

Weighing Nexus Between Greater Public Interest And The Doctrine Of Promissory Estoppel!

written by Mirza Aslam Beg | July 15, 2020



Public Interest and Promissory Estoppel

The Apex Court in its recent judgment in the case of *Union of India & Another V. M/S VVF Limited & Another*^[1] unfolded its perspective and shed light upon the issue of Public Interest Policy and doctrine of promissory estoppel by ruling in favour of greater public interest. The Hon'ble Court laid down that Public Interest is not in equity with individual interest and therefore it cannot override the rule of promissory estoppel. Furthermore, the amended notification issued by the government does have a retrospective operation in a certain region within Gujarat and North Eastern India.

Facts

The government issued notifications with the objective of encouraging economic development in certain backward & earthquake-stricken regions of Gujarat. The notification projected enticement schemes for the new industrial establishment set-up in those particular areas. The original notification^[2] dated 2001 was issued by the government with a view to providing impunity on excise duty to new industrial units set-up in those areas for the manufacturing and sale of goods. The notifications were amended during the period and the manufacturers of goods were allowed to claim their excise duty refund for a period of five years from the date of initiation of business production.

Consequently, an amended notification dated 2008 was issued by the government in addition to the above-issued notifications. The 2008 Notification^[3] focused on alteration & amendment of the existing norms of the earlier issued notification in relation to exemption on the excise duty. This notification directed that the excise duty exemption was only limited to the "Value Addition" to the goods made by new industrial units and consequently they could claim only a refund of 34% of the total duty paid to by them.

The taxpaying industrial manufacturing units distressed by the notification dated 2008 approached High Court challenging the said notification. The High Court quashed the notification and observed that the notification was hit by the doctrine of promissory estoppel which affected the initial incentive scheme promised by the government through a notification dated 2001.

Similarly, the Union Government issued industrial policy notification^[4] dated April 2007 wherein the notification directed a total of 100% impunity

from excise duty for the industrial units established in the North-Eastern region of the country. Further, the 2008 notification was issued and the exemption was again restricted to the 'value addition' of the taxable good. The notification of 2008 which altered the norms of Industrial Policy 2007 was challenged before the Sikkim and Guwahati High Court where the Hon'ble Court set-aside the said notification on the ground of infringement of the doctrine of promissory estoppel.

The rulings of the Hon'ble High Court of Gujarat, High Court of Sikkim & High Court of Guwahati were challenged by filing Special Leave Petition[5] before the Hon'ble Supreme Court of India.

Issues

1. Whether the subsequent notifications/industrial policies issued by the government were clarificatory/explanatory in nature or not?
2. Whether the subsequent notifications/industrial policies issued by the government can be applied retrospectively?
3. Whether the subsequent notifications/ industrial policies issued by the government were affected by the doctrine of promissory estoppel?

The Role of Doctrine of Promissory Estoppel; Applicability and reliance by the Hon'ble Court

The doctrine of promissory estoppels is rooted in the principles of equity, justice, and good conscience. The principle of promissory estoppel is a rule of evidence incorporated under Section 115 of The Indian Evidence Act, 1872. The section reads as follows:

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe such a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

Furthermore, to lay the significance of the principle of equity and justice, decrypting nexus between Public Interest and Promissory Estoppel, the Hon'ble Supreme Court has observed that the doctrine of promissory estoppel shall be equally applicable to both the government and public authorities as well.

In the landmark case of *Motilal Padampat Sugar Mills v Uttar Pradesh*[6], the Hon'ble Supreme Court elucidated the concept of the doctrine of promissory estoppel with a more liberal interpretation. It was held 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 such promise alters his position, then the government will be held bound by the promise and it will be enforceable against the government at the instance of the promisee. It was further held that the government cannot claim any immunity from the doctrine of promissory estoppel.

Furthermore, in the case of *Shrijee Sales Corporation v. Union of India*[7], it was held that the determination of the applicability of promissory estoppel against the government hinges upon the balance of equity or public interest. In the case of *STO v. Shree Durga Oil Mills*[8], it was held that when the withdrawal of exemption is in the public interest, the same must override any consideration of private loss and gain.

