REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7405 OF 2022
[Arising out of SLP (Civil) No. 12397 of 2020]

M/S HERO MOTOCORP LTD. ...APPELLANT (S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

WITH
CIVIL APPEAL NO. 7406 OF 2022
[Arising out of SLP (Civil) No. 11978 of 2021]

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. These appeals raise an important question of law as to whether the Union of India can be directed to adhere to the representation as made by it in the Office Memorandum dated 7th January 2003 (hereinafter referred to as "the said O.M. of 2003") even after the enactment of the Central

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Reason:

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Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

3. Civil Appeal arising out of Special Leave Petition (Civil) No. 12397 of 2020 arises out of judgment and order dated 2nd March, 2020, passed by the High Court of Delhi, dismissing the Writ Petition (Civil) No. 505 of 2022 filed by the appellant – Hero Motocorp Ltd., thereby rejecting the appellants claim of 100% budgetary support in lieu of the pre-existing 100% outright excise duty exemption for ten years from the date of the commencement of commercial production, as provided for by the said O.M. of 2003 issued by the Government of India.

4. Civil Appeal arising out of Special Leave Petition (Civil) No. 11978 of 2021, arises out of judgment and order dated 5th February, 2021 passed by the High Court of Sikkim, dismissing the Writ Petition (C) No. 47 of 2018, filed by the appellant – Sun Pharma Laboratories Ltd. assailing the reduction of the benefit of 100% exemption from excise duty granted to it vide office memorandum dated 17th February,

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2003, which were to be made available for a period of ten years from the date of commencement of commercial production.

5. Both the appellants herein approached the respective High Courts claiming therein that in view of the said O.M. of 2003 and Notification No.50/2003-C.E. dated 10th June 2003 (hereinafter referred to as "2003 Notification"), the Union was bound to give 100% tax exemption till completion of 10 years' period from the date of commencement of their commercial production.

FACTUAL BACKGROUND

6. The factual scenario leading to the filing of the present appeals lies in a narrow compass, which is as under:

6.1 The Government of India had issued the said O.M. of 2003 based on the statement made by the Hon'ble Prime Minister, during his visit to Uttranchal (now Uttarakhand) in March 2002. The said O.M. of 2003 provided that, for the States of Uttaranchal and Himachal Pradesh, new industrial units and existing industrial units on their

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substantial expansion would be entitled to exemption of 100% outright excise duty for 10 years from the date of commencement of commercial production. The said O.M. of 2003 also provided that there shall be 100% income tax exemption for such units initially for five years and thereafter 30% for companies and 25% for other companies for a further period of five years, from the date of commencement of commercial production. Various other incentives were also provided vide the said O.M. of 2003.

6.2 In pursuance to the said O.M. of 2003, a 2003 Notification was notified in exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. The said notification provided for exemption for a period not exceeding ten years from the date of publication of the said notification in the Official Gazette or from the date of

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commencement of commercial production, whichever was later.

6.3 The appellant – Hero Motocorp Ltd. had established a new industry unit for manufacture of motorcycles at Haridwar, Uttarakhand, which commenced commercial production from 7th April, 2008. The appellant – Hero Motocorp Ltd. availed the exemption until 1st July, 2017, whereafter the Goods and Service Tax regime came into existence and the benefit being enjoyed by the appellant – Hero Motocorp Ltd. was reduced to 58% through the Budgetary Support Policy.

6.4 The appellant - Sun Pharma Laboratories Ltd. setup its first industrial unit which commenced its commercial production from 20th April, 2009. A second unit was also set up later which commenced commercial production from 14th April, 2014. Before the advent of the new GST regime, both of the appellant's units were enjoying a full refund of the central excise duties paid by them as provided for in the exemption notification dated 25th June, 2003, pursuant to

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the Office Memorandum dated 17th February, 2003. After the commencement of the new GST regime, here too, the benefit being enjoyed by the appellant - Sun Pharma Laboratories was reduced to 58% through the implementation of the Budgetary Support Policy.

6.5 Subsequently, by the Constitution (One Hundred and First Amendment) Act, 2016 (hereinafter referred to as "the 101st Amendment Act"), the Constitution of India came to be amended by the Parliament to introduce the goods and services tax system pan India. By the 101st Amendment Act, concurrent taxing power was conferred on the Union as well as the States including the Union Territories. By the 101st Amendment Act, Article 246A was inserted, making a special provision for levy of Goods and Service Tax ("GST" for short), by both the Union as well as the States. Article 269A was inserted to provide for levy and collection of GST in the course of Inter-State trade or commerce ("IGST" for short) by the Government of India. It also provided that such tax shall be apportioned between the Union and the

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States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council ("GST Council" for short).

6.6 In pursuance of the said amendments to the Constitution of India, the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") and Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") were enacted by the Parliament and various States Goods and Service Tax Acts ("SGST" for short) were enacted by the State Legislatures for their respective States for the levy of GST.

6.7 Under clause (c) of sub-section (2) of Section 174 of the CGST Act, a Notification No.21/2017-CE dated 18th July 2017 was issued by the respondent-Union of India by which the exemption notifications through which tax exemptions were granted as an incentive against the investment came to be rescinded on or after the appointed day, i.e. 1st July 2017. As a result, the tax exemption which was granted by

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the said O.M. of 2003 ceased to continue with effect from 1st July 2017.

6.8 The GST Council, in its meeting held on 30th September 2016, had resolved that all entities exempted from payment of indirect tax would pay tax in the GST regime. It had also resolved that the decision to continue with any incentive given to specific industries in existing industrial policies of States or through any schemes of the Central Government would be with the concerned State or Central Government. It was further resolved that in the event it was decided by the concerned State or Central Government to continue any existing exemption/incentive, etc., then it would be administered by way of a reimbursement mechanism through the budgetary route. The modalities of the same were to be worked out by the concerned State/Centre.

6.9 In pursuance of the said recommendations of the GST Council, the Central Government notified the Budgetary Support Scheme vide Notification dated 5th October 2017,

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thereby providing to refund/reimburse the Central share of CGST and IGST to the affected eligible industrial units for the residual period in the North Eastern and the Himalayan States. The Central share was determined at 58% of CGST and 29% of IGST.

6.10 Being aggrieved by the decision of the Central Government in restricting the refund only to 58% of CGST and 29% of IGST and not providing 100% refund of CGST, the appellant-Hero Motocorp Ltd. approached the Delhi High Court by way of writ petition being Writ Petition (Civil) No. 505 of 2020 and the appellant-Sun Pharma Laboratories Limited approached the Sikkim High Court by way of writ petition being Writ Petition (Civil) No.47 of 2018. The Delhi High Court, vide its judgment and order dated 2nd March 2020, and the Sikkim High Court, vide its judgment and order dated 5th February 2021, have dismissed the said writ petitions.

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6.11 Being aggrieved by the dismissal of the writ petitions, the appellants (the original writ petitioners) have approached this Court.

