

Become Our Premium Member Today
[know more](#)

Home / Judiciary / Others 🔍

Bombay High Court Judgement

Share

f

t

g+

in

+

f t in 🖨️ +

Court :
Bombay High Court

Brief :

Citation :
Bharat Commerce & Industries Ltd. ... vs Union Of India And Others on 1 January, 1800

Bombay High Court
 Bharat Commerce & Industries Ltd. ... vs Union Of India And Others on 1 January, 1800
 Equivalent citations: 1987 (14) ECC 193, 1988 (15) ECR 146 Bombay, 1987 (32) ELT 40 Bom
 Author: Bharucha
 Bench: S Bharucha, V Tipnis

JUDGMENT Bharucha, J.

1. Is the plea of promissory estoppel available to a party aggrieved when a notification issued under statutory powers granting exemption from a duty or tax for a stated period is superseded during that period? This is the principal issue in these appeals.

BECOME A GLOBAL VALUATION PROFESSIONAL

IICA Indian Institute of Corporate Affairs
Partners in Knowledge Governance Transformation

IVCP IICA VALUATION CERTIFICATE PROGRAM

Want to make a career in the field of ADR?

LAWYERSCLUBINDIA
 INTERACTIVE PLATFORM FOR LAWYERS & PUBLIC

NA The Negotiation Academy™

UPDATED
GST Certification Course
 For Beginners to Advance Level
 by - Bimal Jain

Quick Links

2. On 5th January 1979 a notification (now called "the first notification") was issued by the Central Government under Section 25(1) of the Customs Act exempting viscose staple fiber and viscose tow when imported into India from "so much of that portion of the additional duty leviable thereon under Section 3 of the above mentioned Act as it is in excess of one Rupee thirty-two paise per kilogram". The first notification specified that it "shall be in force upto and inclusive of the 31st December 1979". By a notification dated 30 th October 1979 (" the second notification") also issued under section 25(1), the Central Government amended the first notification. For the words "1.32 p. per kg." therein the words "2.37 p. per Kg." were substituted and for the words "31st December 1979" therein the words "31st day of December 1980" were substituted. By reason of the second notification, from and after 30th October 1979 additional duty was payable on viscose staple fiber and viscose tow at the rate of representation made in the first notification that upto 31st December 1979 additional duty on viscose staple fiber and viscose tow would be Rs. 1.32 p. per kilogram.

3. The appellants in these appeals had acted on the first notification and had imported viscose staple fiber. The imported viscose staple fiber reached Bombay subsequent to the date of the second notification and the appellants were called upon to pay additional duty thereon at the rate of Rs. 2.37 p. per Kg. Each of the appellants, therefore filed a writ petition praying for the quashing of the assessment orders by which it was called upon to pay additional duty on the imported viscose staple fiber at the rate of Rs. 2.37 p. per kilogram and the refund of the amount of additional duty paid in excess of the rate of Rs. 1.32 p. per kilogram.

4. By his judgment and order dated 7th December 1983 in the writ petition filed by the appellant Hindustan Spinning & Weaving Mills Ltd., the learned single judge rejected the contentions raised by the appellant. The learned Judge followed that Judgment in the writ petition of the other applicants. It is, therefore, convenient to deal with the three appeals together. The learned judge held that the doctrine of promissory estoppel had no application to the legislative exercise of powers by the Central Government under Section 25(1).

5. There are two questions to be answered in regard to the case on promissory estoppel. First, as we have indicated, whether the plea of promissory estoppel is available to the appellant. Secondly, if available, whether it should be sustained having regard to the equities.

6. The second question was not raised by the respondents before the learned single judge and no affidavit in support thereof was then filed. During the course of the arguments before us, however, an application to put in such affidavit and raise such question was made and was allowed.

7. Counsel for the appellants relied upon four Judgments as on the first issue. A single judge of the Madras High Court in Sakthi Sugars Limited, Coimbatore v. Union of India, 1983 (12) E.L.T 484, relying upon the judgments of the Supreme Court in Union of India v. Anglo- Afghan Agencies (A.I.R 1968 S.C. 718) and Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh upheld the plea of promissory estoppel in circumstances similar to those before us. In M. Jamal Company v. Union of India, 1985 (21) E.L.T 369, a Division Bench of the Madras High Court made the observation that the plea of promissory estoppel would be available where a notification under Section 25(1) was withdrawn before the expiry of the duration therein specified. In Sri Chakra Tyres Ltd., v. Union of India, 1987 (29) E.L.T. 865, a single Judge of the Madras High Court upheld the plea of promissory estoppel in similar circumstances. The learned single Judge based his judgment upon the decisions in Godfrey Philips India Ltd. and M.P. Sugar Mills.



