STATE OF PUNJAB

v.

M/S. NESTLE INDIA LTD. AND ANR.

MAY 5, 2004

[RUMA PAL AND P. VENKATARAMA REDDI, JJ.]

Punjab General Sales Tax Act, 1948—Ss. 2(ff), 4(B), 6, 10, 11, 13(A), 31—Punjab General Sales Tax Rules, 1949—Rules 20 to 25 & 69:

Levy of purchase tax on milk abolished by the State Government for certain period—Subsequently raising of demands for the same period by the State—Challenged by the assessee—Demand quashed by High Court holding that the State Government estopped from raising the demand because of its promise exempting tax on milk—On appeal, Held : State Government could have been estopped for the promise made by it provided necessary ingredients of promissory estoppel established—State possesses discretionary power to exempt tax on milk—Discretionary power not properly exercised by it as necessary notification not issued—However, it failed to establish any overriding public interest which would make it inequitable to enforce the estoppel against it—Hence, estoppel could be invoked against the State—High Court rightly quashed the demands of tax for the stated period.

Estoppel—Enforceability against the State Government—Scope of—Discussed.

Words and Phrases :

'dealers'—Meaning of in the context of Punjab General Sales Tax Act.

Respondents-Producers of milk products were registered as dealers under the Punjab Sales Tax Act and they have been paying purchase tax on milk in terms of the provisions of the Act except for the period 1.4.1996 to 4.6.1997. The traders did not pay the tax on the ground that the State Government had abolished the tax on milk for the said period. However, the State had raised demands for the same period. The respondents filed writ petitions and the High Court quashed the demands. Hence the present appeals.

A Appellant-State contended that the State Government's decision of not abolishing purchase tax on milk was taken in public interest; that there could be no estoppel against the State; and that since the requisite exemption Notification was not issued, the respondents could not refuse to pay the tax on the ground of promissory estoppel.

B Dismissing the appeals, the Court

HELD : 1.1. The incidence of taxation has been provided for under Section 4 of the Punjab General Sales Tax Act under which every dealer dealing in goods not declared tax fee under Section 6 and whose gross C turnover exceeds the taxable quantum is liable to pay tax on the sales effected or the purchases made. Certain goods have been made tax free under Section 6(1) read with Schedule 'B' to the Act. Section 6(2) at the material time provided that the State Government "after giving by Notification not less than twenty days notice of its intention so to may D by like Notification add to or delete from Schedule B and thereupon Schedule B shall be deemed to be amended accordingly." The State Government had the power to exempt or abolish milk as a taxable commodity. There was nothing in law which prohibited it from doing so. The representation to exempt milk was made by persons who had the E power to implement the representation. Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not fall foul of the constitutional scheme and public interest. The F appellants have been unable to establish any overriding public interest which would make it inequitable to enforce the estoppel against the State Government. The representation was made by the highest authorities including the Finance Minister in his Budget Speech after considering the financial implications of the grant of examination to milk. It was G found that the overall benefit to the State's economy and the public would be greater if the exemption was allowed. The respondents have passed on the benefit of that exemption by providing various facilities and concessions for the upliftment of the milk producers. It would, in the circumstances, be inequitable to allow the State Government to resile H from its decision to exempt milk and demand the purchase tax with

retrospective effect from 1st April, 1996 so that the respondents cannot in any event re-adjust the expenditure already made. The High Court was right in holding that the operation of the estoppel would come to an end with the decision of the Cabinet in the year 1997.

[143-A-B-C; 151-B-C; 154-H; 155-A, G; 156-A-B]

Collector of Bombay **v.** *Municipal Corporation of the City of Bombay,* **[1952] SCR 42;** *Union of India & Ors.* **v.** *M/s. Indo-Afghan Agencies Ltd.,* **[1968] 2 SCR 366;** *M/s. Motilal Padampat Sugar Mills Co. Ltd.* **v.** *State of Uttar Pradesh & Ors.,* **[1979] 2 SCC 409;** *Century Spinning & Manufacturing Company Ltd & Anr.* **v.** *The Ulhasnagar Municipal Council & Anr.,* **[1970] 3 SCR 854;** *Union of India & Ors.* **v.** *Godfrey Philips India Ltd. Etc. Etc.,* **[1985] 4 SCC 369 and** *Bakul Cashew Co.* **v.** *Sales Tax Officer, Quilon Q,* **[1986] 2 SCC 365, relied on.**

