industrial units from receiving exemption from payment of sales tax, which had been promised such exemption under the said industrial policy and the relevant notifications, particularly, the notification, dated April 26,1994, issued in this regard.

4. So far as the Department of Industries, Government of Assam, is concerned, the said department has not filed any affidavit and contested the claim of the petitioner-company ; but the Department of Finance and its functionaries have resisted the claim of the petitioner-company, the case of these respondents being, briefly stated, as follows:

(a) The levy of the sales tax is by way of legislative enactment and, therefore, no exemption of sales tax can be granted except in the manner laid down in the said enactment. Section 9(4) of the AGST Act, 1993, lays down the manner and method of granting of relief of exemption of sales tax to any class of industries by notification in the official Gazette and no executive order can override the requirements of the statute. Since the notification, dated August 16, 1995, issued u/s 9(4) of the AGST Act, 1993, disqualified the steel rolling mills of Kamrup and a few other districts to which category the petitioner-company falls from availing the benefits embodied in the Industrial Policy of 1991, the authorities concerned had rightly decided not to issue the eligibility certificate to the petitioner-company. The doctrine of promissory estoppel is not attracted in the present case inasmuch as the appropriate authority for appropriate reasons decided not to extend the benefits of the said Industrial Policy of 1991 to, amongst others, the re-rolling mills located in the subdivision of Kamrup. So long as the requisite notification under the AGST Act, 1993, is not issued, no legal or equitable right can be said to have accrued to the petitioner-company. The laudable objective behind the incorporation of the provisions of Section 9(4) in the AGST Act, 1993, is to facilitate permanent industrial development of the State in the real sense of the term by offering some initial incentives to genuine entrepreneurs and not allowing any fly by night operators, such as the petitioner-company, to derive unjustified enrichment through such schemes.

(b) No relief, based on the doctrine of legitimate expectation, should be granted, when grant of such relief is likely to harm larger public interest. Since the State Government, in exercise of its statutory power, has decided to withdraw and/or not to grant exemptions from payment of sales tax to a particular class of industries on the ground of public policy, the doctrine of promissory estoppel cannot be pressed into service to thwart such exercise of powers by the Government.

(c) The contention of the petitioner-company that it had not collected any tax on the sales on finished products from September 17, 1993 remains nebulous since the petitioner-company had failed to adduce any reliable evidence that the sale prices realised by the petitioner-company fell short of the quantum of tax amount compared to the sale prices realised by other dealer of the goods paying taxes during that period.

5. I have heard Dr. A.K. Saraf, learned Senior Counsel, appearing on behalf of the petitioner-company, and Mr. D. Saikia, learned Counsel, appearing on behalf of respondent Nos. 1, 2, 5, 6, 7, 8, 9 and 10. I have also heard Mr. H.K. Mahanta, learned Government Advocate, appearing on behalf of the remaining respondents.

6. Placing, before this Court, the case of the petitioner-company, Dr. Saraf has submitted that by the Industrial Policy of 1991, the State Government had taken a policy decision to grant full sales tax exemption for a period of seven years to the eligible industrial units on the purchase of raw materials as well as sale of finished products. Dr. Saraf points out that as, initially, all the industrial units, irrespective of any classification, were considered eligible for the sales tax incentives under the Industrial Policy of 1991, the petitioner-company, acting upon the promises, which had been held out to prospective investors under the Industrial Policy of 1991, set up its re-rolling mill in the sub-division of Kamrup. Subsequently, points out Dr. Saraf, by notification, dated February 18, 1993 aforementioned, the re-rolling mills, situated amongst others, in the sub-division of Kamrup, were made ineligible from receiving incentives under the said industrial policy. However, further points out Dr. Saraf, considering the genuine difficulties of the re-rolling mills, which had already started commercial production before taking of such a restrictive view by the Government, the Government itself, vide notification, dated April 26, 1994, made provisions for safeguarding the interest of such re-rolling mills by providing that the Government would extend the benefits of the Industrial Policy of 1991 to those re-rolling mills, which had started their commercial production prior to April 26, 1994, and that, thereafter, no such cases would be considered. Since the petitioner-company''s industrial unit, set up as per the Industrial Policy of 1991, had, submits Dr. Saraf, started the commercial production on September 17, 1993, the petitioner-company''s said unit became, by virtue of the notification, dated April 26,1994, aforesaid, legally entitled to receive all the incentives and benefits announced under the Industrial Policy of 1991. The said policy decision taken by the State Government as announced under the Industrial Policy of 1991, having remained unchanged and in force, the Department of Finance of the State Government had no authority and/or jurisdiction, contends Dr. Saraf, to bring about any change in the said policy decision taken by the State Government. Dr. Saraf also submits that since the State Government has taken a policy decision to extend the incentives promised under the said industrial policy, it is not open to the Department of Finance to withdraw the concessions and/or incentives promised under the said industrial policy or under various notifications issued in this regard. Dr. Saraf further submits that the Assam Industries (Sales Tax Concessions) Scheme, 1995, having been framed in exercise of powers u/s 9(4) of the Assam General Sales Tax Act, 1993, to give effect to the 1991 Industrial Policy of the State of Assam, the impugned Scheme/Notification, dated

August 16, 1995, issued by the Finance Department, Government of Assam, is bad in law in so far as the same is repugnant to the industrial policy adopted by State Government.

7. In support of his above submissions, State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others,

8. Dr. Saraf has also placed reliance on a decision of this Court in Manjushree Extrusions Limited v. State of Assam [2001] 123 STC 366 SC : [2001] 2 GLR 218, which is a case, which deals with the Assam Industries (Sales Tax Concessions) Scheme, 1995, that is, the very Scheme, which is the subject-matter of controversy in the present writ petition.

9. Dr. Saraf has further referred to the case of Maruti Tea Industries v. State of Assam (Civil Rule No. 1223 of 1997 Reported in [2003] 129 STC 479 (Gauhati), wherein, the said industrial policy, Assam Industries (Sales Tax Concessions) Scheme, 1995, as well as this Court''s decision in Manjushree Extrusions Limited [2001] 123 STC 366 : [2001] 2 GLR 218, have been considered by this Court.

10. Drawing attention of this Court to the Industrial Policy of 1991, Dr. Saraf has submitted that this policy held out a clear promise for the grant of full sales tax exemption to the eligible industrial units for a period of seven years and since the petitioner-company, on the basis of the representations or promises so made, had set up its industry by spending huge amount of money and had altered its position to its detriment relying on the said representations and promises made in the industrial policy, the State Government and its instrumentalities are bound by the equitable doctrine of promissory estoppel to grant such benefits to the petitioner-company, which the Government had promised. It is further submitted by Dr. Saraf that if any statutory authority or an executive authority of the State, functioning on behalf of the State in exercise of its legally permissible powers, had held out any promise to a party, who, relying on the same, has changed his position to his detriment and if the said promise does not offend any provisions of law or does not fetter any legislative or quasi-judicial power inhering the promisor, then, on the principle of promissory estoppel, the promisor can be pinned down to abide by the promise offered by it by way of such representation. Only in the cases where, points out Dr. Saraf, there is supervening public interest, the Government would be allowed to change its stand and withdraw from the representation made by it, which had induced persons to take certain steps, which may go adverse to the interest of such persons on account of such withdrawal. However, the court, insists Dr. Saraf, must satisfy itself that such a public interest exists.

11. In the above premises, relying upon Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , State of Punjab Vs. Nestle India Ltd. and Another, , and Shri Guru Ashish Wire Industries v. State of Gujarat reported in [1994] 92 STC 286 (Guj), Dr. Saraf has submitted that all these decisions clearly lay down that the Government is bound by the promise that it makes and if a

person, on the promises held out by the Government, takes any step, which may be adversely affected by withdrawal of the promise, then, the Government shall not be allowed or permitted to go back on its representations and promises, unless supervening public interest is shown to have impelled the Government to withdraw such concession or promise. In the case at hand, submits Dr. Saraf, in the affidavit-in-opposition filed by the contesting respondents, no such supervening public interest could be established by the respondents concerned so as to permit the State to resile from the promises made by it under the Industrial Policy of 1991. Dr. Saraf points out that the overriding and supervening public interest, which has to be pleaded by the Government, must be of such a magnitude and create such a compelling necessity that a Government could be satisfied and the court should also be persuaded to take the view that it is better not to honour the promise in order that a higher public interest is secured. The affidavit filed by the respondents does not disclose, reiterates Dr. Saraf, any reason, which reflects overriding and supervening public interest, and, hence, the State cannot be allowed to resile from the promises made under the Industrial Policy of 1991 and the petitioner-company''s said industrial unit is, therefore, eligible to receive the eligibility certificate as per the 1991 Industrial Policy of the Government of Assam.

12. Controverting the submissions made, on behalf of the petitioner-company, Mr. Saikia, learned Counsel for the contesting respondents, has submitted that the levy of the sales tax is by way of legislative enactment and, therefore, any exemption of sales tax can be granted only in the manner laid down in the relevant enactment. Section 9(4) of the AGST Act, 1993, points out Mr. Saikia, lays down the manner and method of granting relief to any class of industries by notification in the official gazette and no executive order can override the requirements of the statute. Since the notification, dated August 16, 1995, issued u/s 9(4) of the AGST Act, 1993, disqualified the Steel Rolling Mills of Kamrup and a few other districts to which category the petitioner-company falls from availing the benefits embodied in the Industrial Policy of 1991, the authorities had, contends Mr. Saikia, rightly decided not to issue the eligibility certificate to the petitioner-company.

13. Relying on the decision of the Supreme Court in Sales Tax Officer v. Shree Durga Oil Mills [1998] 108 STC 274 , it is submitted by Mr. Saikia that the Government can change its industrial policy if the situation so warrants. Merely because an Industrial Policy Resolution was announced for a particular period, it does not mean, contends Mr. Saikia, that the Government cannot amend or change the policy under any circumstances. When the petitioner set up its rolling mill, submits Mr. Saikia, it should have had known that the matter of sales tax exemption would have to be governed by the required notification under the taxing statute and, therefore, the petitioner-company''s claim of promissory estoppel is without any basis. There cannot be any estoppel, according to Mr. Saikia, against statute. Moreover, submits Mr. Saikia, it is well-settled that any industrial policy resolution can be changed if there is overriding public interest

involved. In the present case, further submits Mr. Saikia, in order to make a somewhat even distribution of industrialisation process throughout the State, it was considered imperative to restrict sales tax incentive only to the abysmally backward region of the State so that the entrepreneurs may find some motivation to set up industries there instead of establishing industries in the developed districts like Kamrup, Dibrugarh and Bongaigaon. Therefore, even if it is assumed that the petitioner-company came forward to establish its rolling mill, in question, solely motivated by the industrial policy resolution of the relevant time, no promissory estoppel would survive, insists Mr. Saikia, against the Government. Support for this submission was sought to be derived by Shrijee Sales Corporation and Another Vs. Union of India (UOI),

14. Relying on the decision of the apex Court in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , it has been submitted by Mr. Saikia that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition.

