

(1988) 06 CAL CK 0003

Calcutta High Court

Case No: Matter 351 of 1983

Eastern Spinning Mills and
Industries Limited and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: June 7, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226, 299
- Customs Act, 1962 - Section 12, 15, 25, 46, 48
- Customs Tariff Act, 1975 - Section 2, 2(15), 3

Citation: (1989) 21 ECR 260 : (1988) 37 ELT 14

Hon'ble Judges: Baboo Lall Jain, J

Bench: Single Bench

Judgement

Baboo Lall Jain, J.

This is an application under Article 226 of the Constitution of India. The petitioner No. 1 Eastern Spinning Mills & Industries Limited imported certain goods into India which were of the description as mentioned in the Notification No. 216-Cus., dated 1st November 1980. A copy of the said Notification is Annexure A to the petition. By the said notification the Union of India in exercise of its powers conferred by sub-section (i) of Section 25 of the Customs Act, 1962, exempted the goods specified in the liable forming part of the said Notification and falling within Chapter 56 of the First Schedule of the Customs Tariff Act, 1975 (Act No. 51 of 1975), when imported into India from whole of the Duty of Customs leviable thereon under the said first schedule. Thereafter on 14th December, 1982, another Notification was issued by the Central Government being Notification No. 27G/82 Customs whereby the Central Government in exercise of the powers conferred by sub-section (i) of Section 25 of the Customs Act, 1962 and in supersession of the Notification of the Government of India No. 216 Customs, dated 1st November 1980 exempted the goods specified in the table annexed to the said Notification and falling within

Chapter 56 of the First Schedule to the Customs Tariff Act, 1975 (Act No. 51 of 1975), when imported into India from so much of the Duty of Customs leviable thereon under the said First Schedule as is in excess of 20% ad valorem. The said Notification, dated 14th December, 1982, is Annexure-"E" to the petition. Another Notification was issued by the Central Government being No. 39/38, dated 1st March 1983 in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (Act 52 of 1962) whereby the said Notification No. 276/82 Customs, dated 14th December 1982 was amended and intend instead of the words "20% ad valorem" the figure and words "40% ad valorem" was substituted. The effect of the amendment, dated 1st March 1983 was that the exemption which was in respect of duty of customs in excess of 20% ad valorem was reduced to the extent of the duty of customs in excess of 40% ad valorem. Therefore, by the said third Notification which is Annexure-"C" to the petition the exemption already granted was decreased to the extent of further 20% ad valorem.

2. The case of the petitioner is that it entered into an agreement on 6th November 1982 with some foreign party. A Broker's Note dated 6th November 1982 is annexed to the petition. The said Note mentions that the shipment was to be during December 1982/January 1983. Such import was to be made from Austria. On 14th December 1982 the petitioner received a Letter of Credit from M/s. Chemiefaser Leuzing Aktiengesellschaft, an Austrian Party. There is a Copy of the Bill of Lading showing despatch of 520 bales of Lensing High Tenacity High Performance Viscose Fibre, dated 24th January 1983. The bill of the said Austrian party, namely, M/s. Chemiefaser Lensing Aktiengesellschaft is for U.S. Dollars 1,63,675.73. The said goods arrived in the Calcutta Port sometime around 15th March, 1983.

3. After the goods arrived in the Port of Calcutta and were intended to be cleared out of the Customs barrier the Customs Authorities demanded payment of duty on the basis that the petitioner was bound to pay Customs duty at the rate of 40% as per the Notification, dated 1st March 1983. The petitioner's contention was that the petitioner was only liable to pay Customs duty at the rate of 20% ad valorem as per the Notification, dated the 14th December 1982 and, according to the petitioner, the petitioner was not bound by the Notification, dated 1st March, 1983.

