
**SUPREME COURT HOLDS THERE IS NO ESTOPPEL IN CASE OF
PUBLIC INTEREST**

**[Union of India & Anr. vs. M/s. V.V.F Limited]
(JUDGMENT DT. 22.04.2020)**

BACKGROUND

The doctrine promissory estoppel is that when one individual with the intention of creating or affecting lawful relationship makes a promise with another individual and that individual acts on it, that promise must be binding for the individual who is making it. It would not be allowed to go back from its words. The doctrine is based on the principles of justice, fair play, as well as a good conscience.

FACTS OF THE CASE:

The present case deals with a batch of matters arising from the High Court of Gujarat, High Court of Sikkim, and High Court of Guwahati. The High Court while invoking the doctrine of promissory estoppel against the Government held that, the withdrawal of the benefit/incentive to the industries is retrospective and not retroactive. On these grounds, the High Court quashed and set aside the notification(s) withdrawing the benefit/incentive. Aggrieved against the order(s), Union of India (**‘Petitioner’**) filed an appeal before the Hon’ble Supreme Court of India. The lead matter in the batch of appeals is Union of India & Anr. vs. M/s. V.V.F Limited (**‘Respondent’**) facts of which are dealt as hereunder:

- i. The district of Kutch was hit by a massive Earthquake in the year 2001, resulting in damage to infrastructure and huge casualties. Pursuant to the same, in order to attract large scale investment and generate employment opportunities, the Government of India announced an incentive scheme for setting up new industries in the earthquake affected District of Kutch, by issuing Central Excise Exemption Notification No. 39/2001-CE dated 31.07.2001(**‘Original Incentive Scheme’**);
- ii. In terms of the Original Incentive Scheme, exemption was granted to the goods cleared from a new industrial unit set up in the Kutch District of Gujarat prior to 31.07.2003 (subsequently extended to 31.12.2005) from so much of duty of excise as was equivalent to the amount of duty paid in cash/Personal Ledger Account (PLA) on the finished goods. That the said incentive of refund of the duty paid in cash/PLA was available for the period of 5 years from the date of commencement of commercial production;
- iii. On 09.11.2001, the Government of Gujarat announced an Incentive Scheme, 2001 under which Sales Tax exemption was available, to only to those industries which were eligible for excise exemption under the Original Incentive Scheme;
- iv. Various amendments were made in the Original Incentive Scheme. One of the major amendments was made vide Notification No. 16/2008-CE dated 27.03.2008 (**‘Impugned Notification’**). The said notification provided that, the benefit of refund would be granted with reference to the value addition, which was notionally fixed @ 34% for the commodity manufactured. It further provided for determination of a special rate by the Commissioner, in a situation where the actual value addition was more than the deemed value addition as specified;
- v. The present Respondents filed an appeal before the High Court of Gujarat against the Impugned Notification. Simultaneously, the Respondents also filed representations to the Government for re-consideration. Pursuant to the representations, another notification was issued by the Central Government vide Notification No. 33/2008-CE dated

10.06.2008 (**Notification No. 33/2008**). That thereafter the Central Government vide **Notification No. 51/2008** dated 3.10.2008 revised the deemed value addition at 75% in respect of the products manufactured by the original writ petitioners without giving them any option of applying for a special rate;

- vi. The High Court in its judgement quashed the Impugned Notification on the ground that, the same is retrospective and not retroactive, thereby barred by the doctrine of promissory estoppel.

PETITIONER'S SUBMISSIONS BEFORE THE HON'BLE SUPREME COURT

- i. That the High Court did not properly appreciate the Impugned Notification and erred in considering it to be a withdrawal of exemption benefit/ incentive provided by the Original Incentive Scheme;
- ii. That the Impugned Notification was merely clarificatory in nature and cannot be said to be withdrawal of exemption benefit incentive provided earlier by Original Incentive Scheme;
- iii. That the High Court ought to have appreciated that the power of such a kind to grant exemption from levy and collection of duty includes in itself the power to rescind, modify or withdraw such exemption;
- iv. That the provision of granting of refund of cash paid portion of duty prompted certain unscrupulous manufacturers to indulge in different type of tax evasion tactics. As such activities went against the object and purpose of grant of exemption/incentive, the Government came out with the Impugned Notification which as such can be only be said to be clarificatory in nature;
- v. The entire genesis of the Original Incentive Scheme was to provide exemption only to actual value addition made. It was in this background and with a view to give effect to such genesis, the Government in exercise of powers conferred under Section 5A of the Central Excise Act, 1944 modified the refund mechanism so as to provide that excise duty refund would be allowed only to the extent of duty payable on actual value addition made by the manufacturers undertaking manufacturing activities in these areas;
- vi. That the High Court has erred in not appreciating that the Impugned Notification was issued by the Government in public interest and in the interest of revenue.