15. In support of his above submissions, Mr. Saikia has also placed reliance on P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others,

16. Referring to Hira Tikkoo Vs. Union Territory, Chandigarh and Others, , Mr. Saikia has pointed out that no relief, based on the doctrine of legitimate expectation, should be granted, when grant of such relief is likely to harm larger public interest. When public interest is likely to be harmed, neither the doctrine of legitimate expectation nor estoppel can be allowed to be pressed into service by any citizen against the State authorities. So contends Mr. Saikia.

17. It is pointed out by Mr. Saikia that since the State Government, in exercise of its statutory powers, had decided to withdraw and/or not to grant exemptions from payment of sales tax to a particular class of industries on the ground of public policy, the doctrine of promissory estoppel cannot be pressed into service to thwart such exercise of powers by the Government. Reliance has been placed, in this regard, by Kasinka Trading and another, etc. etc. Vs. Union of India and another, .

18. Mr. Saikia has further submitted that the contention of the petitioner-company that it had not collected sales tax on the sales of finished products from September 17, 1993 remains nebulous since the petitioner-company had failed to adduce any reliable evidence to show that the sale prices realised by the petitioner-company fell short of the quantum of tax amount compared to the sale prices realised by other dealers of goods, who paid taxes during the said period.

19. There is, contends Mr. Saikia, no merit in the present writ petition and it is not a fit case at all for issuing any direction in favour of the petitioner-company and the writ petition may, therefore, be dismissed.

20. Repelling the above submissions made on behalf of the respondents, Dr.

Saraf has contended that the contention of the contesting respondents that exemption from payment of sales tax can be granted in the manner laid down in the AGST Act, 1993, and that the promises made under the industrial policy are of no avail unless exemption from payment of sales tax is statutorily made available is not a correct proposition of law inasmuch as the State is, contends Dr. Saraf, bound by the promises it makes unless supervening public interest demands otherwise and the exercise of statutory powers by the State shall be consistent with the promises, which it makes and cannot run contrary thereto. Support for this submission is sought to be derived by Dr. Saraf from the cases of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, and State of Punjab Vs. Nestle India Ltd. and Another,

21. Pointing to the facts of the case in Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, , Dr. Saraf submits that this case is distinguishable and the law propounded therein cannot be applied to the present case. According Dr. Saraf, since the decision in Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, , has been referred to, and discussed in State of Punjab Vs. Nestle India Ltd. and Another, and since the decision in State of Punjab Vs. Nestle India Ltd. and Another, , is a later decision, it is the decision in State of Punjab Vs. Nestle India Ltd. and Another, , which shall be followed by this Court. Dr. Saraf has also contended that the decision in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , is the later decision rendered by the three-Judge Bench of the Supreme Court and, hence, the decision in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , which is given in the similar set of facts and circumstances as the present one, is applicable to the case at hand. As regards the remaining authorities, relied upon by Mr. Saikia in support of his contention that the promises made under the Industrial Policy of 1991 cannot take away the State Government''s power not to grant exemption from payment of sales tax under the provisions of the AGST Act, 1993, and that as long as the exemption from payment of sales tax is not granted in terms of the relevant statute, no one can force the Government to extend such benefit by relying on an industrial policy, Dr. Saraf has submitted that the decisions relied upon, in this regard, by the respondents have no application to the facts of the present case, particularly, when the State-respondents have not been able to show that any supervening public interest made it change the benefits given under the said industrial policy, while preparing the scheme of 1995 in exercise of its powers under subsection (4) of Section 9 of the AGST Act, 1993.

22. Before entering into the rival submissions made before me, on behalf of the parties, certain facts, which have not been made in dispute, may be noticed, once again, for clearly appreciating the issues involved in the present writ petition. These silent facts are : The Industrial Policy of 1991 was aimed at achieving speedy industrial development in the State as well as generation of adequate employment opportunity in industrial sector. The policy, in question,

was announced under two notifications, namely, notifications dated April 6,1991 and July 1,1992, the incentives, covered by the said industrial policy, were made available for a period of seven years to the new industrial units to be set up in the State of Assam on or after April 1, 1991. One of the promises made under the said industrial policy was exemption from payment of sales tax for a period of seven years. The sales tax exemption, so announced, covered the sales tax on purchase of raw materials as well as on sale of finished products for a period of seven years. The petitioner-company''s industrial unit of re-rolling mill, located in the sub-division of Kamrup, having started its first commercial production on September 17, 1993, the said unit, in terms of the Industrial Policy of 1991 (as had been announced under notifications, dated April 6, 1991 and July 1, 1992) would have been eligible for sales tax exemption, but for the reason that before the petitioner-company''s commercial production could commence (which, eventually, commenced on September 17, 1993), (the notification, dated February 18, 1993), was issued by the Department of Industries, Government of Assam, making the re-rolling mills located, amongst others, in the sub-division of Kamrup, ineligible from availing the incentives promised under the said industrial policy. Having realised that the time-lag, between the date of announcement of the Industrial Policy of 1991 and the date of making certain industrial units ineligible to receive incentives under the said industrial policy, had created problems for those, who had either already started their commercial production or were on the verge of commencing the commercial production, the department of industries, Government of Assam, in supersession of its earlier notifications, declared, vide notification, dated April 26,1994, certain industries as non-priorities industries for availing incentives promised under the Industrial Policy of 1991 subject to, however, one exception, the exception being that if any of the non-priority industries aforementioned had started its commercial production before the publication of the non-priority list of the industries under the said notification, dated April 26,1994, such an industry would remain, even if covered under non-priority industries, eligible to receive exemption from sales tax. Since the petitioner-company''s said industrial unit had, as already indicated hereinbefore, started its commercial production on September 17, 1993, i.e., long before the publication of the priority list, dated April 26, 1994 aforementioned, the petitioner-company''s said unit became, once again, entitled to the benefits of the said industrial policy including exemption from sales tax on purchase of raw materials and also on sales of finished products for a period of seven years. The fact that with the publication of the notification, dated April 26, 1994, the said unit of the petitioner-company had become eligible to receive the incentives promised under the Industrial Policy of 1991 is not, in fact, in dispute. It is also not in dispute that but for the Assam Industries Sales Tax Scheme, 1995 (hereinafter referred to as "the scheme of 1995"), which came into force on August 16, 1995, the petitioner-company would have remained, in terms of the notification, dated April 26, 1994, aforementioned, entitled to receive exemption from payment of sales tax as indicated hereinbefore.

23. The question, therefore, which falls for consideration is this : when the Government of a State announces an industrial policy and invites investors to make investments in order to receive the benefits and incentives promised under the industrial policy, can another Department of the Government, namely, Department of Finance, while preparing, in exercise of its powers under the relevant statute, a Scheme, such as the Scheme of 1995, refuse to grant exemption from sales tax to an industrial unit, which is, otherwise, eligible to receive benefits of the industrial policy announced by the Government ? While considering the question, so posed, it is important to bear in mind that a Government, perceived under the Constitution of India, runs as an organised, harmonious, orderly, coherent, systematic and homogenous body and it functions on the principles of collective responsibility. Two different departments of a Government cannot adopt policies, which are contrary to, and inconsistent with, each other, for, the citizens must know what the policy of the Government of the State is. The Government must, therefore, as warranted by the Constitution, behave with such responsibility as is conceived under the Constitution and eschew such a course, which would make its functions impossible to be carried out in accordance with the provisions of the Constitution, for, collision between two departments of a State will reveal arbitrary manner of functioning of the Government and such arbitrary functioning will jeopardize rule of law and make a mockery of the Constitution, which perceives a coherent functioning of various organs or departments of the Government in the spirit of collective responsibility. Bearing in mind this subtle, but definite pre-requisite for effective functioning of the Government, let me, now, turn to the Scheme of 1995.

24. Section 9(4) of the Act of 1993 vests in the Government the power to frame one or more schemes by way of notification for grant of relief to any class of industries within the State by way of full or partial exemption of any tax payable under the AGST Act, 1993, on the raw materials or other inputs purchased by the industries within the State or on the manufactured goods sold by them within the State or in the course of inter-State trade or commerce for such period or periods as may be specified. In the exercise of the powers, conferred by Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the Act of 1993, the Governor of Assam framed and announced, on August 16, 1995, the Scheme of 1995 granting relief by way of full exemption of sales tax on purchase of raw materials within the State of Assam by eligible industrial units and on sale of finished products by such industrial units within the State of Assam or in the course of inter-State trade and commerce. This Scheme came into force on April 1, 1991. This scheme made re-rolling mills located, amongst others, in the sub-division of Kamrup, ineligible to receive the benefits under the said Scheme. This Scheme, thus, made the petitioner-company''s industrial unit, which was, otherwise, eligible to receive sales tax exemption under the notification, dated April 26, 1994, aforementioned ineligible. The department of Finance, Government of Assam, has, thus, adopted the scheme of 1995, which

goes contrary to the Scheme announced by the Department of Industries, Government of Assam, under its Industrial Policy of 1991. Can the Government of Assam do so is the prime question. Whereas, the Department of Finance, speaking on behalf of the respondent Nos. 2, 9 and 10, contends that it is possible for the Finance Department to do so, the petitioner disputes the same. The contesting respondents trace their powers to Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993.

25. There can be no doubt that in exercise of powers conferred on the Government under Sub-section (4) of Section 9 read with Clause (f) of subsection (3) of Section 74 of the AGST Act, 1993, the Government can frame scheme and grant relief in the form of total or partial exemption from sales tax. Can the power, so conferred, be unguided, uncanalised and leave room for complete arbitrariness ? Since arbitrariness cuts at the root of the rule of law, no provisions of the Constitution and/or of any enactment can be read to confer on any State or any of its instrumentalities arbitrary, unguided and uncanalised powers. It is to be, therefore, read into Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, that the powers conferred on the State Government to prepare scheme for grant of relief, in the form of sales tax exemption, cannot be arbitrarily exercised, for, if it is held otherwise, it will prove destructive of the rule of law and disintegrate the Government itself.

26. In order to understand the controversy involved in the present case, let us, instead of looking into the case from the point of view of the petitioner-company, imagine a situation in which the industrial policy announced by the Government makes a particular industrial unit ineligible to receive sales tax exemption. Can, in the face of such an industrial policy, the Department of Finance of the State Government concerned grant, in exercise of powers under a statute, sales tax exemption to such an ineligible industrial unit ? The unhesitant answer to this question has to be an emphatic "no", for, a contrary answer would deny coherent working of the Government and the rule of law. Considered thus, it is abundantly clear that the exercise of power of granting exemption conferred on the State Government, under Sub-section (4) of Section 9 read with Clause (f) of subsection (3) of Section 74 of the Act of 1993, has to be consistent with the industrial policy and cannot be in collision course thereto.