6.12 Hence the present appeals.

SUBMISSIONS

7. We have heard Shri S. Ganesh, learned Senior Counsel appearing on behalf of the appellant-Hero Motocorp Ltd. in Civil Appeal arising out of Special Leave Petition (Civil) No.12397 of 2020, Shri V. Sridharan, learned Senior Counsel appearing on behalf of the appellant-Sun Pharma Laboratories Ltd. in Civil Appeal arising out of Special Leave Petition (Civil) No.11978 of 2021 and Shri N. Venkatraman, learned Additional Solicitor General appearing on behalf of the respondent-Union of India.

8. Shri S. Ganesh, learned Senior Counsel, submits that the perusal of the said O.M. of 2003 would reveal that an unequivocal representation was made by the Central Government to the commercial entities which were desirous of setting up industrial units in the States of Uttarakhand

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and Himachal Pradesh, that, in the event a new industry is established or there is a substantial expansion of the existing unit, then such industrial units would be entitled to 100% exemption from payment of excise duty for 10 years. He submits that the Central Government is bound by such representation. It is submitted that the industrial units like that of the appellants, relying on the promise made by the Central Government, have altered their position to their detriment and as such, the Central Government is now estopped from resiling from the representation made by it to the appellants.

9. Shri Ganesh submits that the figure of refund only to the extent of 58% has been achieved in an arbitrary and irrational manner. He submits that the Union has purportedly done so under the umbrella of the report of the Finance Commission. He contends that, even under the earlier regime of excise tax and all other levies collected by the Central Government, the States were entitled to their share therein. It is stated that the share of the Central

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Government and the State Government in the said regime has always been there and it is not as if it has come for the first time after the GST regime started. Learned Senior Counsel submits that under the old regime, though the Central Government was sharing with the States a certain percentage of entire taxes collected by it, still, 100% exemption from the payment of duty was being granted to the entities like the appellants herein. It is submitted that there is no reason as to why the same should not have been continued under the new regime.

10. Shri Ganesh further submits that the policy as is reflected in the said O.M. of 2003 would stand on a higher pedestal than the statutory provision or a notification under a statute and the Union would be bound to adhere to the same. He submitted that even in January 2003 when the exemption notifications were issued, the same sharing pattern was in existence between the States and the Central Government.

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11. Shri Ganesh further submits that under Section 11 of the CGST Act, the Government has the power to grant exemption from tax and there is no reason as to why the Union Government should not have exercised such a power in the peculiar facts and circumstances of the case.

12. Learned Senior Counsel, therefore, submits that the view taken by the Delhi High Court is not sustainable in law. He submits that the appeals deserve to be allowed and a direction be issued to the Central Government to provide 100% reimbursement of CGST for the remainder of the period.

13. Shri Ganesh relied on the judgments of this Court in the cases of ***State of Bihar and others vs. Suprabhat Steel Ltd. and others***[1], ***State of Jharkhand and others vs. Tata Cummins Ltd. and another***[2], ***Lloyd Electric and Engineering Limited vs. State of Himachal Pradesh and others***[3], ***MRF Ltd., Kottayam vs. Asstt. Commissioner (Assessment) Sales Tax and others***[4], ***The State of***

[1] (1999) 1 SCC 31
[2] (2006) 4 SCC 57
[3] (2016) 1 SCC 560
[4] (2006) 8 SCC 702

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Jharkhand and ors. vs. Brahmputra Metallics Ltd. and ors.[5], ***Manuelsons Hotels Private Limited vs. State of Kerala and others***[6] and ***State of Punjab vs. Nestle India Ltd. and another***[7]

14. He also relied on judgments of various High Courts. However, we do not find it necessary to refer to them inasmuch as the law on the issue is very well crystallized in various judgments of this Court.

15. Shri V. Sridharan, learned Senior Counsel, also submitted that the Central Government had come out with a policy of promoting industrial growth and employment in the backward areas. He submits that even after the GST regime, it should have continued the said policy. He submits that, if the Central Government has brought down the benefit from 100% to 58%, then it should extend/increase the period of benefit to ensure that the promise made in 2003 industrial policy is given effect to in reality. He relies on the judgment of this Court in the case of

[5] MANU/SC/0906/2020 [Civil Appeal Nos. 3860-3862 of 2020, decided on 1.12.2020]
[6] (2016) 6 SCC 766
[7] (2004) 6 SCC 465

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Video Electronics Pvt. Ltd. and another vs. State of Punjab and another[8] and ***Union of India vs. Paliwal Electricals (P) Ltd. and another***[9].

16. Shri Sridharan further submitted that the Sikkim High Court has only relied on the judgment of this Court in the case of ***Union of India & Anr. vs. V.V.F. Limited & Anr.***[10] He submitted that the issue in the case of ***V.V.F. Limited & Anr. (supra)*** was with regard to the withdrawal of notification since it was found to be misused. He submits that the factual situation in the present case is different and as such, the High Court was in error in dismissing the writ petition.

17. Shri N. Venkatraman, learned Additional Solicitor General ("ASG" for short), on the contrary, submits that promissory estoppel cannot be applied to the representation made by the Union of India, if there is a material change in the circumstances and the larger public interest warrants such a withdrawal. He submits that, in view of the

[8] (1990) 3 SCC 87
[9] (1996) 3 SCC 407
[10] 2020 SCC Online SC 378

constitutional amendment, a new era of GST has emerged. He submits that the new era emphasizes on the principle of *pooled sovereignty* where States and Centre share equal responsibilities. Learned ASG submits that Article 279A of the Constitution provides for the establishment of the GST Council. It is submitted that the GST Council consists of (a) the Union Finance Minister; (b) the Union Minister of State in charge of Revenue or Finance; and (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government. He submits that the GST Council has been empowered to make recommendations to the Union and the States on the taxes, cesses and surcharges levied by the Union, the States and the local bodies which are to be subsumed in the GST. It is submitted that clause (6) of Article 279A of the Constitution of India directs the GST Council to be guided by the need for a harmonized structure of GST and the development of a harmonized national market for goods and services, while discharging its functions. He submits that under clause (1)

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of Article 246A of the Constitution, both the Parliament as well as the State Legislatures have been empowered to make laws with respect to GST to be imposed by the Union or by such States, whereas clause (2) of the said Article empowers Parliament to make laws with respect to GST where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

18. Learned ASG would, therefore, submit that a sea change has occurred with the advent of GST from 1st July 2017. The first change, in the submission of the learned ASG, is that the earlier tax regime was origin based, whereas the new tax regime is destination based. Under the old regime, the Centre was collecting 100% excise duty, service tax, central sales tax, etc. and the States were collecting 100% Value Added Tax ("VAT" for short). Under the old tax regime, there was no uniformity with regard to State levies, whereas under the new tax regime, there is uniformity. Under the new regime, both Union and the States come on the same platform under Articles 246A and

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279A of the Constitution and become common partners for taxing together. Under the new regime, both States as well as Union charge at the same rate. Learned ASG submits that the only common feature in the old regime as well as in the new regime is that the Centre continues to fund the States.

19. Learned ASG further submitted that pursuant to the enactment of GST, a notification, being Notification No. 21 of 2017, was issued on 18th July 2017, thereby withdrawing the exemptions granted previously under the erstwhile excise regime. He submits that the appellants have not challenged the validity of the said Notification. He further submits that, in view of the proviso to clause (c) of sub-section (2) of Section 174 of the CGST Act, the exemptions stood automatically rescinded. The validity thereof has also not been challenged by the appellants. He, therefore, submits that the writ petitions, without challenging the validity thereof, are not tenable.