Jit Ram Shiv Kumar & Ors. Etc. **v.** *State of Haryana & Anr. Etc.,* **[1980] 3 SCR 689;** *Surya Narain Yadav & Ors.* **v.** *Bihar State Electricity Board,* **[1985] 3 SCC 38;** *State of Madhya Pradesh* **v.** *Orient Paper Mills,* **[1990] 1 SCC 161;** *Delhi Cloth and General Mills* **v.** *Union of India,* **[1998] 1 SCR 383;** *Sharma Transport* **v.** *Govt. of A.P.,* **[2002] 2 SCC 188;** *State of Orissa* **v.** *Mangalam Timber Products,* **[2004] 1 SCC 139 and** *ITC Bhadrachalam Paperboards* **v.** *Mandal Revenue Officer, A.P.,* **[1996] 6 SCC 634, referred to.**

Amrit Banaspati Co. Ltd. **v.** *State of Punjab,* **[1992] 2 SCC 411, distinguished.**

1.2. The power of the State Government to grant exemption under the Act is coupled with the word "may" - signifying the discretionary nature of the power. Since the State Government's refusal to exercise its discretion to issue the necessary notification "abolishing" or exempting the tax on milk was not reasonably exercised, the plea of promissory estoppel raised by the respondents is upheld. [156-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6449 of 1998.

From the Judgment and Order dated 18.5.98 of the Punjab and

A Haryana High Court in C.W.P. No. 9974 of 1997.

WITH

C.A. Nos. 5826, 6451 and 6450 of 1998.

B

P.N. Misra, F.S. Nariman, Anil B. Diwan, Bimal Roy Jad, Ajay Bansal, Ms. Sunita Pandit, R.M. Patnaik, R.S. Suri, Ms. Sonu Bhatnagar, Ms. Sushma Sharma, Sanjiv Dahiya, Ms. Meghalee Barthakur, Rajan Narain, B.K. Sood, Ms. Indra Sawhney, H.K. Puri, Ujjwal Banerjee, S.K. Puri and Shiv Gupta for the appearing parties.

C

The Judgment of the Court was delivered by

RUMA PAL, J. : All the respondents before us have factories in the State of Punjab where they produce various milk products. For the purpose D of their business, they purchase milk from villages, each respondent from a particular "milk shed area" which covers several hundred villages in and around such respondent's factory. As registered dealers under the Punjab General Sales Tax Act, 1948, the respondents had been and are at present paying purchase tax on milk in terms of Section 4(B) of the State Act. E However, for one year i.e. for the period 1.4.96 to 4.6.97, none of the respondents paid the purchase tax. They did not do so because they say that the Government had decided to abolish purchase tax on milk for the period in question and was estopped from contending to the contrary.

F On the basis that the State had wrongly raised demands for purchase tax on milk on the respondents for the period 1996-97, the respondents filed separate writ petitions before the High Court. The High Court allowed the writ petitions and quashed the demands raised. Aggrieved by the decision of the High Court, these appeals have been preferred by the State Government.

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The circumstances under which the respondents had approached the Court chronologically commenced with an announcement made by the then Chief Minister of Punjab on 26th February 1996 while addressing dairy farmers at a state level function, that the State Government had

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abolished purchase tax on milk and milk products in the State. This announcement was given wide publicity in several newspapers in the State. A

The second circumstance was the speech given by the Finance Minister of the State while presenting the budget for the year 1996-97. Like all other budget speeches, it consisted of a review of achievements and a delineation of future economic measures proposed to be taken for the development of the State. It was said: B

> "In a package of measures, special relief was given to the farming community which is the backbone of the State's economy .... Furthermore, last month the Chief Minister has abolished the purchase tax on milk. While this would reduce the inflow of tax revenue to the extent of Rs. 6.93 crores, it will assist the milk producers, and also the milk co-operatives." C D

The budget speech also noted that despite the fact that the State Government had given a large number of tax concessions during the year which reduced the inflow of revenue, the collections under the sales tax, excise and other taxes had increased by about 100 crores for the current year. E

The next circumstance was a memo of the Financial Commissioner dated 26.4.96 addressed to the Excise and Taxation Commissioner, the relevant extract of which reads as follows: F

> "Pursuant to the announcements made by the Finance Minister, Punjab, on the floor of the House and the announcement made by the Chief Minister, Punjab on 26.2.1996, while addressing a public function organised by the Milk-fed in connection with Milk Day at Milk Plant, Ludhiana relating to exemption of purchase tax on milk, it has been decided in principle, to abolish the purchase tax on Milk w.e.f. 1.4.1996. You are requested to send proposal along with the financial implication involved therein, immediately. G
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> ..... H

A On the basis of the above decision, you are also requested to issue necessary instructions to the field officers."

