Union Of India vs M/S Unicorn Industries on 19 September, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4436, AIRONLINE 2019 SC 1085, 2019 (10) SCC 575, (2019) 12 SCALE 684, (2019) 7 MAD LJ 594, AIR 2020 SC (CIV) 52

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Bench: B.R. Gavai, M. R. Shah, Arun Mishra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 7432 OF 2019
(Arising out of S.L.P.(C) No. 36926 of 2012)

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

VERSUS

M/s UNICORN INDUSTRIES .... RESPONDENT(S)

WITH

CIVIL APPEAL No. 2345 OF 2017 and
CIVIL APPEAL No. 2346 OF 2017

J U D G M E N T

B.R. GAVAI, J.

Leave granted in S.L.P.(C) No. 36926 of 2012.

2. The question of law that arises for consideration in these appeals is, 'as to whether, by invoking the doctrine of promissory estoppel, can the Union of India Reason: of Excise Duty in respect of certain products, which exemption is granted by an earlier notification; when the Union of India finds that such a withdrawal is necessary in the public interest.

3. Since the factual position as well as the question of law arising in the present three appeals are common, they are heard together and disposed of by this common judgment. The appellant, Union of India, in exercise of powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1994) (hereinafter referred to as the "Central Excise Act") read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), being satisfied that it is necessary in the public interest, by Notification No. 71 of 2003 dated 09.09.2003, exempted the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) other than the goods specified in Annexure-I to the said Notification, from the payment of duties under the said statutes. The notification provided that so much of the duty of excise or additional duty of excise, as the case may be, leviable thereon under any of the said Acts as was equivalent to the amount of duty paid by the manufacturer of the said goods, other than the amount of duty paid by utilisation of CENVAT credit under the CENVAT Credit Rules, 2002, was exempted. This exemption was available to the units located in Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate or Scheme Area, as the case may be, in the State of Sikkim, as specified in Annexure-II appended to the said notification. A procedure was also prescribed under the said notification for availing the benefit of exemption. Annexure-I thereto provides the list of the products which were not entitled for exemption. Clause 1 of the said Annexure reads thus:

> "1. Tobacco and Tobacco products including Cigarettes/ Cigars/ Gutkha" Similar notifications were issued by the Union of India being Notification Nos. 32 of 1999-CE and 33 of 1999-CE dated 08.07.1999 insofar as the State of Assam is concerned.
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> 4. By Notification No. 21 of 2007-CE dated 25.04.2007, the earlier notifications issued by it were amended. The effect of the amendment was that the product 'pan masala' falling under Chapter 21 of the First Schedule of the Central Excise Tariff Act, 1985, the goods falling under Chapter 24 of said First Schedule, i.e., tobacco and manufactured tobacco substitutes and plastic carry bags of less than 20 microns were included in the negative list and as such were no longer entitled for exemption from the excise duty. Being aggrieved by the said notification, the respondent, namely, Unicorn Industries in the Civil Appeal arising out of Special Leave Petition (C) No. 36926 of 2012, approached the High Court of Sikkim by way of Writ Petition (C) No. 22 of 2007. The High Court of Sikkim vide its judgment and order dated 11.05.2012 allowed the writ petition and held that the petitioner therein was entitled to exemption from payment of excise duty on the manufacture of pan masala from its unit situated in the State of Sikkim for a period of 10 years from the date of commencement of the commercial production, i.e., 27.06.2006.
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> 5. Similarly, the respondent in Civil Appeal No. 2346 of 2017, namely, M/s Dharampal Satyapal Ltd., which was a manufacturer of pan masala with tobacco and other tobacco products, approached the Gauhati High Court by way of a petition bearing No. PW(C) 749 of 2010. The said petition was with regard to withdrawal of

> exemption in respect of pan masala with tobacco. The Single Judge of the Gauhati High Court vide judgment and order dated 10.12.2010 found no substance in the petition and as such dismissed the petition. Being aggrieved thereby, the said respondent filed Writ Appeal No. 81 of 2011 before the Appellate Bench of Gauhati High Court. Vide the judgment and order dated 20.04.2016, the Appellate Bench of the High Court allowed the appeal; set aside the judgment and order passed by the Single Judge dated 10.12.2010 and quashed Notification No. 11 of 2007-CE dated 01.03.2007.

