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DAI-ICHI KARKARIA LTD.

v.

UNION OF INDIA AND ORS.

APRIL 11, 2000

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[S. RAJENDRA BABU AND R.C. LAHOTI, JJ.]

Customs Act, 1962 :

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Sections 12 and 25(1)—Exemption Notification—Withdrawal of—Before period of expiry—Judicial review of—Notification No. 210/82 dated 10.9.1982 (as amended on 20.9.1983) exempted all raw materials and components imported for manufacture of goods to be supplied to ONGC from payment of customs duty and additional duty up to 10.9.1987. However, Notification No. 513/86 dated 30.12.1986 restricted such exemption only to the extent in excess of 25% ad valorem—Validity of—Held : Such reduction is not based on relevant factors and does not sub-serve public policy—Hence, Notification No. 210/82 is effective till 10.9.1987.

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Section 25(1)—Exemption Notification—Withdrawal of—In public interest—Before period of expiry—Doctrine of promissory estoppel—Applicability of—Held : Not applicable if the change of Government policy is made in public interest.

Section 159—Notification—Laying of—Before Parliament—Judicial review—Scope of—Held : Does not make any substantial difference to the judicial review of the notification.

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Administrative Law :

Administrative action—Discretionary power—Exercise of—In public interest—Held : Should be exercised in a reasonable way in accordance with the spirit of the Constitution—Constitution of India, 1950. Art. 14.

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Doctrines :

Doctrine of Promissory Estoppel—Applicability of.

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Respondent by Notification No. 210/82 date 10.9.1982 (as amended by Public Notice dated 20.9.1983) issued under Section 25(1) of the Customs Act, 1962 exempted from payment of customs duty and additional

duty of customs up to 10.9.1987 on all raw materials and components imported for the manufacture of goods to be supplied to various organisations including ONGC. The respondent by another Notification No. 513/86 dated 30.12.1986 exempted raw materials and components required for the manufacture of the goods to be supplied to ONGC from customs duty in excess of 25% *ad valorem* subject to certain conditions. ONGC and certain other organisations were omitted from Notification No. 210/82 dated 10.9.1982 by a Notification No. 517/86 dated 30.12.1986. As a result thereof the appellant who was a manufacturer and supplier of certain goods to ONGC in connection with oil exploration viz. Flow Improver under the trade name "Daitrolite" became liable to pay duty to the extent of 25% for the period between 30.12.1986 and 10.3.1987. The appellant's writ petition challenging the action of the respondent was dismissed by the High Court. Hence this appeal.

On behalf of the appellant-assessee it was contended that public interest did not demand the variation during the period the exemption was in force by Notification No. 210/82.

On behalf of the respondent-Revenue it was contended that imposition of a nil rate of duty on the import of raw materials and components could lead to misuse thereof; that the administrative requirements as also the cost of the saving/earning of foreign exchange in the economy (which was about 35%) were also taken consideration; and that it was felt necessary to exclude ONGC from the scope of Notification No. 210/82 and to prescribe a separate slab of duty of 25% in respect of such imports in terms of Notification No. 513/86.

Allowing the appeal, this Court

HELD : 1.1. The law is now well settled that even in respect of exemptions that may have been made by the Government the doctrine of promissory estoppel will not be applicable if the change in the stand of the Government is made on account of public policy. [1260-C-D]

Kasinka Trading v. Union of India, [1995] 1 SCC 274 and *Shrijee Sales Corpn. v. Union of India*, [1997] 3 SCC 398, relied on.

1.2. In the present case, the only public interest disclosed by the Revenue cannot stand close scrutiny because the appellant could not

A misutilise the exemption granted inasmuch as the appellant is obliged only
to import goods for the purpose of supplying them to O.N.G.C. and the
licence issued under the policy also clearly reflects the export obligation
imposed on the appellant and the finished product Daitrolite manufac-
B tured. From raw materials imported under the licence is a highly special-
ised product and could be sold only to O.N.G.C., Oil India Ltd. and others.
At the time when the exemption was granted the prevailing basic customs
duty was 60% and 70% on different materials imported for the manufac-
C ture of goods in question. However, it is not clear as to why duty is reduced
to 25% by reason of exemption being modified. It is clear, therefore, that
the factors taken into consideration by the Government are wholly irrel-
evant and do not sub-serve public interest. [1260-G-H; 1261-A-C]

2.1. In cases where power vested in the Government is a power which
has got to be exercised in public interest, as in the present case, the court may
require the Government to exercise that power in a reasonable way in ac-
D cordance with the spirit of the Constitution. The mere fact that a notification
issued under Section 25 of the Customs Act, 1962 is required to be laid before
the Parliament under Section 159 of the Act does not make any substantial
difference as regards the jurisdiction of the court to pronounce on its valid-
ity. Power exercisable under Section 25 of the Act is no doubt discretionary,
E but it is not unrestricted. The pattern of the law imposing custom duties and
the manner in which it is operated to a certain extent exposes the citizens
who are liable to pay customs duties to the vagaries of executive discretion.
It is ordinarily assumed that while such wide power is given to the Govern-
ment, it will consider all relevant aspects governing the question whether
exemption should be granted or not. [1261-G-H; 1262-B-D]

F *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, [1985]
2 SCR 287, relied on.