4. Thereupon the petitioner made the instant writ petition and a Rule was directed to be issued by this Court on the 23rd March 1983. An interim order was made to the effect that upon the petitioner's paying to the Customs Authorities 40% ad valorem, towards the basic Customs duty In respect of high tenacity and high performance viscose staple fibre and upon the undertaking given on behalf of the petitioner that the petitioner will give an unconditional Bank Guarantee in favour of the Registrar, O.S., Calcutta for the full amount of Additional Duty and Auxiliary Duty that will be assessed and/or levied by the Customs Authorities on the consignments of the goods within four weeks from the date of assessment and/or levy and an intimation thereof by the Customs Authorities concerned to the petitioner, an Order

of injunction was passed in terms of prayer (d) of the petition and the petitioner, was to be entitled to clear the goods mentioned in the petition. The Bank Guarantee was to be renewed on or before the date of expiry of the same. The said interim Order further directed that out of 40% of basic duty 20% of the basic duty would be paid under protest, as, according to the petitioner, the same was not payable.

5. The petitioner preferred an appeal from the said Order and the Appellate Court by an Order, dated 25th March 1983, inter alia, directed that instead of paying 40%, the petitioner will pay 20% ad valorem duty only and the petitioner will furnish Bank Guarantee for the remaining 20% of the basic Customs Duty as also the Additional Duty and Auxiliary Duty of Customs.

6. The only point that has been urged on behalf of the petitioners is that the said Notification No. 216-Cus., dated 1st November 1980 exempted the whole of the Duty of Customs as well as the Additional Duty levied u/s 3 of the Customs Tariff Act 1975 (Act No. 51 of 1975) as also the duties levied under the Finance Act in the form of Auxiliary Duties of Customs. Therefore, according to the petitioner, the demand of the Customs Authorities for payment of Additional Duty levied u/s 3 of the Customs Tariff Act, 1975 and for payment of the Auxiliary Duties of Customs was illegal and contrary to the said Notification.

7. The second point that was urged before me was that so far as the Customs Duty levied u/s 12 of the Customs Act, 1962 (Act No. 52 of 1962) is concerned the exemption as per the said Notification bearing No. 276/1982-Cus., dated December 14, 1982 only was binding on the petitioner and that the change effected by the Notification, dated 1st March, 1983 was not binding on the petitioner. The contention made on behalf of the petitioner was, that at the time of the contract the duty leviable as per the said Notification, dated 14th December 1982 was to the extent of 20% ad valorem and that after the date of the contract and until the time when the actual import was made no change could be effected as against the petitioner and that the change made in the Customs Duty by the Notification, dated 1st March 1983 was barred by the principle of Promissory estoppel.

8. So far as the first point urged before me is concerned my attention was drawn on behalf of the petitioner to Section 12 of the Customs Act, 1962 which is as follows :

12. Dutiable goods.- (1) Except as otherwise provided in this Act, or any other law for the time being in force, Duties of Customs shall be levied at such rates as may be specified under the (Customs Tariff Act, 1975) or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

9. My attention was also drawn to Section 25 and Sub-Sections (1) and (3) thereunder of the Customs Act which is as follows :

25. Power to grant exemption from duty.

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special Order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such Order, any goods on which duty is leviable.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the Duty of Customs leviable thereon (the Duty of Customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the Duty of Customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation-- "Form or method", in relation to a rate of Duty of Customs means the basis, namely, valuation, weight, number, length, area, volume or other measures with reference to which the duty is leviable.

10. The word "Duty" is defined in Section 2(15) which is as follows :

2(15) "Duty" means a Duty of Customs leviable under this Act :

11. It was submitted that Additional Duty is levied u/s 3 of the Customs Tariff Act, 1975, the relevant portion whereof reads as follows :

Section 3. Levy of Additional Duty equal to Excise Duty: (1) Any article which is imported into India shall, in addition, be liable to a duty (hereinafter in this Section referred to as the Additional Duty) equal to the Excise Duty for the time being leviable on a like article if produced or manufactured in India and if such Excise Duty on a like article is leviable at any percentage of its value, the Additional Duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

12. Section 2 of the Customs Tariff Act, 1975 specifies the rates of Duties of Customs duties levied under the Customs Act, 1962. The said rates are specified in the First Schedule and the Second Schedule to the Customs Tariff Act, 1975. The First Schedule refers to import duties and the Second Schedule refers to Export Duties. The Auxiliary Duties of Customs are levied by the Finance Act and they are altered or varied by the subsequent Finance Acts from time to time.