Browse by
Category



Submit
Judgment

Search Judiciary



Subscribe to Judiciary Feed

Enter your email address

Submit

Browse by Category

Business Law

Civil Law

Constitutional Law

Criminal Law

Family Law

Labour & Service Law

Legal Documents

8. The decision very strongly relied upon by counsel for the respondents is that of a full Bench of the Delhi High Court in *Bombay Conductors and Electricals Ltd. v. Government of India*, 1986 (23) E.L.T. 87. This was a case of time-bound notification which had been superseded within the stated time and the plea of promissory estoppel was raised by a party who had acted on the representation in regard to time therein and had been prejudiced by its earlier suppression. The full Bench referred to the judgments of the Supreme Court in *Indo- Afghan Agencies and M.P. Sugar Mills* and in *Jit Ram Shiv Kumar v. State of Haryana*, wherein was expressed, as the Full Bench called it, a criticism of the "liberal view" taken in *M.P. Sugar Mills'* case. In the opinion of the Full Bench, it was unnecessary to explore the parameters of the doctrine of promissory estoppel in the case before it because it would be trespassing on the legislative domain if it admitted the doctrine in the fiscal field. The question of estoppel did not arise in the case of a tax law. In tax law there was "hardly any room" for the applicability of promissory estoppel. The legislature was omnipotent in the exercise of the taxing prerogative. There had been encroachments on the principle of the legality of taxation. The encroachment of the executive power on the territory reserved to the legislature in matters of taxation was generally explained by the need to make tax policy more flexible. A compromise had been reached between the orthodox doctrine of legality of taxes and the need, under special circumstances, to amend texts on taxation almost immediately by modifying the text through a decree of an order of the executive and ratifying it by the legislative power as soon as possible thereafter. This was how discretion was confined to the executive. But for all, practical purposes, it was the legislature which was speaking through the mouth of the executive. Section 25 of the Customs Act delegated power to the Central Government, that is, the executive branch, to grant exemption generally from duty whenever it found it necessary so to do in the public interest, either absolutely or subject to such conditions as might be specified in the notification. At the same time Section 159 of the Customs Act said that exemption notification issued under Section 25 had to be laid before parliament as soon as may be after their issue and the Parliament might amend or reject them. This showed that the ultimate law-making power was retained by the legislature in its hands and was not surrendered to the executive in the field of taxation. Was it legislative or executive in nature? If it was executive the doctrine of promissory estoppel could be called in aid. But if it was legislative in character, the short answer to the petitioners' case was that there could be no estoppel against the legislature. Apart from the indication was that notifications under Section 25(1) were required to be published in the Official Gazette. Notifications issued under section 25(1) were, therefore, legislative orders. Against them "estoppel cannot be pleaded because the theory is that Against the operation of the statute there can be no estoppel". Two propositions were established by cases. One was that the power to tax was legislative in character, and two, that in tax law estoppel was unknown. The judgments relied upon by the Full Bench in this context were those in *Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh*, and in *M.P. Sugar Mills*.

9. A single Judge of the Calcutta High Court, in *Indian Rayon Corporation v. Collector of Customs*, 1987 (27) E.L.T 626, also took the view that found favour with the Full Bench of the Delhi Court in the *Bombay Conductor's* case.

10. We are, with respect, in agreement with the view taken by the Full Bench of the Delhi High Court to a limited extent. In exercising the power conferred upon it by Section 25(1) of the Customs Act the Government does perform a delegated or subordinate legislative function. We so held because of the Judgment of the Supreme Court in *Jayantilal Shodhan v. F.N. Rana*, cited by Mr. Bulchandani, learned counsel for the respondents. The Supreme Court there said that notifications were of two kinds. Most government orders were notified so that the public might know them. All of them did not have the force of law. Only such notifications had the force of law as were a species of subordinate legislation passed by a body

