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SALES TAX OFFICER AND ANR.

v.

M/S SHREE DURGA OIL MILLS AND ANR.

DECEMBER 15, 1997

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[SUHAS C. SEN AND SUJATA V. MANOHAR, JJ.]

*Administrative Law :*

C *Promissory estoppel—Applicability of—When not applicable—State Government under its Industrial Policy Resolution (IPR) granted exemption for five years from payment of sales tax/purchase tax to certain industries on various items—Mode of exemption to be issued separately by the department concerned and not under the IPR - Sales tax exemption granted to new industries under Section 6 of the Orissa Sales Tax Act—Exemption subsequently withdrawn by the State in public interest, by the exercise of same power under Section 6 of the Act—Industry alleged to be set up after the introduction of IPR, claimed exemption from payment of sales tax on the doctrine of promissory estoppel—No material to show that the industry was set up on the basis of IPR—Held, principles of promissory estoppel not applicable—Withdrawal of notification under Section 6 of the Act done in public interest on the basis of resources crunch—Hence the Court will not interfere with any such action taken by the State—Further held, the industry affected by the State action must be deemed to know that notification was liable to be amended or rescinded at any time under Section 6 of the Act—Sales Tax—Orissa Sales Tax Act, 1947, Section 6.*

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*Public interest—May override consideration of private loss or gain.*

G **The industry department of the State Government issued an Industrial Policy Resolution (IPR) on 18.7.1979. Clause (8) of the IPR provided specific industries certified as such by the Government and small scale industries to be exempt from purchases/sales tax for five years on construction material, raw material, machinery and packaging materials. The IPR further provided that Government orders would be issued laying down the mode of administering the concessions and incentives by the department concerned. The IPR was effective for the period 1979- 83. Section 6 of the Orissa Sales Tax Act provides that the State may, by notification, exempt from tax the sale or purchase of any goods or class of goods**

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and likewise withdraw any such exemption. State Government had issued a notification under Section 6 of the Act on 11.11.1969, by which raw materials which went into manufacture of the finished goods were exempt from payment of sales/purchase tax when such goods were sold to registered dealer who was a manufacturer inside the State and who had started production after 1.4.1969. A similar notification dated 23.4.1976 was issued, granting exemption to raw materials purchased by a manufacturer for a further period of five years from the date on which the production had commenced. The exemption notifications were withdrawn by a notification dated 20.5. 1977 but were again restored by another notification dated 9.9.1977 but in that notification the exemption was limited only to the industries which had started production prior to 1.4.1977.

The respondent claimed to have set up its industry pursuant to the IPR by obtaining huge loans from Bank, and commenced its production on 19.3.1980 and hence it was not eligible for the exemption under notification dated 9.9.1977. The respondent was assessed to tax for the subsequent assessment years, which was challenged by the respondent before the High Court by filing a writ petition invoking the doctrine of promissory estoppel, claiming that the respondent was entitled to tax exemption on purchase of raw materials as promised by the Government under the IPR, which was allowed by the High Court. Hence this appeal by the Revenue.

Allowing the appeal, the Court

HELD : 1.1. The IPR on which reliance has been placed by the respondent was issued on 18.7.1979. A provisional registration certificate in respect of the respondent's industry was issued on 28.11.1979. The respondent has not given factual details of how in the short span of about four months, it set up its industry on the basis of the IPR. [495-D]

1.2. Any IPR can be changed if there is an overriding public interest involved. In the instant case, it has been stated on behalf of the State that various notifications granting sales tax exemptions to the dealers resulted in severe resource crunch. On reconsideration of the financial position, it was decided to limit the scope of the earlier exemption notifications issued under Section 6 of the Orissa Sales Tax Act. Because of this new perception of the economic scenario of the State, the scope of the earlier notifications had to be restricted. Withdrawal of notifications was done in public interest. The Court will not interfere with any action taken by the Government

**A** in public interest. Public interest must override any consideration of private loss or gain. Thus the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel.