13. It was submitted on behalf of the petitioner that by the said Notification No. 216-Cus., dated 1st November 1980, what was exempted was the whole of the Duty of Customs, no matter whether the same was levied under the Customs Act or whether the same was levied in the form of Additional Duty u/s 3 of the Customs Tariff Act and whether the same was levied under the Finance Act, in the, form of Auxiliary Duties of Customs. The petitioner wanted me to read in the said Notification, the words "the whole of the Duty of Customs" to mean all the duties whether levied under the Customs Act or under the Customs Tariff Act or under the Finance Act. In my opinion, the submissions made on behalf of the petitioner could not stand to reason because the petitioner wanted to ignore the subsequent words "leviable thereon under the said first schedule." What was exempted by the said Notification was "the whole of the Duty of Customs leviable thereon under the said first schedule", The said First Schedule was the first schedule to the Customs Tariff Act 1975 (Act 51 of 1975) as specified in the earlier portion of the said Notification. The duty of customs leviable on the specified goods-under the said first schedule is the Customs Duty under the Customs Act at the rate specified in the First Schedule.

14. In my opinion the language of the said Notification No. 216-Cus., dated 18th November 1980 is quite clear, in as much as it exempted the goods concerned, when imported into India from whole of the Duty of Customs leviable thereon, under the said first schedule. What was exempted was the whole of Duty of Customs leviable under the said first schedule and not the other Duties of Customs which do not find any mention in said first schedule namely the Additional Duty of Customs and the Auxiliary Duty of Customs. The Additional Duty of Customs is levied u/s 3 of the Customs Tariff Act, in the form of counter veiling duty and the Auxiliary Duty of Customs is levied under the Finance Act. May be that the said "Additional Duty" and the said " Auxiliary Duty of Customs" are also "Duties of Customs" with in the meaning of Section 12 of the Customs Act yet they are not leviable under the said first schedule to the Customs Tariff Act and so such it can not be said that the said "Additional Duty" or the said "Auxiliary Duty" were also exempted by the said Notification. Therefore, in my opinion, there is no substance in the contention made on behalf of the petitioner, that the said Notification No. 216-Cus., dated 1st November 1980 or the subsequent amendment or the variation thereof, by the Notification No. 276/82 Customs, dated 14th December 1982 and/or the Notification, dated the 1st March 1983 being Annexure "C" to the petition were intended and/or directed to exempt" Additional Duty" levied u/s 3 of the Customs Tariff Act, (Act 51 of 1975) and/or the Auxiliary Duty levied under the Finance Act in force for the time being. The petitioner submitted that the additional duty chargeable u/s 3 of the Customs Tariff Act, and the Auxiliary Duty of Customs levied under the Finance Act, are also Duties of Customs, leviable under the Customs Act, on import of the goods, with in the meaning of Section 12 of the Customs Act and as such they come with in the expression "Whole of the Customs Duty" as used in the said Notifications. But the said words "Whole of the Customs Duty" are qualified by

the further words used in continuation , in the same sentence, i.e., "leviable thereon under the said first schedule". In the premises in my opinion it can not be said that the said Notifications or any of them, exempted any Duty .of Customs, leviable under any other law or otherwise than "under the said First Schedule". Therefore in my opinion the said Notification, dated 1st November 1980 or the said subsequent varifications thereof did not exempt the" Additional Duty" and/or the "Auxiliary Duty of Customs, even if it can be said that the said Additional Duty and the said "Auxiliary Duty" are also duties of Customs.

15. The next submission on behalf of the petitioner is that the petitioner was liable to pay Duty of Customs as per the Notification No. 276/82-Cus., dated December 14, 1982 on the consignments of 250 Metric Tonnes of high tenacity and high performance viscose staple fibre mentioned in Annexure "D" to the petition the same being the duty represented by the Govt. to be in price at the time of the contract. The contention was that the duty prevalent at the time when the petitioner entered into the contract for the import of the goods was as per the said Notification No. 276/82-Cus. However, the Annexures to the petition have a different story to tell. The contract is dated 6th November, 1982. That date falls prior to the said Notification, dated the 14th December, 1982. Even the letter of credit was advised by the Indian Bank at the instance of the Austrian Bank, to the petitioner on the 14th December, 1982. That also indicates that the instructions for opening the letter of credit must have been given by the shipper, on a date earlier thereto. In any event the submissions on behalf of the petitioner that the rate of customs duty prevalent as on the date of the contract, was as per the Notification No. 286/82-Cus., dated 14th December 1982, is factually incorrect even according to the documents annexed to the petition. The submissions made on behalf of the petitioners is that the petitioner No. 1 entered into the contract relying on the representation that the said Duty of Customs as per the Notification, dated 14th December 1982 would be payable, when the goods would be ultimately imported into India. It was submitted on behalf of the petitioner that they relied on the representation and/or promise of the Government of India that the Duty of Customs as prevalent at the time of the contract, would be the duty which will be charged at the time, when the goods are actually imported. According to the petitioner, the Government of India is estopped by its promise, which was made by the said Notification, dated 14th December 1982.