having the authority to promulgate them and which laid down rules of conduct for persons in the community to obey. But there might be notifications which laid down no rule of conduct. For Example, all appointments and transfers of officers were notified through notifications but these were merely executive orders for the purpose of the information of the public and did not lay down any rule of conduct to be followed by persons in the community. It was clear that in order that a notification or order might have the force of law it had to contain a rule or body or rules regulating the conduct of a person or persons living in the community; it had to be passed by a body which had the necessary authority for the purpose and it was then that it would be enforceable by courts or other authorities and would have the force of law. In order that a notification or order might recognize it if necessity arose; it was further necessary that the same should lay down a rule or course of conduct which a person or persons living in the community was obliged to follow and which, therefore, became enforceable by the Courts or other authorities and acquired the force of law. When such authority framed such rules it made subordinate legislation which had the force of law, for such rules laid down a course of conduct to be followed by a person or persons living in the community the breach of which would be enforceable.

11. We must in this context refer to the judgment of the Supreme Court in *Indian Express Newspapers (Bombay) Private Ltd. v. Union Of India*, . The Supreme Court was here concerned with the power conferred by Section 25(1). It is assumed that the power to grant exemption thereunder was a legislative power and a notification issued by government thereunder amounted to a piece of subordinate legislation. It did not accept the argument advanced on behalf of the Government that a notification issued under Section 25(1), being in the nature of subordinate legislation could not be tested by applying the standards of the argument to administrative action. Reliance had been placed in support of the argument on the Supreme Court's judgment in case of *Narinder Chand Hem Raj* (relied upon by the full Bench of the Delhi High Court in the Bombay's Conductor's case) where it had been held that, the power to impose tax was a legislative power whether that power was delegated by the legislatures or its delegates; the fact that the power was exercised to the legislature or by its judgment in the *Indian Express* case the Supreme Court noted that in *Narinder Chand Hem Raj*'s case it had drawn a distinction between the amendment of the Schedule to the Punjab General Sales Tax Act, by the issue of a notification by the Government of Himachal Pradesh in exercise of power delegated by the legislature and the power of Government to grant an exemption under a power to grant exemption. It stressed the observation in the *Narinder Chand Hem Raj* judgment that unless the executive was specifically empowered by law against a particular person. The Supreme Court pointed out that in the *Indian Express Newspapers'* case it was concerned with the power to grant an exemption as conferred by Section 25.

12. We have, as pointed out, basing ourselves on the judgment of the Supreme Court in the case of *Jayanthilal Amratlal Shodhan*, come to the conclusion that the act of Government granting exemption under Section 25(1) is an act of subordinate legislation. In our view, the question still arises; is the plea of promissory estoppel available when makes a representation but, thereafter, acts contrary to the representation?

13. Two judgments of the Supreme Court must be immediately noticed. First, the judgment in the *Godfrey Philip's* case. The Doctrine of Promissory estoppel was invoked against Government on the basis of a presentation contained in a letter dated 24th May, 1976 written by the Central Board of Excise & Customs to the Cigarette Manufacturers' Association. The letter stated that instruction had been issued to Collectors of Central Excise that the cost of corrugated fiber board containers did not form apart of the value of cigarettes for the purpose of excise duty. The representation was acted upon by cigarette manufacturers. On 2nd November, 1982 the Central Board addressed another letter to Collectors of Central

Excise. It stated that the matter had been re-examined and the earlier instructions should be treated as canceled. It was contended on behalf of the manufacturer that the doctrine of promissory estoppel applied and the cost of corrugated fiber board containers was not includible in the value of the goods. The question before the Supreme Court was whether the representation contained in the Central Board's letter dated 24th May, 1976 could sustain the plea of promissory estoppel. Bhagwati C.J. speaking also for Pathak and A.N. Sen JJ. on this aspect, reiterated what had been held by the Supreme Court in the case of M.P. Sugar Mills in regard to the doctrine of promissory estoppel and its parameters. He considered the judgment in Jeet Ram's case (also relied upon by the Delhi Full Bench) where it had been held that the doctrine of promissory estoppel was not available against the exercise of executive functions of the State, where disagreement had been expressed with the observations made in the case of M.P. Sugar Mills and where it had been suggested that the doctrine of executive necessity was available to the Government to escape its obligation under the doctrine of promissory estoppel. He said that the Court had carefully considered the decisions in the M.P. Sugar Mill's case and in Jeet Ram's case and was clearly of the view that what had been laid down in the M.P. Sugar Mill's case represented that what had been laid down in the M.P. Sugar Mills case represented the correct law in regard to the doctrine of promissory estoppel. He expressed the court's disagreement with the observations in Jeet Ram's case to the extent that they conflicted with the statement of the law in Motilal Sugar Mill's case and introduced reservation cutting down the full width and aptitude of the propositions of law laid down in that case. The following passage in the Godfrey Philips' judgment is of great importance to the controversy before us :