Union of India v. Indian Charge Chrome, (1999) 112 ELT 753 SC and
CCE v. RMDC Press Pvt. Ltd., (1997) 92 ELT 29 SC, held inapplicable.

G 2.2. In the present case, the Government has failed to discharge its
burden of establishing as to what public interest governed the Government
in reducing the extent of exemption. Therefore, the amended notifications,
which are applicable for the period from 30.12.1986 to 10.9.1987 reducing,
the extent of exemption, are quashed. The notification issued earlier on
H 10.9.1982 and modified in 1983 shall be effective till 10.9.1987. [1263-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7202 of 1995. A

From the Judgment and Order dated 27.6.95 of the Bombay High Court in W.P. No. 593 of 1987.

F.S. Nariman, R.F. Nariman, A.B. Diwan, Sunil Dogra, S.S. Shroff, Ms. Monica Sharma, Shahid Rizvi, R. Sasiprabhu, Manish Garg, Ms. Nisha Bagchi and P. Parmeshwaran for the appearing parties. B

The Judgment of the Court was delivered by

RAJENDRA BABU, J. By Notification No. 210/82 dated September 10, 1982 (as amended by Public Notice dated September 20, 1983) issued under Section 25(i) of the Customs Act the Government of India exempted from payment of customs duty and additional duty of customs on all raw materials and components imported for the manufacture of goods to be supplied to various organisations such as I.D.A. that is, the International Development Association, International Bank for Reconstruction and Development (I.B.R.D.) or bilateral or multilateral aided projects. The said notification stated that it would be in force till September 10, 1987. By Notification No. 513/86 dated December 30, 1986 issued under Section 25(i) of the Customs Act the Central Government exempted raw materials and components required for the manufacture of the goods to be supplied to the O.N.G.C. or G.A.I.L. from so much of that portion of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 as is in excess of the amount calculated at the rate of 25% ad valorem and whole of the additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 subject to certain conditions. By another Notification No. 516/86 of the same date the Central Government exempted goods imported in connection with off-shore oil exploration or exploitation from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 subject to certain conditions. By another Notification No. 517/86 dated December 30, 1986 it was notified that Notification No. 210/82 dated September 10, 1982 stood amended by omitting the words "or Oil and Natural Gas Commission or Oil India Limited or Gas Authority of India Limited". As a result thereof the appellant who is manufacturer and supplier of certain goods to O.N.G.C. in connection with oil exploration viz. Flow Improver under the trade name "Daitrolite" became liable to pay duty to the extent of 25% for the period C
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A between December 30, 1986 and September 10, 1987.

B Though several contentions had been raised in the High Court in challenging the action of the respondents, in the appeal before us what is urged is only one contention which is as follows: That Notification No. 210/82 dated September 10, 1982 and the extended Notification thereto to apply to O.N.G.C. was issued to encourage manufacture of goods indigenously for effecting supplies to essential Indian enterprises as a part of the scheme which was Project Based and the exemption under the said Notification was a part of Project Based exemption scheme. Public interest did not demand the variation during the period the exemption was in force by Notification No. C 210/82.

D In the writ petition before the High Court the contention raised by the appellant is that the fact that many persons, including the petitioners have undertaken importation of materials on the basis that no duty was leviable or payable on the imported material and that there have been no new events nor any supervening circumstances which could form a basis for or justify the withdrawal of the benefit contained in the exemption Notification No. 210/82 as amended in 1983 after being satisfied that public interest required that there should be no duty of customs nor additional duty of customs in respect of raw materials and components imported for supplies therefrom to O.N.G.C. E for a fixed and definite period up to September 10, 1987; that the policy of the first respondent is to indigenise production as is the policy of O.N.G.C. to indigenise; that the appellant had secured orders for supply of goods against global tenders where foreign suppliers also participated and in the teeth of international competition the company had been awarded the contracts by O.N.G.C.; that pursuant to the exemption that has been granted the company had invested since 1983 a large amount of money in respect of its plant for manufacture of goods to be supplied to O.N.G.C.; that public interest F which prompted the first respondent to issue the exemption notification No. 210/82 remains unaltered and no new supervening circumstances have justified reversal of the said policy and, in fact, such a reversal to encourage G foreign manufacturers at the cost of Indian manufacturers is *per se* contrary to public interest drain on foreign exchange.

