# Ms. Darshan Oil Pvt. Ltd. and Another Vs Union of India and Others

## Civil Appeal No''s. 7153 of 1994 etc.

**Court:** Supreme Court of India

**Date of Decision:** Nov. 8, 1994

**Acts Referred:**
Customs Act, 1962 â€" Section 25#Imports and Exports (Control) Act, 1947 â€" Section 3#Constitution of India, 1950 â€" Article 14, 19

**Citation:** AIR 1995 SC 370 : (1996) 53 ECC 107 : (1995) 75 ELT 32 : (1995) 1 JT 219 : (1994) 4 SCALE 840 : (1995) 1 SCC 345 : (1994) 5 SCR 278 Supp

**Hon'ble Judges:** K.S. Paripoornan, J; J. S. Verma, J

**Bench:** Division Bench

**Advocate:** H.N. Salve, S. K. Ghambir and Vivek Ghambir, for the Appellant; A. Subba Rao, R. Sasi Prabhu, V.K. Verma and Sushma Suri, for the Respondent

**Final Decision:** Dismissed

## Judgement

@JUDGMENTTAG-ORDER

J.S. Verma, J.
Leave granted in all the special leave petitions.

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2. The import and Export Policy for the period 1.4.1993 to 31.4.1994 was declared by the Central Government by issue of an order in exercise

of the powers conferred by Section. 3 of the import and Export (Control) Act, 1947 giving general permission for import into India of raw

materials, components and consumables by actual users (industrial) subject to certain conditions which included the following :-

22. Items covered under Part-III of the Schedule to this licence can be imported under OGL by Actual Users (Industrial) and others, for stock

and sale;

26. Such goods are shipped on through consignment to India on or before 31st March, 1994 or in the case of Actual Users (Indastrial) on or

about 30th June 1984 against confirmed orders for which irrevocable letters of credit are opened and established on or about 29-2-1984 with no

grace period whatsoever.

3. Split steering fatty acids were not a canalised item under that Policy. The appellants, entered into a contract with a foreign supplier for import of

fatty acids on 1.8.1993 and on 3.10.1983 opened an irrevocable letter of credit in favour of the foreign supplier. On 11.11.1994, the Central

Government issued a public notice amending the said Policy for the period April 1990 to March 1994 whereby the import of fatty acids became a

canalised Item. The amendment clearly provided that import of fatty acids could be made only by the State. Trading Corporation under Open

General Licence and therein it was stated as under: -

3. Import of items referred to in para 2 of this public notice shall not be allowed under any import licence already issued or under paras 31, 34, 37,

38, 138, 148 and 203 of the Import & Export Policy, 1983-84 or under any other provision of the Import & Export Policy 1983-84, except

against shipments from the country of origin already effected before the date of this public notice. This restriction will not, however, apply to the

imports by STC of India Ltd.

(emphasis supplied)

Thus, the amended Policy effective from 11.11.1993 made it clear that import of fatty acids was not allowed thereafter even under any import

licence already issued except against shipments from the country of origin already effected before the date of this public notice"", In other words,

the only exception made for import of the canalised items under import licences already issued was in respect of the shipments already effected

from the country of origin before the date of said amendment, that is, of shipments of which transit had already commenced from the country of

origin. The shipment in question arrived at Bombay on 9.2.1984 and it is not the appellants case that this shipment falls within the exception

indicated above. This being so, the shipment of fatty acids in the present case, not being covered by the exception made in the amendment to the

Policy effective from 11.11.1983 and the import being not through the State Trading Corporation, the appellant has been denied the benefit of its

import being covered by the Policy prior to its amendment.

4. The appellants filed a writ petition in the Bombay High Court challenging the amendment made by the public notice dated 11.11.1988. That writ

petition having been dismissed, this appeal has been filed by special leave.

