

DELHI HIGH COURT

Bombay Conductors and Electricals Ltd.

Vs.

K. Chandramouli, Under Secretary to the Government of India (Delhi)

CWP. Nos. 1295, 1289, 1232, 1232, 1234 and 1235 of 1980 and 3416, 3464, 3465, 3700, 3701, 3820, and 3648 of 1982

(Prakash Narain, C.J., Avadh Behari Rohatgi and B.N. Kirpal, JJ.)

3.3.1983

JUDGMENT

Avadh Behari Rohatgi, J.

1. These are 13 writ petitions. They can be divided into two sets. The first set of 7 writ petitions (C.W.P. Nos. 3416 of 1982, 3464 of 1982, 3465 of 1982, 3700 of 1982, 3701 of 1982, 3820 of 1982 and 3648 of 1982) raises the question of the validity of the notification dated February 28, 1982. By virtue of the notification No. 151/77-Customs dated July 15, 1977, there was no duty of customs on the melting scrap. By notification No. 35/82-Customs F. No BLD (Customs) 82, dated February 28, 1982, the exemption was withdrawn with respect to the melting scrap of stainless steel. The effect of withdrawal of exemption was that the petitioners in these seven cases became liable to pay duty at the rate of 40 per cent. ad valorem on the melting scrap of stainless steel. The petitioners impugn the notification dated February 28, 1982, by which the exemption granted in 1977 was withdrawn. It has to be noticed here that the notification of July 15, 1977, was not a time-bound notification because it did not specify any time-limit during which the exemption granted by it would be available to the importers.

2. The other set of six writ petitions (C.W.P. Nos. 1295/1980, 1289 of 1980, 1232/1980, 1233 of 1980, 1234 of 1980 and 1235 of 1980) raises the question of the validity of the time-bound notification. The exemption from customs duty was granted for a fixed time and before the expiry of the time it was withdrawn.

3. The arguments addressed to us on both these sets were the same. It is not disputed that if the challenge to the withdrawal of time-bound notification fails,

the petitioners in cases in which there was no time-bound notification cannot succeed. To test the validity of the arguments it will be convenient to take a case of a time-bound exemption notification.

4. The petitioners in C.W.P No. 1295 of 1980, which we take as a representative case, are engaged in the production of aluminum conductors and aluminum conductors steel reinforced. They have been supplying conductors manufactured by them to various public sector undertakings. Aluminum ingots and rods are basic raw materials for the production of these conductors. This raw material, for some time past, was in acute short supply. The indigenous supply was insufficient to meet the domestic requirements. So the Govt. of India decided to import aluminum. To ensure parity of prices between the indigenous product and imported aluminum the Central Govt. decided to exempt the imported aluminum from payment of customs duty and additional duty.

5. By a notification dated April 18, 1980, the Central Govt. exempted in Public interest aluminum ingots and aluminum rods from payment of any duty of customs and additional duty with effect from April 18, 1980, to September 30, 1980. This was a time-bound exemption notification. This notification read as follows :

"Government of India,

Ministry of Finance,

Department of Revenue.

New Delhi, the 18th April, 1980.

Notification.

Customs.

G.S.R. 213(E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts aluminum wire rods or aluminum ingots falling within Chapter 76 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from -

(i) the whole of the duty of customs livable thereon under the First Schedule to

the said Customs Tariff Act; and

(ii) the whole of the additional duty livable thereon under section 3 of the said Customs Tariff Act.

2. This notification shall be in force up to and inclusive of the 30th September, 1980.

(Sd.) K. Chandramouli

Under-Secretary to the Govt. of India".

6. Simultaneously by another notification dated April 18, 1980, the Central Govt. in public interest notified that import of aluminum rods and aluminum ingots will also not be liable for payment of any auxiliary duty thereon.

7. The petitioners say that relying on these exemption notifications they entered into contracts for the purchase of aluminum ingots from abroad so that they may be able to import without payment of duty the item required by them within the period from April 18, 1980 to September 30, 1980.

8. By a notification dated August 29, 1980, issued in exercise of its powers under sub-s (1) of section 25 of the Customs Act, 1962 (the Act), the Central Govt. rescinded the exemption notification as follows :

Government of India,

Ministry of Finance,

Department of Revenue.

New Delhi, the 29th August, 1980.

Notification.

Customs.

G.S.R. - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 79-Customs, dated the 18th April, 1980.

(Sd.) K. Chandramouli

Under-Secretary to the Government of India."

9. By another notification dated August 29, 1980, the Central Govt. further notified that additional duty which was hitherto not payable at all under the exemption notification will now be payable at the rate of 12-1/2 per cent ad valorem.