H The High Court took the view that this Court had laid down in *Kasinka Trading & Anr. v. Union of India & Anr.*, [1995] 1 SCC 274, that the power to exempt flows from Section 25 of the Customs Act; that just as the notification issued granting exemption is in public interest, by another

notification it can also be modified or withdrawn in public interest, irrespective of whether exemption is project based or specific goods related. The High Court having held that Notification No. 210/82 had been issued in public interest and modified again in public interest, dismissed the petition. Hence this appeal.

Inasmuch as the contention raised on behalf of the appellant had not been specifically dealt with by the respondents in the writ petition in the High Court, this Court permitted the respondents to file counter affidavit. Accordingly, a counter affidavit was filed on February 9, 2000. In that affidavit what is stated is as follows :-

“It is further submitted that the oil section in general had been enjoying various fiscal concessions since 1982. During December, 1986, a review was undertaken in relation to various concessions accorded to oil exploration and development of oil and natural gas production. The conditions prevailing then compelled the government to review the earlier concessions and to prescribe different rates of duties on different goods required by the sector in order to promote oil exploration in the country. It was believed that the imposition of a nil rate of duty on the import of raw materials and components required for the manufacture and supply of products to the ONGC, OIL and GAIL could lead to misuse, specially by the private contractors who have other interests, in addition to the supplies to the Oil Sector. The Administrative requirements as also the cost of the saving/earning of foreign exchange in the economy (which is about 35%) were also taken into consideration. Consequently, it was felt necessary to exclude ONGC, Oil India Ltd. and Gas Authority of India Ltd. from the scope of Notification No. 210/82 and to prescribe a separate slab of duty of 25% in respect of such imports in terms of notification No. 513/86.”

The appellant filed a reply stating as follows :-

“(1) It is wrong to say that the appellant herein could have misused the exemption because under the export obligation clause, in keeping with the policy of the government, the appellant was obliged only to import for supplying to ONGC, respondent No. 4 herein. The licence issued under the policy clearly reflects the export obligation imposed on the appellant herein.

A (2) Furthermore, the finished product Daitrolite manufactured from the raw materials imported under the licence, being a highly specialised product could have been sold only to ONGC, Oil India etc. and nobody else.

B (3) At the time in 1982 when the exemption on customs duty was allowed to the appellant, the prevailing basic customs duty was 60% and 70% on different materials and even if on account of probable misuse, the exemption why only a 25% customs duty was allowed to be imposed for bringing in the raw materials.”

C The law on the matter is now well settled that even in respect of exemptions that may have been made by the Government the doctrine of promissory estoppel will not be applicable if the change in the stand of the Government is made on account of public policy. This position has been explained in detail by this Court in *Kasinka Trading & Anr.* (supra) and reiterated in *Shrijee Sales Corporation & Anr. v. Union of India*, [1997] 3 SCC 398. In both these cases this Court is concerned with notifications issued under Section 25 of the Customs Act. In *Kasinka Trading & Anr.* (supra) case it is stated that the exemptions granted under Section 25(i) of the Customs Act in public interest is 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 and the imported product was substantial and at a time when the notification was withdrawn by the Government there was no scope for any loss to be suffered by the importers and, therefore, the change of policy was permissible. This decision is the same in *Shrijee Sales Corporation & Anr.* (supra) wherein it was noticed that once public interest is accepted as the superior equity which can override individual equity, the principle would be applicable even in cases where a period has been indicated for which period the notification would remain in force and Government is competent to resile from a promise. It was further noticed therein that the Government can resile from a promise even if there is no manifest public interest involved provided, of course, that no one is put in any adverse situation which cannot be rectified.

H In the present case, it is clear that the only public interest disclosed is as stated above in the counter affidavit and those circumstances cannot stand close scrutiny because the appellant could not mis-utilise the exemption granted inasmuch as the appellant is obliged only to import goods for the purpose of supplying them to O.N.G.C. and the licence issued under the

policy also clearly reflects the export obligation imposed on the appellant herein and the finished product Daitrolite manufactured from raw materials imported under the licences is highly specialised product and could be sold only to O.N.G.C., Oil India Ltd. and others. At the time in 1982 when the exemption was granted the prevailing basic customs duty was 60% and 70% on different materials imported for the manufacture of goods in question. However, it is not clear as to why duty is reduced to 25% by reason of exemption being modified. It is clear, therefore, that the factors taken into consideration by the Government appear to us to be wholly irrelevant and do not subserve public interest. In somewhat identical situation, this Court had occasion to examine the scope of interference in respect of notification issued under Section 25 of the Customs Act.