"Of course we must make it clear, and that is also laid down in Motilal Sugar Mill case (supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or a public authority to be deferred by promissory estoppel from enforcing a statutory prohibition. It is equally true that a promissory estoppel cannot be used to compel the Government or a public authority or power of the officer of the Government or of the public authority to make."

[Emphasis ours].

3rd August, 1987

14. This brings us to consider the judgment of the Supreme Court in M.P. Sugar Mills' case. Briefly, the facts thereof were that a news of Uttar Pradesh had decided to give exemption from sales tax for a period of three years under a certain provision of the U.P. Sales Tax Act to new industries. The news item was based upon a statement made by the Secretary in the Industries Department of the U.P. Government that it intended to set up a new plant and sought confirmation that it would be entitled to a sales tax holiday for the period of three years confirmed. This was also confirmed by the Chief Secretary to the U.P. Government. It was his letter which was set up a representation by the Government. It was his letter which was set up a representation by the appellant and the U.P. Government was, on the basis of promissory estoppel, held not to be entitled to go back upon the representation. Bhagwati J., speaking for the Supreme Court, said that the true principles of promissory estoppel) was that where one party had by his words or conduct made to other a clear and unequivocal promise which was intended to create legal relations of effect a legal relationship to arise in the future, knowing or intending that it would be acted upon, and it was in fact so acted upon, the promise was binding on the party making it and he was not entitled to go back upon it if it was inequitable to allow him to do so having regard to the dealings which had taken place between the parties. The court considered the whether and to what extent the doctrine of

promissory estoppel was available against the Government. It noted the eloquent exposition of the doctrine in case Indo-Afghan Agencies. It was, it said, there laid down that a party which had acting in reliance on a promise made by Government altered its position, was entitled to enforce the promise against Government, even though the promise was not in the form of a formal contract as required by a Article 299. That Article did not militate against the applicability of the doctrine of promissory estoppel against the Government. The law could be taken as settled as a result of the decisions in the Indo- Afghan Agencies' case that where Government made a promise knowing or intending that it would be acted on by the promise and, in fact, the promisee, acting in reliance on it, altered position, his position, Government would be held bound by the promise and the promise would be enforceable against it at the instance of the promise, notwithstanding that there was no consideration for the promise required by Article 299 of the constitution. It was elementary that in a Republic Governed by the rule of law, no one, howsoever high or low, was above the law. Every one was subject to the law as fully and completely as any other and Government was no exception. However, promissory estoppel could not be invoked to compel Government to do an act prohibited by law. There could be no promissory estoppel against the exercise of legislative power. The legislature could not be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. In this context the court referred its judgment in State of Kerala v. Gwalior Rayon Silk Mfg.(Wvg.) Co. Ltd., . It said that that case "does not negative the applicability of doctrine of promissory estoppel against the Government". In regard to the case of Excise Commissioner, U.P. Allahabad v. Ram Kumar, , the court said that the observation therein that "there can be no question of promissory estoppel against the Government in the Exercise of its legislative, sovereign or executive powers", was clearly in the nature of arbiter and could not prevail as against the statement of the law in the Indo-Afghan Agencies' case.

15. We must now refer to the judgment in Gwalior Rayon Silk Mfg.(Wvg.) Co. Ltd., cited in the M.P. Sugar Mills' case as authority for the proposition that the legislature could not be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. (The relevant paragraph is paragraph 23). The company had established itself in Kerala for the production of rayon cloth pulp on an understanding that the State Govt. would bind itself to supply the raw material. Later, the State Government was unable to supply the raw materials and by an agreement undertook not to legislate for the acquisition of private forests for a period of 60 years if the Company purchased forest lands for the purpose of its supply raw material. The company purchased 30,000 acres of private forests, but legislation for acquisition of private forests was enacted. It was argued that, so far as the Company was concerned, the agreement of the State Government not to legislate should operate as equitable estoppel. The Supreme Court said, "We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel".

[Emphasis ours.]