[496-H; 497-A-G; 498-E-F]

**B** 1.3. Moreover, the IPR itself had not granted any exemption but had indicated that orders will be issued by various departments for granting the exemptions. The exemption order under sales tax could only be issued under Section 6 which could be amended or withdrawn altogether. This is expressly provided by Section 6. If the respondent acted on the basis of a notification issued under Section 6 it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest. This is exactly what has happened in this case. [498-G-H]

**D** *Kasinka Oil Mills v. Union of India*, [1995] 1 SCC 274; *Shrijee Sales Corporation v. Union of India*, [1997] 3 SCC 398, relied on.

*Poumami Oil Mills v. State of Kerala*, [1987] 1 SCR 654, referred to.

*Pine Chemicals Ltd. v. Assessing Authority*, [1992] 2 SCC 683, distinguished.

**E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3784 of 1988 Etc.

From the Judgment and Order dated 15.9.87 of the Orissa High Court in O.J.C. No. 2090 of 1980.

**F** R.K. Mehta for the Appellants.

Vinoo Bhagat for the Respondents.

The Judgment of the Court was delivered by

**G** SEN, J. M/s Shree Durga Oil Mills, respondent herein, was assessed to tax by the Sales Tax Officer for the assessment years 1979-80, 1980-81 and 1981-82 for purchase of groundnut from unregistered dealers. There is no dispute that groundnut was purchased from time to time by the respondents and utilised for manufacturing oil. The assessment orders

**H** were challenged by a writ petition on the ground that in view of the

Industrial Policy Resolution (I.P.R.) dated 18.7.1979 issued by the Industries Department of the Government of Orissa, sales tax was not payable by a new industry on the purchase of raw material for the period prescribed in the I.P.R. A

It was contended on behalf of the writ petitioner that it had applied for a license setting up an industry at Betnoti in the district of Mayurbhanj and obtained a provisional registration certificate on 28.11.1979. A permanent registration certificate as a small scale industrial unit was granted by the Director of Industries, Orissa on 10.4.1980. The industrial unit also obtained a production certificate certifying that it had started production on 19.3.1980. The certificate of registration was renewed from time to time. Clause (8) of the I.P.R. effective for the period 1979-83 provided that village cottage and tiny industries certified as such by the State Government and small scale industries shall be exempt from purchase/sales tax for five years on construction material, raw material, machinery and packaging materials. Small scale industrial units in non-backward areas would be entitled to this exemption only for four years. The case of the writ petitioner before the High Court was that it set up its industry in the district of Mayurbhanj pursuant to this I.P.R. It had obtained a huge loan from the United Bank of India. In terms of the I.P.R., it was entitled to tax exemption on purchase of groundnut, mustard seeds etc. which were used as raw material for production of oil. B  
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The Sales Tax Officer took the stand that there was no notification in force under Section 6 of the Orissa Sales Tax Act, 1947 granting exemption to purchase or sale of groundnut, mustard seeds etc. during the relevant period. In the absence of such a notification, the assessee could not gain immunity from payment of tax on its purchases. F

Section 6 of the Orissa Sales Tax Act provides that the State may by notification, subject to such conditions and exceptions, if any, exempt from tax the sale or purchase of any goods or class of goods and likewise withdraw any such exemption. A notification dated 11.11.1969 had been issued under Section 6 by the State Government by which raw materials which went into manufacture of the finished goods were exempted from sale/purchase tax when such goods were sold to a registered dealer who was a manufacturer inside the State and who had started production after 1.4.1969. This exemption had been given for a period of five years from the G  
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- A date on which such registered dealer had started production. A similar notification dated 23.4.1976 was issued granting exemption to raw materials purchased by a manufacturer for a further period of five years from the date on which production had commenced. Both these notifications require that in order to avail this exemption the manufacturer should furnish declarations in Form 'D'.

