

A ARVIND INDUSTRIES AND ORS.  
v.  
THE STATE OF GUJARAT AND ORS.

AUGUST 23, 1995

B [A.M. AHMADI, CJ, SUHAS C. SEN AND  
K. S. PARIPOORNAN, JJ.]

*Gujarat Sales Tax Act, 1969 : Sections 49(2) and 86.*

C *Gujarat Sales Tax Rules, 1970 : Rule 42-A.*

*Sale Tax—Exemption to new industries—Notification regarding—Claim of benefit by assessee—new industry—Held not available on facts—Held government is entitled to grant exemption—But can withdraw or modify fiscal benefits from time to time—Held case of promissory estoppel was not made out by assessee.*

**The appellant established a solvent extraction plant at Junagadh and claims benefit of exemption from sales tax provided under a Notification dated 11th November, 1970 issued by the respondent- State. Under this Notification a new industry which was commissioned at any time between 1st April, 1970 to 31st March, 1975 was entitled to the benefit of sales tax exemption for a period of five years from the date of commissioning of the industry. The assessee was also to obtain an eligibility certificate from the commissioner of Industries to the effect that the industry has been commissioned in the area beyond prescribed municipal limits. The appellant states that by establishing the plant it had changed its position to its detriment by relying not only on the said notification but also on the strength of assurance held out by the Government in a press statement and the speeches made by the Chief Minister and the Finance Minister on the floor by the house. Therefore it was entitled to the benefit of exemption and the Government was estopped from withdrawing the benefit as has been done by a subsequent notification dated 17th July, 1971. In the connected appeal also, which involves similar facts, the contention of promissory estoppel was raised.**

H **Dismissing the appeals, this Court**

**HELD : 1. The Government is entitled to grant exemption to industries having regard to the industrial policy of the Government. It is equally free to modify its industrial policy and grant, withdraw or modify fiscal benefits from time to time. There is nothing in the notification dated 11.11.1970 by which any assurance was held out to any industry. This was an usual Government notification relating to purchase and sales tax, granting reliefs to certain industries on fulfilment of the conditions laid down in the notification. [20-F-G]**

**2. The appellant has not been able to show that some definite promise was made by or on behalf of the Government and the appellant had acted upon that promise to its detriment and thereafter the changes effected by the Notification date 17th July, 1971 have caused great prejudice to the appellant. Therefore, it is not necessary to go into the question of applicability of the doctrine of promissory estoppel in the field of fiscal legislation. [21-F-G]**

**3. The date of commencement of appellant's industry, according to the eligibility certificate obtained by the appellant from the Commissioner of Industries, is 3rd December, 1970. It is difficult to believe that the appellant, after the exemption Notification dated 11th November, 1970 was issued and on the basis of it, set up an oil extraction plant which commenced production within three weeks' time on 3rd December 1970. No particulars have been given as to when the land was purchased, or when the plant and machinery for the industry were procured. [20-D-E]**

**4. In the connected appeal the appellant had stated that on 31st August, 1970, it had set up the factory premises. This was long before the exemption Notification dated 11th November, 1970. However, no dates have been given for the purchase of machinery and spare-parts. But it has been stated that the production in the factory started from 31st December, 1970. Thus having regard to the facts of the case and also nature of the two Notifications issued by the Government dated 11th November, 1970 and 17th July, 1971, the factual basis for a case of promissory estoppel has not been made out by the appellant. [22-B-D]**

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 951 of 1976.**

**From the Judgment and Order dated 24/25.6.76 of the Gujarat High**

A Court in S.C.A. No. 468 of 1973.

AND

Civil Appeal No. 1011 of 1977.

B From the Judgment and Order dated 9.7.76 of the Gujarat High Court in S.C. Application No. 1515 of 1971.

B.K. Mehta and S.C. Patel for the Appellant in C.A. No. 951/76.

B.K. Mehta and Vimal Dave for the Appellant in C.A. No. 1011/77.

C P.S. Poti, Ms. Hemantika Wahi and Ms. S. Hazarika for the Respondent.