In response to this memo, a circular dated 26th April 1996 was issued by the Excise and Taxation Commissioner, Punjab to all the Deputy and Assistant Excise and Taxation Commissioners and the Deputy Directors B (Enforcement) in the State. The circular requires quotation:

"The Government *have decided to abolish purchase tax on milk* and to exempt dhoop-agerbati, kumkun, kirpan, pens and ball-pens from the levy of sales tax. It has also decided to reduce rate C of tax on stainless steel utensils from 10% to 4% on tractor parts from 8% to 2% and on bullion from 2% to 0.5% all these exceptions/reductions will be effective from 1.4.1996.

2. To implement these decisions, necessary notifications are under process and likely to be issued shortly D

3. This position may be brought to the notice of all the officers/ officials for information and necessary action.

4. The receipt of this communication may please be acknowledged". E

It is averred in the writ petitions and not disputed by the appellants that the representatives of the respondents companies were informed about the instructions contained in the above circular dated 18th May 1996 by the concerned officials of the Department. The fact of exempting milk and F milk products from purchase tax was also recorded in a letter written by the Excise and Taxation Commissioner to the Financial Commissioner in which it is also said that in compliance with the directions of the Government, instructions had been circulated to the field officers to charge the tax as per the decision of the Government. The issuance of the G necessary notification to implement the decision of the Government was urged, to avoid any "legal complications or audit objection". That such instruction has been issued is also recorded in a series of letters between the Financial Commissioners which are not referred to in detail here.

On 27th June 1996, a meeting was held under the chairmanship of H the Chief Minister which was attended by the Finance Minister, the Excise

and Taxation Minister and various Financial Commissioners. At the meeting, the decision to abolish purchase tax on milk was reiterated and it was decided to issue a formal notification "in a day or two". A

On 18th July 1996/24th July 1996 the Finance Minister made an announcement that with a view to encourage milk producers and for granting relief to the common people, traders and industrialists, the Government had abolished tax on milk. The Finance Department formally approved the proposal of the Administrative Department to abolish purchase tax on milk and the Council of Ministers gave its formal approval to the decision at its meeting on 21st August 1996. B C

Therefore, it appears that the Chief Minister, the Council of Ministers and the Finance Department had all decided to abolish purchase tax on milk w.e.f. 1st April 1996 and the Sales Tax Authorities have taken the consequential action by issuing circulars. Consequently, the respondents-milk producers did not pay the purchase tax along with their returns for the year 1996-97 as required under the Rules framed under the Act. Along with each return, it was expressly stated that "purchase tax on milk is not being deposited from 1.4.96 due to various Press statements/letters/ circulars issued by Department and the issue has been discussed with the Excise and Taxation Commissioner, Patiala and Assistant Commissioner, Moga wherein we were informed that sales tax return will be accepted on the basis of tax exemption on ground of purchase of milk". The returns were not rejected by the tax authorities. D E

According to the respondents, the benefit which arose from the exemption of purchase tax was passed on by them to the farmers and milk producers. Details of this expenditure have been mentioned in the writ petitions filed. F

None of the facts which we have narrated earlier have been denied by the respondents. In fact even after the end of the financial year 1996-97, the Government published advertisements claiming credit for having abolished purchase tax on milk. G

For the first time, on 4th June 1997, the Council of Ministers held a meeting to consider various items on the agenda. One of the items related to the abolishing of purchase tax on milk. The minutes cryptically record H

A that the decision to abolish purchase tax on milk was not accepted. Consequently on 3rd July 1977 the Excise and Taxation Officer issued notices to the respondents requiring them to pay the amount of purchase tax for the whole of the year 1996-97.

B In this background, the High Court held that the State Government was bound by its promise/representation made to the respondents to abolish purchase tax. According to the High Court, "the absence of a formal notification was no more than a ministerial act" which remained to be performed. The respondents had acted on the representation made and could not be asked to pay the purchase tax w.e.f. 1.4.96 but would be liable C after the decision of the Government for the subsequent period i.e. from 4.6.97.