10. The petitioners complain against this sudden change in the policy which meant that aluminum ingots and rods which were hitherto wholly exempt from payment of duty were again subjected to customs duty and additional duty. They contend that this reimposition of customs duty is contrary to the solemn assurances given in the exemption notification, which exemption was to last from April 18, 1980, to September 30, 1980.

11. By a notification dated September, 9, 1980 the Central Govt. again exempted aluminum ingots and aluminum rods from payment of customs duty until March 31, 1981. This time the Government did not grant any exemption in respect of additional duty.

12. The petitioners' case is two-fold. Firstly, that the time-bound exemption notification which was to ensure for the benefit of the importers from April 18, 1980 to September 30, 1980, could not be rescinded on August 29, 1980, as was actually done, having regard to the representations, assurances and promises made by the Government. They invoke the doctrine of promissory estoppels against the Government. This is the main complaint. The second is that by the withdrawal of exemption notification during the brief period from August 29, 1980, to September 9, 1980 the petitioners suffered a huge loss because they were required to pay customs duty and even after September 9, 1980, till March 31, 1981, they were required to pay additional duty. The withdrawal of exemption is also challenged on the ground that it infringes the petitioners' right to carry on trade under art. 19(1)(g) of the Constitution of India.

13. The respondent, Union of India, defends its action on the sole ground of public interest. It says that in order to equalize the sale price of indigenous and imported metal it was necessary in public interest to waive customs duty and additional duty so that aluminum, imported or indigenous, is available to the consumers at a uniform price. This is why the Cabinet decided to issue the

exemption notifications under section 25(1) of the Act on April 18, 1980, for the period up to September 30, 1980, by which time the Government thought there would be a clear indication of the likely trends in the supply of power and production of aluminum in the country, and of the behavior of monsoon, on which so much depends. Suddenly it found that the international prices of aluminum were falling steeply. Consequently import prices became lower than the ex-factory prices of the indigenous metal. In the last week of July, 1980, the affidavit of the Government affirms, the Ministry of Steel and Mines requested for immediate withdrawal of the exemption notification. After examining the matter thoroughly the Government issued the notification dated August 29, 1980, withdrawing the exemption notification in public interest. It is pleaded that withdrawal of the exemption notification was done in public interest.

14. Section 25 of the Act reads as under:

"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 livable 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 livable."

15. The petitioners invoke the doctrine of promissory estoppels and say that the Government ought to be held to its word and the exemption granted by the notification of 18th April, 1980, ought to be made available to them till September 30, 1980.

Promissory estoppels

16. The question is whether the doctrine of promissory estoppel can be invoked in this case. Counsel for the petitioners has taken us through the modern cases on the doctrine of promissory estoppels. We were referred to *Collector of Bombay v. Municipal Corporation of the City of Bombay*,¹ *Seth Sat Narain v. Dominion of India*² *Union of India v. Indo-Afghan Agencies*,³ *Century Spg. &*

Mfg. Co. Ltd v. Ulhasnagar Municipal Council,⁴ *Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh*,⁵ *Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd.*,⁶ *N. Ramanatha Pillai v. State of Kerala*,⁷ *State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.*,⁸ *Asstt. Custodian, E. P. v. Brij Kishore Agarwala*,⁹ *Excise Commissioner, U. P. v. Ram Kumar*,¹⁰ *Motilal Padampat Sugar Mills Co. Ltd v. State of U.P.*,¹¹ :and *Jit Ram Shiv Kumar v. State of Haryana*,¹²

17. Nearly all these cases have been noticed in the landmark decision of *Motilal Padampat Sugar Mills*,¹³ and subsequently in *Jit Ram*.

18. After the Second World War a series of cases, stemming from the decision of Denning J. (as he then was) in *Central London Property Trust Ltd v. High Trees House Ltd.* (1947) KB 130, began to develop a new doctrine of promissory estoppel. Although this, at first, was treated as a revolutionary decision, and many lawyers thought it was inconsistent with the "true" doctrine of consideration, it now seems to have established itself thoroughly as a part of the modern law. Till recently it has continued to be proclaimed that the promissory estoppels cannot give rise to a cause of action, but is only available by way of defense, but there are now signs that even this bastion is about to crumble : See *In Re Wyvern Developments Ltd.*¹⁴ *Crabb v. Arun District Council*¹⁵

19. The doctrine has been applied in a large number of cases in India and England. The solutions are varied but the principle on which these are reached is not in doubt : "The court must look at all the circumstances in each case to decide in what way the equity can be satisfied." *Plimmer v. Wellington Corporation*¹⁶, Denning J. himself discovered this doctrine enunciated by Lord Cairns in *Thomas Hughes v. Metropolitan Rly. Co.* (1877) 2 App Case 439 (HL), The courts were hungry for this additional jurisdiction, and adopted it rapidly. It was a plant of early and rapid growth. This was all in the course of the advancement of justice. The doctrine burst out in sudden blaze in 1946 when Denning J. sitting in the Court of King's Bench delivered the judgment in *Central London Property Trust Ltd. v. High Trees House Ltd.*¹⁷ Lord Denning brought it into being. We in India have nourished it.