16. In the Godfrey Phillips's case, as in the M.P. Sugar Mills' case, it was held that "(i) there can be no promissory estoppel from Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that (iii) promissory estoppel cannot be used to compel the Government or a Public authority to carry out a representation or a promise which is contrary to law or (iv) which was outside the authority or power of the officer of the Government or of the public authority to make". (Numerals supplied)". The doctrine of promissory estoppel is not available in the four cases so carefully set out. It is not available against the "legislature exercising legislative functions". It is not

enough that legislative functions are being carried out; it is only if the legislative functions are being carried out by the legislature that the doctrine is not available.

17. The doctrine is not available against a statutor in the sense that the representation is contrary to the terms of a statute the statute will prevail and the representation will not be enforced. That promissory estoppel is not available against a statute does not mean that promissory estoppel is not available when Government or some public authority does something in the exercise of powers conferred on it by statute.

18. Lastly, the doctrine is not available when the maker of the representation does not have the power to make it good.

19. The cases aforementioned do not cover a situation where Government exercises powers conferred upon it by statute or the powers of subordinate legislation in acting contrary to the terms of a representation it had earlier made. In other words, the Supreme Court has not in its enunciation of the situation where the doctrine of promissory estoppel will not be available said that it will not be available when Government exercise either powers conferred on it by statute or powers of Subordinate legislation. In the context of the powers of the legislature, the Supreme Court has very carefully stated that the doctrine is not available against "The legislature in the exercise of its legislative functions". Thus, legislation may be enacted by the legislature contrary to the terms of Government's representation. In a case such as the present the legislature could also resolve under the provision of Section 159 of Customs Act, to abrogate Government's representation. The legislature's legislative powers are plenary and cannot be cut down because Government has made a representation. Government cannot bind the legislature or trammel its plenary powers.

20. But we are here concerned with the application of the doctrine of promissory estoppel to Government, which made the representation and seeks to resile from it. The doctrine of promissory estoppel is that he who makes the representation is estopped from going back upon it provided he has the authority or power to make the representation good. In the M.P. Sugar Mills and Godfrey Philip's cases the representation were made by circular and letter respectively. The Supreme Court found the Government had the power to make the representation good and that power was conferred upon Government under a statute. It was held, even so, the Government was estopped from going back on the representation it had made. That the Government had attempted to resile from the representation by further circulars or letters is not relevant upon the ratio of the Judgments Government could, clearly not have resiled from the representation even by exercising the powers statutorily conferred upon it.

21. We were, therefore, inclined to take the view that the doctrine of promissory estoppel was available against Government when it was exercising powers of subordinate legislation. We saw no reason why Government should be permitted to act contrary to the terms of its representation, upon which citizens had based themselves, only because it was so acting in exercise of powers given under a statute or in exercise of powers of subordinate legislation. As the Supreme Court has pointed, Government is under no obligation to make a representation. If, then it does it must be held to it. If the legislature disapproves, it can enact legislation nullifying the representation. If the equities have changed and the public good demands that Government should act contrary to the terms of its representation, the Court will not require the Government to honor its representation; but, subject to that, it must.

22. At this stage of our cogitations counsel for the appellants found and cited the judgment of the Supreme Court in Pournami Oil Mills v. State of Kerala, . By a notification dated 11th April, 1979 small scale industries set up after 1st

April, 1979 were exempted by the State Government from the payment of sales tax for a period of five years from the date of production. A second notification dated 29th September, 1980 was issued by the State Government in exercise of powers conferred upon it by Section 10 of the Kerala General Sales Tax Act. The second notification altered the concession given by the earlier notification to the detriment of the small scale industries and it stated that it would be deemed to come into force with effect from 1st April, 1979. Section 10 of the Kerala General Sales Tax Act empowered the State Government to grant exemption and reduction in rates of tax. Clause [1] thereof empowered it, if it considered it necessary in the public interest, by notification in the Gazette, to make an exemption or reduction in rate [either prospectively or retrospectively] in respect of any tax payable under the Act. Clause [3] thereof permitted the State Government, by notification in the Gazette, to cancel or vary any notification issued under sub-section [1]. The Supreme Court found that both notifications had been issued under the provisions of Section 10. In regard to the claim of promissory estoppel raised by the appellants, the Supreme Court said, "To the facts of the present case, the ratio of M.P. Sugar Mills" case directly applies and the plea of estoppel is unanswerable." The Supreme Court noted that it was not disputed that the first notification gave more of a tax exemption than the second notification. It held that all parties before it who, in response to the first notification, had set up their industries within the State of Kerala prior to the date of publication of the second notification would be entitled to the exemption promised under the first notification and such exemption would continue for the full period of five years from the date they started production.

