A SHRI JEE SALES CORPORATION AND ANOTHER

v.

UNION OF INDIA

DECEMBER 20, 1996

B [A.M. AHMADI, CJ., N.P. SINGH AND SUJATA V. MANOHAR, JJ.]

Customs Act, 1962 : Section 25(1)/Customs Tariff Act, 1975 : Chapter 39, First Schedule—Import of Polyvinyl Chloride resins—Levy of Customs
C *duty exempted vide Notification 66, upto 31.3.1981—Subsequent Notification withdrawing exemption from payment of Customs duty issued on 16.10.1980—Whether principle of promissory estoppel applicable against the Government—Held, applicable only if there is no supervening public interest—But Court must satisfy itself that such public interest exists.*

D **The Government vide Notification No. 66 Cus. dated 15.3.1979 G.S.R. gave exemption to imports of polyvinyl Chloride resins (PVC) from the duty of customs leviable thereon upto 31.3.81. The appellant on the faith of this solemn assurance given by the Government entered into an arrangement for the import of PVC resin as an actual user with the U.P. Export**
E **Corporation and opened Letters of Credit against the foreign suppliers on 2.10.80 and the goods arrived at the port on 8.11.80. However, Notification withdrawing the exemption from payment of customs duty was issued on 16.10.80. The appellants filed a writ petition challenging the notification withdrawing the exemption which was dismissed by the High Court.**

F **In appeal to this Court, the appellants alleged that they imported the PVC resin on the assurance that there would be no customs duty imposed upon it and that but for this exemption, they would not have imported the PVC resin as that would have been uneconomical. It was, therefore, contended that the Government should be estopped from**
G **withdrawing the benefit of Notification No. 66. It was also contended that the judgement in *Kasinka Trading* is not correct.**

Dismissing the appeal, this Court

HELD : 1.1. The determination of applicability of promissory estop-
H **pel against the public authority/Government hinges upon balance of equity**

or 'public interest' and that it is the Court which has to determine whether the Government should be held exempt from the liability of the "promise" or "representation". [896-H; 895-A-B] A

1.2. The principle of promissory estoppel is applicable against the Government but in case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. However, the court must satisfy itself that such a public interest exists. [894-A-B] B

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M/s. Motilal Padampat Sugar Mills Co. (P) Ltd. v. *State of Uttar Pradesh and Others,* [1979] 2 SCR 641, relied on.

Bombay Conductors and Electricals Ltd. & Anr. v. *Government of India & Ors.,* (1986) 23 E.C.T. 87 Delhi, referred to.

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Emmanuel Ayodji v. *Briscoe,* (1964) All E.R. 556, cited.

2.1. The appellants in the present case have not disclosed any facts which could show the existence of better equity in their favour. All that they have alleged is that they would not have imported PVC resin without the exemption as that would have been "unviable" and "uneconomical" and further that many persons took full advantage of the exemption; moreover the exemption accorded preferential treatment to some persons, but not to the appellants. The facts of the economic situation explained in the judgment in *Kasinka Trading* have not been controverted. Nor is it alleged by the appellants that public interest did not call for supersession of the Notification No. 66. [896-D-F] E F

2.2. Once the public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in case where a period has been indicated. The Government is competent to resile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation which cannot be rectified. [896-H; 897-H] G

Modilal Padampat Sugar Mills v. *GOI & Ors.,* [1979] 2 SCR 641, relied on. H

A *Kasinka Trading & Anr. Etc.* **v.** *Union of India & Anr.,* **JT (1994) 7 SC 362, referred to.**

Emmanuel Ayodeji Ajayi **v.** *Briscoe,* **(1964) 3 All E.R. 556, referred to.**

3. In the present case, there is a supervening public interest and
B **hence it is not mandatory for the Government to give a notice before withdrawing the exemption. [897-C]**

4. The judgment in *Kasinka Trading* **is based on a correct analysis of facts and law, and there is no reason to differ from the judgement. [897-D]**

C *Kasinka Trading & Anr. Etc.* **v.** *Union of India & Anr.,* **JT (1994) 7 SC 362, affirmed. [897-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3000 of 1984.

D From the Judgment and Order dated 26.3.82 of the Delhi High Court in C.W.P. No. 1574 of 1980.

Soli J. Sorabjee, Ms. Amrita, Ravinder Narain, Rajan Narain, Ms. Punit Singh, Ms. Sonu Bhatnagar, Arvind Verma for the Appellants for
E JBD & Co.