27. It further logically follows from the above that when the Department of Industries, Government of Assam, had announced its industrial policy and invited people to make investments on the basis of the said policy promising, amongst others, exemption from payment of sales tax on purchase of raw materials and on sale of finished products, the exercise of powers under Sub-section (4) of Section 9 read with Clause (0 of Sub-section (3) of Section 74 of the AGST Act, 1993, shall be consistent with such a policy until, at least, the industrial policy itself is changed denying such exemption as the policy had promised. Hence, unless it can be shown otherwise, the impugned notification, dated August 16,

1995 aforementioned to the extent that it takes away the benefits of sales tax exemption granted under the Industrial Policy of 1991 in terms of the notification, dated April 26, 1994, aforementioned cannot be allowed to survive. The reference made, in this regard, by Dr. Saraf to the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , is, therefore, not misplaced.

28. In State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , the State Government issued notification, on April 4, 1994, in exercise of the powers u/s 7 of the Bihar Finance Act, whereunder the old industrial units, which had started production prior to April 1, 1993 but whose investments in the plants and machinery had not exceeded Rs. 15 crores on April 1, 1993 were denied the benefit of sales tax exemption on the purchase of raw materials. In other words, the industrial units, which were, otherwise, entitled to the sales tax exemption on the basis of the Industrial Policy of 1993, were denied the exemption on the basis of the fact that those industries had already taken some benefits under the prior Industrial Policy of 1986. The notification, dated April 4, 1994 aforementioned, issued by the State Government was challenged before the High Court and the High Court struck down the notification. The State of Bihar approached the apex Court, and the apex Court, while dealing with the said notification, observed and held as under:

7. Coming to the second question, namely, the issuance of notification by the State Government in exercise of power u/s 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the incentive policy itself. The industrial incentive policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification u/s 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decisions taken in the industrial policy itself. In this view of the matter, any notification issued by the Government order in exercise of power u/s 7 of the Bihar Finance Act, if is found to be repugnant to the industrial policy declared in a Government resolution, then the said notification must be held to be bad to that extent. In the case in hand, the notification issued by the State Government on April 4, 1994 has been examined by the High Court and has been found, rightly, to be contrary to the Industrial Incentive Policy, more particularly the policy engrafted in Clause 10.4(i)(b). Consequently, the High Court was fully justified in striking down that part of the notification which is repugnant to Sub-clause (b) of Clause 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a notification in exercise of power u/s 7 of the Bihar Finance Act, which may override the incentive policy itself. In our

considered opinion, the expression ''such conditions and restrictions as it may impose'' in Sub-section (3) of Section 7 of the Bihar Finance Act will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general policy resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the notification dated April 4, 1994.

29. The decision in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , squarely applies to the facts of the present case. When the policy decision of the Government was, in terms of the notification, dated April 26, 1994 aforementioned to grant sales tax exemption to the re-rolling mills located even in the sub-division of Kamrup if the commercial production of such a unit had started before March 11, 1994 and when this policy remained unchanged and unamended, the Scheme of 1995 could not have been prepared, even in exercise of powers under Sub-section (4) of Section 9 read with Clause (f) of Sub-section (3) of Section 74 of the AGST Act, 1993, making the industries, such as the one described hereinbefore, ineligible from receiving the sales tax exemption. Thus, the extent to which the Scheme of 1995, as announced under notification, dated August 16, 1995, aforesaid is repugnant to the notification dated April 26, 1994 aforementioned, which was issued in terms of the said industrial policy of the Government, the same (i.e., the notification, in question), cannot stand and must be interfered with. In, no uncertain words/made it clear the Supreme Court in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , that even in exercise of powers under a statute, the exemptions, which relate to the incentives promised under the industrial policy, cannot be taken away.

30. Coupled with the above, it is also worth noticing that in Manjushree Extrusions Limited [2001] 123 STC 366 GAU : [2001] 2 GLR 218, a division Bench of this Court had the occasion to examine the said Scheme of 1995 in the light of the Industrial Policy of 1991. Though the two learned single Judge differed on certain aspects of the matter, there was consensus as regards the fact that the State cannot resile from the promise that it makes through the industrial policy. Biswas, J., who had differed from Ms. M. Sarma, J., on the question of granting of relief to the writ petitioners, too observed and held as follows:

43 See para 42 at page 383 of 123 STC. The learned Counsel for the respondents in their arguments did not dispute the validity of the contentions of the appellants that the incentives granted under the industrial policy cannot be curtailed/denied by framing a Scheme, in the instant case, the Scheme 1995. The ratio enunciated in the judicial pronouncement mentioned above is that principle of promissory estoppel and legitimate expectation require regularity, predictability and certainty in the Government''s dealing with the public. These principles may not be source of Constitutional Code, but are the consequences of rights of individual/public on substantive effect of Government action as defined

and enforced by the courts. As submitted by Dr. Saraf, promissory estoppel has arisen with legitimate expectation on the decision of the respondent-State Government from the incentives already given by the 1991 Industrial Policy and that by the subsequent Scheme 1995 the same benefit be given to them. It is an admitted fact that the industrial units of the appellants were in production prior to April 1, 1991 and they undertook expansion, modernisation, and diversification of their existing industries and have received the benefits with promise till end of seven years. Hence, in our view, when the appellants are in receipt of the benefits as per the Scheme 1991 it cannot be curtailed by another scheme.

48. I have seen the judgment written by my sister Mrs. M. Sarma, J. I fully agree to the principles of law as discussed by her. There is no controversy that the State cannot resile from the promise it makesthrough its industrial policy for extending benefits like exemption of payment of taxes, rebate in rent for land and subsidies in different forms when the investors in pursuance of the said promise set up industrial units. Promise once held by the State cannot be withdrawn, except in certain exceptional circumstances, to the detriment of the investors. Therefore, I fully agree to the conclusion arrived at by my sister Mrs. Sharma, J., that the incentives proposed in the Industrial Policy of Assam, 1991 cannot be taken away or abridged in any manner before the expiry of the period of concession promised to the industrial units. On this context, it has to be seen whether the Assam Industries (Sales Tax Concessions) Scheme, 1995 in any manner has adversely affected the concessions proposed in the Industrial Policy of 1991.

31. From a careful reading of what has been observed by Biswas, J., it is clear that there was no disagreement on the question that the State cannot resile from the promise that it makes through its Industrial Policy extending benefits like exemption of payment of taxes, rebate in rent of land and subsidies in different forms, when the investors, in pursuance of the said promise, set up industrial units. Promise once held out by the State cannot, to the detriment of the investors, be withdrawn, except in certain exceptional

circumstances.

32. In Manjushree Extrusions Limited [2001] 123 STC 366 (Gau) : [2001] 2 GLR 218, because of the difference of opinion between the two learned Judges, when the matter was referred to N.C. Jain, J., the learned third Judge, held that the Scheme of 1995 is inconsistent with the 1991 Industrial Policy and held that the industries were entitled to the full sales tax exemption on the basis of the Industrial Policy of 1991. Though the State Government filed a SLP before the apex Court against the said decision, the same was dismissed. A review application filed by the State also met with the same facts. The law laid down by this Court in Manjushree Extrusions Limited [2001] 123 STC 366 (Gau) : [2001] 2 GLR 218, while interpretating the Industrial Policy of 1991, and the said Scheme of 1995, therefore, remains intact and if the law laid down therein

applies to the case at hand, there will be no difficulty in holding that the petitioner-company''s said industrial unit was and still remains entitled to sales tax eligibility certificate on the basis of the 1991 Industrial Policy for the said period of 7 (seven) years.

33. In Maruti Tea Industries v. State of Assam Civil Rule No. 1223 of 1997 Reported in [2003] 129 STC 479 (Gau), too, this Court had the occasion to examine the similar controversy as has arisen in the present case with regard to the Industrial Policy of 1991 vis-avis the Scheme of 1995 framed under the AGST Act, 1993. In Maruti Tea Industries Reported in [2003] 129 STC 479 (Gau), black tea was excluded as a raw material from the benefit of sales tax exemption under the Scheme of 1995, although the same was not excluded under the Industrial Policy of 1994. This court, in its judgment, dated November 11, 20021, held that the industrial unit, set up on the basis of the Industrial Policy Resolution of 1991, cannot be denied the benefit of sales tax exemption by taking recourse to the Scheme of 1995 and the said industrial unit was held to be entitled to sales tax exemption on the purchase of raw material, namely, "black tea" for a period of 7 years as per the Industrial Policy of 1991.

34. Put shortly, when a person, acting upon the representation made by another, alters his position, the doctrine of promissory estoppel estops the person making the representation from going back on his words to the detriment of the one, who has altered his position. The doctrine of promissory estoppel was evolved, in England, as a principle of equity to mitigate the rigours of strict law and to prevent injustice taking place from strict adherence to law. The development and expansion of this doctrine, particularly, in the realm of its application against Governments, in India, in the post-independence era of this country, makes a fascinating reading.

35. The earlier English decisions, which involved the application of this doctrine, particularly, the decisions in Hughes v. Metropolitan Railway Co. [1877] ACJ 439 and Birmingham & District Land Co. v. London & North Western Rail Co. [1888] 40 Ch. D. 268, seemed to suggest two limitations in the application of this doctrine, the first limitation being that the parties must have a contractual or legal relationship in order to apply the doctrine and the second one being that this doctrine can operate only as a shield and not as sword. To put it differently, the doctrine of promissory estoppel had no application if the parties were not bound by some contractual or legal relationship and that the doctrine could have been applied only as a defence and could not have formed the basis of a cause of action against anyone. Both these limitations imposed on the operation of this doctrine have, as I shall indicate shortly, been dispensed with in its application in India. In the post-independence era of our country, there are two remarkable decisions, which applied the doctrine of promissory estoppel and recognised that a cause of action can be founded even by taking resort to this doctrine, the first case being Ganges Manufacturing Co. v. Sourujmull ILR [1880] Cal 669. This doctrine was also applied as a formation for cause of action against the

Government in Municipal Corporation of the City of Bombay v. Secretary of the State ILR [1905] 29 Bom 580. In the latter case, Jenkinson, C.J., speaking on behalf of the division Bench, observed that the doctrine, which was being applied, took its origin "from the jurisdiction assumed by the courts of equity to intervene in the case or to prevent fraud". This decision in Municipal Corporation of the City of Bombay ILR [1905] 29 Bom 580 , as expressed by Bhagawati, J., speaking for the Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , is a clear authority for the proposition that it is open to a party, who has acted on a representation made by the Government, to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