The Hon'ble Supreme Court of India specifically acknowledged the judgment of *Kasinka Trading v. Union of India*[9] wherein it was observed that the withdrawal of exemption policy is a matter of public interest and the courts would not bind the government to its policy decision for all times to come,

irrespective of the satisfaction of the government that a change in the policy was necessary in public interest. Furthermore, where the government acts in public interest and where no fraud or lack of bonafide is alleged, it would not be appropriate for the courts to interfere with such government actions.

Court's Observation

The Hon'ble Supreme Court explained the nexus between Public Interest and Promissory Estoppel and the reasons for the introduction of the amended notification and the legality of its retrospective operation in its ruling as under: -

- The original notification issued in 2001 simply waved the imposition and collection of excise duty in certain specified areas for public interest. The exemptions provided under the 2001 notification were not restricted to be altered, modified or revoked. The court held that the notifications issued subsequent to the 2001 notification were of explanatory nature deriving the clarification of the refund apparatus which made it clear that the actual value addition would be the line to evaluate the excise duty exemption.
- The court also held that the subsequent notification/Industrial policy cannot be viewed as taking away the vested rights guaranteed under earlier notification as the public interest is superior to individual interest.
- The court observed the vital and imperative objective of the government for issuing the earlier notifications/industrial policies which were directed towards employment generation in such backward regions of the country but it was observed that these were used for unfair purposes by some manufacturers for getting tax exemption benefits. Thus, the Hon'ble Court held that the government was correct in issuing subsequent notifications/ industrial policies for greater public interest and for boosting legitimate industrialization in such backward regions of the country.
- The Apex Court relied upon the precedents and held that the 2008 notification and the subsequent Industrial policy were in explanatory & expounding nature and thus will have a retrospective operation.

The Hon'ble Court further took the issue of promissory estoppel and ruled as follows: -

- The court in this regard placed confidence and relied upon a plethora of judgments passed in regards to the doctrine of promissory estoppel. The court heavily placed reliance upon the ruling passed in the case of *Commissioner of Customs (Import) v. Dilip Kumar and Company*^[10] and held that the subsequent notification/industrial policies were issued in greater public interest and for the purposed of revenue generation which estimates to be the actual objective with which the earlier notification/ Industrial Policies were to be issued by the government.
- Therefore, the court finally held that the subsequent notifications/ industrial policies were issued in the public interest and thus the doctrine of promissory estoppel is not affected by it.

Conclusion

In my view regarding the nexus between Public Interest and Doctrine of Promissory Estoppel, the court's decision was based on the theory of greater public good/interest while overriding upon the interest of bonafide individuals where the doctrine of promissory estoppel is kept silent and aside. Here, the court laid down the guidelines for evaluating the issues where public interest and government's liability is in question in relation

to the promises made by the government. It is imperative to lay emphasis on the fact that each and every case needs to be examined by evaluating facts and circumstances of the case and thus merits of the case be assessed before passing any decision.

The court here took two different views in concluding the case, where the court at one instance held that the subsequent amended notification/ industrial policies were introduced as because the earlier issued original notifications were misused by some of the industrial manufacturing units for having tax benefits. On the other hand, the court explained that the subsequent notifications/ industrial policies were of expounding or explanatory nature. It is clear from the above reasons that policy was changed because of certain following facts of misuse of notifications/ industrial policies which were not duly noted, although the court held the amending notifications as the expounding/explanatory which were to have retrospective operation.

[1] *2020 SCC Online SC 378*

[2] Central Excise Exemption Notification No. 39/2001 - CE dated 31.07.2001

[3] Industrial Policy notification dated 27.03.2008. (Subsequent Notification No. 16 of 2008 dated 27.03.2008)

[4] The Industrial Policy notification dated 1.04.2007

[5] CIVIL APPEAL NOS. 2256-2263 OF 2020 arising out of S.L.P.(C) Nos. 28194-28201/2010

[6] (1979) 2 SCC 409

[7] (1997) 3 SCC 398

[8] (1998) 1 SCC 572

[9] (1995) 1 SCC 274

[10] (2018) 9 SCC 1

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