M. Chandrashekharan, Additional Solicitor General, N.K. Bajpai, S.D. Sharma and V.K. Verma for the Respondent.

The Judgment of the Court was delivered by

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AHMADI, CJ. The present appeal impugns the judgment of the High Court of Delhi dated 16.3.1983 which dismissed the writ petition filed by the appellants challenging the Notification dated 16.10.1980 issued by the Government of India, Ministry of Finance, Department of Revenue, being
G Notification No. 205/T-No. 355/141/80-Cus I. (hereinafter referred to as "Notification No. 205"). This Notification was issued in supersession of an earlier Notification dated 15.3.1979 being Notification No. 66 Cus. dated 15.3.1979 G.S.R. (hereinafter referred to as "Notification No. 66. By the first Notification No. 66 the Government gave exemption to imports of polyvinyl resins (PVC) falling within Chapter 39 of the First Schedule to
H the Customs Tariff Act, 1975 from the duty of customs leviable thereon

specified in the first schedule. The relevant part of the Notification No. 66 is as under:

> "In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification of Government of India in the Ministry of Finance, Department of Revenue, No: 145-Customs, dated the 27th July, 1980, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts polyvinyl chloride resins, falling within Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from the whole of the duty of customs leviable thereon which is specified in the said First Schedule.
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> The Notification shall be in force upto and inclusive of the 31st March, 1981."

The case of the appellant is that on the faith of the solemn assurance given by the Government of India that no duty of customs would be leviable on the importation of PVC resins upto 31.3.1981, they entered into an arrangement for the import of PVC resin as an actual user with the U.P. Export Corporation, Kanpur and opened Letters of Credit against the foreign suppliers on 2.10.1980 and the goods arrived at the Bombay Port on 8.11.1980. However, the Notification withdrawing the exemption from payment of customs duty was issued on 16.10.1980. The relevant part of impugned Notification is as under :

> "In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act , 1962, (52 of 1962) and in supersession of the Notification of the Government of India in the Ministry of Finance, Department of Revenue, 66 Customs, dated 15th March, 1979, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts polyvinyl chloride resins, falling within Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of the duty of Customs leviable thereon which is specified in the said First Schedule as is in excess of forty percent ad valorem.
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> (K. Chandramouli)
> Under Secretary to the Govt. of India."

A The appellants alleged that they imported the PVC resin on the assurance that there would be no customs duty imposed upon it and that but for this exemption, they would not have imported the PVC resin as that would have been uneconomical. They, therefore, contend that the Government should be estopped from withdrawing the benefit of Notification No. 66.

B The impugned judgment of the High Court is quite brief. It relies entirely on a Full Bench decision of the same High Court in the case of *Bombay Conductors and Electricals Ltd. and another* v. *Government of India and Others,* 1986 (23) E.L.T. 87 (Delhi). The primary focus of the judgement in the case of *Bombay Conductors* (supra) was that imposition of C taxes and withdrawal thereof are legislative functions and since there can be no estoppel against the legislature, the withdrawal Notification was not hit by the principles of estoppel. The impugned judgment, however, does not dispute that the doctrine of promissory estoppel can be attracted against the State. However, after an analysis of various previous judgments D of this Court on the question of promissory estoppel against public authorities, the judgment concludes that the question of promissory estoppel cannot be invoked when the public interest requires otherwise. The following part of the judgment in *Bombay Conductors* can be quoted with profit to identify the reasoning of the High Court as to why the impugned Notification could not be quashed, be it a legislative function or an executive one. E

> "...In M.P. Sugar Mills it was recognised that where the Government owes a duty to the public to act differently, promissory estoppel cannot be invoked to prevent the Government from doing so. The Government cannot be prevented from acting in the F discharge of its duty under the law (AIR 1979 SC 621 at 646).
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> 42. One thing is clear from the authorities. There is not a single case which has gone to the length of saying that estoppel can be pleaded even against public interest. The present is a case essen- G tially of "public interest". All the authorities uniformly hold that against "public interest" the plea of estoppel will not avail a party. Otherwise the Government will not be able to assert its power and will be a helpless spectator even if public interest requires it to act differently. It would amount to surrender by the Government of its legislative powers which have to be used for the public good. H This is why Section 25 confers a statutory power on the Central

Government to act in public interest and to grant exemption or rescind it.

43. Estoppel cannot be invoked where the result will be to compel the Government to continue the exemption which a competent enactment has validly authorised the executive to withdraw in the public interest at any time. In public interest exemption can be granted. In public interest exemption can be rescinded. In other words, the rights of individuals are subordinated to the paramount interest of the public good. Section 25 underlines the importance of the common good. "Public interest" dominates the economic scene. If in public interest the Central Government finds that it is necessary to protect its own industry by putting up a tariff wall it will be futile to say that it cannot do so because it is bound by its promise to continue the exemption up to a particular time. The traders may feel incensed at the behaviour of the executive at its imposition, exemption, reimposition and re-exemption of taxes and levies. But when to exempt and when to impose duty is left to the executive by the legislature. It will depend on the economic climate. New times require new measures. In a world of growing inter-dependence the first thing every country wants is protection for its domestic industry.

44. Governed by the market forces and the laws of supply and demand, if the Government finds that it must withdraw the exemption notification at once it can do so. What actuated the Government to take the step of exemption and reimposition was enlightened self-interest, such self-interest as would subserve the common good. The imposition and exemption of customs duty are the chief vehicles of the Government to protect a domestic market and to steady the level of Prices. The tariffs are its chosen instruments to shield domestic production from foreign competition."