The Judgment of the Court was delivered by

D SEN, J. *Civil Appeal No. 951 of 1976.*

E The appellants are manufactures of edible oil and have their own solvent extraction plants at Junagadh. The case of the appellant is that on or about September 9, 1969, a press note was issued by the State Government that New Industries will be granted exempted from Sales Tax for a period of five years from the date of commencement of production. The then Chief Minister as well as the Finance Minister of the State Government of Gujarat also made statements on March 3, 1970 on the floor of the Legislative Assembly that New Industries will be granted exemption from Sales Tax for a period of five years. The press note has not been annexed to the petition. Copies of the alleged statements made by the Chief Minister and the Finance Minister in the Legislative Assembly have also not been produced in court.

G However, a copy of the Notification dated April 29, 1970, issued under Section 49(2) of the Gujarat Sales Tax Act, 1969, has been included in the paper-book. This Notification contains a recital that the Government of Gujarat is satisfied that circumstances exist which render it necessary to take immediate action to amend the Gujarat Sales Tax Rules, 1970 and to dispense with the previous publication thereof. This Notification does not make any reference to any previous press note or assurance given by H anybody on benefit of the Government. It merely provides that in exercise

of the powers conferred by Section 86 of the Gujarat Sales Tax Act, 1969, the rules were being framed to amend the Gujarat Sales Tax Rules, 1970. Rule 42A was introduced in the Gujarat Sales Tax Rules, 1970, whereby on fulfilment of certain conditions, a New Industry was granted drawback, set off or refund of the whole or any part of the tax in respect of the purchase of raw materials, processing materials and machinery or packing materials used in manufacture of goods for sale. Certain conditions were laid down which had to be fulfilled before a New Industry could avail of this benefit of the amended Rule 42A. 'New Industry' was defined to mean and include an industry which has been commissioned at any time during the period from 1st April, 1970 to 31st March, 1975. One of the conditions laid down in the Notification was that the assessee had to obtain an eligibility certificate from the Commissioner of Industries, Gujarat State, to the effect that the new industry had been commissioned in an area beyond 24 kilometres from the municipal limits of cities of Ahmedabad and Baroda and 16 kilometres from the municipal limits of Surat, Bhavnagar, Rajkot and Jamnagar. A new industry would enjoy the benefit of this notification for a period of five years from the date of commissioning of the industry as stated in the eligibility certificate.

On 11th November, 1970, a further notification was issued amending the earlier notification dated 29th April, 1970. It was specifically provided that 'New Industry' will not include industries engaged in, inter alia :

- (12) decoraticating expelling, crushing, roasting, paching, frying of oil seeds and colouring decolouring, scenting of oil;
- (13) solvent extraction of oil from oil-seeds and oil-cakes.

The contention made on behalf of the appellants is that the solvent extraction plant at Junagadh was set up by the appellant on the strength of assurance made out by the Government in the press statement, the speeches made by the Chief Minister and the Finance Minister on the floor of the Legislative Assembly, and also the Notification issued on 11.11.1970. The appellant would not have set up this industry at Junagadh but for the aforesaid assurances given by the Government. It is not open to the Government now to withdraw the benefits of this Notification by subsequent Notification issued on 17.7.1971. Since the appellant had changed his position to his detriment on the strength of the earlier assurance held out by the Government, the appellant is entitled to continue to enjoy the

A benefits given by Notification dated 11th November, 1970 for a period of five years from the date of commissioning of its plant. The Government was estopped from withdrawing the benefits by removing the appellant from the list of eligible industries by the subsequent Notification dated 17th July, 1971.

B Elaborate arguments were advanced as to the scope and effect of the doctrine of promissory estoppel and under what circumstances could this doctrine be invoked. It was argued that the two Notifications issued by the Government were not in exercise of legislative power delegated by the Statute. The Government could not unilaterally withdraw the benefits conferred by the earlier Notification from industries which had started production after the Notification dated 11th November, 1970 came into force. Having regard to the facts of the case, it is not necessary to go into this Controversy. The date of commencement of appellant's industry, according to the eligibility certificate obtained by the appellant from the Commissioner of Industries, is 3rd December, 1970. It is difficult to believe that the appellant, after the exemption Notification dated 11th November, 1970 was issued and on the basis of it, set up an oil extraction plant which commenced production within three weeks' time on 3rd December, 1970. No particulars have been given as to when the land was purchased, or when the plant and machinery for the industry were procured.