In *Indian Express Newspapers (Bombay) Private Ltd. & Ors. etc. etc. v. Union of India & Ors. etc. etc.*, [1985] 2 SCR 287, scope of interference in the notification issued under Section 25 of the Customs Act, 1962 is considered. This Court held that power to grant exemption under Section 25 of the Customs Act is a legislative power and a notification issued by the Government thereunder amounts to a piece of subordinate legislation, even then the notification is liable to be questioned on the ground that it is an unreasonable one inasmuch as a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of grounds on which plenary legislation can be challenged : (i) that it does not conform to the statute under which it is made; (ii) that it is contrary to some other statute inasmuch as subordinate legislation must yield to plenary legislation, (iii) that it is unreasonable in the sense that it is manifestly arbitrary. The embargo of arbitrariness is embodied in Article 14 of the Constitution. An enquiry into the vires of delegated legislation must be confined to the ground on which the plenary legislation may be questioned, except that subordinate legislation cannot be questioned on the ground of violation of the principle of natural justice on which administrative action may be questioned. In cases where power vested in the Government is a power which has got to be exercised in public interest, as is the case in the present case, the court may require the Government to exercise that power in a reasonable way in accordance with the spirit of the Constitution. The mere fact that a notification issued under Section 25 of the Customs Act is required to be laid before Parliament under Section 159 of the Customs Act does not make any substantial difference as regards the jurisdiction of the court to

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A pronounce on its validity. Section 25 of the Customs Act under which notifications are issued confers a power on the Central Government coupled with a duty to examine the whole issue in the light of public interest. If the Central Government is satisfied that it is necessary in the public interest so to do, it may exempt generally either absolutely or subject to such conditions,

B goods of any description, from the whole or any part of the customs duty leviable thereon. Power exercisable under Section 25 of the Customs Act is no doubt discretionary, but it is not unrestricted. The pattern of the law imposing customs duties and the manner in which it is operated to a certain extent exposes the citizens who are liable to pay customs duties to the vagaries of executive discretion. While Parliament has imposed duties by

C enacting the Customs Act and the Customs Tariff Act, 1975, the executive Government is given wide power by Section 25 of the Customs Act to grant exemption from the levy of customs duty. It is ordinarily assumed that while such wide power is given to the Government, it will consider all relevant aspects governing the question whether exemption should be granted or not.

D Ms. Nisha Bagchi, learned counsel for respondents, relied on *Union of India v. Indian Charge Chrome*, (1999) 112 ELT 753 S.C.. In this case, however, the law stated in *Kasinka Trading & Anr.* (supra) is reiterated but there is no plea in the petition that the formation of opinion as to public interest is based on no material or was vitiated by malafides. In the present

E case, the position is altogether different. Specific plea has been raised that there is no basis for formation of the opinion as to public interest calling for withdrawal or modification of the exemption already granted. Therefore, the principle stated in that case has no application to the facts of the present case.

F Relying upon a decision in *Collector of Central Excise v. R.M.D.C. Press Pvt. Ltd.*, (1997) 92 ELT 29 S.C., it was further submitted by the learned counsel for the respondents that public interest should be presumed to exist even when the judgment under appeal does not expressly refer to public interest which moved the respondents to curtail the period of exemption. When a specific contention had been raised regarding non-existence of public

G interest in curtailing the period of exemption, we fail to understand as to how this decision can be of any assistance to the learned counsel.

H In the present case, by issuing different set of notifications and granting exemption at different stages and limiting only to the extent of 75% for the period from December 30, 1986 to September 10, 1987 and for the reasons stated earlier in the manner set out in the counter affidavit clearly indicate that

the Government has not taken into account all the relevant factors while issuing the impugned notifications reducing the exemption to 25% for the aforesaid period. We may state that the Government has failed to discharge its statutory obligation while issuing the impugned notifications. Justifications offered, to say the least, is far too naive to be accepted. The reason set out does not carry the case of the State Government further at all. However, Ms. Nisha Bagchi sought to distinguish the different notifications by stating that different notifications issued subsequently are in respect of different commodities and it is always open to the Government to change its policy. Undoubtedly it is so, but those factors per se would not discharge the burden of the Government in establishing as to what public interest governed the Government in reducing the extent of exemption.

We have already held that the Government has failed to discharge that burden. In the result, we have no hesitation in quashing the amended notifications which are applicable for the period from December 30, 1986 to September 10, 1987 reducing the extent of exemption. The notification issued earlier on September 10, 1982 and modified in 1983 shall be effective till September 10, 1987. The appellants should be subject to duty only in accordance with those notifications issued under the Customs Act.

The appeal is allowed accordingly by setting aside the order made by the High Court in allowing the writ petition filed by the appellant in the manner indicated therein. There shall be no order as to costs.

V.S.S.

Appeal allowed.