36. The first glimpses of the application of this doctrine, in its full vigour, can be noticed, very early in post independent era, in the decision of the Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, . The facts giving rise to this case were, in brief, thus : In the year 1865, the Government of Bombay called upon the predecessor-in-title of the Municipal Corporation of Bombay to remove old markets from a certain site and vacate the same. On the application of the Municipal Commissioner, the Government passed a resolution approving and authorising the grant of another site to the Municipality. The resolution adopted by the Government further stated, "the Government do not consider that any rent should be charged to the Municipality as the markets will be, like other public buildings, for the benefit of the whole community". Although possession of the site was made over to the then Municipal Commissioner, no formal grant was, in fact, executed as required by the relevant statute. Acting, however, on this resolution, the Municipal Corporation gave up the site on which the old markets were situated and spent a sum of Rs. 17 lakhs in erecting and maintaining markets on the new site. In 1940, the Collector of Bombay assessed the new site to Land Revenue and the Municipal Corporation, thereupon, filed a suit for a declaration that the order of assessment was ultra vires and it was entitled to hold the land forever without payment of any assessment. The suit was dismissed, for, notwithstanding the said resolution, the fact remained that no formal grant, in terms of the relevant statute, had been made by the Government. An appeal was preferred before the High Court. The High Court of Bombay held that the Government had lost its right to assess the land, in question, by reason of the equity arising on the facts of the case in favour of the Municipal Corporation. The High Court accordingly reversed the decision of the trial court and held the Corporation entitled to hold the land forever without payment of any rent. The Collector preferred an appeal before the apex Court. There was no dispute that by reason of non-compliance with the statutory formalities, the Government''s resolution of 1865 was not a formal grant passing title in the land to the Corporation. There was also no dispute that there was, legalistically speaking, no formal enforceable contract between the State Government and the Municipal Corporation. Of the five Judges, Das. J., speaking

for the majority, observed that the possession of the Corporation, not being referable to any legal title, was adverse to the legal title of the Government and the right acquired by the Corporation to hold the land in perpetuity included immunity from payment of rent. Patanjali Sastri, J., expressed a contrary view holding that the express provisions of the statute could not be overridden by considerations of equity. Chandrasekhara Aiyar, J., concurred with the conclusion of Das, J., but based his reasoning on the fact that by the resolution, representations had been made to the Corporation by the Government and the accident that the grant was invalid did not wipe out the existence of the representation. The observations, so made by Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , have been treated as the single most exposition of law on the doctrine of promissory estoppel involving Governments. The relevant observations may, therefore, be taken note of, which read as follows:

21. ...In the present case, the Corporation stands on much firmer ground. They have acquired a title to the land which the Government cannot upset or challenge. This acquisition of title is as a result of the law of limitation. It has nothing to do with any conduct on the part of the Corporation which can be said to have rendered the representation about non-liability to assessment of no legal effect or consequence. The invalidity of the grant does not lead to the obliteration of the representation.

22. Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being committed ? If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115, Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. Whether it is the equity recognised in Ramsden''s case [1866] L.R. 1 H. L. 129: 14 W. R. 926, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power. As pointed out by Jenkins, C.J. in Dadoba Janardhan''s case ILR [1901] 25 Bom 714, a different conclusion would be ''opposed to what is reasonable, to what is probable, and to what is fair''.

37. A careful reading of the above observations made by Chandrasekhara Aiyar, J., would indicate that the doctrine was applied in the Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , without there being any formal contractual or legal relationship existing between the parties concerned, for the representation sought to be enforced against the Government, in Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, was legally invalid inasmuch as the representation had not been made in

the manner as the statute had prescribed. This apart, the doctrine was resorted to not merely as a shield for defence, but for founding the cause of action against the Government. To this extent, the decision in Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, deviated from the traditional views of the English Courts and can be treated as the path-breaking judgment on the doctrine of promissory estoppel.

38. What also needs to be emphasised is that contrary to the conclusion reached by Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , that the expressed provisions of a statute could not be overridden by considerations of equity, Chandrasekhara Aiyar, J., opined, "....The invalidity of the grant does not lead to the obliteration of the representation". Noticing this change, the Supreme Court in State of Punjab Vs. Nestle India Ltd. and Another, , while referring to the observations of Chandrasekhara Aiyar, J., explained as follows:

25. In other words, promissory estoppel long recognised as a legitimate defence in equity was held to be found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute.

39. What crystallises from the above discussions is that the observations made by Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , reveal that the doctrine of promissory estoppel, which had long been recognised as legitimate defence in equity, was held to found a cause of action against the Government, even when the representation sought to be enforced against the Government was not strictly in accordance with the statute in the sense that the representation was made in a manner, which was not in conformity with the procedure prescribed by the statute. I may also hasten to point out that though the observations of Chandrasekhara Aiyar, J., that "the invalidity of the grant does not lead to the obliteration of the representation" do not stricto senso, form the ratio of the decision in Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , yet these observations contained the seed and, in fact, laid the foundation for the subsequent development of the scope and ambit of the doctrine of promissory estoppel, in India, particularly, in its application to the promises made by the Government.

40. Disagreeing with the contrary views expressed by Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , that the expressed provisions of the statute cannot be overridden by considerations of the equity and, at the same time, approving the views expressed by Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , that courts must do justice by the promotion of justice and good faith as far as it lies within their power, a three-Judge Bench of the Supreme Court, speaking through J.C. Shah, J., in Union of India v. Indo Afghan Agencies AIR 1968 SC 718, held, "Under our jurisprudence the Government is not exempt from liability to carry out the

representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen".

41. The decision in Indo Afghan Agencies AIR 1968 SC 718 not only strengthened the application of the doctrine of promissory estoppel, in India, against the Government by firmly laying down that the Government is not exempted from carrying out the representation made by it as regards its future conduct, the court, further, emphasised that in order to save itself from the operation of the doctrine of promissory estoppel, the Government must disclose the grounds of necessity or expediency, which make the Government fail to carry out the promise made by it. No wonder, therefore, that the decision in Indo Afghan Agencies AIR 1968 SC 718 has been described in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , as the epoch-making decision.

42 Close on the heels of the epoch-making decision in Indo Afghan Agencies AIR 1968 SC 718 , the two-Judge Bench of the Supreme Court in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , observed and held "....If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law, if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting therefor, but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation."

43. If taken to its logical conclusion, the observations made in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , would mean that if the statute prescribes a particular manner, which has to be followed by the Government for the purpose of enabling it to keep to its promises, law is not powerless, in appropriate cases, to compel the Government to act in such a manner as would be necessary to enforce the contract. Logically, therefore, when the statute does not bar making of a promise or the statute does not bar the Government from granting exemption from sales tax, the Government must, acting upon its industrial policy, bring out a notification in terms of the taxing statute in order to keep to its promises rather than resile therefrom on the pretext that unless exemption is granted in the manner in which the statute has prescribed for granting of exemption, no enforceable contract can be made out.

44. In other words, a careful reading of the decision in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , shows that if the conditions precedent for application of the doctrine exist, the court may compel the Government to act in terms of its

promises by forcing it to act in accordance with law, that it to say, if the law permits or does not prohibit act of granting of exemption of sales tax or if the law does not prohibit the Government from acting upon the representation that it had made, court can force the Government to act in terms of its promises by bringing, if necessary, its act in accord with law. For instance, if for granting of exemption of sales tax, a notification under the relevant sales tax statute is required to be published and if the Government has declared its Industrial Policy promising to grant exemption from sales tax if a particular type of industry is set up at a particular place, it will be no defence for the Government to say that so long as no requisite notification is brought out under the relevant statute, the promise made by the Government is not enforceable against it, for, the law is not powerless and will force the Government to bring out a notification in tune with its industrial policy if the person affected has, acting upon the representations made by the Government, set up the industry at the specified place.

45. It is, however, the decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , which has really built a complete structure for application of the doctrine, in India, against the Government, for, this decision lays down the conditions precedent subject to which the doctrine can be resorted to, it also lays down as to when the Government can be forced, with the help of the equitable doctrine of promissory estoppel, to abide by, and carry out, its promises, and as to when this doctrine may not be allowed to prevail upon and shall succumb to the Government''s decision not to abide by or carry out the promises made by the Government.

46. Noticing that the earlier English decisions seemed to suggest that the doctrine of promissory estoppel is limited in its operation to the cases, where the parties are already contractually bound and one of the parties induces the other to believe that the strict rights under the contract would not be enforced, made it clear the apex Court, speaking through Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , thus, "The doctrine would seem to apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise in future."

47. Also noticing that the decisions in Hughes v. Metropolitan Railway Co.(II) [1877] ACC 439, and Birmingham & District Land Co. v. London & North Western Rly Co. [1888] 40 Ch. D. 268 , lay down that the doctrine of promissory estoppel cannot itself be the basis of a cause of action and it cannot found a cause of action ; it can only be used as a shield and not a sword, the court reacted, in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , by observing as follows:

This narrow approach to a doctrine which is otherwise full of great potentialities is largely the result of an assumption, encouraged by its rather misleading nomenclature, that the doctrine is a branch of the law of estoppel. Since estoppel has always been traditionally a principle invoked by way of defence, the doctrine of promissory estoppel has also come to be identified as a measure of defence.

48. Making it explicit that the doctrine of promissory estoppel can form a cause of action against the Government, the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , justified such an approach in the following words:

13 See page 61 of [1979] 44 STC.... It is true that to allow promissory estoppel to found a cause of action would seriously dilute the principle which requires consideration to support a contractual obligation, but that is no reason why this new principle, which is a child of equity brought into the world with a view to promoting honesty and good faith and bringing law closer to justice, should be held in fetters and not allowed to operate in all its activist magnitude, so that it may fulfil the purpose for which it was conceived and born. It must be remembered that law is not a mausoleum. It is not an antique to be taken down, dusted, admired and put back on the shelf. It is rather like an old but vigorous tree, having its roots in history, yet continuously taking new grafts and putting out new sprouts and occasionally dropping dead wood. It is essentially a social process, the end-product of which is justice and hence it must keep on growing and developing with changing social concepts and values. Otherwise, there will be estrangement between law and justice and law will cease to have legitimacy. It is true, as pointed out by Mr. Justice Holmes, that continuity with the past is a historical necessity but it must also be remembered at the same time, as pointed out by Mr. Justice Cardozo that ''conformity is not be turned into a fetish''.

49. The true meaning and scope of the doctrine of promissory estoppel has been eloquently propounded by Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , thus, "The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise 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, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

50. In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , the case was that acting on the basis of the representations made by the Government that the sugar factories, if set up, would be exempted from payment of sales tax for a period of three years from the date of commencement of the production, the petitioners had set up their sugar factories. When the State Government refused to honour its representation and wanted to force the petitioners to pay sales tax for the period for which the Government had made such a promise, the petitioners approached the court. The plea taken by the Government for not keeping to its promises were, to a great extent, same as in

the present case. The pleas were as follows:

(1) in the absence of notification u/s 4-A, the State Government could not be prevented from enforcing the liability to sales tax imposed on the petitioners under the provisions of the Sales Tax Act;

(2) that the petitioners had waived their right to claim exemption ; and

(3) that there could be no promissory estoppel against the State Government so as to inhibit it from formulating and implementing its policies in public interest.