RESPONDENT'S SUBMISSIONS BEFORE THE HON'BLE SUPREME COURT

- i. That the Impugned Notification offered refund of the total amount of Central Excise Duty paid in cash/PLA. On the basis of this promise held out by the Government of India to refund the Central Excise Duty paid in cash/PLA, heavy investments were made. Therefore, the Impugned Notification is in violation of the doctrine of promissory estoppel;
- ii. That mere misuse of the exemption notification by some of the manufacturers cannot justify the withdrawal of incentive since there is an adequate machinery available with the Revenue under the Central Excise Act and under the notification itself, to curb, deduct, as well as punish the offenders for any such misuse, otherwise the Revenue would suffer adverse consequences for no fault of theirs;
- iii. That the object and purpose for issuing the Impugned Notification is irrational and arbitrary and as such cannot be a ground to withdraw the Original Incentive Scheme.

QUESTIONS BEFORE THE HON'BLE SUPREME COURT

- i. Whether in the facts and circumstances of the case, the Impugned Notification which has been quashed and set aside by the High Court of Gujarat, can be said to be clarificatory in nature?
- ii. Whether it can be said that the Impugned Notification takes away the vested right conferred pursuant to the Original Incentive Scheme?
- iii. Whether the Impugned Notification can be made applicable retrospectively?
- iv. Whether the Impugned Notification has been issued in the public interest?
- v. Whether the same is hit by the Doctrine of Promissory Estoppel?

JUDGMENT BY THE HON'BLE SUPREME COURT OF INDIA

- The principles of promissory estoppel cannot be invoked, in case the circumstances warrant public interest. Also, the rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, where the objective is to do justice between the parties and to extend an equitable treatment to them;
- Every taxing statute including, charging, computation and exemption clauses, at the threshold stage should be interpreted strictly. In case of ambiguity in charging provisions, the benefit necessarily goes in favour of the assessee although in case of an exemption notification or exemption clause the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State;
- The Impugned Notifications are clarificatory in nature and do not take away any vested rights conferred under the earlier notifications/industrial policies. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect;
- That the object of granting the refund was to refund the excise duty paid on genuine manufacturing activities, which is not being taken away by the Impugned Notification. The Impugned Notification was introduced for the prevention of tax evasion. It can be said that the said Notification only rationalizes the quantum of exemption and proposing rate of refund on the total duty payable on the genuine manufactured goods.
- That the entire genesis of the policy manifesting the intention of the Government to grant excise duty exemption/refund of excise duty paid was to provide such exemption only to actual value addition made in the respective areas. As it was found that there was misuse of excise duty exemption it was considered expedient in the public interest and with a laudable object of having genuine industrialization, the Impugned Notification was issued. Thereby, the Impugned Notification was in the public interest, which cannot be said to be bad in law, arbitrary and/or hit by the doctrine of promissory estoppel.
- That the Impugned Notification does not take away any vested right conferred under the Original Incentive Scheme, it only clarifies that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities. Further, as the Impugned Notification are "to explain" the Original Incentive Scheme, it would be without object unless construed retrospectively.
- While concluding, the Court held that the Impugned Notification does not take away any vested rights conferred under the Original Incentive Scheme and therefore cannot be said to

be hit by the doctrine of promissory estoppel, the same is to be applied retrospectively and cannot be said to be irrational and/or arbitrary.

- The Court while allowing the appeals held that the respective High Courts have committed a grave error in quashing and setting aside the Impugned Notification on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not retroactive.
- However, the Court clarified that the present judgment would not affect the cases where the excise duty is already refunded prior to the Impugned Notification and the same are not to be reopened. Further, the Court also clarified, that the pending refund applications shall be decided as per Impugned Notification in accordance with the law and on merits.

VA Comments:

The judgement once again reiterates the well settled principle that, in case of public interests, doctrine of promissory estoppel shall not apply. However, it is important to note that the bearing of such a stance shall be interpreted on case to case basis and not as an inflexible rule.

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