The appellants have not seriously questioned the fact that the Government had by a series of actions on its part, in effect, made D representations regarding the non-levy of purchase tax w.e.f. 1.4.1996 nor is it denied that the respondents had acted on the representations so made. The only question raised by the appellant is that the principle of promissory estoppel would not arise when the relevant statute prescribes a particular mode for the grant of relief in respect of which the representation has been E made. The relevant statute is the Punjab General Sales Tax Act, 1948. It is said by the appellants that there can be no estoppel against the statute and since no notification had been issued as required by the statute, the respondents could not refuse to pay the tax on any principle of promissory estoppel. According to the appellants the decision not to abolish purchase F tax on milk was taken in the public interest.

The Punjab General Sales Tax Act, 1948 (hereafter referred to as 'the Act') provides for the levy of tax on the sale and purchase of certain goods in the State of Punjab. Rules have been framed under Section 27 of the Act known as the Punjab General Sales Tax Rules, 1949 (referred to as G "the Rules"). We are concerned with the purchase tax which is payable under Section 4 read with Section 2(ff) on the acquisition of goods mentioned in Schedule 'C' to the Act, milk when purchased for use in the manufacture of goods (other than tax free goods) for sale is one of the items in Schedule 'C'. The Excise and Taxation Commissioner (who has featured H in the various statements and correspondence referred to earlier) is

appointed under Section 3(1) as the Taxing Authority. The Excise and Taxation Commissioner has overall superintendence and control over the administration and the collection of tax leviable under the Act as well as control on all officers empowered under the Act(Rule 69). The incidence of taxation has been provided for under Section 4 of the Act under which every dealer dealing in goods not declared tax free under Section 6 and whose gross turnover exceeds the taxable quantum is liable to pay tax on the sales effected or the purchases made. Certain goods have been made tax free under Section 6(1) read with Schedule 'B' to the Act. Section 6(2) at the material time provided that the State Government "after giving *by notification* not less than twenty days notice of its intention so to do may by like notification add to or delete from Schedule B and thereupon Schedule B shall be deemed to be amended accordingly".

The respondents are admittedly dealers within the meaning of the definition of the word under Section 2(d) of the Act. Every dealer is required to pay tax in the manner prescribed under Section 10 which requires furnishing of returns/declarations by the dealer together with the receipt showing that the full amount of tax due from the dealer under the Act according to such returns had been paid in the prescribed manner. If there is failure to pay the tax in the manner prescribed, the dealer may be liable to pay penalty of a sum upto one and a half times of the tax payable under sub-section (6) of Section 10. The substance of section 10 has been detailed in Rules 20 to 25 of the Rules. Rule 20 provides for the furnishing of returns either quarterly or monthly. Rule 24 provides for the form in which such returns are to be filed. Rule 25 provides that all returns which are required to be furnished under the Rules "shall be signed by the registered dealer or the agent, and shall be sent to the appropriate assessing authority.....together with the treasury or bank receipt in proof of payment of the tax due". The Assessing Authority then passes an order of assessment on such return under Section 11 unless he is satisfied that the returns are not correct and complete.

Apart from the power to treat goods otherwise leviable to tax under the Act as tax free under Section 6(2), the State Government has the power under Section 31 to amend Schedule ''C' itself and thereby remove goods from imposition of tax altogether. It provides:

A "The State Government after giving *by notification* not less than twenty days notice of its intention so to do, may by notification add to, or delete from, schedule C any goods, and thereupon Schedule C shall be deemed to be amended accordingly."

(emphasis added)

B In addition, the State Government has the power to exempt the payment of tax under Section 30 which reads:

"Power to exempt

C (1) The State Government, if satisfied that it is necessary or expedient so to do in the interest of cottage industries, *may by notification* exempt any class of co-operative societies, or persons from the payment of tax under this Act on the purchase or sale of any goods subject to such conditions as D may be specified in such notification.

(2) **********

(3) Every notification made under sub-section (1) shall as soon E as may be after it is made, be laid before the State Legislature."

(emphasis added)

Section 30-A also gives the State Government the power to exempt certain industries from payment of tax. It provides:

F "The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period and subject to such conditions, as may be prescribed....."