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20. Learned ASG submits that, though after the enactment of the GST the Central Government was not bound to continue granting any relief, however, as a matter of good gesture and on the recommendations of the GST Council, it has decided to reimburse 58% of CGST paid by such industrial units who were entitled to the benefit of exemption notifications. He submits that the said has been done based on the recommendations of the Finance Commission, which has earmarked the share of the Union at 58% and of the States at 42%.

21. Learned ASG submits that the writ petitions have been erroneously filed seeking a relief against the Union. He submits that if the appellants have any claim, then that would be against the State Governments wherein the industries are situated. It is submitted that, as a matter of fact, the Government of Jammu & Kashmir, vide Notification dated 21st December 2017 has already resolved to reimburse the remaining 42% of the GST to the units located in the State till the period the Union Scheme is

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valid. It is submitted that the appellants ought to have sought similar relief against the State Governments. Thus, in his submission, a writ against the Union of India is untenable.

22. Learned ASG further submits that the writ of mandamus could only be issued against a statutory body when it is established that there is a duty cast upon a statutory authority and that the said authority has neglected to perform such duty. It is submitted that the appellants have not been in a position to point out that any such duty is cast upon the Union to reimburse 100% GST and as such, the present appeals would not be tenable.

23. Learned ASG, relying on various judgments of this Court submitted that in view of the overwhelming public interest, the Union cannot be held to comply with the assurance given by it in the said O.M. of 2003.

24. In support of his submissions, learned ASG relies on the judgments of this Court in the cases of ***Union of India and others vs. VKC Footsteps India Private Limited***[11],

[11] (2022) 2 SCC 603

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Union of India and another vs. Mohit Minerals Pvt. Ltd. through Director[12], ***Union of India and others vs. Unicorn Industries***[13], ***Augustan Textile Colours Limited (Now Augustan Textile Colours Private Limited) vs. Director of Industries and another***[14], ***Kuldeep Singh vs. Govt. of NCT of Delhi***[15], ***Union of India and another vs. International Trading Co. and another***[16], ***Comptroller and Auditor General of India, Gian Prakash, New Delhi and another vs. K.S. Jagannathan and another***[17] and ***Union of India & others vs. Bharat Forge Ltd. & another***[18].

25. Shri S. Ganesh, learned Senior Counsel, in rejoinder, submits that the submission of the learned ASG that the remedy lies against the States and not against the Centre is devoid of any substance. He submits that the assurance was given by the Central Government and not by the State

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[12] 2022 SCC OnLine SC 657
[13] (2019) 10 SCC 575
[14] (2022) 6 SCC 626
[15] (2006) 5 SCC 702
[16] (2003) 5 SCC 437
[17] (1986) 2 SCC 679
[18] Civil Appeal No.5294 of 2022 (@ SLP(C) No.4960 of 2021) decided on 16th August, 2022

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Governments. He submits that the said O.M. of 2003 has to be understood from a viewpoint of a businessman to whom the commercial representation was made. The words "exemption from direct or indirect tax" is required to be given full meaning. He submits that the proviso to Section 174(2)(c) of the CGST Act would not be applicable in the present case if looked at from the viewpoint of the ordinary businessman.

CONSIDERATION

26. It is not in dispute that the Union of India had framed a policy vide the said O.M. of 2003. It is also not in dispute that, vide the said policy, the Central Government had provided that 100% exemption would be granted to the industrial units from payment of outright excise duty for 10 years from the date on which such industrial units commence their commercial production. The incentives applied to the new industrial units as well as existing industrial units going for substantial expansion. As such, it is clear that, vide the said O.M. of 2003, an unequivocal

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promise was given to the entities that, in the event they establish a new industrial unit or go for a substantial expansion of their existing industrial units in the States of Uttarakhand and Himachal Pradesh, they would be entitled to 100% tax exemption.

27. It is to be noted that, subsequently, an important development took place. By the 101st Amendment Act, a sea change in the earlier taxation regime occurred. A uniform tax structure throughout the country has been adopted. The GST Council has been constituted, which is empowered to make recommendations to the Union and the States with regard to GST. The Union and all the States have become common partners in levy of various taxes. To give effect to the 101st Amendment Act, the CGST Act has been enacted.

28. The relevant part of Section 174 of the CGST Act reads thus:

> "**174. Repeal and saving**.—(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to

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the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994)(hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or Section 173 shall not—

(*a*) .....

(*b*) .....

(*c*) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or"

29. It could thus be seen that, under clause (1) of Section 174, various enactments, including the Central Excise Act, 1944, are repealed. Clause (c) of sub-section (2) of Section

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174, however, provides that the repeal of the said Acts shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts. However, the proviso thereto is clear and specific. It specifically provides that any tax exemption granted as an incentive against investment through a notification shall not continue as a privilege if the said notification is rescinded on or after the appointed day.

30. It can thus be seen that, though the first part of clause (c) of sub-section (2) of Section 174 would protect any right, privilege, obligation, etc. under the amended Act or repealed Acts, the proviso thereto provides that any tax exemption granted as an incentive against investment shall not continue as a privilege if the said notification is rescinded on or after the appointed day. Admittedly, vide Notification No.21/2017 dated 18th July 2017, various earlier area-based exemption notifications have been rescinded. It is thus clear that the benefit which was granted under the

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2003 Notification stands rescinded in view of the notification issued under proviso to clause (c) of sub-section (2) of Section 174 of the CGST Act.

31. The question, therefore, that would fall for consideration is, as to whether, despite a subsequent statute specifically providing for rescinding the benefits granted under an earlier statute, the Union Government can be compelled to stand by the representation made by it through the earlier notification. In other words, the question that will have to be considered is whether doctrine of promissory estoppel could operate against a statute.

JUDICIAL PRECEDENTS

32. For considering the rival submissions, it would also be necessary to refer to various earlier authoritative pronouncements of this Court on the issue.

33. Heavy reliance is placed on the judgment of this Court in the case of ***Union of India & Ors. vs. M/s Indo-Afghan Agencies Ltd.***[19], which is one of the earlier judgments of this Court considering the issue of promissory estoppel. In

[19] 1968 2 SCR 366

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the said case, the Textile Commissioner published a scheme on 10th October 1962, called the Export Promotion Scheme providing incentives to exporters of woolen goods. The scheme was extended by a Trade Notice dated 1st January 1963, to export of woolen goods to Afghanistan. In pursuance of the said scheme, the exporters were entitled to import raw materials of a total amount equal to 100% of the F.O.B. (freight on board) value of their exports. However, the competent authority issued an Import Entitlement Certificate to Indo-Afghan Agencies Ltd. only in part. The Indo-Afghan Agencies Ltd., therefore, made a representation to the authorities. On failure of the authorities to respond, a petition came to be filed in the High Court of Punjab. The High Court held that the Export Promotion Scheme specifically provided for granting certificates to import materials of the "value equal to 100% of the F.O.B. value of the goods exported". It was, therefore, held by the High Court that the petitioners therein were entitled to obtain import licenses for an amount equal to 100% of the F.O.B.