16. It is not the case of the petitioner that such representation or promise was oral or that it was contained in any documents other than the said Notifications. The said Notifications, however, do not any where mention the length of time until which the same will continue in force. They also, do not mention that the government will not alter the rates of duty, until any time. The Union of India has powers to impose Customs duties or to exempt the same by following the procedure prescribed by law and/or through the prescribed authority. It is not the case of the petitioner that the said Notification, dated 1st March 1982 was issued without authority or power to do so, or that the same was not in accordance with law. All that the petitioner wants to

contend is that the Union of India, is estopped from entering the same as against the petitioner by reason of alleged representations and/or promises alleged to be made to the petitioner. The petitioner has not been able to point out any representation and/or promise by the Union of India, not to exercise its statutory powers of impositions of Customs Duties and/or exemptions in respect thereof. I do not find any document, that the Union of India represented or promised that the duty of prevalent at the time of contract will be charged, irrespective of Section 15 of the Customs Act. The Government from time to time alters the duties of customs in Exercise of its statutory powers. The alterations come into force on and from the date they are so notified. The rate of duty remains in force until the next change is effected in accordance with law. The Government never in this case represented and/or promised as to the length of the period until which the said Notification, dated 14th December 1982, would continue to be in force. u/s 15 of the Customs Act the duty of customs is leviable on the basis as specified in that Section.

17. The said Section 15 reads as follows :

15. Date of determination of rate of Duty and Tariff valuation, of imported goods. --
(1) The rate of Duty and Tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,

- (a) in the case of goods entered for home consumption under Sec. 46, on the date on which a bill of entry in respect of such goods is, presented under that section ;
- (b) in the case of goods cleared from a warehouse under Sec. 48, on the date on which the goods are actually removed from the warehouse;
- (c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

18. The said Section states that when a bill of entry is presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inward. So the rate of Duty and the Tariff valuation is related to the date on which the bill of entry is presented or in case of goods cleared from warehouse on the date the goods are actually removed from the warehouse and in any other case on the date of payment of duty. The petitioner is deemed to have knowledge about the said Section of the Customs Act. Any person who intends to import any goods into India is supposed to know that the rate of Duty which will be charged, will be the rate prevalent on the date, as mentioned in Section 15 of the Customs Act and not the rate of duty prevalent on the date, on which the person enters into a contract for import of the

goods. Furthermore, it was not disputed on behalf of the petitioner that the said Notifications were duly issued by Competent Authority under the law having right to issue such Notifications. According to the petitioner the legality of the said Notifications and the changes effected by them were not disputed. What the petitioner wanted to urge was that the said Notifications were valid and binding in respect of all persons excepting those like the petitioner, who entered into contracts on a date earlier than the date of the particular Notifications on the basis of representations and/or promises contained there in. This is quite illogical. The rate of Customs Duty may be changed from time to time, exemptions may be given by the Government from time to time and exemptions may be withdrawn by the Government either partially or in full from time to time. If such changes are effected, they come into force from the time they are notified. Government never represents that its right to exercise these statutory powers will not be exercised for any given length or time. Therefore, there was no promise here and no question of promissory estoppel had arisen. The petitioner could not possibly have acted on any alleged representations or promises which were never made and no question of any estoppel could arise here. The petitioner relied on the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd. . The relevant portions of the said judgment relied on by the petitioner are as follows :