It further directed the Investment Appraisal Committee to give an opportunity of hearing to the appellant before it (respondent herein) so that it can prove the amount it had actually invested in the specified items for availing the benefits under the earlier notifications and further directed that if the appellant proves that it had actually invested the amount, the respondent authorities shall refund to the appellant so much of the excise duty to which the appellant therein would be entitled as per the earlier notifications.

6. The respondent in Civil Appeal No. 2345 of 2017, namely, M/s Dharampal Satyapal Ltd., had also filed another petition being Writ Petition (C) No. 749 of 2010 insofar as its product 'pan masala without tobacco', is concerned. The same was also dismissed by the learned Single Judge of the Gauhati High Court vide the common judgment and order dated 10.12.2010. It appears that the appeal arising from the said petition being Writ Appeal No. 223 of 2011 was separately heard by another Appellate Bench of the Gauhati High Court. However, noticing that the writ appeal arising out of the order of the Single Judge regarding the product of the appellant therein, i.e., 'pan masala containing tobacco' was already allowed by the Appellate Bench of the High Court by Order dated 20.04.2016, the said writ appeal was also allowed, by the judgment and order dated 25.05.2016 thereby setting aside the Order passed by the learned Single Judge in Writ Petition (C) No. 749 of 2010 so also the Notification dated 25.04.2007. The respondent therein was directed to refund the excise duty component to the appellant as is admissible under the law.

7. Being aggrieved by the aforesaid judgments and orders, one passed by the Sikkim High Court in the writ petition and the other two passed by the Gauhati High Court in the writ appeals, the Union of India is before this Court.

8. Mr. Dhruv Agrawal, learned senior counsel appearing on behalf of the appellants, submits that both, the Sikkim High Court as well as the Appellate Benches of the Gauhati High Court have grossly erred in allowing the writ petition and the writ appeals of the assessees. It is submitted that, though the Union of India had specifically contended before both the High Courts that the 2007 Notifications were issued in the public interest, the same has not been considered. It is submitted that the Union of India, in exercise of its delegated powers, is always empowered to modify and withdraw the exemptions granted by it under the earlier notification(s). It is submitted that the Union of India, taking into consideration the public interest, that the consumption of pan masala with tobacco or pan masala without tobacco is hazardous to the human health and, therefore, for curbing its consumption, had issued the 2007 Notifications thereby including pan masala in Chapter 21 and all products contained in Chapter 24, i.e., tobacco and manufactured tobacco substitutes, in

the negative list. It is submitted that, after taking into consideration that the 2007 Notification was issued in public interest, the Sikkim High Court ought not to have interfered with it. He further submitted that the reasoning given by the Sikkim High Court that pan masala is not hazardous and, therefore, the 2007 Notification cannot be said to be in the public interest is totally erroneous. It is further submitted that while doing so, the Sikkim High Court has assumed the role of an expert in the field and, therefore, travelled beyond its jurisdiction.

9. Insofar as the Gauhati High Court is concerned, the learned senior counsel submitted that the learned Single Judge of the Gauhati High Court had rightly dismissed the writ petitions, finding that in the conflict between the interest of an individual and the public interest, individual interest should give way to the larger public interest. It is submitted that, the Appellate Bench of the Gauhati High Court in its judgment dated 20.04.2016 has grossly erred in interfering with the reasoned order passed by the learned Single Judge. It is submitted that, in the said appeal, the product that fell for consideration before the Appellate Bench of the High Court was Zarda scented tobacco and pan masala containing tobacco. It is submitted that, the products containing tobacco are indisputably hazardous to health and, therefore, the Notification which withdraws exemption granted for the manufacture of the said products is undoubtedly in the larger public interest. However, overlooking this aspect, the appeals have been allowed. It is submitted that insofar as the other appeal is concerned, the another Appellate Bench has only relied upon the judgment by the earlier Appellate Bench and has observed that the only distinction in both the matters was that in the earlier matter, the issue was with regard to pan masala containing tobacco and in the matter before them, the issue was with regard to pan masala without tobacco and with these observation allowed the appeal.