The same impugned Notification No. 205 came to be challenged in another set of appeals decided by this Court in *Kasinka Trading & Anr. etc.* v. *Union of India & Anr.,* JT 1994 (7) S.C. 362. The Notification was upheld by a Division Bench of this Court comprising of M.N. Venkatachaliah, CJI and A.S. Anand, J. It is, however, contended before us that the judgment in *Kasinka Trading* is not correct.

A It is not necessary for us to go into a historical analysis of the case law relating to promissory estoppel against the Government. Suffice it to say that the principle of promissory estoppel is applicable against the Government but in case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take B certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. However, the Court must satisfy itself that such a public interest exists. The law on this aspect has been emphatically laid down in the case of *M/s. Motilal Padampat Sugar Mills Co. (P.) Ltd.* v. *State of Uttar Pradesh & Others*, [1979] 2 SCR 641. The portion relevant C for our purpose is extracted below :-

> "It is only if the Court is satisfied, on proper and adequate material placed by the Government, the overriding public interest requires that the Government should not be held bound by the promise but D 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 he 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 E 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. But even where there is F no such overriding public interest, it may still be competent to 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 *status quo ante.* If however, the promisee cannot resume his position, the promise G would become final and irrevocable. Vide *Emmanuel Ayodeji Ajayi* v. *Briscoe,* (1964) 3 All. E.R. 556."

Two propositions follow from the above analysis :

H (1) The determination of applicability of promissory estoppel against

public authority/Government hinges upon balance of equity or 'public interest'. A

(2) It is the Court which has to determine whether the Government should be held exempt from the liability of the "promise" or "representation".

B

In the present case, the first Notification exempting the customs duty on PVC itself recites "...Central Government being satisfied that it is necessary in public interest to do so....". In the Notification issued later which gave rise to the present cause of action, the same recitation is present. C

In *Kasinka,* the Court has actually gone into this aspect. In para 19, the Court says :

> "PVC resins, it is not disputed, is manufactured in India and is also imported from abroad. In the counter to the Writ Petition filed by D the Union of India in the High Court, the justification for the issuance of the exemption Notification No. 66/79 in the "public interest" was spelt out by the respondents. It was stated that it was with a view to equalising sale prices of the indigenous and the imported material and to make the commodity available to the consumer at a uniform price, keeping in view the trends in the E supply of the material, that the Cabinet had decided to issue the exemption Notification No. 66 of 1979 under Section 25(1) of the Act. Subsequently, when it was found and realised that the international prices of the product were falling and consequently the import prices had become lower than the exfactory prices of the F indigenous material, the material was examined by the Government of India and it was decided in "public interest" to withdraw the exemption Notification. Thus, the Union of India has disclosed the circumstances under which the exemption was initially granted as well as the change of circumstances which warranted the G withdrawal of the exemption notification. The reasons given by the Union of India justifying withdrawal of the exemption notification, in our opinion, are not irrelevant to the exercise of the power in 'public interest', nor are the same shown to be insufficient to support the exercise of that power. From the material on the record it is apparent that the exemption Notification issued under H

A Section 25(1) of the Act, in "public interest", was designed to off set the excess price which the local entrepreneurs were required to pay for importing PVC resin at a time when the difference between the indigenous product. No importer could be expected to import PVC resins after paying duty and incur losses. The exemption Notification, was therefore, issued with a view to set off those losses to the extent possible. The Notification was not issued as a potential source of extra profit for the importer. Again, at the time when the Notification was withdrawn by the Government there was no scope for any loss to be suffered by the importers as was clearly stated in the counter filed by the Union of India and which contention has remained unrebutted. From the counter filed by the Union of India in the High Court it is abundantly clear that the necessity for the continuation of the exemption, in view of the changed circumstances, was no longer necessary."

It can be seen that the High Court in the case of *Bombay Conductors* had also noticed a similar public interest in withdrawing the Notification of exemption. The appellants in the present case have not disclosed any facts which could show the existence of better equity in their favour. All that they have alleged is that they would not have imported the PVC resin without the exemption as that would have been imported the PVC resin without the exemption as that would have been "unviable" & "uneconomical" and further that many persons took full advantage of the exemption; moreover, the exemption accorded preferential treatment to some persons, but not to the appellants. The facts of the economic situation explained in the judgment of *Kasinka* have not been controverted. Nor is it alleged by the appellants that public interest did not call for supersession of the Notification No. 66.

The next question is whether the fact that the Notification No. 66 mentioned the period during which it was to remain in force, would make any difference to the situation. in other words, could it be said that an exemption notified without specifying the period within which the exemption would remain in force, would be withdrawn in public interest but not the one in which a period has been so specified? Once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been

indicated. The Government is competent to resile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation which cannot be rectified. To adopt the line of reasoning in *Emmanuel Ayodeji Ajayi* v. *Briscoe* (1964) 3 All E.R. 556 quoted in *M.P. Sugar Mills* (supra) 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.

A B C

However, in the present case, there is a supervening public interest and hence it should not be mandatory for the Government to give a notice before withdrawing the exemption.

In our opinion, the judgment in *Kasinka Trading* is based on a correct analysis of facts and law. We see no reason to differ from the judgment. The present appeal is accordingly dismissed. Parties shall bear their own costs.

D

S.S. Appeal dismissed.