Karnataka High Court Union Of India (Uoi) vs Yokogawa Bluestar Ltd. on 22 June, 2000 Equivalent citations: 2000 (72) ECC 279, 2001 (129) ELT 598 Kar Author: R Gururajan Bench: A Bhan, R Gururajan JUDGMENT R. Gururajan, J. 1. The Union of India and four other officials of the Union of India have filed this appeal aggrieved by the order passed in WP No. 33537/94 dated 2-8-1999. 2. Facts : The Govt. of India, in exercise of its power under Section 3A of Import & Exports (Control) Act, 1947 notified an export and import policy and was made effective from 1-4-1992 for a period of five years. The said policy provided for importing capital goods by Companies with a licence issued under EPCG (Export Promotion Capital Goods) Scheme at a concessional rate of customs duty subject to fulfilment of certain conditions. The petitioner acting on the policy imported capital goods after obtaining a licence under the scheme at a concessional rate of 25% of CIF value subject to an undertaking of export obligation to be fulfilled by the petitioner to the extent of 3 times the CIF value within a period of four years. Petitioner placed purchase orders in terms of the policy for procuring the capital goods to be used exclusively for fulfilling the export obligation in April 1992. The Government permitted the petitioner to import the goods. The said licence was given in terms of the policy. The petitioner thereafter cleared the said capital goods by filing bills of entry by clearing the said goods in terms of the Act on various dates. The Customs Authorities allowed the benefit of said concession and cleared the capital goods at a concessional rate of duty in terms of their applications. 3. Later the respondents in exercise of its powers conferred Under Section 25 of the Customs Act also issued a notification 307/92 on 28-12-1992 in consonance with the Export Import policy of Govt. of India. These being the facts of the case later on 7-9-1993 a show cause notice came to be issued calling upon the petitioner to answer short levy in the matter of Excise Duty on account of existing benefit of notification by the respondent. Petitioner submitted a reply and thereafter a personal hearing was granted and an order came to be passed against the petitioner by respondent 3 on 25-1-1994. Aggrieved by the said order the petitioner filed an appeal and the Appellate Authority also rejected the appeal on 6-9-1994. Petitioner in these circumstances filed a writ petition before this court in WP No. 33537/94 seeking for several prayers including a direction to the respondent directing them to value and accept 15% C&F value in terms of the policy. 4. The matter was heard. After hearing the learned Single Judge in the impugned order allowed the writ petition holding that the delay in issuing notification under Section 25 of the Customs Act cannot come in the way of the petitioner claiming the benefit in terms of the policy. The learned Single Judge also ruled that the principle of promissory estoppel would also apply to the facts of this case. 5. The Union of India and two others had now filed this appeal questioning the correctness of the order of the learned Judge. Mr. Ashok Harnahalli, learned Senior Counsel for the appellant questioned the order on the ground that in the absence of a concession notification under Section 25, the respondents/writ petitioner is not entitled for any concession whatsoever. On the said basis he attacked the order by relying on several authorities in support of his case. The counsel for the respondent supported the order. 6. The admit-

ted facts reveal that the Govt. of India issued a notification in the matter of Export and Import policy for a period of 5 years in terms of the power granted to the respondents. The said policy is to be effective for a period of 5 years. The writ petitioner acting upon the said policy imported capital goods and sought for concessional Customs Duty which has also been granted after being satisfied by the respondent. It is only after audit objection a show cause notice was issued and adverse orders were passed against the petitioners. Admittedly, in the case on hand concession notification Under Section 25 of the Act has also been issued by the respondent in consonance with the policy of the Union of India. However, there was some delay in issuing the said notification. The delay in issuing the notification in the light of the promissory policy decision of the government cannot come in the way of the writ petitioner availing concession in terms of the policy of the government. 7. The learned Single Judge after noticing all the aspects of the matter has in our opinion rightly ruled that the delay in issuing notification should not come in the way of the implementation of the policy. In fact in the case on hand the notification Under Section 25 of the Act is issued in consonance of the policy to regularise the concessional import duty in terms of the policy of the government. Merely because there is a delay in issuing the notification that by itself does not give right to the respondent to seek differential duty from the petitioner in the case on hand. The authorities in the circumstances have acted against the said policy of the Union of India in demanding the differential duty particularly when they themselves have acted on the policy by issuing a notification under the Act. 8. Mr. Ashok Harnahalli, learned Senior Counsel, however, vehemently contends before us that the concessional duty is not available prior to the issuing of the notification. According to him Section 15 provides for concessional rate of duty being made available to an importer and in the absence of concessional notification no concession can be shown in his argument. For this purpose he relies on a judgment of the Supreme Court in the case of Sheshank Sea Foods Pvt. Ltd v. Union of India, and in the case of Katnath Packaging Ltd. v. Union of India, and in the case of Kasinka Trading v. Union of India, . What is forgotten by the appellants is that the appellant has not challenged the policy and it cannot do so on the facts of this case. Moreover, the notification was only issued pursuant to the Exim policy and to be in consonance with the policy of the government in the matter of concessional duty. The various decisions relied on by the appellants are of no assistance to the appellants. In the case of Kamath Packaging Ltd., - , this court was concerned with regard to the customs authorities jurisdiction to pursue in case of violation of conditions of notification although advance license was issued by Chief Controller of Imports and Exports. It is not the case of the department that the writ petitioner in this case has in any way violated any of the conditions of exit (EXIM) policy. Therefore, the said judgment is clearly not applicable to this case. In the case of Sheshank Sea Foods Pvt. Ltd., -, the court was concerned with the Customs Authority jurisdiction to investigate the violation of condition of exemption to raw material imported under Advance license issued under DEEC scheme. The Court was concerned with regard to the breach of condition of an exemption by the petitioner in that case. In the case