- The exemptions granted by the two earlier notifications were abrogated by notification dated 20.5.1977. The State Government again restored the earlier two notifications by another notification dated 9.9.1977. However, in that notification dated 9.9.1977, the exemption was limited only to the industries which had started production prior to 1.4.1977. Since the industry set up by the writ petitioner had commenced production on 19.3.1980, it was not eligible for the exemption given by the notification dated 9.9.1977. The case of the respondent in the writ petition was that the I.P.R. was effective for the period 1979-83. The petitioner had set up its industry pursuant to and in terms of this Resolution. Exemption from tax had been granted by the two notifications issued on 11.11.1969 and 23.4.1976. The State Government could not change these notifications to the detriment of the assessee after the assessee had set up its plant and had taken a huge loan from the bank for carrying on its business. A prayer was made to declare the notification dated 9.9.1977 as *ultra vires* Article 19(1)(g) of the Constitution of India.

- The High Court allowed the writ petition on the ground that in the I.P.R., a clear and unequivocal promise had been made by which a legal relationship was sought to be created between the State and the persons who had acted on the basis of the I.P.R. M/s Shree Durga Oil Mills, the writ petitioner, had set up its industry on the basis of the declaration made in the I.P.R. and the promise held not therein. There was no way the State Government could back out from the commitments made by it in the I.P.R. after the petitioner had actually set up its industry pursuant to that Resolution which was effective for the period 1977-83. On the strength of this reasoning, the Orissa High Court quashed the assessment orders passed by the Sales Tax Officer. The State has now come up in appeal.

- One of the points raised in this Court on behalf of the respondent is that the High Court had merely followed its judgments in the case of

*Jagannath Roller Flour Mills and Ors. v. State of Orissa*, (1987) 65 STC 384 and also in *M/s. Industrial Packaging*. No appeal was preferred against these two judgments. Therefore, it is not open to the state now to contend in this case that the decision of the High Court was erroneous. Since the Sales Tax Department had accepted the aforesaid two decisions as final and binding, it could not be permitted to challenge the settled law.

On behalf of the appellant, it has been pointed out that although the earlier two decisions were not challenged in this Court, the High Court's view needs reconsideration in view of the decision of this Court in the case of *Commissioner of Sales Tax, Orissa and Anr. v. M/s. Jagannath Cotton Mill*, 99 STC 83 where it was pointed out :

"The High Court seems to have proceeded on the assumption that the I.P.R. by itself is enough to provide the exemption from the sales tax. But where the provisions of the Sales Tax Act are also amended providing for exemption, then the court has to see whether they are the same as the I.P.R. or are they different-and if different, what is the effect of such difference. It is, therefore, necessary to ascertain the relevant provisions in the Sales Tax Act, Rules and notifications, if any, issued thereunder before expressing a final opinion in the matter."

In our view, this appeal cannot be shut out on the preliminary ground that no appeal was preferred against the two earlier decisions of the High Court which were followed in the instant case. It is for the Court to decide whether to entertain an appeal or not. In our view, the point of law raised in this case is of general public importance and this appeal cannot be dismissed *in limine* on the preliminary issue of maintainability. On behalf of the appellant, it has been pointed out that in the High Court itself, there has been a change in the perception of law in this regard.

On the merit of the case, it has been contended on behalf of the respondent that the State cannot be allowed to first grant exemption and induce industries to be set up on the basis of the promise held out in its I.P.R. and thereafter back out from the promise after it had been acted upon. Reliance was placed on a decision of this Court in *Poumami Oil Mills v. State of Kerala & Anr.*, [1987] 1 SCR 654 for the proposition that for granting exemption from sales tax an I.P.R. was sufficient by itself. A

A statutory notification was not necessary to implement that policy. Persons who had acted on the basis of the I.P.R. were entitled to get benefit thereunder. It has been contended that this Court has emphasised this rule once again in the case of *Pine Chemicals Ltd. v. Assessing Authority*, [1992] 2 SCC 683.