51. The apex Court, in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , rejected all the above three pleas of the Government and observed:

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel....If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the courts and the Legislatures, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible, The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that, having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that, in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case [1968] 2 SCR 366, claim to be exempt from the liability to carry out the promise ''on some indefinite and undisclosed ground of necessity or expediency'', nor can the Government claim to be the sole Judge of its liability and repudiate it ''on an ex parte appraisement of the circumstances''. If the Government wants to resist the liability, it will have to disclose to the court what are the subsequent on account of which the Government claims to be exempt from the liability and it would be for the court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability ; the Government would have to show what precisely is the changed policy and also its reason and justification so that the court can judge for itself which way the public interest lies and what the equity of the case demands, It is only if the court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the court would refuse to enforce the promise against the Government. The court would not act on the mere ipse dixit of the Government, for it is the court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the court would insist on a highly rigorous standard of proof in the discharge of this burden....It would, therefore, be seen that there is no authoritative decision of the Supreme Court which has departed from the law laid down in the celebrated decisions in the Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , and the Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, . The law laid down in these decisions as elaborated and expounded by us continues to hold the field.

52. Turning to the facts of the case in Motilal Padampat Sugar Mills Co. Ltd. Vs.

State of Uttar Pradesh and Others, , the court observed, "The appellant clearly altered its position by borrowing moneys from various financial institutions, purchasing plant and machinery from M/s. De Smet (India) Pvt. Ltd., Bombay, and setting up a vanaspati plant, in the belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the date of commencement of the production. The Government was, therefore, bound on the principle of promissory estoppel to make good the representation made by it. Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948, did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948, confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case the Government was bound to exempt the appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant."

53. In short, what the decision, in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , lays down is that where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee, acting upon the promise, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding the fact that there was no consideration for the promise and the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. The doctrine of promissory estoppel would be attracted in such a case, because, on the facts, equity would require that the Government should be held bound by the promise made by it. When the Government is able to show that public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest vis-a-vis the position of the one, who has altered his position, and it is the court, which has the duty to determine which way the equity lies. It would, however, not be enough for the Government merely to say that public interest requires that the Government should not be compelled to carry out the promise or that

the public interest would suffer if the Government were required to honour it. If the Government wants to resist the liability, it will have to disclose to the court what are the facts and circumstances on account of which the Government claims to be exempted from the liability and it would be for the court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability ; the Government would have to show what precisely is the changed policy and also its reason and justification so that the court can judge for itself which way the public interest lies and what the equity of the case demands. The court would not act on the mere ipse dixit of the Government, for, the Government cannot be the judge of its own cause and it is the court, which has to decide and not the Government, whether the Government should be held exempt from liability. This is, as Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , observes, "the essence of the rule of law".

54. Elaborately dealing with the various facets of the decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , a two-Judge Bench in State of Punjab Vs. Nestle India Ltd. and Another, , has pointed out that the court, in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , has reiterated the two well-known preconditions for the operation of the doctrine, namely, that (1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee ; and that (2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

55. Pointing out the strength of the doctrine of promissory estoppel, which were noted in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , the court in State of Punjab Vs. Nestle India Ltd. and Another, , has held that the strength of the doctrine lies in the fact that the doctrine is not limited only to cases, where there was some contractual relationship or other pre-existing legal relationship between the parties ; the principle would be applied even when the promise is intended to create legal relations or affect a legal relationship, which would arise in future, and that the Government is equally susceptible to the operation of the doctrine in whatever area or field, the promise is made- contractual, administrative or statutory.

56. The court, in State of Punjab Vs. Nestle India Ltd. and Another, , also pointed out the limitations placed on the doctrine laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , namely, that (1) The doctrine of promissory estoppel, being an equitable doctrine, must yield, when the equity so requires, means that the doctrine would yield only if the court is satisfied, on proper and adequate materials placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise, but should be free to act unfettered by it : and that (2) No representation can be enforced, which is prohibited by law, means that if the

person or authority making the representation or promise has the power to carry out the promise, then, subject to the preconditions and the two limitations indicated hereinbefore, the doctrine must be applied. Making the ambit of the doctrine explicit, observed the court in State of Punjab Vs. Nestle India Ltd. and Another, , "....Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax."

57. What emerges from the above discussion is that when the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute ; but if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax.

58. It may, now, be noted that it was in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , that a two-Judge Bench took the view that the plea of estoppel is not available against the Government in exercise of its legislative or statutory functions.

59. Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , is, of course, a case in which the representation was made by a person, who had no authority to make the representation. The note of disagreement, which was so struck in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , from the one, which the three-Judge Bench in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , had propounded, was formally disapproved by a Bench of three Judges in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , and the law, which was laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, was reaffirmed in the following words:

12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of the executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. We must concede that the subsequent decision of this Court in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of the executive function of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , that the doctrine of the promissory estoppel cannot be. defeated by invoking the defence

of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , could possibly overturn or disagree with what was said by another Bench of two Judges in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . If the Bench of two Judges in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , found themselves unable to agree with the law laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , they could have referred Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a co-ordinate Bench of the same court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,

13. We have carefully considered both the decisions in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , and Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , and we are clearly of the view of that what has been laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , represent the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , to the extent that they conflict with the statement of the law in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , and introduce reservation cutting down the full width and amplitude of the propositions of law laid down in that case.

60. The limitations to the doctrine of promissory estoppel delineated in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , were also reaffirmed in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , when the court said, "Of course we must make it clear, and that is also laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a 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. 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 transpired, it would be inequitable to hold the Government or public authority to the promise or 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 held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , and we find ourselves wholly in agreement with what has been said in that decision on this point."

61. The principles governing the application of promissory estoppel against the Government, flowing from the decision in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , are that if the Government possesses a power, it is bound to wield that power to enforce its promise, the limitation on the enforcement of the promise being when the statute prohibits the exercise of powers necessary for carrying out the representation made by the Government or when the overriding public interest permits the Government not keep itself within the bounds of the promise made by it. In short, as long as, by asking the Government to keep to its promise, the court does not force the Government to act contrary to law or against supervening public interest, the court will not be doing anything wrong.

62. When a statute prohibits or bars enforcement of the representation made by the Government, the court would not enforce the representation against the Government, for, the Government cannot be compelled to act contrary to the statute. Logically, therefore, when a sales tax enactment contains provisions enabling the Government to grant exemption from payment of sales tax, the court can, in an appropriate case, force the Government to act in terms of this representation and it would be no defence for the Government to say that necessary notification, in terms of the taxing statute, has not been brought out or published, for, the Government, in such a case, can be bound by its promise to exempt person(s) from payment of sales tax.

63. Closely following the decision in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , a two-Judge Bench of the Supreme Court, in Pournami Oil Mills and Others Vs. State of Kerala and Another, had the occasion to consider two notifications issued by the Government of Kerala. By the first notification, dated April 11, 1979, the Government of Kerala, in order to strengthen the traditional industries, which were labour-intensive, announced that the new industrial unit set up after 1st April, 1979, would be exempted from payment of sales tax for a period of five years from the date of production. By the second notification, dated September 29, 1980, the Government of Kerala clarified that the new unit would mean those small-scale industries, which have been set up on or after 1st April, 1979. The first question, which was raised before the court was whether the first notification, dated April 11, 1979, which had no reference to relevant sales tax laws, was an exemption order referable to the powers of the Government u/s 10 of the Kerala General Sales Tax Act, 1963 for, it was Section 10 of the Kerala General Sales Tax Act, 1963 which empowers the Government to grant exemption from payment of sales tax by way of notification in the Gazette.

64. It can be easily seen that the question raised in Pournami Oil Mills and Others Vs. State of Kerala and Another, , was substantially identical to what I am concerned with in the present writ petition, for, as in the present case, Pournami Oil Mills and Others Vs. State of Kerala and Another, , also raised the similar question, namely, as to whether, without a notification having been issued u/s 10 of the Kerala General Sales Tax Act, 1963, which contained provisions empowering the Government to grant exemption from payment of sales tax, a mere notification issued by the Government, on April 11, 1979, granting exemption from sales tax can be treated as legal and valid exemption granted to the industries, set up before April 1, 1979 and whether such industries would be entitled to the grant of exemption. Reacting to the question, which so arose, the apex Court observed, "During the hearing of the appeals it has been contended that the notifications in question were not in exercise of the powers u/s 10 of the Act. The High Court has proceeded on the footing that the first order dated April 11, 1979, was not made in exercise of statutory powers while the second order was issued in exercise of powers u/s 10. Having read the two orders and the contents, we are of the view that both the orders are covered by the provisions of Section 10 of the Act, though in the earlier order there is no reference to Section 10. It is a well-settled principle of law that where the authority making an order has power conferred upon it by statute to make an order made by it and an order is made without indicating the provision under which it is made, the order would be deemed to have been made under the provision enabling the making of it. We accordingly hold that both the orders are u/s 10 of the Act.

7. Under the order dated April 11, 1979, new small-scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five-year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently."

65. What emerges from the decision in Pournami Oil Mills and Others Vs. State of Kerala and Another, , is that when the Government makes an announcement promising to grant exemption from sales tax if specified industries are set up at specified place(s) within a specified date without, however, bringing out corresponding notification granting exemption in terms of the relevant statute, the notification, which makes no reference to the provisions of the relevant statute, while making the announcement, would still be treated as a notification under the relevant provisions of the statute and the doctrine of promissory estoppel would force the Government not to deny the incentive of exemption from payment of sales tax promised by it provided, of course, that the other conditions for application of the doctrine exist.

66. I may also pause here to point that the Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , was also a case of the grant of some incentives : but the Government took the stand that concession granted under the relevant order had been misused and undue advantage was being taken of the same and, hence, it would not be proper to hold the Government bound to keep to its promises, which had been made under order, dated June 30, 1969. The apex Court rejected these contentions on the ground that there was no material to show misuse of the concessions or taking of undue advantages. In the case at hand too, though it has been contended, on behalf of the contesting respondents, that the Industrial Policy of 1991 was not meant for persons, who had come to take advantage of the concessions announced by the Government, there is not even an iota of supporting materials on record to show that the concessions announced by the Government under the said policy have been misused or undue advantage thereof has been taken by the petitioner-company or anyone else.