20. *M.P. Sugar Mills*¹⁸ is the high water mark of promissory estoppel so far as this country is concerned. There is another decision of the Supreme Court which

has of late attracted much attention. It is *Jit Ram Shiv Kumar v. State of Haryana*,¹⁹ Jit Ram is in fact a criticism of the "liberal view" taken in *Motilal Padampat Sugar Mills*. If *Motilal Padampat Sugar Mills* is the apogee of promissory estoppel, Jit Ram may be said to serve as a sounding board of warning against the danger of wider extension of this new doctrine by judicial activist. This Full Bench was asked to decide whether this court ought to follow *Motilal Padampat Sugar Mills* or Jit Ram or for that matter *Indo-Afghan Agencies*, a decision of three judges, in preference to the two cases decided by the Bench of two judges.

The nature of tax law

21. In our opinion it is unnecessary to explore the precise parameters of the doctrine of promissory estoppel in this case because we are convinced that we will be trespassing on the legislative domain if we admit the doctrine in the fiscal fields. In truth, the question of estoppel does not arise on the facts and circumstances of this case. This is a case of tax law. In tax there is hardly any room for the applicability of promissory estoppel.

22. In a general sense, tax is any contribution imposed by Government upon individuals, for the use and service of the State, whether under the name toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply or another name (Story). The Oxford English Dictionary defines a tax as a "compulsory contribution to the support of government, levied on persons, property, income, commodities, transactions, etc., now at fixed rates, mostly proportional to the amount on which the contribution is levied". This definition lays an undue stress on proportionate as opposed to progressive taxation. But it emphasizes the fact that taxes are compulsory. Taxes are imposed under the authority of the Legislature. They are levied by a public body. They are intended for public purposes (See *Lawson v. Interior Tree, Fruit & Vegetable Committee of Direction*²⁰ Duff J.).

23. Tax law falls within the domain of public law, i.e., the rules that determine and limit the activities and reciprocal interests of the political community and the members comprising it, as distinguished from relationships between individuals (the sphere of private law). The specific purpose of the relationship between the individuals and the community regulated by tax is the imposition on individuals and corporations of a contribution to cover public expenditure.

The taxing power : Predominance of the Legislature

24. The limits to the right of the public authority to impose taxes are set by the power that is qualified to do so under the constitutional law. In a democratic system this power is with the Legislature, not the executive or the judiciary. Taxation is a prerogative of the Legislature. The historical origins of this principle are identical with those of political liberty and representative government the rights of citizens to take cognizance, either personally or through their representatives, of the need for the public contributions, to agree to it freely, to follow its use and to determine its proportion, basis, collection and duration. In the words of the Declaration of the Rights of Man and the Citizens proclaimed in the first days of the French Revolution, August, 1789. Other precedents may be found in the English Bill of Rights of 1689 and the rule "no taxation without consent" laid down in the Declaration of Independence of the United States, In India the doctrine is embodied in art 265 of the Constitution. Subject to the provisions of the Constitution, the Legislature is omnipotent in the exercise of the taxing Prerogative. Whereas the right to impose taxes and to determine the circumstances under which they will be done is a privilege of the legislative power, administration of the tax law is the responsibility of the executive power. Certain limitations on the taxing power of the Legislature are self-evident. Since the power to raise taxes is a prerogative of the public authority, a government only has the right to impose a levy in so far as it is competent to do so.

25. Under this principle all that is necessary is that the rights of the tax administration and the corresponding obligations of the taxpayers be specified in the law; that is in the text adopted by the people's representatives. The implementation of the tax laws is generally regulated by the executive power (the Government or the tax Department).

26. There have been many encroachments on the principle of the legality of taxation : sometimes the base or the rate of taxation is determined by a government decree rather than by law. The encroachment of the executive power on the territory reserved to the Legislature in matters of taxation is generally explained by the need to make tax policy more flexible; urgent amendments may be required by the sudden changes in the economic situation, changes so sudden that recourse to relatively slow parliamentary procedure would take too long. A compromise has been reached between the orthodox

doctrine of legality of taxes and the need, under special circumstances, to amend texts on taxation almost immediately, by modifying the next through a decree or an order of the executive and ratifying by the legislative power as soon as possible thereafter. This is how the Legislature reposes sovereign trust in the executive. This is how discretion is confided in the executive. But for all practical purposes it is the Legislature which is speaking through the mouth of the executive. Only the organ changes.