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value. The judgment of the High Court was challenged before this Court. One of the issues before this Court was with regard to the violation of principles of natural justice. This Court also considered the issue of promissory estoppel. This Court held:

> "**15.** In these cases it was clearly ruled that where a person has acted upon representations made in an Export Promotion Scheme that import licences *upto* the value of the goods exported will be issued, and had exported goods, his claim for import licence for the maximum value permissible by the Scheme could not be arbitrarily rejected. Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position, or other matters which have a bearing on the general interests of the State. In the present case, the Scheme provides for grant of import entitlement *of the value*, and not *upto the value*, of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported: he could only reduce that amount after enquiry contemplated by clause 10 of the Scheme...."

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34. It could thus be seen that the issue that fell for consideration in the case of ***M/s Indo-Afghan Agencies Ltd. (supra)*** was with regard to an arbitrary reduction of the claim of the writ petitioner contrary to the Export Promotion Scheme. The issue as to whether the Legislature by a subsequent enactment was entitled to withdraw the benefit granted under the earlier scheme did not fall for consideration in the said case.

35. This Court in the case of ***Century Spinning and Manufacturing Company Ltd. and another vs. The Ulhasnagar Municipal Council and another***[20] considered the issue wherein the Municipality had agreed to exempt the appellant therein from payment of octroi duty for 7 years from the date of levy of octroi. However, thereafter, the Municipality sought to levy octroi duty from the appellant therein. This Court observed thus:

> "**12.** If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from

[20] (1970) 1 SCC 582

> liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

36. A Constitution Bench of this Court in the case of ***M. Ramanatha Pillai vs. The State of Kerala and another***[21] considered the question as to whether estoppel could arise against a State in regard to abolition of posts. The Constitution Bench observed thus:

> "**37.** The High Court was correct in holding that no estoppel could arise against the State in regard to abolition of post. The appellant Ramanatha Pillai knew that the post was temporary. In *American Jurisprudence* 2d at p. 783 para 123 it is stated "Generally, a state is not subject to an estoppel to the same extent as in an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. ***Therefore as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice".*** The estoppel alleged by the appellant Ramanatha Pillai was on the ground that

[21] (1973) 2 SCC 650

> he entered into an agreement and thereby changed his position to his detriment. The High Court rightly held that the Courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate."
>
> [emphasis supplied]

37. It can thus clearly be seen that the Constitution Bench has approved the statement in *American Jurisprudence* that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception to the application of the said doctrine to the State would, however, arise where it is necessary to prevent fraud or manifest injustice.

38. Another Constitution Bench of this Court in the case of ***State of Kerala and another vs. The Gwalior Rayon Silk Manufacturing (WVG). Co. Ltd. Etc.***[22] was considering an issue as to the application of promissory estoppel when a right to compensation for acquisition of forest land as provided in the earlier statute was taken away

[22] (1973) 2 SCC 713

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by a subsequent statute. The Constitution Bench held thus:

> "**38.** In an attempt to show that the impugned Act was a piece of colourable legislation, reference was made to the Karala Private Forests Acquisition Bill, 1968 LA Bill No. 33 of 1968 which provided for the acquisition of private forests on payment of compensation for the acquisition. ***That Bill, it is contended, was allowed to lapse and the present Act was enacted with the obvious intention of expropriating vast forest lands without paying compensation.*** We can hardly countenance such an argument. The question really is, in the first place, of the competence of the legislature to pass the impugned Act and, in the second, whether the Act is constitutional in the sense that it is protected by Section 31-A(1). So far as the competence of the legislature is concerned, no objection is made before us. As to its constitutionality we have shown that the Act purports to vast the janman rights to the forests in the Government as a step in the implementation of agrarian reform. ***If this could be constitutionally done by the legislature, the fact that at an earlier stage the Government was toying with the idea of paying compensation to owners of private forests is of little consequence.*** The dominant purpose of the impugned Act,

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as already pointed out, is to distribute forest lands for agricultural purposes after making reservations of portions of the forests for the benefit of the agricultural community. The fear is expressed that such a course if, genuinely implemented, may lead to deforestation on a large scale leading to soil erosion and silting of rivers and streams and will actually turn out to be detrimental to the interests of the agricultural community in the long run. It is undoubtedly true that rackless deforestation might lead to very unhappy results. But we have no material before us for expressing opinion on such a matter. It is for the legislature to balance the comparative advantages of a scheme like the one envisaged in the Act against the possible disadvantages of resulting deforestation. There are many imponderables to which we have no safe guides. ***It is presumed that the legislature knows the needs of its people and will balance the present advantages against possible future disadvantages.*** If there is pressure on land and the legislature feels that forest lands in some areas can be conveniently and, without much damage to the community as a whole, utilized for settling a large proportion of the agricultural population, it is perfectly open, under the constitutional powers vested in the legislature, to make a suitable law, and if the law is constitutionally valid this Court can hardly strike it down on the ground that

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in the long run the legislation instead of turning out to be a boon will turn out to be a curse.

39. Mr Menon who appeared for the respondent in Civil Appeal No. 1398 of 1972 put forward a plea of equitable estoppel peculiar to his client company. It appears that the Company established itself in Kerala for the production of rayon cloth pulp on an understanding that the Government would bind itself to supply the raw-material. Later Government was unable to supply the material and by an agreement undertook not to legislate for the acquisition of private forests for a period of 60 years if the Company purchased forest lands for the purpose of its supply of raw-materials. Accordingly, the Company purchased 30,000 acres of private forests from the Nilambhuri Kovila Kannan estate for Rs 75 lakhs and, therefore, ***it was argued that, so far as the Company is concerned, the agreement not to legislate should operate as equitable estoppel against the State. We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel.***"

[emphasis supplied]

39. It could thus be seen that this Court held that it is presumed that the legislature knows the needs of its people and will balance the present advantages against possible future disadvantages. It has been held that if a new enactment is constitutionally enacted by the legislature, then the fact that, at an earlier stage, the Government was toying with the idea of paying compensation to owners of private forests would be of no consequence. Undisputedly, the GST enactment is an enactment validly enacted by the Parliament. It was also sought to be urged that the petitioner Company, on the basis of the agreement by the State Government that it would not legislate to acquire the forest land for 60 years, had purchased 30,000 acres of private land. It was submitted therein that, applying the doctrine of equitable estoppel, the Government was estopped from enacting a legislation contrary to the agreement. Negating the said contention, it was held that when the legislature exercises its powers for the public

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good, the earlier representation would not operate against the Government as equitable estoppel.