G The authority of the State Government to exempt in exercise of the powers conferred on it by statute has not been disputed before us.

The pleas raised by the parties for and against the operation of the H doctrine of promissory estoppel are to be considered against the background

of these statutory provisions. A

But first a recapitulation of the law on the subject of promissory estoppel. The foundation of the doctrine was laid in the decision of Chandrasekhar Aiyar, J. in *Collector of Bombay* v. *Municipal Corporation of the City of Bombay* (1952 SCR 42). There, in 1865, the Government B of Bombay had passed a resolution authorising the grant of an area to the municipality rent free for the purpose of setting up a market. Although possession of the site was made over to the then Municipal Commissioner no formal grant was in fact executed as required by the applicable statute. Acting on the resolution, the Corporation spent considerable sums of C money in building and improving the market and was in possession for 70 years during which period no revenue had been paid to or claimed by the Government. At this stage, a demand was sought to be raised on account of rent under the Bombay City Land Revenue Act, 1876. The Corporation impugned the demand by filing a suit. The suit was dismissed. An appeal was preferred before the High Court. The High Court reversed the decision D of the Trial Court and held that the Corporation was entitled to hold the land for ever without payment of any rent and the Government had no right to assess the premises. The Collector preferred an appeal before this Court. There was no dispute that by reason of non-compliance with the statutory formalities, the Government resolution of 1865 was not a factual grant E passing title in the land to the Corporation. There was also no dispute that there was no enforceable contract between the State Government and the Municipal Corporation. Of the three Judges, Das, J. held that the possession of the Corporation not being referrable to any legal title was adverse to the legal title of the Government and the right acquired by the Corporation F to hold the land in perpetuity included an immunity from payment of rent. Patanjali Sastry, J differed. Chandrasekhara Aiyar, J., concurred with the conclusion of Das, J but based his reasoning on the fact that by the resolution, representations had been made to the Corporation by the Government and the accident that the grant was invalid did not wipe out the existence of the representation nor the fact that it was acted upon by G the Corporation. What has since been recognised as a signal exposition of the principle of promissory estoppel, Chandrasekhara Aiyar, J. said:

> "....The invalidity of the grant does not lead to the obliteration of the representation. .....Can the Government H

A be now allowed to go back on the representation, and if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being committed. If the resolution can be read as meaning that the grant was of rent-free land, the case B would come strictly within the doctrine of estoppel enunciated in section 115 of the Indian Evidence Act. But even otherwise, that is if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it..... Courts must do justice by the promotion of honesty and C good faith, as far as it lies in their power".

In other words, promissory estoppel long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation D sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute.

This principle was built upon in *M/s Union of India & Ors.* v. *M/s Indo-Afghan Agencies Ltd.*, [1968] 2 SCR 366 where it was said (at p. 385): E

> "Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly F made by it, nor claim to be the judge of its own obligation to the citizen on an *ex parte* appraisement of the circumstances in which the obligation has arisen:.

However, the superstructure of the doctrine with its pre-conditions, strengths and limitations has been outlined in the decision of *M/s Motilal* G *Padampat Sugar Mills Co. Ltd.* v. *State of Uttar Pradesh and Others,* [1979] 2 SCC 409. Briefly stated the case related to a representation made by the State Government that the petitioners factory would be exempted from payment of sales tax for a period of three years from the date of commencement of production. It was proved that the petitioners had, as H a consequence of the representation, set up the factory in the State. But

the State Government refused to honour its representation. It claimed sales tax for the period it had said that it would not. When the petitioners went to Court, the State Government took the pleas :

(1) In the absence of notification under Section 4-A, the State Government could not be prevented from enforcing the liability to Sales Tax imposed on the petitioners under the provisions of the Sales Tax Act;

(2) That the petitioners had waived its right to claim exemption and;

(3) That there could be no promissory estoppel against the State Government so as to inhibit it from formulating and implementing its policies in public interest.

This Court rejected all the three pleas of the Government. It reiterated the well-known preconditions for the operation of the doctrine.