67. It is also worth noticing that in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , it was also contended that the order, dated June 30, 1969, was of no legal effect as there was no statutory provision whereunder such concession could have been granted. Heavily deprecating the practice of the Assistant Commissioner or the Deputy Commissioner of Sales Tax raising such contention, the court, in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , observed, "The next submission of learned Counsel for the appellants was that the concessions granted by the said order dated June 30, 1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of June 30, 1969 was ultra vires and bad in law. We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either. Moreover, if the said argument of learned Counsel is correct, the result would be that even the second order of January 12,1977 would be equally invalid as it also grants concessions by way of refunds, although in a more limited manner and that is not even the case of the appellants."

68. In the case at hand too, the affidavit, on behalf of the contesting respondents, has been sworn by a Joint Commissioner of Taxes, who is a functionary of the State. In tune with the decision in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , I am bound to hold that I fail to see as to how a Joint Commissioner of Taxes, who is a functionary of the State, can say that the concession granted by the State itself was beyond the power of the State or how the State can say so either.

69. What is also of immense importance to note is that notwithstanding the fact that the court held, in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , that it was not open to the functionaries of the State or the State to challenge the power of the State to grant exemption, the court still examined the submissions on merit to determine as to whether the concessions could have been granted by the Government. On noticing that Section 8A of the Karnataka Sales Tax Act, 1957, empowers the Government to notify exemption and reduction in the levy of tax on sale or purchase of goods, the court held that the benefit granted is in the nature of exemption from payment of sales tax or reduction in the sales tax liability to the extent stated in the order and, hence, there is no substance in the contention that the State Government had no authority to provide for the grant1 of refunds. Again, the mere fact that the order of June 30, 1969 did not specify the power under which it was issued will make no difference, because such a power is clearly traceable to Section 8A and when the source of power under which it is issued is not stated in an order but can be found on the examination of the relevant enactment, the exercise of the power must be attributed to that source.

70. The above observations made in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , make it more than abundantly clear that when an order or notification is issued by a Government promising incentives in the form of exemption of, or reduction from payment of, sales tax if specified type or types of industries are, within the date(s) prescribed in this regard, set up within the place (s) specified there for and when such order or notification does not refer to the relevant statute, yet if the power to grant such exemption exists with the Government under a relevant statute, the Government would be bound to act on its promises and would be restrained, by taking recourse to the doctrine of promissory estoppel, from going back on the promises that it had made if anyone, acting upon the promises made by the Government, has altered his position to his detriment. The facts of the present case fit into the facts of the case, which the apex Court had considered in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . When this decision is applied to the factual matrix of the present case, there remains no escape from the conclusion that when the Government had announced sales tax exemption under the Industrial Policy of 1991 and repeated its assurance by notification, dated April 26, 1994, aforementioned and when the Government does have the power under the relevant sales tax enactment to grant such exemption, it will be no defence for the Government to say that until the notification is issued under the relevant statute, promise made by the Government cannot be enforced, for, enforcing of such promise would not amount to directing the Government to act contrary to law. Had the relevant statute not provided for such exemption, the matter would have been different.

71. Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , is a

case, decided by a Bench of three-Judge, which did notice the decisions rendered in Pournami Oil Mills and Others Vs. State of Kerala and Another, and Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, Referring to the case of Pournami Oil Mills and Others Vs. State of Kerala and Another, , the court, in Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , had this to say, "14 See at pages 442-444 of [1992] 85 STC GAU . In Pournami Oil Mills and Others Vs. State of Kerala and Another, , this Court had occasion to consider almost identical Government orders as those we are concerned with in these appeals....On this issue this Court held that it was an exemption order and that since there was an enabling provision in the statute empowering the Government to give exemption, though the Government order did not refer to the statutory provision conferring such powers the order should be deemed to have been made under the said enabling provision and that therefore both the orders were made in exercise of the powers u/s 10 of the Kerala Act. The second important point that was decided was that the second notification was prospective in operation and that industries set up on or after April 1, 1979 and before October 21, 1980, would be entitled to the benefit of the whole exemption under the first Government order for the full period of five years from the date they started production and that right could not have been curtailed by the second notification dated October 21, 1980, as the Government was bound by the rule of estoppel from taking away that right which had accrued to them under the first Government order. Only new industries set up after October 21, 1980, would have the restricted benefit as provided in the second notification."

72. As regards the Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, , the court in Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , observed, "Though this again was in the form of a Government order giving incentives and concessions, this Court held that since there is a power to grant an exemption or concessions under the statute the mere fact that it did not specify the power under which it was issued will make no difference and that the assessee would be entitled to the benefit of this order."

73. The court further clarified in Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , by observing as follows:

9 See at page 441 of [1992] 85 STC....It is well-settled that if power to do an act or pass an order can be traced to an enabling statutory provision, then even if that provision is not specifically referred to, the act or order shall be deemed to have been done or made under the enabling provision. Thus the Government orders satisfy all the requirements of the provisions of Section 5 of the local Act. The section also does not talk of any notification ; it only talks of a Government order exempting in whole or in part from payment of tax. This is very significant, if contrasted with Sections 4(1) and 4(5) of the local Act relating to the fixation of the taxable point refers to a notification by the Government. The Act itself

thus makes a distinction requiring a notification to be made for certain purposes and the making of a Government order in respect of certain other purposes. Moreover, since there is no form prescribed in this behalf if the particular order in effect is an exemption order, whether it takes the form of an order or notification makes no difference. But we may note from the various orders produced before us that normally in the case of grant of tax exemptions as an incentive to industry the exemption orders have generally taken the form of Government order rather than a notification. But in the case of other exemptions though they are also u/s 5 of the local Act they have taken the form of notification. Thus the pattern followed in Jammu and Kashmir seems to be that in respect of exemptions from payment of taxes following cabinet decision on policy matters and incentive they have taken the form of a Government order. It is necessary to refer this aspect because in later modifications while superseding the earlier orders or notifications, the Government have followed the specific pattern and have used the word ''orders'' in cases of grant of incentive and the word ''notifications'' in the other cases.

12. Thus on a plain reading there could be no doubt that the two

Government orders are referable to the power of the Government u/s 5 of the General Sales Tax Act and are exemption orders falling within the scope of that provision.

74. The decision of the three-Judge Bench in Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , too makes it clear that when an order granting exemption or reduction on payment of sales tax can be referred to an enabling provision in the relevant statute, the order granting exemption shall be deemed to have been one made under the enabling provisions of the relevant statute.

75. Though Mr. Saikia has not referred to I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , which is rendered by a two-Judge Bench of the Supreme Court, I may like to point out that this was another case in which the decision is, somewhat, contrary to what Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , has laid down. In this case, the court held to the effect that dispensing with payment of tax being a serious matter, the requirement of the existence of the provisions conferring such a power is mandatory and must be strictly complied with by the Government, for, there is no estoppel against statute. The relevant observations made in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , are quoted hereinbelow:

30 See para 25 of [1998] 110 STC....For a proper appreciation of this contention, it is necessary to keep in mind the distinction between an administrative act and an act done under a statute. If the statute requires that a particular act should be done in a particular manner and if it is found, as we have found hereinbefore, that the act done by the Government is invalid and ineffective for non-compliance with the mandatory requirements of law, it would be rather curious if

it is held that notwithstanding such non-compliance, it yet constitutes a ''promise'' or a ''representation'' for the purpose of invoking the rule of promissory/equitable estoppel. Accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the Government or other body to act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment meaningless and superfluous. Where the field is occupied by an enactment, the executive has to act in accordance therewith, particularly where the provisions are mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in accordance therewith. Where, of course, the matter is not governed by a law made by a competent Legislature, the executive can act in its executive capacity since the executive power of the State extends to matters with respect to which the Legislature of a State has the power to make laws (article 162 of the Constitution). The proposition urged by the learned Counsel for the appellant falls foul of our constitutional scheme and public interest. It would virtually mean that the rule of promissory estoppel can be pleaded to defeat the provisions of law whereas the said rule, it is well-settled, is not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the law cannot be allowed to be defeated by resort to rules of estoppel. None of the decisions cited by the learned Counsel say that where an act is done in violation of a mandatory provision of a statute, such act can still be made a foundation for invoking the rule of promissory/equitable estoppel. Moreover, when the Government acts outside its authority, as in this case, it is difficult to say that it is acting within its ostensible authority.

76. Taking note of the above observations made in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , the court in State of Punjab Vs. Nestle India Ltd. and Another, , which is a later decision, has this to say, "Although the view expressed by two Judges in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , has seen disapproved in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , it was ostensibly resuscitated in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, : I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, ...It would appear that these observations are in conflict with the earlier and subsequent pronouncements of the law on promissory estoppel. Chandrasekhara Aiyar, J. had held that the representation was enforceable despite the ''accident'' that the grant was invalid inasmuch as it was contrary to statute. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , had said that the promise was enforceable against the Government despite the requirement of Article 299 of the Constitution. Similarly, Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , held that despite the requirement of the statute prescribing the manner and form to grant exemption from payment of octroi, a promise not made in that manner or form

could be enforced in equity. Then again in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , the court directed an exemption to be granted on the basis of the principles of promissory estoppel even though Rule 8 of the Central Excise Rules, 1944 required exemption to be granted by notification. Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not ''fall foul of our constitutional scheme and public interest''. On the other hand, as was observed in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , and approved in the subsequent decisions:

''It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel''. None of these decisions has been considered in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , except for a brief reference to Chandrasekhara Aiyar, J.''s judgment which was explained away as not being an authority for the proposition that even where the Government has to and can act only under and in accordance with a statute-an act done by the Government in violation thereof can be treated as a presentation to found a plea of promissory estoppel. But that is exactly what the learned Judge had said. In any event judicial discipline requires us to follow the decision of the larger Bench. The facts in the present case are similar to those of prevailing in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . There too, as we have noted earlier, the statutory provisions required exemption to be granted by notification. Nevertheless, the court having found that the essential prerequisites for the operation of promissory estoppel had been established, directed the issuance of the exemption notification.

77. What emerges from the above discussion, as a whole, is that if the representation made by the Government is not barred under any law or if the same is not against larger public interest, the Government will be bound by the representation that it has made if a person, acting on the representations made by the Government, has altered his position to his detriment. In such a case, it will be no defence for the Government to say that no notification, in terms of the relevant statute, having been brought out to give effect to the representations made by the Government, the Government is not bound by the promise. In fact, in a case of present nature, promissory estoppel will come into operation and the court can force the Government to carry out the representations that it had made. Any notification, issued under the relevant statute, which runs contrary to the Government''s representation, may be interfered with. A mere claim by the Government that larger public interest permits the Government not to abide by its representation will not be enough to free the Government from the

commitments that it had made, for, the Government cannot be the judge of its own cause and the Government would have to lay bare all the facts and circumstances, which had induced the Government not to carry out the representation that it has made, and if, on balancing between the two competeting equities, that is, the commitment made to the promisee, on the one hand, and the public interest, on the other, the court finds that the public interest has the overriding effect, the promise would not be enforced, for, the doctrine of promissory estoppel, being an equitable relief, must yield, when so required.