40. A four judge Bench of this Court in the case of ***Excise Commissioner, U.P. Allahabad and others vs. Ram Kumar and others***[23] had considered the issue wherein, at the time of the auction, licenses sold by the Government to vend country liquor exempted the levy of sales tax. However, by a subsequent notification, the sale of country liquor was subjected to the levy of sales tax. This Court specifically rejected the contention that the State was estopped from doing so. This Court relied on the earlier Constitution Bench judgment in the cases of ***M. Ramanatha Pillai (supra)*** and ***The Gwalior Rayon Silk Manufacturing (WVG). Co. Ltd. Etc. (supra)***. It held that an assurance given by or on behalf of the Crown by an officer of a government, however high or low in the hierarchy, could not bar the Crown from enforcing a statutory prohibition. It reiterated the legal position that

[23] (1976) 3 SCC 540

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estoppel does not operate against the Government or its assignee.

41. In the case of ***The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. vs. Sipahi Singh and others***[24], the State Government had directed that the settlement of the Jalkar would continue with Sipahi Singh for the years 1976-77 and 1977-78. However, on the representation made by the Bihar Eastern Gangetic Fishermen Co-operative Society Ltd., the State Government directed that the settlement of the Jalkar would be with the said Society for the relevant years on certain conditions. Sipahi Singh filed a writ petition which was allowed by the High Court relying on the doctrine of promissory estoppel. A three-judge Bench of this Court, while reversing the judgment of the High Court, observed thus:

> "**13.** The doctrine of promissory estoppel could also not be pressed into service in the present case, as ***it is well settled that there cannot be any estoppel against the Government in exercise of its sovereign legislative and executive***

[24] (1977) 4 SCC 145

> ***functions.*** (See *Excise Commissioner, U.P. Allahabad* v. *Ram Kumar* [(1976) 3 SCC 540 : 1976 SCC (Tax) 360 : AIR 1976 SC 2237])."
>
> [emphasis supplied]

42. It is thus clear that ***The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. (supra)*** is also an authority to hold that there cannot be any estoppel against the Government in the exercise of its sovereign, legislative and executive functions. In the said case, the judgment of this Court in the case of ***M/s Indo-Afghan Agencies Ltd. (supra)*** was pressed into service. Distinguishing the same, this Court observed thus:

> "**14.** The decision of this Court in *Union of India* v. *Indo-Afghan Agencies Ltd.* [AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889] on which strong reliance is placed by Counsel for Respondent 1 is clearly distinguishable. In that case, unlike the present one, the respondents were not seeking to enforce any contractual right. They were merely seeking to enforce compliance with the obligation which was laid upon the Textile Commissioner by the terms of the Export Promotion Scheme providing for grant (by way of incentives to exporters of woollen textiles and goods) of Entitlement Certificate to import raw materials of a

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> total amount equal to 100% of the f.o.b. value of their exports. ***Their claim was founded upon the equity which arose in their favour as a result of the representation made on behalf of the Government in the aforesaid Scheme, the exports of woollen goods made by them to Afghanistan acting upon the representation and curtailment of the import entitlement by the Textile Commissioner without notice to them.***"
>
> [emphasis supplied]

43. Subsequently, a two Judge Bench of this Court in the case of ***Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and others***[25] again considered the issue of estoppel. In the said case, the State Government had represented that an exemption from sales tax would be granted to new industrial units. Based on the assurance of the State Government, the appellant before this Court in the said case had established its industrial unit. However, subsequently, the Government decided to rescind the said concession. Though this Court, in the facts of the said case, held that the appellant therein, based on the promise made by the respondent therein, had altered its position to its

[25] (1979) 2 SCC 409

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detriment and as such, the State could not resile from the said promise, allowing the appeal observed thus:

> "**28.** ..... ***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 Manufacturing Co. Ltd.* [(1973) 2 SCC 713, 730 (para 39) : (1974) 1 SCR 671, 688]"
>
> [emphasis supplied]

44. Thereafter comes the judgment of this Court in the case of ***M/s Jit Ram Shiv Kumar and others vs. State of Haryana and others***[26]. In the said case, the municipal committee established a small mandi and decided that the purchasers of the plots for sale in the mandi would not be required to pay octroi duty on goods imported within the said mandi. Subsequently, the municipal committee started imposing octroi duty. Challenging the said act of the municipal committee, a writ petition was filed before the High Court. The High Court dismissed the said writ

[26] (1981) 1 SCC 11

petition. The two-Judge Bench of this Court in the said case, referring to judgments of courts of various other jurisdictions as well as the judgments of this Court at an earlier point of time, observed thus:

> "**40.** The scope of the plea of doctrine of promissory estoppel against the Government may be summed up as follows:
>
> (*1*) ***The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.***
>
> (*2*) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.
>
> (*3*) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the unauthorised acts of its officers.
>
> (*4*) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to require the officer to act according to the scheme and the agreement or representation. The officer

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> cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.
>
> (5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State."
>
> [emphasis supplied]

45. It can thus clearly be seen that this Court held that the plea of promissory estoppel would not be available against the exercise of the legislative functions of the State. Equally, it cannot be invoked for preventing the government from discharging its functions under the law. The learned judges of this Court in the case of ***M/s Jit Ram Shiv Kumar and others (supra),*** holding that some of the observations of this Court in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** were not in tune with the earlier judgments of larger Benches of this Court, observed thus:

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"**45.** We find ourselves unable to ignore the three decisions of this Court, two by Constitution Benches in *M. Ramanatha Pillai* v. *State of Kerala* [(1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641 : (1974) 1 SCR 515] and *State of Kerala* v. *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* [(1973) 2 SCC 713 : AIR 1973 SC 2734 : (1974) 1 SCR 671] and the third by a Bench of four Judges of this Court in *Excise Commr., U.P., Allahabad* v. *Ram Kumar* [(1976) 3 SCC 540 : 1976 SCC (Tax) 360 : 1976 Supp SCR 532] on the ground that the observations are in the nature of obiter dicta and that it cannot be insisted as intending to have laid down any proposition of law different from that enunciated in the *Indo-Afghan Agencies case* [AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889] . It was not necessary for this Court in the cases referred to above to refer to *Union of India* v. *Indo-Afghan Agencies Ltd.* [AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889] for, if properly understood, it only held that the authority cannot go back on the agreement arbitrarily or on its mere whim. We feel we are bound to follow the decisions of the three Benches of this Court which in our respectful opinion have correctly stated the law. We are also unable to read the case of the House of Lords in *Howell* v. *Falmouth Boat Construction Co. Ltd.* [1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151] as not having overruled the view of Denning, J., and as not having expressed its disapproval of the doctrine

of promissory estoppel against the Crown nor overruled the view taken by Denning, J. in *Robertson* v. *Minister of Pensions* [(1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323] that "the Crown cannot escape the obligation under the doctrine of promissory estoppel".

46. We find ourselves unable to share the view of the learned Judge that the Constitution Bench of this Court in *Ramanatha Pillai case* [(1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641 : (1974) 1 SCR 515] heavily relied upon the quotation from the *American jurisprudence*, para 123, p. 873 of Vol. 28. Again we feel to remark that "unfortunately this quotation was incomplete and had overlooked *perhaps inadvertently*" is unjustified.