23. The first and the second notifications in the Pournami Oil Mills' case were issued by the State Government in the exercise of power conferred upon it by statute. Inasmuch as the notifications contained rules binding on the community, the State Government, in issuing them, exercised the power of subordinate legislation. The Supreme Court held that the State Government was estopped from resiling from the representation made in the first notification, issued under such power. It is true that the judgment in Pournami Oil Mills does not address itself to the argument that promissory estoppel is not available against Government in the exercise of powers conferred by statute or of subordinate legislation but there can be no doubt at all, in the context of the facts, that the Supreme Court was very well aware of the nature of the power that the State Government was exercising when it made the representation and when it sought to act contrary to the terms of the representation. This is clearer still from the fact that the State Government had not expressly stated in the first notification that it was issued under the powers conferred by Section 10 of the relevant statute but the Supreme Court considered the point and decided that it had been issued thereunder.

24. The judgment in Pournami Oil Mills' case leaves us in no doubt and we must hold that the plea of promissory estoppel is available to the appellants.

25. The question that we must now consider is whether the plea should be upheld. The observations of the Supreme Court in this context in the M.P. Sugar Mills' case must be adverted to. They read thus: "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 honor it. The Government cannot, as Shah, J., pointed out in the Indo- Afghan Agencies case, 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 appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events 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 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 in the dicit of the Government, for it is the Court which has to decide and 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."

In the Godfrey Philips' case the Supreme Court said that it found itself "wholly in agreement with what has been said in that decision [M.P. Sugar Mills] on this point."

4th August, 1987

26. An affidavit has been filed by Jagdish Chander, Assistant Collector of Customs, "to set out the nature of public interest involved which made it imperative for the Government in exercise of its duties to amend" the first notification by the second notification. The affidavit states that the excise duty on indigenously manufactured viscose staple fiber was Rs. 4/- per kg. and, by reason of Section 3 of the Customs Tariff Act, additional duty on imported viscose staple fiber was chargeable at the same rate. A notification was issued on 1st March, 1975 whereby an exemption was granted in respect of excise duty on indigenous viscose staple fiber so that it became payable at the rate of Rs. 2.65 per kg. On 5th January, 1979 the first notification was issued fixing additional duty on imported viscose staple fiber at the rate of Rs. 1.32 per kg and it specified that this rate would prevail until 31st December, 1979. On 30th October, 1979 the notification dated 1st March, 1975 granting exemption from excise duty on indigenous viscose staple fiber was withdrawn so that from and after that date the excise duty thereon was at the rate of Rs. 4/- per kg. On the same day, that is, 30th October, 1979, the second notification was issued by which the additional duty on imported viscose staple fiber was raised to Rs. 2.37 per kg with immediate effect.

27. This is the only factual data placed by the respondents before the court in support of its contention that it would be inequitable to sustain the plea of promissory estoppel raised by the appellants.

28. It was contended by Mr. Bulchandani, learned counsel for the respondents, that viscose staple fiber was issued in the manufacture of textile, as was cotton. Cotton was not liable to excise duty but indigenously manufactured viscose staple fiber was. The task before Government was to protect cotton growers, to protect indigenous manufacturers of viscose staple fiber and to carry out the objects of Section 3 of the Customs Tariff Act. It was, therefore, imperative, once the exemption of excise duty on viscose staple fiber was removed on 30th October, 1979, to forthwith amend the first notification by the second notification and increase the additional duty leviable on imported viscose staple fiber.

29. Judged by the material that has been set out, Government would appear to have acted as if it was not conscious of its representation in the first notification. No consideration appears to have been given to the consequence of resiling from the representation. A balancing of the equities by the court is just not possible upon this material. No data has been furnished to the court as to why the excise notification had to be issued on 30th October, 1979. Assuming that it had to be issued, no material is placed on record to show what damage or loss would have resulted if the second notification had been deferred until 1st January, 1980.