78. Though Mr. Saikia, appearing on behalf of the contesting respondents, has referred to, and relied upon, Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, to show that the Government can change its industrial policy or the promises made thereunder. What is of utmost importance to note is that in the case at hand, the industrial policy of the Government has not changed. Without changing the Industrial Policy of 1991 and/or the ambit of the notification, dated April 26, 1994, aforementioned, the Department of Finance, in exercise of its powers granted under the AGST Act, 1993, has sought to deny the benefit of sales tax exemption, which even the notification, dated April 26, 1994 aforementioned makes available. In such a scenario, the case of Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, has no application, particularly, when I notice that in Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, , the industrial policy was amended and the vires of the second Industrial Resolution was not challenged. This apart, in Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, , the Industrial Policy Resolution by itself had not granted any exemption to the persons, who had set up industries pursuant to the Industrial Policy Resolution : whereas, in the present case, a clear and unequivocal representation was made in the Industrial Policy of 1991. Moreover, in the present case, the Industrial Policy of 1991 has not been amended and even the notification, dated April 26,1994, aforementioned, by which the policy was sought to be amended, has further specified that the industries, like that of the petitioner, which have already started commercial production, shall be entitled to avail the benefits of the 1991 Industrial Policy. The decision, in Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, , was referred to in State of Punjab Vs. Nestle India Ltd. and Another, and the apex Court observed that the said decision had no relevance, for, in State of Punjab Vs. Nestle India Ltd. and Another, , the representations were clear and unequivocal. Furthermore, the decision in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , is a later decision and rendered by a Bench of three Judges, as already indicated hereinabove, wherein, it has clearly been held that a notification issued under the sales tax enactment cannot go contrary to the industrial policy. Hence, the decision in Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, can be of no assistance to the respondents.

79. To a pointed query made by this Court, in fact, Mr. Saikia, conceded, though reluctantly, that the Industrial Policy of 1991 did hold out promises to persons,

who were to come forward to receive the benefits and the incentives under the said industrial policy. At the initial stage of the announcement of the said industrial policy, there was, in fact, no restriction at all and all industrial units, set up in any part of Assam, were entitled to receive the benefits. When the petitioner-company, acting upon the promise, which the State Government had held out, has already made investment in setting up the industrial unit, in question, the Government cannot arbitrarily resile from the promises that it had made under the said industrial policy. The doctrine of promissory estoppel makes the Government bound to keep its promises and if it fails to keep its promises, the law may force it not to resile from the promises made by it. In no uncertain words, made it clear the Supreme Court, in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , that the court would not act on the ipse dixit of the Government, for, it is the court, which has to decide and not the Government, whether the Government should be held exempt from the liability. In the case at hand, an industrial unit, such as the petitioner-company, was made ineligible from receiving the benefit of sales tax exemption by issuing notification, dated March 18, 1993. This was, however, changed by notification, dated April 26, 1994, aforementioned, and the industrial units, such as the one at hand, was made eligible. The reason for making industrial units, so eligible, was obviously to avoid hardship to the persons concerned, who had; acting upon the promises made by the Government, already set up the industries. No supervening public interest could be brought out on the record, on behalf of the respondents, to show that the Government should be allowed to resile from the promises that it had made under the Industrial Policy of 1991.

80. The decision in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , which the respondents have relied upon, also does not apply to the facts of the present case. In Kasinka Trading and another, etc. etc. Vs. Union of India and another, , the apex Court was required to consider the question as to whether the notification issued u/s 25 of the Customs Act, 1962, granting complete exemption from payment of customs duty to PVC resin imported into India by manufacturers of certain products requiring the said resin as one of the raw materials, which was issued in public interest and which had stated that the exemption would remain in force up to March 31,1981, could be withdrawn before the expiry of the said period by a fresh notification issued by the Government in exercise of the very same power u/s 25 of the Customs Act. The apex Court took the view that while issuing the notification, in question, no promise can be said to have been held out or any representation made to the importers, in general, on the basis of which they could insist, on the strength of the doctrine of promissory estoppel, that the customs duty exemption granted earlier by the first notification could not be reduced by the second one and since the said notification was issued in public interest, it could be withdrawn in public interest even before the time fixed therein for its operation.

81. It is of immense importance to note that in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , the court found that the so-called

exemption notification was actually designed to offset 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, for, no importer could have been expected to import PVC resins after paying duty and incur losses. The said notification was, therefore, according to the apex Court, issued with a view to offsetting the losses to the extent possible. The said notification, in the view of the apex Court, was not issued as a potential source of extra profit for the importer. In fact, the specific finding of the court in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , was that the exemption notification did not, in reality, hold out to the appellants any enforceable promise.

82. Coupled with the above, the specific finding recorded in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , was that the Government had presented sufficient materials before the court to show that it was, in the larger public interest, that the exemption be withdrawn. It was, thus, on the basis of twin factors, namely, that there was no promise held out by the notification, in question, and also that larger public interest justified the withdrawal of exemption that the decision in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , was rendered.

83. The decision in Shrijee Sales Corporation and Another Vs. Union of India (UOI), , relied upon by Mr. Saikia, is a case in which the correctness of the decision in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , came to be re-examined by a Bench of three Judges of the apex Court and the decision reached in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , came to be affirmed therein. In Shrijee Sales Corporation and Another Vs. Union of India (UOI), , too, the specific finding of the court was that "there is a supervening public interest and hence it should not be mandatory for the Government to give a notice before withdrawing the exemption" and it was, in these circumstances, that the court, in Shrijee Sales Corporation and Another Vs. Union of India (UOI), , declared that the decision in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , has been correctly reached. In Shrijee Sales Corporation and Another Vs. Union of India (UOI), , the apex Court has reiterated its earlier decision that in case there is supervening public equity, the Government would be allowed to change its stand ; but the court must satisfy itself that such a public interest exists. The three-Judge Bench in Shrijee Sales Corporation and Another Vs. Union of India (UOI), , approved the position of law propounded in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , to the effect that "it is only if the court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the court would refuse to enforce the promise against the Government."

84. The decision in Kasinka Trading and another, etc. etc. Vs. Union of India and

another, , therefore, cannot be of any assistance to the respondents. In the present case, the Industrial Policy of 1991 made unequivocal promises by providing a clear-cut scheme of incentives for the establishment of new industries as well as expansion, modernisation and diversification of the existing industries and the petitioner-company, acting on the said promises, established its new industrial unit. The decision in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , has, thus, no application to the facts of the case at hand.

85. In the case at hand, the respondents have not been able to disclose and establish any overriding public interest, which would make it inequitable to enforce the doctrine of estoppel against the State Government. Thus, with the help of the decision in Shrijee Sales Corporation and Another Vs. Union of India (UOI), , too, the Government cannot resile from the promises that it had made in the notification, dated April 26, 1994, aforementioned, in terms of its Industrial Policy of 1991.

86. Coupled with what have pointed out above, it is of immense importance to note, as already indicated at para 2 above that no affidavit, in the present case, has been filed by the respondent Nos. 3, 4, 5, 6, 7 and 8, i.e., the Department of Industries, Government of Assam, and its other functionaries. The Government cannot speak in different voices. As long as the industrial policy remains what it is and the same is not changed, the benefits promised thereunder cannot be taken away by another Department of the Government by taking resort to its statutory powers. If the granting of sales tax exemption to the re-rolling mills set up in the sub-divisions of Kamrup is not in public interest, nothing stops the Government from modifying its own industrial policy and/or withdraw the incentives. When the State Government does not change its policy, which it has announced, its Finance Department cannot, in exercise of its statutory powers, act in a manner, which would run contrary to the Government''s own policy.

87. The decisions in Kasinka Trading and another, etc. etc. Vs. Union of India and another, and Shrijee Sales Corporation and Another Vs. Union of India (UOI), , were considered by the apex Court in the case of M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , and the court has held that the notifications, impugned therein, were not designed or issued to induce the appellants to import PVC resin and, strictly speaking, therefore, the notifications could not have been said to have extended any "representation", much less a "promise", to anyone enabling him to invoke the doctrine of promissory estoppel against the State. It must, therefore, be held, in the light of the decision in M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , that the decision in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , had clearly proceeded on the basis that by issuing the earlier notification u/s 25 of the Customs Act, no promise had been held out to any of the importers that the notification''s life would not be curtailed earlier. The apex Court has, however,

clarified, in M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , that the decision in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , is not an authority for the proposition that even if a claim of exemption from import duty was resorted to in public interest by way of an incentive for a class of importers, though such public interest continued to subsist during the currency of such exemption notification and even though the promisee, for whose benefit such exemption was granted, had changed their position relying on the said exemption notification, it could still be withdrawn before the time mentioned therein.

88. In M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , the court''s specific finding, based on the given fact-situation, was that the notification, in question, had, indeed, held out promises and made representations to the general public inviting them to set up industries on the basis of the said representations and it was, acting upon such promises, that the industries had, in fact, been set up.

89. I may pause here to point out that in Shrijee Sales Corporation and Another Vs. Union of India (UOI), , the court had quoted, with approval, the observations made in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , that "even where there is no such overriding public interest, it may still be within the competence of the Government to resile from the promise on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, provided, of course,, it is possible for the promisee to restore the status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable".

90. I may also pause here to point out that from what was observed in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , and approved, as indicated hereinabove in Shrijee Sales Corporation and Another Vs. Union of India (UOI), , it is clear that even when there is no overriding public interest enabling the Government to resile from the promise, which it has made, yet, if on giving reasonable opportunity to the promisee, it is possible for the promisee, to restore status quo ante, the Government may resile from the promise made by it. If, however, the promisee cannot resume his position, the promise would become final and irrevocable and, thereafter, it would be impermissible for the Government to resile from the promise made by it except if it can plead and prove to the satisfaction of the court that overriding public interest constrains it to withdraw the incentives promised.

91. In the light of the above position of law, the court, in M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , examined if the promisee could resume the status quo ante and found, on such examination, that it was not possible for the person, who had acted upon the promises made by the Government, to restore the status quo ante. The court, therefore, in M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P.

State Electricity Board and others, , held, by invoking the doctrine of promissory estoppel, the Government bound by the promises that it had made.

92. What follows from a close and combined reading of the decisions in Kasinka Trading and another, etc. etc. Vs. Union of India and another, , Shrijee Sales Corporation and Another Vs. Union of India (UOI), and M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , is that where the Government makes representations inviting investments against incentives promised by it and a person acts on such a promise, yet the Government may, even where no overriding public interest so demands, resile from such promise by giving reasonable notice or opportunity to the promisee to resume his original position ; but if it is impossible for the promisee to resume his original position or restore status quo ante, the promise would become final and irrevocable. To put it differently, the Government can, even in the absence of supervening public interest, resile from its promise until such a stage is reached, when the promise becomes irrevocable due to the fact that the promisee cannot resume his original position or that the status quo ante cannot be restored.