(emphasis supplied)"

46. This Court in the said case reiterated the legal position thus:

"**51.** ***On a consideration of the decisions of this Court it is clear that there can be no promissory estoppel against the exercise of legislative power of the State.*** So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government

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> must be held to have notice of the limitations of his authority. the Court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest."
>
> [emphasis supplied]

47. A three Judge Bench of this Court in the case of ***Union of India and others vs. Godfrey Philips India Ltd.***[27] commented on the correctness of the decision in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** and observed thus:

> "**13.** Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills case* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] ***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 or a public

[27] (1985) 4 SCC 369

> 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 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. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in *Motilal Sugar Mills case* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] and we find ourselves wholly in agreement with what has been said in that decision on this point."
>
> [emphasis supplied]

48. Within a short period, another three-judge Bench of this Court in the case of ***Express Newspapers Pvt. Ltd.***

and others vs. Union of India and others[28] referring to the conflict between the case of ***Motilal Padampat Sugar Mills Co. Ltd.*** and the case of ***M/s Jit Ram Shiv Kumar and others (supra)***, observed thus:

> "**182.** I am not oblivious that there was a discordant note struck by Kailasam, J. speaking for himself and Fazal Ali, J. in *Jit Ram Shiv Kumar* v. *State of Haryana* [(1981) 1 SCC 11 : AIR 1980 SC 1285 : (1980) 3 SCR 689] holding that the doctrine of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under law. It is also not applicable when the officer and the Government act outside the scope of their authority. The doctrine of ultra vires will in that event come into operation and the Government cannot be held bound by the unauthorised acts of its officers.
>
> **183.** It is not necessary for purposes of this judgment to resolve the apparent conflict between the decision of Bhagwati, J. in *Motilal Padampat Sugar Mills case* [(1979) 2 SCR 641 : (1979) 2 SCC 409 : 1979 SCC (Tax) 144] as to the applicability of the doctrine of estoppel for preventing the Government from discharging its functions under the law. In public law, the most obvious

[28] (1986) 1 SCC 133

limitation and doctrine of estoppel is that it cannot be evoked so as to give an overriding power which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. ***Another limitation is that the principle of estoppel does not operate at the level of Government policy.*** Estoppels have however been allowed to operate against public authority in minor matters of formality where no question of ultra vires arises: Wade: *Administrative Law*, fifth edition, pp. 233-34.

184. The principles laid down in *Maritime Elec. Co.* v. *General Dairies Ltd.* [1937 AC 610 (PC)] and by Lord Parker, C.J. in *Southend-on-Sea Corporation* v. *Hodgson* (*Wickford*) *Ltd.* [(1962) 1 QB 416] relied upon by learned counsel appearing for Respondent 1 the Union of India are clearly not attracted in the facts and circumstances of the present case. In the present case, admittedly, the then Minister for Works & Housing acted within the scope of his authority in granting permission of the lessor i.e. the Union of India, Ministry of Works & Housing to the Express Newspapers Pvt. Ltd. to construct new Express Building with an increased FAR of 360 with a double basement for installation of a printing press for publication of a Hindi newspaper under the Rules of Business framed by the President under Article 77(3). Therefore, the doctrine of ultra vires does not come into operation. In view of this

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> Respondent 1 the Union of India is precluded by the doctrine of promissory estoppel from questioning the authority of the Minister in granting such permission. In that view, the successor Government was clearly bound by the decision taken by the Minister particularly when it had been acted upon."
>
> [emphasis supplied]

49. The three-judge Bench of this Court in the case of ***Express Newspapers Pvt. Ltd. and others (supra)*** held that no estoppel can legitimize action which is ultra vires. It was further held that another limitation is that the principle of estoppel does not operate at the level of Government policy. In the facts of the said case, this Court held that the doctrine of ultra vires did not come into operation in the said case. It held that, in view of the permission granted by the then Minister for Works & Housing, the respondent-Union of India was precluded from questioning the validity thereof. The successor Government was bound by the decision taken by the Minister, particularly when it had been acted upon.

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50. It could thus be seen that there is some discord in the judgments of this Court in the cases of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and ***Godfrey Philips India Ltd. (supra)*** on one hand and in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** on the other hand.

51. This Court in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** holds that, if on the basis of a promise made by a government, an entity changes its legal position to its detriment, the State could not be permitted to resile from the said promise. It is to be noted that the said judgment is authored by Bhagwati, J. and the Bench strength is of two learned judges.

52. Within a period of two years, Kailasam, J. in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** found fault with some of the observations made in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and held that the observations made in ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** were not in tune with the judgments of Constitution Benches in the cases ***M. Ramanatha Pillai***

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(supra) and ***The Gwalior Rayon Silk Manufacturing (WVG). Co. Ltd. Etc. (supra)***; and the judgment of a four-Judge Bench of this Court in the case of ***Ram Kumar and others (supra).***

53. The judgment of this Court in the case of ***M/s Jit Ram Shiv Kumar and others (supra)*** again fell for consideration before a three-judge Bench of this Court in the case of ***Godfrey Philips India Ltd. (supra),*** which is again authored by Bhagwati, J. In the case of ***Godfrey Philips India Ltd.*** **(supra),** the judgment of the learned three-Judge Bench delivered through Bhagwati, J. holds that what has been held by learned two judges in the case of ***Motilal Padampat Sugar Mills Co. Ltd.*** has been correctly held so and endorses the said judgment. The said judgment also criticizes the view taken in ***M/s Jit Ram Shiv Kumar and others (supra)***. Within a short period, the issue again comes up for consideration before another three-judge Bench in the case of ***Express Newspapers Pvt. Ltd. and others (supra)***. A.P. Sen, J. speaking for the three-judge

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Bench notes the conflict between the view taken by Bhagwati, J. in ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and Kailasam, J in the case of ***M/s Jit Ram Shiv Kumar and others (supra)***. It appears that since the judgment was delivered within a fortnight from the date on which ***Godfrey Philips India Ltd. (supra)*** was decided, this Court in the case of ***Express Newspapers Pvt. Ltd. and others (supra)*** did not notice the judgment in the case of ***Godfrey Philips India Ltd. (supra).*** However, A.P. Sen, J in ***Express Newspapers Pvt. Ltd. and others (supra)*** held that it was not necessary for the purposes of the said judgment to resolve the conflict between the decision of Bhagwati, J. in the case of ***Motilal Padampat Sugar Mills Co. Ltd. (supra)*** and Kailasam, J. in the case of ***M/s Jit Ram Shiv Kumar and others (supra)***. It held that one of the limitations on the principle of estoppel is that it does not operate at the level of Government policy.

54. However, a common thread in all these judgments that could be noticed is that all these judgments consistently

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hold that there can be no estoppel against the legislature in the exercise of its legislative functions. The Constitution Bench in the case of ***M. Ramanatha Pillai (supra)*** has approved the view in *American Jurisprudence* that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. It further held that the only exception with regard to applicability of the doctrine of estoppel is where it is necessary to prevent fraud or manifest injustice. The analysis of all the judgments of this Court on the issue would reveal that it is a consistent view of this Court, reiterated again in ***Godfrey Philips India Ltd. (supra)***, that there can be no promissory estoppel against the legislature in the exercise of its legislative functions.