E Moreover, the Notification dated 11.11.1970 does not contain any promise that the benefit given to new industries will not be altered from time to time. The Government is entitled to grant exemption to industries having regard to the industrial policy of the Government. The Government is equally free to modify its industrial policy and grant, withdraw or modify fiscal benefit from time to time. There is nothing in the notification dated 11.11.1970 by which any assurance was held out to any industry. This was an usual Government Notification relating to purchase and sales tax, granting reliefs to certain industries on fulfilment of the conditions laid down in the notification.

G Even otherwise, the Notification dated 11th November, 1970 grants exemption to a New Industry which 'has been commissioned on or after 1st April, 1970, in the areas beyond 24 kilometres from the Municipal limits of cities of Ahmedabad and Baroda and 16 kilometres from the Municipal limit of Surat, Bhavnagar, Rajkot and Jamnagar'. In other words; the

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Government wanted to encourage industries set up beyond the specified distance from the municipal limits of the aforesaid towns. This cannot be construed to mean that the Government was contemplating to encourage industries set up in other cities of Gujarat which were far away from Ahmedabad, Baroda, Surat, Bhavnagar, Rajkot and Jamnagar. The appellant had set up its industry at Junagadh, which is a large city. It is doubtful whether such an industry was at all entitled to any benefit of the Notification dated 11th November, 1970. However, we need not express any final opinion on this aspect of the case, because no argument was advanced on this issue at the hearing of the case.

There is also a further point to be noted. In the Special Leave Petition, it has been stated that some time in April, 1970, the then Chief Minister and the Finance Minister had announced that the Government had adopted the policy of giving incentives to establishment of new industries. It has further been stated that petitioner's total investment in the oil extraction plant is roughly 23 lakhs out of which about Rs. 14 lakhs was for the cost of machinery, about Rs. 8 lakhs was towards erection, construction of necessary sheds and buildings and about Rs. 68,000 was towards the cost of land. The appellant is a partnership firm. It has not been stated at what point of time the partners decided to set up this plant and when and how the fund required of setting up of the plant was raised.

The appellant has been entirely unable to make out any factual basis for a case of promissory estoppel. The appellant cannot claim that merely because it had set up its industrial unit at Junagadh at a certain point of time, the fiscal laws of the State must remain unaltered from that date. The appellant has not been able to show that some definite promise was made by or on behalf of the Government and the appellant had acted upon that promise to its detriment and thereafter the changes effected by the Notification dated 17th July, 1971 have caused great prejudice to the appellant.

In the premises, it is not necessary to go into the question of applicability of the doctrine of promissory estoppel in the field of fiscal legislation.

The appeal is dismissed. There will be no order as to costs.

A *CIVIL APPEAL NO. 1011 OF 1977*

The facts of this case are similar to the facts in the case of *Arvind Industries and other v. The State of Gujarat and Others*, (Civil Appeal No. 951 of 1976). Here again, the contention of the promissory estoppel has been raised.

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The appellant has set up a factory at Ambavadi Road, Dhoraji. The industrial undertaking was commissioned on 31.12.1970, i.e., within seven weeks from the date of the Notification dated 11.11.1970. The appellant had stated in the petition that on 31st August, 1970, it had set up the factory premises at Dhoraji at a cost of Rs.38,000. this was long before the exemption Notification dated 11th November, 1970. No dates have been given for the purpose of Machinery and spare-parts worth Rs. 43,000. But it has been stated that the production in the factory started from 31st December, 1970. Having regard to the facts of the case and also nature of the two Notifications issued by the Government dated 11th November, 1970

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and 17th July, 1971, we are of the view that the factual basis for a case of promissory estoppel has not been made out. It is unnecessary to deal with the elaborate arguments advanced on the scope of the doctrine of promissory estoppel in the facts of this case. The appeal is dismissed. There will be no order as to costs.

D  
T.N.A.

Appeal dismissed.