Delegation of Powers.

27. Section 25 of the Act is based on this theory of taxation. It delegates power to the Central Govt., that is, the executive branch to grant exemption generally from duty whenever it finds it necessary so to do in the public interest, either absolutely or subject to such conditions as may be specified in the notification, or by a special order in each case under circumstances of an exceptional nature.

28. At the same time section 159 of the Act says that these exemption notification issued under section 25 shall be laid before Parliament as soon as may be after their issue and Parliament may amend or reject them. This shows that the ultimate law-making power is retained by the Legislature in its hands. It does not surrender it to the executive. This makes it perfectly clear that Parliament has in no way abdicated the authority, but is keeping strict vigilance and control over its delegate : (*D. S. Garewal v. State of Punjab*), ²¹ That the Legislature keeps control over the delegate is an indicia that it is a legislative power.

29. Exemption notifications, therefore, have been issued under a general grant of authority by the representatives who are elected by the people to make the laws. The Legislature is not always in session. It has been found both convenient and necessary for Parliament to delegate the actual exercise of certain law-making powers to the executive. No one doubts that delegation of power in this fashion is a practical necessity. Even if Parliament had the time, it would not have the skill, to frame all of the multifarious rules of a statutory nature which good administration requires.

30. The question arises : What is the true character and nature of this power delegated by the Legislature to the executive in the field of taxation ? Is it legislative in character or executive in nature ? If the power is executive the doctrine of promissory estoppel can be called in aid. But if it is truly legislative

in character, the short answer to the petitioners' case is that there can be no estoppel.

Nature of Power.

31. The distinction between "legislative" and "executive" is very difficult to draw. But in these cases it is not difficult to answer this question. There are two sure indications. One is section 159 of the Act which requires that the notification under section 25 shall be laid before Parliament. Those who criticize the delegation of the power to legislate say that in this practice "there is a danger that the servant may be transformed into the master". To counteract this tendency section 159 provides for the laying before Parliament, so that there is a parliamentary supervision over the statutory orders issued under section 25. In this way the master keep control over the servant. This is a real indicia of legislation.

32. The second indication is that under section 25(1) the exemption notifications are to be published in the official Gazette. Sir Cecil Carr, the leading authority of Delegated Legislation, has suggested that if the statutory instrument is subject to the requirement for publication the answer is that the document is legislative. That the document has to be published is a mandatory requirement under section 25(1). It is a fundamental principle that the public must have access to the law. This delegated legislation does not come into force until it is published in the official Gazette. So that the people know what the law is.

33. The subordinate legislations under the parent Act are like the children of the Act. Where subordinate legislation made immediately under the parent Act confers powers to make laws they are in the form of grand children of Act. It is called sub-delegated legislation. But here we are concerned with the children of Act. Publication is a sure index of their legislative character.

34. This is so far as section 25(1) is concerned. Whether an order under section 25(2) which provides for the making of a special order of exemption "under circumstances of an exceptional nature to be stated in the order", is a legislative order, it is not necessary for us to decide. Because, no special orders under sub-s (2) are in question in any of these cases. These are all cases of general orders under section 25(1). Perhaps a special order under sub-s. (2) is an "executive" order. The test suggested is that the meaning of "legislative" and "executive"

may be determined by a reference to the nature of the action. By this test, a power to make rules of general application is a legislative power and the rule is legislative rule. A power to give orders on a specific "cases", is by the same test an executive power and the order is an executive order. Similarly, a power to take specific action is an executive power and the action is an executive action. What is "general" and what is "specific" may be difficult to distinguish. (Griffith and Street, Principles of Administrative Law, 5th Edn., pp. 48-49). By this test a special order under sub-s. (2) would seem to be an executive order. Because it is not required to be published. Because it grants exemption in a specific case and not "generally". It is akin to the power of the State Govt. under section 4A of the M.P. Sales Tax Act, in *Motilal Padampat Sugar Mills*,²² to grant exemption in which promissory estoppel was successfully invoked. But a notification under sub-s. (1) is a legislative order. Against the statutory notifications issued from time to time under section 25(1), estoppel cannot be pleaded because the theory is that against the operation of the statute there can be no estoppel.

35. In *Kailash Nath v. State of U.P.*²³ Constitution Bench of five judges held that, where a notification is issued by the Government under Sales Tax Act, the character of that notification is the same as that of the act under which it is issued. It has the force of statute. The court said (p. 360 of 8 STC) :

"This notification having been made in accordance with the power conferred by the statute has statutory force and validity and, therefore, the exemption is as if it is contained in the parent Act itself."