B *Pine Chemicals* case dealt with the exemption from sales tax granted under the J & K General Sales Tax Act, 1962. It was held in that case that if the exemption was claimed on the basis of a Minister's speech or a brochure published by the Government then the claim of promissory estoppel could not be entertained on behalf of any person who claimed

C that they had changed their position on the basis of the speech or the brochure. It was, however, held that if the Government in exercise of powers under a statute granted exemption then if appropriate conditions existed a case of promissory estoppel could arise. The Court in that case found, that the Government had not made any general declaration of its

D intention but had actually passed an order granting exemption to new industries from Sales Tax. The order was held to have been issued under Section 5 of the General Sales Tax Act. Relying on these representations each of the appellant had set up their industries. This Court was of the view that since the appellants on the representation of the State had set up their industries, they were entitled to the benefit of tax exemption for the

E entire period of five years as promised by the Government. Section 5 of the General Sales Tax Act as set out in the judgment was :

F "5. *Exemption from tax* - The Government may, subject to such restrictions and conditions as may be prescribed, including conditions as to licence and licence fee, by order exempt in whole or in part from payment of tax any class of dealers or any goods in class or description of goods."

It will be seen that unlike Section 6 of the Orissa Sales Tax it does not specifically say that any exemption from tax could be granted by the

G Government by a notification and such exemption could be withdrawn at any point of time by the Government. Moreover, in that case no argument was advanced nor was the Court called upon to consider the necessity of overriding public interest in situations like this. If the Government after granting tax exemption to various industries finds itself in a tremendous

H financial crunch and seeks to raise finance by doing away with the exemp-

tions, it cannot be argued that because the Government had promised to give tax exemption, which was revocable under the statute, the Government cannot resile from its stand however disastrous it may turn out to be for the State's economy.

The crux of the matter in this case is whether the Government had made any promise to the respondent and if so, can it depart from the promise made by it in the I.P.R. which was stated to be effective from 1977-1983.

There are several reasons why we are unable to uphold the contention based on the principle of promissory estoppel raised by the respondents in this case. No particulars have been given by the respondents as to when the decision was taken to set up the industry, the date when the loan was obtained from the bank, and exactly when land was purchased or the plant and machinery were acquired for setting up of the small scale industrial unit. The I.P.R. on which reliance has been placed by the respondent was issued on 18.7.1979. A provisional registration certificate in respect of the respondent's industry was issued on 28.11.1979. The respondent has not given factual details of how in the short span of about four months, it set up its industry on the basis of the I.P.R.

Moreover, the Government may change its industrial policy if the situation so warrants. Merely because, the I.P.R. was announced for the period 1979-1983, it does not mean that the Government cannot amend or change the policy under any circumstance. As a matter of fact, in this case the Government had published another I.P.R. on 31.7.1980 modifying the earlier I.P.R. The vires of the second I.P.R. has not been challenged. The two I.P.Rs. have not been issued under any particular statute. A general announcement was made by the Government that certain economic policy would be pursued for the acceleration of the growth of the industrial sector in the State of Orissa. For that purpose, a package of measures for stimulating the growth of industries were announced. It was specifically made clear in the I.P.R. dated 18.7.1979 that :

"Government orders will issue laying down the mode of administering the concessions and incentives by concerned departments."

In other words, the I.P.R. dated 18.7.79 by itself did not grant any exemption to the persons who set up industries pursuant to that I.P.R. The

A I.P.R. merely promised that orders will be issued laying down the mode of administering the concessions and incentives by concerned departments. Exemption of sales tax can only be granted in the manner laid down by the Sales Tax Act. The Government by an executive order cannot override the requirement of the statute. The method and manner of granting exemption has been laid down in Section 6 of the Orissa Sales Tax Act. This Section specifically says that exemptions have to be granted by a notification. It further provides that exemption granted by a notification issued under Section 6 can be modified or withdrawn by the State Government at any point of time. The State Government in the instant case, initially issued the exemption notifications under Section 6. The State Government subsequently decided to withdraw the exemption notification in respect of some industries which had commenced production after 1.4.1977. The State Government was fully competent to do so under the provisions of Section 6 of the Act. The respondent must have been aware of this when its industry was set up. Everybody is presumed to know the law. Section 6 of the Orissa sales Tax Act which empowers the State Government to issue a notification granting exemption from sales tax, also empowers the State Government to withdraw, amend or modify any such notification as and when it thinks necessary to do so. Section 6 of the Orissa Sales Tax Act is as under :

E *"6 Tax-free Goods -*

The State Government may, by notification, subject to such conditions and exceptions, if any, exempt from tax the sale or purchase of any goods, or class of goods and likewise withdraw any such exemption".