(1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;

(2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

As for its strengths it was said: that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made, contractual, administrative or statutory. To put it in the words of the Court:

> "The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his

A position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the
B Constitution. (p. 442).....
Equity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or *under statute.* (p. 424) .....*Whatever be the nature of the function which the Government is discharging, the Government*
C *is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it."* (p. 453)
(emphasis added)

D So much for the strengths. Then come the limitations. These are:

(1) since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. But it is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that
E the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. (p. 443)

F (2) No representation can be enforced which is prohibited by law in the sense that the person or authority making the representation or promise must have the power to carry out the promise. If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised. Thus, if the statute does not contain a provision enabling the Government to grant exemption,
G it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the
H promisee from payment of sales tax. (p. 387-388)

The remaining decisions are illustrative of various aspects of the framework set up by the Court in the decision in *M.P. Sugar Mills.* For example *Century Spinning & Manufacturing Company Ltd. & Anr.* v. *The Ulhasnagar Municipal Council & Anr.*, [1970] 3 SCR 854 emphasised the strengths defined earlier:

> " If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law ; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereupon *but the law is not powerless to raise in* appropriate cases an equity against him to compel performance of the obligation arising out of his representation". (p. 859)

An apparently aberrant note was struck in *Jit Ram Shiv Kumar & Ors. Etc.* v. *State of Haryana and Anr. Etc.*, [1980] 3 SCR 689 where despite all the factors of promissory estoppel being established, the Court held:

> "The plea of estoppel is not available against the State in the exercise of its legislative or statutory functions". (P. 699)

Of course, it was also found that the representator had no authority to make the representation it had. To that extent the decision could not be said to have deviated from the earlier pronouncements of the law.

The discordant note struck by *Jitram's* case was firmly disapproved by a bench of three Judges in *Union of India & Ors.* v. *Godfrey Philips India Ltd. Etc. Etc.*, [1985] 4 SCC 369. It was affirmed that:

> "There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel". (p. 387)

A It was held that irrespective of the nature of power wielded the Government is bound to wield that power provided it possessed such power and has promised to do so knowing and intending that the promisee would act on such promise and the promisee has done so:

B "We think that the Central Government had power under Rule 8 sub-rule (1) of the Rules to issue a notification excluding the cost of corrugated fibreboard containers from the value of the cigarettes and thereby exempting the cigarettes from the part of the excise duty which would be attributable to the cost of corrugated fibreboard containers. So also *the Central Board of Excise and*
C *Customs had power under Rule 8 sub-rule (2) to make a special order in the case of each of respondents granting the same exemption, because it could legitimately be said that, having regard to the representation made by the Cigarette Manufactures' Association, there were circumstances of an exceptional nature*
D *which required the exercise of the power under sub-rule (2) of Rule 8.* The Central Government and the Central Board of Excise and Customs were therefore clearly bound by promissory estoppel to exclude the cost of corrugated fibreboard containers from the value of the goods for the purpose of assessment of excise duty
E for the period May 24, 1976 to November 2, 1982". (p. 389)
(emphasis added)

The limitations to the doctrine delineated in *M.P. Sugar Mills* (supra), however, were also reaffirmed when it was said:

F "..... that 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
G 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. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity
H so requires; if it can be shown by the Government or public

authority that having 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 and enforce the promise or representation against the Government or public authority". (pp. 387-388)

In all these decisions, Chandrasekhar Aiyar, J.'s judgment was quoted with approval. In the case before us, the State Government had the power to exempt or abolish milk as a taxable commodity. There was nothing in law which prohibited it from doing so. The representation to exempt milk was made by persons who had the power to implement the representation. Can it not be said that there are such circumstances in this case which required the State Government to exercise its powers to exempt milk from the burden of purchase tax, a power which it undoubtedly had? Before we determine the answer to this question, we may consider the remaining decisions cited to determine whether the principles relating to promissory estoppel as culled out from these earlier cases still hold the field.

The decision in *Bakul Cashew Co.* v. *Sales Tax Officer, Quilon Q,,* [1986] 2 SCC 365 was a case dealing with the preconditions on the fulfilment of which a plea of promissory estoppel can be raised viz., that the representation must not only be definite but must be satisfactorily established. The alteration of the petitioner's position acting upon such representation must also be pleaded with particularity and sufficiently supported with material. The Court found that it had not been established that any prejudice had been suffered by the petitioner. As we have noted earlier, each of the respondents in these appeals has given a detailed account of how the monies which were otherwise payable on account of purchase tax have been expended on the milk shed areas and producers of milk. No dispute has been raised by the appellants to this.