55. Undisputedly, the Notification dated 18th July 2017 withdrawing the exemption notifications was issued in pursuance of the statutory mandate as provided under Section 174(2)(c) of the CGST Act. If the contention as raised by the appellants is to be accepted, it would make the

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provisions under the proviso to Section 174(2)(c) of the CGST Act redundant and otiose. The legislature in its wisdom has specifically incorporated the proviso to Section 174(2)(c) providing therein that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded. If the contention is accepted, it will amount to enforcing a representation made in the said O.M. of 2003 and 2003 Notification contrary to the legislative incorporation in the proviso to Section 174(2)(c) of the CGST Act. In other words, it will permit an estoppel to be operated against the legislative functions of the Parliament. We are, therefore, of the considered view that the claim of the appellants on estoppel is without merit and deserves to be rejected.

56. It is further to be noted that this Court has also consistently held that when an exemption granted earlier is withdrawn by a subsequent notification based on a change in policy, even in such cases, the doctrine of promissory

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estoppel could not be invoked. It has been consistently held that where the change of policy is in the larger public interest, the State cannot be prevented from withdrawing an incentive which it had granted through an earlier notification. Reliance in this respect could be placed on the judgments of this Court in the cases of ***Kasinka Trading and another vs. Union of India and another***[29]***, Shrijee Sales Corpn. vs. Union of India***[30]***, State of Rajasthan vs. Mahaveer Oil Industries***[31]***, Shree Sidhbali Steels Ltd. vs. State of U.P.***[32]**,** and ***Director General of Foreign Trade vs. Kanak Exports***[33]

57. Recently, this Court, in the case of ***Unicorn Industries (supra),*** after surveying the earlier judgments of this Court on the issue has observed thus:

> "**26.** It could thus be seen that, it is more than well settled that the exemption granted, even when the notification granting exemption prescribes a particular period till which it is available, can be withdrawn by the

[29] (1995) 1 SCC 274
[30] (1997) 3 SCC 398
[31] (1999) 4 SCC 357
[32] (2011) 3 SCC 193
[33] (2016) 2 SCC 226

> State, if it is found that such a withdrawal is in the public interest. In such a case, the larger public interest would outweigh the individual interest, if any. In such a case, even the doctrine of promissory estoppel would not come to the rescue of the persons claiming exemptions and compel the State not to resile from its promise, if the act of the State is found to be in public interest to do so."

58. We are, therefore, of the considered view that even on the ground of change of policy, which is in public interest or in view of the change in the statutory regime itself on account of the GST Act being introduced as in the instant case, it will not be correct to hold the Union bound by the representation made by it, i.e. by the said O.M. of 2003. Further, this would be contrary to the statutory provisions as enacted under Section 174(2)(c) of the CGST Act.

59. There is another reason which, in our view, could disentitle the relief as was claimed by the appellants before the High Courts. The appellants, in effect, are seeking a writ of mandamus against the Union of India to reimburse

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100% of CGST for the remainder of the period instead of only 58%.

60. This Court in the case of ***The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. (supra)*** had an occasion to consider when a writ of mandamus could be issued. This Court held that:

> "**15.** .....There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. ***It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.*** (See *Lekhraj Satramdas Lalvani* v. *Deputy Custodian-cum-Managing Officer* [AIR 1966 SC 334 : (1966) 1 SCR 120 : (1966) 1 SCJ 24] , *Rai Shivendra Bahadur Dr* v. *Governing Body of the Nalanda College* [AIR 1962 SC 1210 : 1962 Supp 2 SCR 144 : (1962) 1

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> LLJ 247] and *Umakant Saran Dr* v. *State of Bihar* [(1973) 1 SCC 485 : AIR 1973 SC 964]). In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."
>
> [emphasis supplied]

61. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent-Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in the case of ***K.S. Jagannathan and another (supra)*** as under:

> "**20.** There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has

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> wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

62. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion *malafidely* or on an irrelevant consideration.

63. This position was again reiterated by this Court recently in the case of ***Bharat Forge Ltd. (supra)*** as follows:

> "**18**. Therefore, it is clear that a Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. ***This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise form a Statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public 25 duty in a Statute or otherwise, if in substance, it exists.*** Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority. A Writ of Mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which

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> would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court."
>
> [emphasis supplied]

64. Undoubtedly, in the present case, there is no duty cast on the Union to refund 100% of CGST. As such, we find that the relief as sought cannot be granted.

65. That leaves us with the judgments cited by Shri S. Ganesh and Shri V. Sridharan, learned Senior Counsel.

66. Insofar as the judgment of this Court in the case of ***Suprabhat Steel Ltd. (supra)*** is concerned, the question that arose for consideration was whether the Notification issued under Section 7 of the Bihar Finance Act by the State Government to carry out the objectives and the policy decisions taken in the industrial policy could be held to be bad in law if it is in contravention of the industrial policy. In the case of ***Tata Cummins Ltd. (supra)***, the question that fell for consideration was whether a Notification that was issued for implementation of the industrial policy of the State could be construed strictly or liberally. In the case of

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Lloyd Electric and Engineering Limited (supra), the question was, as to whether the delay on the part of the Excise and Taxation Department in issuing Notification pursuant to the decision taken by the Council of Ministers could deny the benefit of Notification to the entities which were entitled thereto.

67. Insofar as the judgment of this Court in the case of ***MRF Ltd., Kottayam (supra)*** is concerned, this Court, in the facts of the said case, specifically came to a finding that the decision to deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years was highly arbitrary, unjust and unreasonable. In the case of ***Manuelsons Hotels Private Limited (supra)***, perusal of the impugned judgment therein would reveal that the provision on which Manuelsons Hotels Private Limited was claiming benefit under was deleted with effect from the 1st of March 1993. This Court, therefore, made it clear that the benefit would only be available during the period when the said statutory provision existed in the statute book, i.e., from 6th

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November 1990 to 1st March 1993. This Court, therefore, clearly rejected the claim of benefit from the date on which the statutory provision was deleted from the statute book.

68. In the case of ***Nestle India Ltd. (supra)***, the respondent milk producers did not pay the purchase tax for the period between 1st April 1996 and 4th June 1997 since the Government had decided to abolish purchase tax for the said period. For the rest of the period, the tax was paid. The State had attempted to recover the purchase tax retrospectively for the aforesaid period. In this background, the claim of the respondents therein before this Court was found to be meritorious.

69. Insofar as the reliance placed by Shri V. Sridharan, learned Senior Counsel, on the judgment of this Court in the case of ***Video Electronics Pvt. Ltd. (supra)*** is concerned, the question was as to whether the State was empowered to grant sales tax exemption to a class of goods. It was held that the classification was permissible, provided that it was not vitiated by colourable exercise of power or

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abuse. As such, the said judgment would not be applicable to the facts of the present case.

70. It could thus be seen that in none of the aforesaid cases, the issue as to whether, on account of change in the law, the State was bound to stand by its representation made under the earlier law even when the change in law does not permit it to do so, fell for consideration. As against this, this Court, in a catena of judgments, including two Constitution Bench judgments, a four-Judge Bench judgment and various judgments of learned three judges, have consistently held that promissory estoppel would not apply against the exercise of legislative powers of the State. As such, none of the judgments cited, in our view, would be of any assistance to the cases of the appellants.