The doctrine of promissory estoppel is well established in the administrative law of India. It represents a principle evolved to equity to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter position of equity which has always, true to its form, stepped into mitigate the rigour of strict law. This doctrine, though of ancient vantage, was rescued from obscurity by the decision of Mr. Justice Denning in his celebrated judgment in Central London Property Trust vs. High Trees House Ltd. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of a action it can only be a shield and not a sword but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of Supreme Court in Motilal Sugar Mills v. State of Uttar Pradesh, it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found. a cause of action the decision of this Court in Motilal Sugar Mills case (supra) contains a exhaustive discussion of the doctrine of promissory estoppel and we find ourselves

wholly in agreement with the various parameter of this doctrine outlined in that decision. The doctrine of promissory estoppel is also applicable against the Government and cannot be defeated by invoking the defence of the executive necessity because if party who has, acting in reliance on a promise or representation made by the Government altered his position, is entitled to enforce the promise or the representation against the Government, even though the promise or representation is not the form of a formal contract as required by Article 299 and the Article does not militate against the applicability of the doctrine of promissory estoppel against the Government. The doctrine of promissory estoppel is also applicable against public authorities because there is no distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned. The Supreme Court judgment in Jeet Ram's case where it was held that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law, is not a correct law to that extent. However, there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or Public Authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a Public Authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the Officer of the Government or of the Public Authority to make. The doctrine of promissory estoppel being an equitable doctrine., it must yield when the equity so requires, if it can be shown by the Government or Public Authority that have regard to the facts as they have transpired, it would be inequitable to hold the Government or Public Authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made.

19. In this case there was no promise nor representation made by the Government. The only representation was that the Duty of Customs on and from the date of Notification would be as follows. The said duty was to apply on the basis as per Section 15 of the Customs Act. So there was no question of any representation to the petitioner that the rate of duty prevalent as on the date of the contract would continue to be so until the date of actual import or the presentation of the bill of entry. Since there was no promise nor any representation by the Government and since there was no representation by the Government that it would not exercise its right to change the rate of Customs Duty the question of any acting on such alleged promise or representation did not and could not arise and the question of any promissory estoppel does not and cannot arise.

20. In view of what have been stated above the Rule is hereby discharged and the application is dismissed. I am told the bank guarantee was issued by the American Express International Banking Corporation in favour of the Registrar, Original Side. I am further told that the said bank guarantee has been duly renewed and is still in

force. The said bank is hereby directed to deposit the entire amount payable under the bank guarantee to the Registrar, Original Side of this Court forthwith on service of a signed copy of the operative portion of this judgment. The Registrar, Original Side, on receipt of the said bank guarantee amount will make over the same to the Collector of Customs, Calcutta, who will appropriate the same towards the balance claim on account of Customs Duty, additional duty and Auxiliary Duty as payable by the petitioner under the different Acts. All interim Orders of injunction as against the Collector of Customs and/or the respondents are vacated and the respondents will be entitled to realise the Duty of Customs, Additional Duty as also the Auxiliary Duty of Customs leviable as against the goods mentioned in the petition under the aforesaid respective Acts. The Collector of Customs and/or the appropriate officer of the Customs Department will be entitled to take all suitable proceedings as against the petitioner No. 1 for realisation of any of the said dues and/or the balance thereof remaining outstanding from the petitioner No. 1. In addition to the duties which were and/or are payable, the petitioner will also pay interest on the said sum of Rs. 6,24,716 on and from the 23rd March, 1983 at the rate of 10 per cent. per annum until the date of this Order. The petitioner has caused this delay in payment of the duties, due and payable to the Union of India and has also enjoyed that the benefit by getting the goods released without payment of the duties thereon and it is fit and proper that the petitioner should be held liable to pay such interest as aforesaid. If, however, the Customs Authorities are entitled to levy any interest against the petitioner under any provisions of law for the period from the 23rd March, 1983 until today the said claim, if any, will merge with this Order for payment of interest and interest will not be charged twice over.

21. The petitioner will also pay the costs of this application and/or the proceedings thereunder assessed at Rs. 2,000.

22. Stay asked for on behalf of the petitioner is declined.

23. All parties including the said bank and the Registrar, Original Side, will act on a signed copy of the operative portion of this judgment on the usual undertaking.