The doctrine of promissory estoppel has also been extended to service law. In *Surya Narain Yadav and Others* v. *Bihar State Electricity Board,* [1985] 3 SCC 38, It was found as a fact that the Bihar State Electricity Board had made representations that graduates who would be taken as training engineers would be regularised against appropriate posts and the submission that such appointments would be contrary to statutory rules of

A the Board was brushed aside and the Court directed the Board, following Chandrasekhara Aiyar, J's opinion in *Collector of Bombay* v. *Municipal Corporation* (supra) as well as the decisions *Union of India* v. *Indo-Afghan Agencies* (supra) and *Century Spinning & Manufacturing Co. Ltd.* v. *Ulhasnagar Municipal Council* (supra) and *Motilal Padampat Sugar Mill* B *Co. Ltd.* v. *State of U.P.* (supra), to act in terms of the representation made. Indeed the principles of promissory estoppel have been applied time and again by this Court and it is unnecessary to burden our decision by referring to all the cases except to note that the view expressed by Chandrasekhara Aiyar, J in 1952 still holds good. [See: *State of Madhya Pradesh* v. *Orient* C *Paper Mills,* [1990] 1 SCC 161; *Delhi Cloth and General Mills* v. *Union of India,* [1998] 1 SCR 383; *Sharma Transport* v. *Govt. of A.P.,* [2002] 2 SCC 188; *State of Orissa* v. *Mangalam Timber Products,* [2004] 1 SCC 139]

The case of Kasinka Trading v. *Union of India,* [1995] 1 SCC 274, D cited by the appellants is an authority for the proposition that the mere issuance of an exemption notification under a provision in a fiscal statute such as Section 25 of the Customs Act, 1962, could not create any promissory estoppel because such an exemption by its very nature is susceptible to being revoked or modified or subjected to other conditions. E In other words there is no unequivocal representation. The seeds of equivocation are inherent in the power to grant exemption. Therefore, an exemption notification can be revoked without falling foul of the principle of promissory estoppel. It would not, in the circumstances, be necessary for the Government to establish an over-riding equity in its favour to defeat F the petitioner's plea of promissory estoppel. The Court also held that the Government of India had justified the withdrawal of exemption notification on relevant reasons in the public interest. Incidentally, the Court also noticed the lack of established prejudice to the promises when it said:

> G "The burden of customs duty etc. is passed on to the consumer and therefore the question of the appellants being put to a huge loss is not understandable".

[See also *Shrijee Sales Corporation* v. *Union of India,* [1997] 3 SCC 398; *Sales Tax Officer* v. *Shree Durga Oil Mills,* [1998] 1 SCC 572. We do not H see the relevance of this decision to the facts of this case. Here the

representations are clear and unequivocal. A

Amrit Banaspati Co. Ltd. v. *State of Punjab,* [1992] 2 SCC 411 is an example of where despite the petitioner having established the ingredients of promissory estoppel, the representation could not be enforced against the Government because the Court found that the Government's assurance B was incompetent and illegal and "a fraud on the Constitution and a breach of faith of the people". This principle would also not be applicable in these appeals. No one is being asked to act contrary to the statute. What is being sought is a direction on the Government to grant the necessary exemption. The grant of exemption cannot be said to be contrary to the statute. The C statute does not debar the grant. It envisages it.

Although the view expressed by two Judges in *Jitram's* case (supra) has been disapproved in *Godfrey Phillips* (supra), it was ostensibly resuscitated in *ITC Bhadrachalam Paperboards* v. *Mandal Revenue Officer, A.P.,* [1996] 6 SCC 634. In that case the State Government had the power D to remit assessment under section 7 of the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963. Section 11 of that Act provided for exemption to be made by an order of the State Government which was required to be published in the Andhra Pradesh Gazette prior to which the order had to be laid on the table of the Legislative Assembly. The Court construed E the provisions of the State Act and came to the conclusion that the nature of the power under Section 11 did not amount to delegated legislation but conditional legislation. It was held that

> "If the statute requires that a particular act should be done in a F particular manner and if it is found, as we have found hereinbefore, that the act done by the Government is invalid and ineffective for non-compliance with the mandatory requirements of law, it would be rather curious if it is held that notwithstanding such non-purpose of invoking the rule of promissory/equitable estoppel. Accepting such a plea would amount to nullifying the mandatory G requirements of law besides providing a licence to the Government or other body to act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment meaningless and superfluous. Where the field is occupied by an enactment, the executive has to act in accordance therewith, H