71. Insofar as the contention of Shri S. Ganesh, learned Senior Counsel, that the Union should have issued exemption notification as provided under Section 11 of the CGST Act is concerned, we find that under the said provision, a discretion is vested in the Central Government,

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which is to be exercised on the recommendations of the GST Council. A writ of mandamus cannot be issued to the Central Government to exercise power under Section 11 of the CGST Act in a particular manner. In any case, it is a matter of policy which has to be determined by the Union/State while taking a decision as to whether it should grant exemption from payment of CGST or make a budgetary allocation for refund of the tax paid. In any case, such power can be exercised by the Central Government only on the recommendations of the GST Council. As already discussed herein above, the Central Government was not bound to continue with a representation made by it in 2003 in view of the change of law by the enactment of the CGST Act. However, in order to partly honour the representation made by it, it has decided to refund 58% of the CGST paid by the entities. It is more than settled that this Court cannot interfere in policy matters of the Government unless such policy is found to be palpably arbitrary and irrational. In that view of the matter, we do

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not find that the claim made on the basis of Section 11 of the CGST Act is of any substance.

72. Though we have held that the appellants' claim based on promissory estoppel is without substance, we find that this is not a case wherein it can be said that the appellants' claim is wholly without any substance.

73. The appellants have established their industrial units based on the industrial policy as reflected in the said O.M. of 2003. The policy of the year 2003, in question, was based on the statement made by the Hon'ble Prime Minister during his visit to Uttarakhand. As such, the policy was framed to bring into effect the statement made by the highest executive functionary of the country. Relying on the said policy, the appellants have established their units. Though the appellants may not have a claim in law, we find that they do have a legitimate expectation that their claim deserves due consideration.

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74. It will be relevant to refer to the minutes of the meeting of the GST Council dated 30th September 2016, which read thus:

> "25. The Secretary to the Council explained that the Central and State governments had given various incentives of Central Excise and Value Added Tax (VAT) and Central Sales Tax (CST). He pointed out that in the GST regime, such incentives could not be continued as supplies would need to be made on payment of tax in order to permit flow of tax to the destination state. Therefore, a decision would need to be arrived at regarding the treatment of such tax incentive schemes under the GST regime. He observed that one option could be to 'grandfather' such schemes and provide for a budgetary apportionment in the State and the Central budgets for reimbursing the tax paid to those units which enjoyed tax exemption up to a specified period. However, while 'grandfathering' any such scheme, it would need to be kept in mind that unlike VAT and the CST which were origin-based taxes, GST was a destination-based tax and an unconditional reimbursement scheme could lead to double outflow for the origin-state – one by way of transfer of tax to the destination State and the other by way of reimbursement to the supplier. Therefore, the States would need to be careful while devising any

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> reimbursement scheme and care could be taken that such reimbursement was limited for supplies made within the State.
>
> 26. The Hon'ble Deputy Chief Minister of Gujarat alluded to examine possible legal complications. The Secretary to the Council pointed out that the agenda note contained certain judgments of the Hon'ble Supreme Court as per which the principle of promissory estoppel would not apply in a case where there was a supervening public equity."

75. It could thus be seen that the GST Council has noticed that the Central and State Governments had given various incentives of Central Excise and Value Added Tax (VAT) and Central Sales Tax (CST) so as to encourage investment in those States. It also took notice of the fact that such incentives could not be continued as supplies would need to be made on payment of tax to permit flow of tax to the destination state. The solution that was suggested was to provide for budgetary apportionment in the State and the Central budgets for reimbursing the tax paid to those units which enjoyed tax exemption up to a specified period.

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76. It will be further relevant to note the concerns expressed by the State of Uttarakhand and the State of Jammu & Kashmir in the said meeting, which are as under:

> "28. The Hon'ble Minister from Uttarakhand stated that the Government of India had given an area-based exemption for 10 years and that such exemptions were to continue upto 2020. She observed that the Centre must reimburse such units for the Central taxes as jobs of more than one lakh workers were at stake. The Hon'ble Minister from Jammu and Kashmir stated that his State was in a similar situation as Uttarakhand. The Chairperson observed that once incentive schemes were withdrawn, the taxes paid would be accounted for in the Consolidated Fund of India and 42% of the amount would be devolved to the States. The Centre, therefore, could be expected to only reimburse the units out of the remaining 58% of the fund which was not part of the devolution and the States would also need to correspondingly reimburse such units out of the share of revenue received through devolution."

77. It can thus be seen that the Hon'ble Minister from Uttarakhand had stated that the Government of India had given an area-based exemption for 10 years and that such

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exemptions were to continue up to 2020. She was of the view that the Centre must reimburse such units for the Central taxes as jobs of more than one lakh workers were at stake. The Hon'ble Minister from Jammu & Kashmir had also supported the view of the Hon'ble Minister from Uttarakhand. However, the Chairperson of the GST Council, i.e. the Hon'ble Finance Minister of the Union of India, stated that the Centre would only reimburse the units to the extent of 58%. He also expressed that the State would also need to correspondingly reimburse such units out of the share of revenue received through devolution. Accordingly, the following resolution was passed in the said meeting by the GST Council:

> "29. The Council approved the following-
>
> (i) All entities exempted from payment of indirect tax under any existing tax incentive scheme shall pay tax in the GST regime.
>
> (ii) The decision to continue with any incentive given to specific industries in existing industrial policies of States or through any schemes of the Central

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Government, shall be with the concerned State or Central Government.

(iii) In case the State or Central Government decides to continue any existing exemption/incentive/deferral scheme, then it shall be administered by way of a reimbursement mechanism through the budgetary route, the modalities for which shall be worked out by the concerned State/Centre."

78. We, therefore, find that in the deliberations of the GST Council itself, it was observed that the States also need to correspondingly reimburse the industrial units which were entitled to exemption under any existing incentive scheme, out of the share of revenue received through devolution, which, as per the Finance Commission, stands at 42%. As a matter of fact, the State of Jammu & Kashmir has issued a notification dated 21st December 2017 thereby resolving to reimburse the remaining 42% of the CGST of the Union. This is limited until the period the Union Scheme is valid.

79. It is further to be noted that the GST Council is a constitutional body. It has powers to make recommendations on wide-ranging issues concerning GST,

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including grant of exemptions from the GST. It also has power to make recommendations with regard to special provisions governing North Eastern and Himalayan States. Taking into consideration that the units like the appellants have been established in the Himalayan and North-Eastern States based on the said O.M. of 2003 and that lakhs of persons are employed in such industries, we are of the view that it will be appropriate that such States should also consider to correspondingly reimburse such units out of the share of revenue received by them through devolution from the Central Government. We further find that it will also be appropriate that the GST Council considers making appropriate recommendations to the States in that regard.

80. We, therefore, permit the appellants to make representations to the respective State Governments as well as to the GST Council. We also request the State Governments and the GST Council to consider such representations, if made, in accordance with what has been observed herein above in an expeditious manner.

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81. In the result, the appeals are dismissed, save and except the observations made in paragraphs 72 to 80 hereinabove.

82. Pending applications, if any, shall stand disposed of.

83. In the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[B.R. GAVAI]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
OCTOBER 17, 2022

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