36. If the character of the notification is legislative, as we hold it to be, it must inevitably follow that there can be no estoppel against the acts of legislature. So, two propositions can be said to be established by cases. One, that the power to tax is legislative in character. Second, that the tax law estoppel is unknown. In *Narinder Chand Hem Rai v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh*,²⁴, the supreme court said (p. 174) :

"The power to impose the taxes undoubtedly a legislative power. That power can be exercised by the Legislature directly or, subject to certain conditions, the Legislator may delegate that power to some other authority. But the exercise of that power, whether by the Legislature or by its delegate is an exercise of a legislative power. the fact that the power was delegated to the executive does

not convert that power into an executive or administrative power. No court can issue a mandate to a Legislature to enact a particular law. Similarly no court can direct a subordinate a legislative body to enact or not to enact a law which may be competent to enact."

37. In *Motilal Padampat Sugar Mills*, ²⁵ the Supreme Court said:

"There can also be no promissory estoppel against the exercise of legislative power. The Legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel: vide *State of Kerala v. Gwalior Rayon Silk Mfg. Co. Ltd.*,

Again:

"...there can be no promissory estoppel against the Legislature in the exercise of its legislative function."

public interest and estoppel

38. Article 265 of the Constitution lays down that no tax can be levied or collected excepted by the authority of law. Hence the levy of a tax can be done only by the authority of law and not by an executive order. "No taxation without representation". Representative Government owns its origin to financial necessities. Medieval Kings summoned the people to Parliaments because they needed money. And public finance is still the chief business of Legislature. Taxation is their prerogative. Even in the hands of the executive power retains its true character of a legislative power. Now if the Central Govt., in public interest, decides to grant exemption at one moment and decides to withdraw it at another the court cannot compel it to continue the exemption beyond the time it (the Government) thinks necessary in public interest to do. This applies to the power to issue notifications whether they are time-bound or not.

39. Imposition of tax and exemption from tax are acts of a positive kind. These cannot be created by estoppel. In a democratic system a tax can be imposed only by law. Thus the courts or the administration do not have a "creative power" to make things or transactions taxable where it is not proved that the Legislature wished them to be taxable. Likewise exemption from tax cannot be claimed by pressing against the legislative power the doctrine of promissory estoppel. If the principle of estoppel is applied it will result in the nullification of the statutory power such as is contained in section 25 of the act. In other

words, there can be no estoppel against the statute.

40. If the power of exemption conferred on the Central Govt. under section 25 is to be exercised in the public interest, for the benefit of the public, and the statute imposes a duty of a positive kind, it is not open to the petitioners to set up an estoppel to prevent the exercise of that power. *Maritime Electric Co. Ltd. v. General Dairies Ltd* ²⁷"...the obligation to obey a positive law is more compelling than a duty not to cause injury to another by inadvertence."

The admission of an estoppel would nullify the statutory provision contained in section 25. In other words, we will be repealing the notification withdrawing the exemption dated 29th August, 1980. If we turn to the authorities we find that there is not a single case in which estoppel has been allowed to defeat a statutory power of sufficient width and amplitude meant to be exercised for the public good.

41. The Counsel for the petitioner heavily relied on *Century Spg. and Mfg. Co. v. Ulhasnagar Municipality* ²⁸ In that case the company expanded its activities on the assurance of the municipal authority that factories in a specified area within the municipality will be exempted from payment of octroi for seven years. It was held that the authority may be guilty of breach of contract if octroi is levied within this period of seven years. The question in that case was not of taxation but of fixing the local limits of the municipality. It was observed that an equity was raised in favor of the company and the court would compel the performance of the obligation arising out of the representation of the municipality. Representation, it was held, amounted to a contract. The object of promissory estoppel is to enforce contractual obligations. But taxation is not a contract. It is an expression of unilateral will of the Legislature. Tax is an exaction by the State in the exercise of its sovereign powers. There are no promises. There are no contractual obligations. If there are any promises they are subject to the overriding public interest. There is plain repugnance between contract and taxation. Taxation is the very antithesis of contract.

42. *Indo-Afghan Agencies*, ²⁹ was followed in *Ulhasnagar*. In *Indo-Afghan Agencies* an executive scheme of incentives was in question. The court held that merely on their whim the Government cannot go back upon the promises made by it and embodied in the scheme. The Government cannot act arbitrarily on some "undefined and undisclosed ground". *Indo-Afghan and Motilal*

Padampat Sugar Mills,³⁰ which follows *Indo-Afghan*, were cases of executive action, where the executive, to use the words of Shah J. in *Indo-Afghan*, "on some undefined and undisclosed ground of necessity or expediency failed to carry out the promise solemnly made by it". Ours is a case of legislative power. No court can restrain the exercise of legislative power which is to be exercised for the public good. This was firmly established in *Narinder Chand*,³¹

43. Here "public interest" is the ground disclosed and defined by the empowering enactment itself. In "public interest" the notification was rescinded. Public interest cannot be defined. But it is more than the sum of competing interests. Public good is the "greatest happiness of the greatest number", in Bentham's phrase, which by common consent is the object of the society. The concept of public interest serves to remind the parties immediately concerned that there are considerations extending beyond their own goals or their individual selfish interest. The Government cannot afford to sit by while the disputants bring economic pressure to bear on one another. In public interest it must devise whatever measures are expedient for the general welfare. Neither the Legislature, nor the executive, therefore, can fetter itself for all times to come.