A particularly where the provisions are mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in accordance therewith. Where, of course, the matter is not governed by a law made by a competent legislature, the executive can act in its executive B capacity since the executive power of the State extends to matters with respect to which the legislature of a State has the power to make laws (Article 162 of the Constitution). The proposition urged by the learned counsel for the appellant falls foul of our constitutional scheme and public interest. It would virtually mean that the rule of promissory estoppel can be pleaded to defeat the C provisions of law where the said rule, it is well settled, is not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the law cannot be allowed to be defeated by resort to rules of estoppel. None of the decisions cited by the learned counsel say that where an act is D done in violation of a mandatory provision of a statute, such act can still be made a foundation for invoking the rule of promissory/ equitable estoppel. Moreover, when the Government acts outside its authority, as in this case, it is difficult to say that it is acting within its ostensible authority".

E (p. 657-658)

It would appear that these observations are in conflict with the earlier and subsequent pronouncements of the law on promissory estoppel. Chandrasekhara Aiyar, J. had held that the representation was enforceable F despite the "accident" that the grant was invalid inasmuch as it was contrary to statute. *M.P. Sugar Mills* (supra) had said that the promise was enforceable against the Government despite the requirement of Article 299 of the Constitution. Similarly, *Century Spinning* (supra) held that despite the requirement of the statute prescribing the manner and form to grant exemption from payment of octroi, a promise not made in that manner or G form could be enforced in equity. Then again in *Godfrey Philips* (supra), the Court directed an exemption to be granted on the basis of the principles of promissory estoppel even though Rule 8 of the Central Excise Rules 1944 required exemption to be granted by notification.

H Of course, the Government cannot rely on a representation made

without complying with the procedure prescribed by the relevant statute, A
but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest". On the other hand, as was observed in *Motilal Sugar Mills* case and approved in the subsequent decisions: B

> "It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, C claim immunity from the doctrine of promissory estoppel."

None of these decisions have been considered in *ITC Bhadrachalam Paperboards* v. *Mandal Revenue Officer* (supra) except for a brief reference to Chandrasekhara Aiyar, J's judgment which was explained D away as not being an authority for the proposition that even where the Government has to and can act only under and in accordance with a statute—an act done by the Government in violation thereof can be treated as a presentation to found a plea of promissory estoppel. But that is exactly what the learned Judge had said. E

In any event judicial discipline requires us to follow the decision of the larger Bench[1]. The facts in the present case are similar to those of prevailing in *Godfrey Philips* (supra). There too, as we have noted earlier, the statutory provisions require exemption to be granted by notification. Nevertheless, the Court having found that the essential pre-requisites for F the operation of promissory estoppel had been established, directed the issuance of the exemption notification.

The appellants have been unable to establish any overriding public interest which would make it inequitable to enforce the estoppel against G the State Government. The representation was made by the highest authorities including the Finance Minister in his Budget Speech after considering the financial implications of the grant of the exemption to milk.

1. *General Manager, Telecom* v. *A. Srinivasa Rao and Ors.*, [1997] 8 SCC 767; *Commissioner of Income Tax, Bihar* v. *Trilok Nath Mehrotra and Ors.*, [1998] 2 SCC 289. H

A It was found that the overall benefit to the state's economy and the public would be greater if the exemption were allowed. The respondents have passed on the benefit of that exemption by providing various facilities and concessions for the upliftment of the milk producers. This has not been denied. It would, in the circumstances, be inequitable to allow the State B Government now to resile from its decision to exempt milk and demand the purchase tax with retrospective effect from 1st April 1996 so that the respondents cannot in any event re-adjust the expenditure already made. The High Court was also right when it held that the operation of the estoppel would come to an end with the 1997 decision of the Cabinet.

C In the case before us, the power in the State Government to grant exemption under the Act is coupled with the word "may"— signifying the discretionary nature of the power. We are of the view that the State Government's refusal to exercise its discretion to issue the necessary notification "abolishing" or exempting the tax on milk was not reasonably D exercised for the same reasons that we have upheld the plea of promissory estoppel raised by the respondents. We, therefore, have no hesitation in affirming the decision of the High Court and dismissing the appeals without costs.

E S.K.S. Appeals dismissed.