10. The learned senior counsel relied on the following judgments of this Court in the cases of Kasinka Trading vs. Union of India1, Darshan Oils (P) Ltd. vs. Union of India2, STO vs. Shree Durga Oil Mills3, Shrijee Sales Corpn. vs. Union of India4, State of Rajasthan vs. Mahaveer Oil Industries5, Shree Sidhbali Steels Ltd. vs. State of U.P.6, DG of Foreign Trade vs. Kanak Exports7, Pappu Sweets and Biscuits vs. Commr. Of Trade Tax, U.P.8 and Commr. of Customs vs. Dilip Kumar & Co.9,.

11. Shri Balbir Singh and Shri Nakul Dewan, learned senior counsel appearing on behalf of the respondents, have supported the impugned judgments and orders. It is 1 (1995) 1 SCC 274 2 (1995) 1 SCC 345 3 (1998) 1 SCC 572 4 (1997) 3 SCC 398 5 (1999) 4 SCC 357 6 (2011) 3 SCC 193 7 (2016) 2 SCC 226 8 (1998) 7 SCC 228 9 (2018) 9 SCC 1 submitted that, the Sikkim High Court as well as the Appellate Benches of the Gauhati High Court have rightly relied upon the doctrine of promissory estoppel and allowed the appeals. It is submitted that, it is only on account of the representation given by the Union of India and the State Governments that the industries established in the notified areas of Sikkim as well as Assam would be entitled for 100% exemption from central excise, the writ petitioners before the High Court had established the industries in such remote areas. It is submitted that, the exemption notifications were issued in view of the industrial policy of the Union of India as well as the State Governments that on account of backwardness in these areas, the industrialisation in these areas should be promoted so that the economic development takes place. It is submitted that, only on the assurance of the Central as well as the State Governments, the writ petitioners have invested huge amount and, as such, now the Union of India could not be permitted

in law to resile from the assurance given by them to the writ petitioners. It is submitted that, considering these principles, the Sikkim High Court and the Appellate Bench of the Gauhati High Court have granted relief to the writ petitioners. It is submitted that, this Court has consistently held that, if a party changes its position to its detriment, on account of a promise given by the other party, the other party cannot be permitted to resile from such a promise. It is submitted that the doctrine of promissory estoppel is equally applicable to the State and its functionaries. Reliance in this respect is placed on the following judgments of this Court. M/s Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and Ors.10, Union of India & Ors. Vs. Godfrey Philips India Ltd. & Ors.11 and Pawan Alloys & Casting Pvt. Ltd. vs. U.P. State Electricity Board & Ors.12.

12. The issue raised in these appeals is no more res integra. This Court in a catena of decisions has considered the issue with regard to inapplicability of the doctrine of promissory estoppel, when the larger public interest demands so. We will refer, in brief, to the earlier judgments of this Court.

13. In the case of Kasinka Trading (supra), this Court was considering the case of the appellant, who were manufacturing certain products, requiring PVC resin as one of the raw materials for its manufacturing process. By Notification No. 66 dated 15.03.1979 issued under Section 25 of the Customs Act, 1962 which is pari materia 10 (1979) 2 SCC 409 11 (1985) 4 SCC 369 12 (1997) 7 SCC 251 with Section 5A of the Central Excise Act, the PVC resin was exempted from basic import duty. The exemption was to be effective till 31.03.1981. However, by Notification No. 205 dated 16.10.1980 issued under Section 25 of the Customs Act, the exemption granted earlier came to be withdrawn. A challenge similar to the one which is raised herein was raised before this Court. This Court observed thus:

> "12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation." (emphasis supplied)

14. It could thus be seen that, this Court has clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to see all aspects including the objective to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principle of equity must forever be present in the mind of the Court while considering the applicability of the doctrine. It has been held that the doctrine of promissory estoppel must yield when the equity so demands and when it can be shown having regard to the facts and circumstances of the case, that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. After considering the earlier judgments on the issue, which have been heavily relied upon by the assesses, this Court has observed thus:

"21. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner." (emphasis supplied)

15. It could thus be seen that, it has been held by this Court that an exemption notification does not make the items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty etc. subject to such conditions as may be laid down in the "public interest".