44. *Antonio Buttigieg v. Captain Stephen H. Cross*,³² illustrates the point. In that case the club was opened on September 3, 1941, and on May 31, 1942, it was placed out of bounds for service members by order of H.Q. This was done in spite of the assurance to the appellant that the club will endure till such time as the state of hostilities existed. The order of closure of the club was made in the interest of military discipline because the club was being mismanaged by the sale of liquor long after permitted hours and by the admission of undesirable women to the premises. So the club was ordered to be wound up. The appellant sued the Crown. The Privy Council held that it was not open to the crown to bind itself not to close the club if that course became necessary in the public interest.

45. This principle has been reiterated in *Jit Ram's case*,³³ Following *Excise Commissioner, U.P. v. Ram Kumar*,³⁴ *N. Ramanatha, A*,³⁵ and *Gwalior Rayon*³⁶ the court held that the principle of estoppel is not available against the Government in the exercise of legislative, sovereign or executive power. The court quoted with approval the following observation (p. 1291 of AIR 1980 SC)

:

"It is now settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers." (*Excise Commissioner, U. P. v. Ram Kumar*,³⁷

46. It is here that Jit Ram differs from *Motilal Padampat Sugar Mills*,³⁸ We are not, as at present advised, prepared to commit ourselves to the view that the doctrine can never be applied against the executive in all the circumstances in all cases, whether involving public interest or not. But on the authorities it is incontestable that against the Government in the exercise of its legislative power estoppel cannot be invoked. In *Motilal Sugar Mills* it was recognized that where the government owes a duty to act differently, promissory estoppel cannot be invoked to prevent the government from doing so. The Government cannot be prevented from acting in the discharge of its duty under the law (p. 646 of

47. One thing is clear from the authorities. There is not a single case which has gone to the length of saying that estoppel can be pleaded even against public interest. The present is a case essentially of "public interest". All the authorities uniformly hold that against "public interest" the plea of estoppel will not avail a party. Otherwise the Government will not be able to assert its power and will be a helpless spectator even if public interest requires it to act differently. It would amount to surrender by the Government of its legislative powers which have to be used for the public good. This is why section 25 confers a statutory power on the Central Govt. to act in public interest and to grant exemption or rescind it.

48. Estoppel cannot be invoked where the result will be to compel the Government to continue the exemption which a competent enactment has validly authorized the executive to withdraw in the public interest at any time. In public interest exemption can be granted. In public interest exemption can be rescinded. In other words, the rights of individuals are subordinated to the paramount interest of the public good. Section 25 underlines the importance of the common good. "public interest" dominates the economic scene. If in public interest the Central Government finds that it is necessary to protect its own industry by putting up a tariff wall it will be futile to say that it cannot do so because it is bound by its promise to continue the exemption up to a particular time. The traders may feel incensed at the behavior of the executive at its imposition, exemption, reimposition and re-exemption of taxes and levies. But, when to exempt and when to impose duty is left to the executive by the

Legislature. It will depend on the economic climate. New times require new measures. In a world of growing interdependence the first thing every country wants is protection for its domestic industry.

49. Governed by the market forces and the laws of supply and demand if the Government finds that it must withdraw the exemption notification at once it can do so. What actuated the Government to take the step of exemption and reimposition was enlightened self-interest, such self-interest as would sub serve the common good. The imposition and exemption of customs duty are the chief vehicles of the Government to protect a domestic market and to steady the level of prices. The tariffs are its chosen instruments to shield domestic production from foreign competition.

50. The Legislature is in effect saying to the importer, "we give you exemption in public interest. But if public interest demands otherwise we will withdraw the exemption". This is implied in the promise. This, to our minds, is the true construction of the statutory notification promulgated under section 25 of the Act.