5. The challenge to the public notice dated 11.11.1983 by the appellants in the High Court was based mainly on the doctrine of promissory

estoppel which has been rejected by the High Court. A similar challenge on the ground of promissory estoppel has been rejected by this Court in

Kanishka Trading and Anr. etc. v. Union of India and Anr. C.A. Nos. 4336 etc. of 1994 decided on 18.10.1994. Accordingly, decision of the

Delhi High Court in Kaptan's Enterprises and Another v. Union of India, AIR 1986 Delhi 221 cannot furnish any support to the appellants'' in the

present case. Shri Harish Salve, learned Counsel for the appellants made no attempt to support the appellant''s case on the doctrine of promissory

estoppel. This point does not, therefore, require any further consideration.

6. The submission of Shri Harish Salve, learned Counsel for the appellants is that an irrevocable letter of credit having been opened by the

appellants in favour of the foreign supplier on 3.10.1983 prior to amendment of the Policy by the public notice dated 11.11.1983, it was not

feasible for the appellants to prevent the shipment of the goods thereafter, and, therefore, not extending the benefit of exception to such cases also,

confining the exception only to actual shipments made prior to issue of public notice dated 11.11.1983, is unreasonable and violative of Article 14.

learned Counsel submits that opening of an irrevocable letters of credit prior to issue of the public notice being lawful, its consequence could not be

made unlawful by a subsequent amendment of the Policy. learned Counsel also submitted that amendment of the import Policy by issue of a public

notice can be only prospective, but in this manner it has been made retrospective. Shri Subba Rao, learned Counsel for the Central Government

submitted that the exception is applicable only to such goods which wee already in transit on account of the shipments having been made; and the

only consequence of the amendment is an increase in the tax which is not violative of Articles 14 and 19 of the Constitution.

7. We are unable to accept the submissions of the learned Counsel for the appellants. These submissions are merely a different fact of the doctrine

of promissory estoppel which has been held inapplicable in such a situation. In Kanishka Trading which related to withdrawal of exemption from

payment of duty etc. in exercise of the statutory powers, it was reiterated that the power to exempt includes the power to modify or withdraw that

benefit and the liability to pay duty under the Customs Act, 1992 arises when the taxable event occurs being subject to payment of duty as

prevalent on the date of the entry of the goods. It was held that the doctrine of promissory estoppel could not be invoked to question the

withdrawal of notification issued u/s 25 of the Customs Act, 1992 when it was done in public interest. Equities have to be balanced and public

interest must outweigh individual interest. Kanishka Trading clearly holds that withdrawal of such a benefit can be made in public interest during the

period for which the benefit had earlier been intended. In our opinion, this is sufficient to indicate the fallacy inherent in the submissions made on

behalf of the appellant.

8. In D. Navinachandra & Co., Bombay & Anr. etc. v. Union of India & Ors., [1987] 2 S.C.R. 989, it was clearly held that the entitlement to

import items which were canalised or not, is governed by the Import Policy prevalent at the time of import. In the present case, the import of a

canalised item being made after amendment of the Policy by the public notice dated 11.11.1983 in a manner not permitted by the amended Policy,

the appellants cannot claim to avoid the logical consequences of the import being made contrary to the Import Policy prevailing at the time of

import of the goods. Exemption under the amended Policy being limited to shipments already made cannot be termed unreasonable or unduly

restrictive. Obviously, the exception was made to cover only those goods of which the shipment had been made and were in transit, excluding all

such goods of which no shipment had been made. The classification between goods in transit and those of which the transit had not begun, cannot

be called irrational or unreasonable in the context.

9. Reliance by Shri Harish Salve on the decision in M/s. Universal Imports Agency and Another v. The Chief Controller of Imports and Exports

and Others, [1991] 1 S.C.R. 305 , which deals with the meaning of the expression ""things done"" in a general sense is misplaced. In the present

case the language of the exception made in the amended Import Policy is clear and unequivocal excluding from its ambit all such goods, except

those in transit because of the shipment having already been made. That decision does not, therefore, require any further consideration.

10. For the aforesaid reasons, the appeal has no merit and is dismissed with Rs. 10,000/- (Rupees ten thousand) only, as costs.

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11. In view of the decision in Civil Appeal No. 7153 of 1994 [arising out of SLP (C) No. 20837 of 1993], these appeals are also dismissed with

Rs. 10,000/- (Rupees ten thousand) only as costs in each appeal.