on hand the respondent did not in any way assert or contend that the petitioner has committed any breach of condition of exemption notification issued in the month of December, 1992. Therefore, the present case is also clearly distinguishable on facts. The third case is also distinguishable on facts. In the said case an exemption notification was withdrawn and the said withdrawal of the notification was challenged before Supreme Court and the Supreme Court considered the impact of withdrawal of time-bound exemption notification Under Section 35A of the Act. In the case on hand the notification was issued in continuation of the policy of the government. Therefore, this case is also clearly distinguishable on facts. 9. Therefore, we do not find any substance in the argument of the counsel that the petitioner is not entitled for any concessional duty. In our view learned Judge has rightly ruled that the delay in issue of notification should not come in the way of implementation of the EXIM policy. 10. Before concluding we may notice the latest judgment of Punjab and Haryana High Court reported in (1999) 13 PHT 132 (P&H), between Nestle India Ltd. v. State of Punjab. The facts as could be seen from the said case reveal that the government was requested by the manufacturer of milk products to abolish the purchase tax and the Chief Minister announced the abolition of the same in the public meeting. The same was endorsed by the Finance Minister in public speech. Later the Excise Commissioner issued directions to accept the returns without collection of purchase tax. Thereafter notices were issued by the department to pay the purchase tax for the relevant year. The said notices were subject matter of writ petition before the Division Bench of the Punjab and Haryana High Court. The Division Bench has noticed the various judgments including Kanishka Trading v. Union of India -AIR 1995 SC 874 in the said judgment. Similar argument as in the present case of "no notification" exempting the tax under the Act was pressed into service by the Deputy Advocate General appearing for the State. The Division Bench ruled that the absence of formal notification "are in our opinion in the facts of these cases was, no more than ministerial act which remain to be performed, cannot be made basis for regulate the promise made to milk purchasers". The court further ruled in para 15 as under :- "15. In law, the doctrine of promissory estoppel represents a principle of equity evolved by the Courts to prevent injustice. The correct principle underlying the doctrine of promissory estoppel is that where one party has be his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relation or affect a legal relationship to arise in future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties. The doctrine of promissory estoppel has also been applied against the government and the argument based on executive necessity has been categorically negatived. Thus, where the government makes a promise knowing or intending that it would be acted upon by the promise and in fact, the promise relying on it alters its position, the government would be held bound by the promise and the promise would be enforceable against the

government at the instance of the promise. However, in such matters the doctrine of promissory estoppel must yield when the equity so requires. If it can be shown by the government that having regard to the facts of the case, it would be inequitable to bind the government to the promise made by it, the court would not raise an equity in favour of the promisee and enforce the promise against the government. Likewise, in cases in which the government changed its policy in larger public interest and establishes before the court that it would be against the public interest to enforce the promise, the court may relieve the government of its obligation to fulfil the promise." The Division bench after ribticing all these aspects has ruled that the doctrine of promissory estoppel represents the principles of equity evolved by the courts to prevent injustice. This judgment supports the view taken by us. 11. We are also at a loss to understand as to how the Union of India through the Ministry of Commerce and Director General of Foreign Trade can challenge the order of learned Single Judge when their policy is being directed to be implemented by the other wings of the State by this court in the impugned order. 12. In conclusion, we find no substance in this appeal. Writ appeal is rejected without any order as to costs.