51. It was pressed upon us that we should do equity to the petitioners who, it was said, in reliance on the representation made in the notification dated April 18, 1980, altered their position and acted to their detriment. In our opinion this argument has no merit. The truth is that the doctrine of promissory estoppel has no place in tax law. Promissory estoppel is "a child of equity" a juristic device for preventing injustice" (*Motilal Padampat Sugar Mills*,³⁹ But we are told that "in the law of taxation justice has no place all". (David M. Walker, Oxford Companion to Law (1980), p. 1208). Nor equity. "There is no equity about a tax." (per Rowlatt J. in *Cape Brandy Syndicate v. IRC* ⁴⁰ The power to levy taxes is but one manifestation of the sovereignty of Parliament. Parliament is concerned only with the common weal. This is why the dominant note of section 25 is "public interest". Public interest is overriding. It can override private interest. It can override promises.

52. The Legislature or the sovereign authority cannot fetter its freedom of action for ever. That public interest is supreme is recognized even in *Motilal Padampat Sugar Mills*,⁴¹ which marked the high noon of this doctrine. The court said (p. 73) : "When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest

would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government....It is only if the court is satisfied on proper and adequate material placed by the Government that overriding public interest requires that 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." (*Motilal Padampat Sugar Mills* ⁴²

53. In our opinion the present is precisely a case where the Government ought not to be held bound by its promise. Public interest required it to act differently. On these two propositions, namely:

(1) That the plea of promissory estoppel is not available against the exercise of the legislative functions of the State, and

(2) no public authority entrusted with discretionary power to be exercised for the public can bind itself by a contract not to exercise that discretion when the public good demands its exercise.

54. We find that *Jit Ram*, ⁴³ does not take a view different from *Motilal Padampat Sugar Mills*, ⁴⁴

Freedom to carry on trade or business (Art. 19(1)(g))

55. The courts have decided that imposing restrictions upon business such as import or export of goods will be in the interests of the general public. The system of tariffs and licensing for imports and exports is a reasonable restriction on the right to carry on trade. The Supreme Court has said : "In modern times the export and import policy of any democratic government is bound to be flexible. The needs of the country, the position of foreign exchange, the need to protect national industries and all other relevant considerations have to be examined by the Central Government from time to time and rules in regard to export and import suitably adjusted. It would be, therefore, idle to suggest that there should be unfettered and unrestricted freedom of export and import." (*Bhatnagars & co. Ltd. v. Union of India*), ⁴⁵ The import and export trade thus involves foreign exchange. It involves our relations with foreign powers. It involves raising tariff walls on the ground of reciprocity and protectionism. The

petitioners have not placed any material to persuade us to hold that the restrictions imposed by the Government are unreasonable. On the facts of these cases we are unable to hold that their right under art. 19(1)(g) has been infringed.

56. The mere ground that the incidence of taxation is heavy or it will diminish the profits of a party are not interferences with his right to carry on business. That the profits would be diminished or greatly reduced cannot be a ground for holding that there is an infringement of art. 19(1)(g) (*Nazeera Motor Service v. State of A.P.*).⁴⁶ A challenge to tax law on the mere ground that the tariff imposed by the tax law is heavy cannot be entertained (*Jagannath v. Union of India.*).⁴⁷

57. Taxation is shaped by ideology and by economic policy. The amount of taxation may be excessive : only the Legislature can decide that point, by rejecting or amending the duty notification. Once enacted by the Legislature or by its delegate, the executive, a tax cannot be judicially restrained. There is no way of mounting a legal attack upon a tax law on the ground that it is arbitrary or unjust. But the application of the law must be correct; it is a matter of public interest that taxpayers be protected against unlawful decisions and actions by the authorities administering the tax laws.

58. In the present case it is not the executive action which is in question but the legislative action. The tax claim is a claim under public law. Its cause lies not in a contractual obligation but in an expression of unilateral will, a decision by the public authority. The notion of taxes is incompatible with the principles of the law of contracts : such principle apply only to relationships under private law and, therefore, cannot be invoked to restrain taxes. (see the Illuminating article on tax law in Encyclopaedia Britannica, 15th Edn., Vol. 17, p. 1083).

59. If public interest demands that the right to trade can be regulated and the withdrawal of the exemption granted by the executive can be said to be a reasonable restriction, if it can be shown that the public interest demanded the withdrawal of the exemption.

Global Markets

60. On the material placed before us by the Government in this case we are not persuaded to hold that the withdrawal of the exemption was anything except in

the public interest. The international market was falling in July, 1980. IT was decided at that time to withdraw the notification of exemption. On August 29, 1980, the exemption notification was withdrawn. By that time the market had started showing signs of recovery. That there was some delay in rescinding the notification no one will dispute. This is merely an example of red tapism and bureaucratic delays in the corridors of power. It takes time to comprehend how close one is to ruin. But that alone will not entitle us to strike down the rescinding notification. This does not, in our opinion, afford a ground for judicial review.