93. I may also point out that the decision in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , relied on by the respondents, in fact, helps the case of the petitioner-company. In Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , the court directed an exemption to be granted on the basis of promissory estoppel even though Rule 8 of the Central Excise Rules, 1944, required exemption to be granted by way of notification. In the present case, there is specific provision u/s 9(4) of the AGST Act, 1993, empowering the Government to frame a scheme granting exemption from payment of sales tax to any class of Industries even for the period prior to the commencement of the Act. As a matter of fact, even prior to enactment of the AGST Act, 1993, Section 7 of the Assam Sales Tax Act, 1947, had specifically empowered the Government to exempt any goods from levy of sales tax by amending the schedule appended thereto. The authority of the State Government to grant the exemption has also not been disputed by the respondents. In a case of present nature, the decision in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , is, thus, squarely applicable and on the authority of this decision itself, this Court is bound to direct the Government not to resile from the promise made by it under the notification, dated April 26, 1994 aforementioned.

94. The decisions in P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, , relied upon by Mr. Saikia, is a decision rendered upon the validity of the withdrawal of the previous policy and introduction of a new policy. In the present case, there is no change in policy and the industrial policy remains intact and, hence, the decision in P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, , is not applicable to the case at hand.

95. The decision reached in Hira Tikkoo Vs. Union Territory, Chandigarh and Others, , relied upon by the respondents, is also of no assistance to the respondents inasmuch as no larger public interest enabling the Government to

resile from the promises made by it could be shown. In fact, the averments made in the writ petition, which have remained wholly undisputed, is that the petitioner-company has been granted transport subsidy as well as subsidy on electricity. If the larger public interest required the Government to resile from its commitment, I fail to see as to how the Government continued to grant transport and electricity subsidised. In fact, no record has been produced by the contesting respondents to even remotely indicate that any exercise was carried out to determine if the public interest required withdrawal of the incentives given under the relevant industrial policy. Far from this, there is no decision from the Government in this regard and it is merely the Department of Finance, Government of Assam, which has, while issuing the impugned notification, withdrawn the incentives. Sadly enough, for withdrawing the exemption, which was promised under the notification, dated April 26, 1994 aforementioned, in terms of the Industrial Policy of 1991, even the Department of Finance has not placed any materials justifying the omission to issue the requisite notification.

96. Dealing with the submissions made on behalf of the respondents that the petitioner-company had impliedly collected sales tax, it is submitted Dr. Saraf that in paragraph 35 of the writ petition, it has been specifically averred that the petitioner had not collected any tax on the sale of finished products. Moreover, the eligibility certificate, contends Dr. Saraf, cannot be refused to the petitioner-company on the ground that the petitioner had collected the tax. Proviso to Clause 8(b) of the Scheme of 1995 (Part I) provides, points out Dr. Saraf, that a holder of the certificate of authorisation shall not collect sales tax on the sale of finished products and in case, he collects tax on such sales, the amount of sales tax, so collected, shall be deposited by him into the Government treasury. This proviso, nowhere, provides, contends Dr. Saraf, that an industrial unit shall not be entitled to the issuance of the eligibility certificate and shall not be entitled to exemption if tax has been collected by such a unit.

97. In Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , submits Dr. Saraf, exemption was sought to be denied on the ground that the industry had collected tax : but, the apex Court, while upholding that the industry is entitled to exemption, held that the question whether the assessee had collected any tax and whether the amount was collected by way of tax and whether any sales tax had merged in the fixation of price that may amount to collection of tax would have to be decided in a separate proceeding that may have to be initiated u/s 8B of the Jammu and Kashmir General Sales Tax Act. The said provision of Section 8B is, points out Dr. Saraf, parallel to Section 65A of the AGST Act, 1993. Further, this Court, in Harlalka RG & Co. v. State of Assam [1997] 1 GLR 131, has held, points out Dr. Saraf, that there is nothing like implied collection of taxes in a taxing statute and, in any case, the petitioner-company had not, according to Dr. Saraf, collected any tax either impliedly or explicitly.

98. From the decision in Pine Chemicals Ltd. and Others Vs. Assessing Authority

and Others, , it is clear that the determination of the question as to whether the impugned notification is or is not legally valid has nothing to do with the collection, if any, of sales tax by the petitioner-company. If the petitioner-company has collected any sales tax, remedy for recovery thereof lies within the relevant statute and this fact will not create any impediment in the way of this Court granting such relief(s) as the parties may be entitled to.

99. It has been contended by Mr. Saikia that the ignorance of law can be of no avail to the petitioners, for, the petitioners ought to have known, contends Mr. Saikia, that until a notification was issued under the relevant provisions of the AGST Act, 1993, the exemption from payment of sales tax promised by the Government under the Industrial Policy of 1991 would not be available to them. While dealing with this contention, it is necessary to point out that in a similar situation, the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , observed, "It is possible that the appellant might have thought that since no notification exempting the appellant from sales tax had been issued by the State Government u/s 4-A, the appellant was legally not entitled to exemption and that is why the appellant might have chosen to accept whatever concession was being granted by the State Government. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well-defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated June 25, 1970. In fact, in the petition as originally filed, the right to claim total exemption from sales tax was not based on the plea of promissory estoppel which was introduced only by way of amendment. Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement : there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in Martindale v. Falkner [1846] 2 C.B. 706:

''There is no presumption in this country that every person knows the law : it would be contrary to common sense and reason if it were so''. Scrutton, L.J., also once said : ''it is impossible to know all the statutory law, and not very possible to know all the common law''. But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in Evans v. Bartlam [1937] A.C.J. 473 : ''....the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application''. It is, therefore, not possible to presume, in the absence of any material placed before the court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dated June 25, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government.

100. In the face of the above golden words used, in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , showing that there is no such principle of law that "every person must be presumed to know the law", it is no longer open to the respondents to contend, as contended by Mr. Saikia, that the petitioner-company ought to have known that in the absence of appropriate notification under the relevant statute, the promise for exemption from payment of sales tax made under the relevant industrial policy and/or the notification, dated April 26, 1994, would not be made available to the petitioner-company. In short, this plea, raised on behalf of the respondents, is wholly untenable in law.

101. The true meaning and scope of the doctrine of promissory estoppel, in the realm of governmental promises, may be summarised thus : Where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee, acting upon the promise, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding the fact that there was no consideration for the promise and the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution or in accordance with the procedure prescribed by the relevant statute. The doctrine of promissory estoppel would be attracted in such a case, for, on the facts, equity would require that the Government should be held bound by the promise made by it. When the Government is able to show that public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest vis-a-vis the position of the promisee, who has altered his position, and it is the court, which has to, eventually, determine which way the equity lies. It would, however, not be enough for the Government merely to contend that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour its promise. If the Government wants to resist the liability, it will have to disclose to the court what are the facts and circumstances on account of which the Government claims to be exempted from the liability and it would be for the court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability ; the Government would have to show what precisely is the changed policy and also its reason and justification so that the court can judge for itself which way the public interest lies and what the equity of the case demands. The court would not act on the mere ipse dixit of the Government, for, the Government cannot be the judge of its own cause and it is the court, which has to, ultimately, decide and not the Government whether the Government should be held exempt from liability. The doctrine of promissory estoppel would apply even when the promise would, if acted upon, give rise to legal relationship in future. The doctrine of promissory estoppel would not be attracted if the promise made by the Government is barred by law. However, when the law does not bar the

Government from making the promise, as might have been made by the Government, or when making of the promise itself is not contrary to law, the Government would be required to abide by the promise. The Government has to function as a cohesive body and its different organs or departments have to act in tandem with each other and in harmony with each other on the principles of collective responsibility. The constitutional scheme of governance of the Government does not permit the Government to work in violation of the principles of collective responsibility. It will, therefore, be no defence for the Finance Department, in a case of the present nature, to merely contend that until the time, requisite notification, in terms of the relevant statute, is published, the promise for tax exemption made by the Government under its industrial policy cannot force the Government to grant such exemption, for, there is no estoppel against the statute. In a case of this nature, if the promise made by the Government is not barred by law, though the same might not have been made strictly in accordance with the relevant statute, yet it will be the duty of the court to trace out the source of power of the Government and if the power is found to exist with the Government, the Government cannot be allowed to resile from its promise by merely citing lack of issuance of appropriate notification(s) in terms of the relevant statute. Since the doctrine of promissory estoppel can be used not merely as a shield but also as a sword and for forming cause of action, permissible it would be for the court to insist upon the Government to issue requisite notification or, conversely, not to demand payment of taxes contrary to the promises made by the Government. If the industrial policy invites investment by making promises of exemption from payment of sales tax, neither the Finance Department can levy sales tax on the ground that until necessary notifications in terms of the relevant statute is issued, the industry, in question, would be liable to pay sales tax nor would it be permissible for even the Government to say that until the notification in terms of the relevant statute is brought out or published, the promise cannot be enforced against the Government. In a given case, however, even when the promise is not barred by law and there is no supervening public interest permitting the Government to resile from the promise, it will be still permissible for the Government to resile from the promise made by it if it is possible for the promisee to resume its original position or to restore status quo ante if, on a reasonable opportunity being given to the promisee, the promisee can resume his original position. If the status quo ante cannot be restored, the promise would become irrevocable and can be enforced against the Government. It will be no defence for the Government to say that the promisee ought to have known the position of law that without issuance or publication of the requisite notification under the relevant statute, the promise would not be binding.

102. What crystallises from the discussions held, as a whole, above is that the respondents have miserably failed to justify the omission to include in the Scheme of 1995 the requisite provisions granting exemption from payment of sales tax in terms of the relevant industrial policy and the notification, dated

April 26, 1994, aforementioned, and the omission has adversely affected the interest of the petitioner-company. This court has, therefore, no option, but to interfere and stop the respondents from realising the sales tax for the period specified in the Industrial Policy of 1991 read with the notification, dated April 26, 1994 aforementioned.

103. In the result and for the reasons discussed above, this writ petition succeeds. The impugned notification, dated August 16, 1995, aforementioned, to the extent that the same is repugnant to the Industrial Policy of 1991 read with the notification, dated April 26, 1994 aforementioned, is hereby set aside and quashed. The impugned letter, dated April 28, 1998 aforementioned, issued by the Additional Director (US), Directorate of Industries, Government of Assam, declining to issue to the petitioner-company the requisite eligibility certificate is also hereby set aside and quashed. The respondents are directed not to force the petitioner-company to pay sales tax for the period, which the petitioner-company, in terms of the notification, dated April 26, 1994 aforementioned, is, otherwise, not liable to pay. The respondents are, however, left at liberty to recover, in accordance with law, sales tax, if any, that the petitioner-company might have collected on its finished products.

104. With the above observations and directions, this writ petition is disposed of.

105. No order as to cost.