30. It is too late in the day for Government to plead, as Mr. Bulchandani did, that it is, in practical terms, not possible to do so. It is not enough, and it has been so held by the Supreme Court, that the Government thinks that the public good requires that it should not act upon its representation. To defeat the plea of promissory estoppel the Government has to satisfy the court, on the strength of germane material, whatever may be its volume, that the public good did so require. The Government has totally failed to place such material before this court and to satisfy the court that, taking the equities into account, the public good required that the Government should not act as it had represented it would in the first notification. Consequently, the plea of promissory estoppel raised by the appellants must be upheld.

31. The respondents have not, we may note, disputed before the learned single judge or before us that the appellants had acted on the representation contained in the first notification.

32. Since we hold that the plea of promissory estoppel can be raised by the appellants and that it must be upheld, it is not necessary to deal with the subsidiary contentions that were raised on behalf of the appellants.

33. Before we conclude we must record our appreciation of the assistance given to us by counsel on both sides.

34. The appeals are allowed. The respondents shall levy additional but on the viscose staple fiber imported by the appellants and which arrived at the port of Bombay on or before 31st December, 1979 at the rate of Rs. 1.32 per kg. The respondents shall refund to the said imports within 8 weeks from today.

35. In Appeals No. 960 of 1983 and 655 of 1984 the bank guarantees furnished by the appellants pursuant to interim orders shall stand discharged.

36. No order as to costs.

37. Mr. Bulchandani applies for leave to appeal to the Supreme Court. Having regard to the judgment in Pournami Oil Mills' case we are unable to grant such leave.

adv.bharat @ PUNE

on 15 June 2016

Report Abuse

Published in Others

Views : 7848

Tags :- bombay high court judgement

← Previous

Next →

Recent Comments

Total: 3

Login to post comment



Santosh Mohite 13 December 2017

Respected sir/madam I am Santosh Mohite from Mumbai but now I am settled in Bangalore since 4 years and I am looking for court marriage and she is from Assam but I don't have my relatives and she has . As per her family they r supporting us to get marry with each other , will the court agree with us as court require 3 witness from each side and from my side is there her family will the court will accept.
Regards Santosh Mohite



vswaminathan 10 February 2017

Error: On Top line, -Citation , and elsewhere , should '1800' be corrected ; instead be read '?' .. NOTE for Admn.< per last comment, may have look into the point requiring clarification !



vswaminathan 📅 17 September 2016

OFFHAND The Judgment , as seen, is one rendered in the year 1987, almost 2 decades ago. it is to be believed that case law, - including the several citations therein- as updated,would have been of more informative value. In a few contexts /the bottom of paragraphs,it has been denoted, - "Emphasis ours". Unclear, in the absence of any indication, as to what or which portion is intended to be emphasized. The Admn./ the Editorial Team of Lci could have been of help by bringing about clarity through a special Note,as thoughtfully done by some others.

Other Latest Judgments

- Singapore HC judgement on S.377A
- SC Directs Navy To Grant Permanent Commission For Serving Women SSC Officers
- IPR (Trademark)
- North Sea Continental Shelf cases
- Increasing toll of custodial deaths and tortures in the police lock-ups
- Power of Magistrate u/s 178(3) CrPC viz. a viz. Extra Ordinary Jurisdiction of High Court under Article 227 of Constitution of India to order further investigation
- Delhi HC Issues Directions For Streamlining The Recording Of Victims/Witnesses Testimonies Of Foreign Nationals In Cases Of Sexual Assault
- Death By Rash Driving: Delhi HC Holds Debarment From Obtaining Driving Licence For Life As Excessive Sentence
- Refugee Can Pursue Claim For Damages Against Government For Illegal Detention: UK SC
- Sexual Harassment At Workplace Is An Affront To Women's Fundamental Rights: SC

[More »](#)

MENU

[Jobs](#)

[Coaching](#)

[Events](#)

[Bare Acts](#)

[Bookmarks](#)

[Legal Dictionary](#)

[Files](#)

[Judiciary](#)

[Notifications](#)

[Poll](#)

[Video](#)

[Top Members](#)

[Forms](#)

[Scorecard](#)

[Today's Birthdays](#)

[RSS](#)

[Rewards](#)

[Lawyers Search](#)

[About](#)

[We are Hiring](#)

[Advertise](#)

[Terms of Use](#)

[Disclaimer](#)

[Privacy Policy](#)

[Contact Us](#)

Our Network Sites



[Send Me Newsletter](#)

Email address...