61. A public authority exists primarily to regulate social and economic life. So the executive itself issued the exemption notification again on September 9, 1980, as a sort of corrective action. In the international arena the Government is concerned more with the happenings of the future than with the promises of the past. The crux of the problem is that if the international trade calls for greater freedom and enterprise it will be against the public interest to curb and confine that freedom by applying the doctrine of estoppel. The imposition, exemption, reimposition and re-exemption of levies are like launching life-boats to save a sinking ship in international market when faced with foreign competition. "Like the ocean, these markets are never at rest", a British banker has said, "and like the weather never entirely predictable". The rises and falls, the ups and downs, in the international trade are difficult to comprehend at once. Because the changes are so sudden in this cosmopolitan and competitive world. To reconcile the numerous differences which exist between the pressure groups and the commercial lobby the Government has to survey carefully the economic scene here at home and in the international arena before making the final adjustments. Under this system every tariff, as finally adopted, is bound to be a mosaic of compromises, with on one directly responsible for it and nobody satisfied. Indigenous commercial commodities require protection. The Legislature as the guardian and protector of the public interest gives the protection by putting tariff barriers.

62. To sum up. The power to fix the rate of a tax is a legislative power. (*Sita Ram Bishambhar Dayal v. State of U.P.* The statutory notifications issued under section 25(1) are from first to last legislative in character. The author of the notifications is the Central Government no doubt, but the power that it wields is legislative in character. Notifications issued under section 25(1) are an exercise

of "sovereignty", that is, of authority of legislate. The custom duties are compulsory contributions imposed by the sovereign authority. The error resides in the assertion that it is an executive action. On this assumption we were invited to review and restrain the taxes. The judiciary cannot restrain the taxes, however great the hardship may appear to the judicial mind to be. (Per Lord Cairns in *Partington v. Attorney General* ⁴⁹ All the it can enquire into is the legislative competence in a federal written constitution.

63. We have, therefore, no hesitation in holding that to the notifications issued under section 25(1) of the Act the doctrine of promissory estoppel has to application. Nor are we prepared to hold that the withdrawal of exemption is such action as interferes with the petitioners' right to carry on business or trade. The Government, in our opinion, was competent to with draw the exemptions once granted, whether the notification granting the exemption was time-bound or not. We have reached the conclusion that the exemption was withdrawn in public interest and the withdrawal notifications are valid.

64. For these reasons these petitions are dismissed with costs.

Cases Referred.

1. (1952) SCR 43,
2. (1968) 2 SCWR 335,
3. (1968) 2 SCR 366
4. AIR 1971 SC 1021,
5. (1972) 29 STC 169 (SC) : AIR 1971 SC 2399,
6. AIR 1972 SC 1311,
7. AIR 1973 SC 2641
8. AIR 1973 SC 2734,
9. AIR 1974 SC 2325
10. AIR 1976 SC 2237,
11. (1979) 44 STC 42 (SC) : AIR 1979 SC 621,

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14. (1974) 1 WLR 1097 (Ch D),
15. (1975) 3 All ER 865 ; 3 WLR 847 (CA),
16. (1884) 9 AC 699, 714 (PC)
17. (1947) KB 130 (KB),
18. (1974) 44 STC 42 (SC) : AIR 1979 SC 621
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22. (1979) 44 STC 42 (SC) : AIR 1979 SC 621
23. (1957) 8 STC 358 (SC) : AIR 1957 SC 790 (791),
24. (1972) 29 STC 169 (SC) : AIR 1971 SC 2399
25. (1979) 44 STC 42 (77, 78) (SC) : AIR 1979 SC 621 (647, 648)
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- 27.. [1937] 1 All ER 748, 754; [1937] AC 610, 621 (PC).
28. AIR 1971 SC 1021
29. (1968) 2 SCR 366
30. (1979) 44 STC 42 (SC) : AIR 1979 SC 621
31. (1972) 29 STC 169 (SC) : AIR 1971 SC 2399 and Gwalior Rayon, AIR 1973 SC 2734
32. AIR 1947 PC 29,
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36. AIR 1973 SC 2734,
37. AIR 1976 SC 2237 (2241).
38. (1979) 44 STC 42 (SC) : AIR 1979 SC 621,
39. 1979) 44 STC 42 (61) (SC) : AIR 1979 SC 621 (635)).
40. (1921) 1 KB 64 at p. 71),
41. (1979) 44 STC 42 : AIR 1979 SC 361, '
42. (1979) 44 STC 42 (SC) : AIR 1979 SC 621 (644).
43. AIR 1980 SC 1295
44. (1979) 44 STC 42 (SC) : AIR 1979 SC 621,
45. AIR 1957 SC 478
46. AIR 1970 SC 1864
47. AIR 1962 SC 148
48. [1972] 29 STC 206 (SC) : AIR 1972 SC 1168).
49. [1869] LR 4 HL 100, (122).

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