F When the respondent set up its oil mill and was granted exemption from sales tax, it should have known that the notification granting exemption of tax under Section 6 could be withdrawn at any point of time. Therefore, the case of promissory estoppel is without any basis. There cannot be any estoppel against statute.

G Moreover, it is well settled that any I.P.R. can be changed if there is an overriding public interest involved. It has been stated on affidavit by the State of Orissa that after a package of incentives was given to the industries, the Government was faced with severe resource crunch. On a review of its financial position, it was felt that for the sake of the economy of the State,

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it was necessary to limit the scope of exemption granted to various industries. Accordingly, further notifications were issued under Section 6 of the Orissa Sales Tax Act from time to time. Because of this new perception of the economic scenario, the scope of the earlier notifications was restricted by subsequent notifications issued under Section 6. This also led to issuance of the second I.P.R. dated 31.7.1980.

The question of applicability of the doctrine of promissory estoppel against the Government has been considered in a number of cases by this Court.

In the case of *Kasinka Trading and Another v. Union of India and Another*, [1995] 1 SCC 274, a notification was issued by the Customs Department under Section 25(1) of the Customs Act in public interest exempting certain goods from basic import duty and specified the date upto which it will remain in force. Prior to expiry of that date another notification was issued withdrawing the exemption and imposing customs duty on import of such goods. A challenge was made to withdrawal of the notification by some importers who claimed that they had entered into agreements on the basis of the earlier notifications. It was held by this Court that the Government had issued the first notification in public interest for a certain period. But it was felt later that in public interest, exemption should not be continued even though that period had not expired. Therefore the Government withdrew it. It was held that when exemption was granted under statutory power, it was implicit that it could also be rescinded or modified in exercise of the same power.

In the instant case, Section 6 of the Orissa Sales Tax Act specifically lays down that the exemption notification issued under that Section can be withdrawn at any point of time.

Moreover withdrawal of notification was done in public interest. The Court will not interfere with any action taken by the Government in public interest. Public interest must override any consideration of private loss or gain.

The view taken by this Court in *Kasinka's* case was reiterated by a Bench of three-Judges in the case of *Shrijee Sales Corporation & Anr. v. Union of India*, [1997] 3 SCC 398. It was laid down in that case that the determination of applicability of promissory estoppel against the Govern-

A ment hinges upon balance of equity or public interest. 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. Once public interest was accepted as the superior equity which can override individual equity, the aforesaid principle should be applicable even in cases where a period had been indicated for operation of the promise. In that case, a notification was issued exempting customs duty on PVC. By a second notification the exemption was withdrawn. The Court held that the facts of the case revealed that there was a supervening public interest and the Government was competent to withdraw the first notification without giving any prior notice to the respondent.

D In the instant case, it has been stated on behalf of the State that various notifications granting sales tax exemptions to the dealers resulted in severe resource crunch. On reconsideration of the financial position, it was decided to limit the scope of the earlier exemption notifications issued under Section 6 of the Orissa Sales Tax Act. Because of this new perception of the economic scenario of the State, the scope of the earlier notifications had to be restricted. They were first abrogated altogether on 20.5.1977. Thereafter, it was decided to grant exemption at a limited scale.

E In our opinion, the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel. Public interest demanded modification of the earlier I.P.R.

F Moreover, as it has been noted earlier that the I.P.R. itself had not granted any exemption but had indicated that orders will be issued by various department for granting the exemptions. The exemption order under sales tax could only be issued under Section 6 which could be amended or withdrawn altogether. This is expressly provided by Section 6.

G If the respondent acted on the basis of a notification issued under section 6 it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest. That is exactly what has happened in this case.

H In view of the above, we are of the opinion that this appeal must

succeed and is allowed. The judgment under appeal is set aside. There will be no order as to costs. A

*C.A. Nos. 3785-86 of 1988*

In view of the above decision in C.A. No. 3784/88, these appeals are also allowed. B

R.K.S.

Appeals allowed.