

**(1989) 07 CAL CK 0041**

**Calcutta High Court**

**Case No:** C.R. No. 11122 (W) of 1980

Eastern Spinning Mills Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

**Date of Decision:** July 21, 1989

**Citation:** (1991) 37 ECR 168 : (1989) 43 ELT 638

**Hon'ble Judges:** Susanta Chatterji, J

**Bench:** Single Bench

**Advocate:** S.K. Bagaria, for the Appellant;

### **Judgement**

Susanta Chatterji, J.

The present Rule was obtained on 20-11-1980 by the petitioners Eastern Spinning Mills Ltd. and Another praying, inter alia, for a Writ of Mandamus for commanding the respondents to forbear from giving any effect or further effect or taking any step whatsoever pursuant to and/or furtherance of the purported Notification Nos. 214-Customs/80 and 215-Customs/80 both dated November 1, 1980 and the other purported Notification dated June 19, 1980 and all proceedings relating thereto and/or from demanding any basic duty of customs or any countervailing duty in excess of Rs. 2.37 P. per kg. on the viscose staple fibre imported by the petitioner Company as mentioned in and pursuant to the contracts in Annexure "D" prior to December 31, 1980.

2. It is stated that the Notifications dated 5th January, 1979 as amended by Notification dated October 30, 1979 clearly stated that the exemption granted thereunder would remain in force upto and inclusive of December 31, 1980. Representations were made by the Government of India fully knowing that the importers of viscose staple fibre including the petitioner No. 1 would be acting thereupon and it is alleged that in fact, the petitioner No. 1 on the basis of representations made by the respondent No. 1 herein, in the said Notifications entered into contracts for import of viscose staple fibre and thus acting on such basis, there was promise by the respondents and the respondents cannot take steps

to circumvent the situation or stand by issuing the impugned notice to the prejudice of interests of the petitioners. It is further alleged that the respondents having made the promises aforesaid which were fully within their powers, competence and authority and the petitioners having acted thereby and on the basis thereof and also having altered their position, respondents cannot do anything to the prejudice of the petitioner Company and the principle of promissory estoppel is aptly applicable in the facts and circumstances of the present case and the petitioners are entitled to reliefs indicated above and prayed for in this writ petition. The facts in detail have been elaborated in the writ petition.

3. Mr. Bagaria, learned Counsel appearing for the petitioners argued with much emphasis that by applying the principle of promissory estoppel the reliefs cannot be denied to the petitioners in the manner sought for. He has drawn the attention of the Court to various decisions. First of them is Pournami Oil Mills and Others Vs. State of Kerala and Another, . It was found therein that it is well settled principle of law that where the authority has power conferred on it by Statute, to make an order and once order is made without indicating the provisions under which it is made, the order would be deemed to have been made under that provision of the Statute. In that case, the question of exemption to new industries from sales tax and other tax for five years were considered. The attention of the Court has been drawn to another case reported in 65 S.T.C. 430 Pat (State of Bihar and Anr. v. Usha Martin Industries Ltd.). Following the decision of Pournami Oil Mills (Supra) and (Motilal Padampat Sugar Mills v. State of U.P.) reported in 44 STC 42 SC, it was found in that case that the Sales Tax Authorities were bound to give exemption on the basis of the resolutions and the respondents were entitled to incentives in terms of the resolutions.

4. Looking to another decision reported in 70 S.T.C. 59 (Assistant Commissioner of Commercial Taxes v. Dharmendra Trading Company), the scope of exemption was also considered with limits and ceiling in the proper perspective.

5. Mr. Bagaria, learned Advocate for the petitioners has also argued with much emphasis to canvas the concept of estoppel and promissory estoppel as would be appearing from the decision reported in Ceat Tyres of India Ltd. Vs. Union of India and others, wherefrom it appears that the doctrine of promissory estoppel must yield when equity requires. If it can be shown by the Government that having regard to the facts as they have consequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise as against the Government. It would not be enough just to say that the Government would not be compelled to carry out the promise or that the public interest would suffer if the Government was required to honour it. The Government cannot claim to be exempt from the liability to carry out the promise, on some indefinite and undisclosed ground of interest and necessity and expediency nor can the Government claim to be the sole judge of its

liability and repudiate it on an ex parte appraisement of the circumstances. Therefore, it is not enough merely stating that the exemptions were withdrawn in the public interest. Whatever may be, when the exemption was given the Government did take into account that such an exemption was necessary, they must place such material on record as to convince the Court as to why such exemption was detrimental in public interest.

6. In that context another decision was cited from the Bar in support of the petitioners as reported in Bharat Commerce and Industries Ltd. and another Vs. Union of India and others, wherein also the question of estoppel and in particular promissory estoppel was considered in the proper perspective. The duration of the Notification granting certain benefits and the impact of the withdrawal of such Notification by another and the impact thereof were considered. In course of the said decision, it was observed that there is no reason why the Government should be permitted to act contrary to the terms of its presentation upon which citizens have based themselves only because it was no acting in exercise of powers given under a Statute or in terms or exercise of powers of subordinate legislation. The Supreme Court judgment in Pournami Oil Mills (Supra) case, according to the said E.L.T. 32, Page 40 decision, leaves the Court in that case in no doubt that the plea of promissory estoppel was available also in the said case and applying the said test, the reliefs prayed for therein were granted.

7. By considering the arguments advanced on behalf of the petitioners with all anxieties and looking to the facts of the instant case, this Court has no doubt as to the principle of estoppel and promissory estoppel. There is no dispute as to the principle laid down in the cases cited from the Bar. Apart from looking to the principle as it is, the burden is upon the petitioners to satisfy this Court that in the facts and circumstances of the case such principles of law are applicable. The precedents are there and the ratio of the decisions cited from the Bar is available to the petitioners as to the merits of the case as it can be considered with much occasion. Looking to the instant case in detail as disclosed by the petitioners that before the expiry of the two months, in view of the extended period of the previous Notification there is lifting of such exemption for which the petitioners have suffered. It is not merely to satisfy this Court from a positive point of view that there is sufferance. Unless such sufferance are demonstrated in the proper perspective, the Writ Court would be slow to grant reliefs on the basis of only dry principle of law. This Court appreciates the principle of law cited from the Bar in support of the case of the petitioners, but applying the tests as laid down in those reported decisions, this Court finds that those principles are not available to the petitioners' case herein.

8. Accordingly, this Court does not feel inclined to interfere in the matter to grant the reliefs as prayed for. Consequently, the writ petition is dismissed and the Rule is discharged without any order as to costs.

9. Interim order, if any, is vacated.

10. There will be stay for a period of two weeks from date of the operation of the order, as prayed for.