It has further been held that, such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. It has been held that the supersession or revocation of an exemption notification in the public interest is an exercise of the statutory power by the State under the law itself. It has further been held that under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner.

16. This Court, after considering the objections that the exemption could not be withdrawn prior to the date prescribed in the notification granting exemption has observed thus:

> "23. The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had been issued. The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The courts, do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act." (emphasis supplied)

17. It has been observed, that the withdrawal of exemption in public interest is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the public interest. It has been held that, where the Government acts in public interest and neither any fraud or lack of bona fides is alleged much less established, it would not be appropriate for this Court to interfere with the same. Ultimately, this Court came to the conclusion that the withdrawal of the exemption was in the public interest and, therefore, refused to interfere with the order of the Delhi High Court dismissing the petitions.

18. In the case of Shree Durga Oil Mills (supra), the Government of Orissa had withdrawn the sales tax exemption which was granted earlier under the Orissa Sales Tax Act, 1947. Considering a similar challenge, while reversing the judgment and order of the High Court, this Court observed thus:

> "21. Moreover withdrawal of notification was done in public interest. The Court will not interfere with any action taken by the Government in public interest. Public interest must override any consideration of private loss or gain.
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> 23. In the instant case, it has been stated on behalf of the State that various notifications granting sales tax exemptions to the dealers resulted in severe resource crunch. On reconsideration of the financial position, it was decided to limit the scope of the earlier exemption notifications issued under Section 6 of the Orissa Sales Tax Act. Because of this new perception of the economic scenario of the State, the scope of the earlier notifications had to be restricted. They were first abrogated altogether on 20-5-1977. Thereafter, it was decided to grant exemption at a limited scale.
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> 24. In our opinion, the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel. Public interest demanded modification of the earlier IPR."

19. It could thus be seen that, it has been held that when withdrawal of the exemption is in public interest, the public interest must override any consideration of private loss or gain. In the said case, the change in policy and withdrawal of the exemption on the ground of severe resource crunch have been found to be a valid ground and to be in public interest.

20. A similar issue came up for consideration before the Bench consisting three Judges of this Court in the case of Shrijee Sales Corporation (supra). The notification which came up for consideration was similar with the notifications that fell for consideration in the case of Kasinka Trading (supra). While considering the argument that when the notification prescribes a period during which the exemption would be available, such an exemption cannot be withdrawn till the end of the period prescribed, this Court observed thus:

> "7. The next question is whether the fact that the Notification No. 66 mentioned the period during which it was to remain in force, would make any difference to the situation. In other words, could it be said that an exemption notified without specifying the period within which the exemption would remain in force, would be withdrawn in public interest but not the one in which a period has been so specified? Once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been indicated. The Government is competent to resile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation which cannot be rectified. To adopt the line of reasoning in Emmanuel Ayodeji Ajayi v. Briscoe, (1964) 3 All ER 556, quoted in M.P. Sugar Mills [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409, even where there is no such overriding public interest, it may still be within the competence of the Government to resile from the promise on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, provided, of course, it is possible for the promisee to restore the status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable." (emphasis supplied)

21. It could thus be seen that this Court observed that once public interest is accepted as a superior equity which can override an individual equity, the same principle should be applicable in such cases where the period is prescribed.

22. The another three Judges Bench of this Court in the case of Mahavir Oil Industries (supra) has taken a similar view. In the case of Shree Sidhbali Steels Ltd. (supra), this Court was considering the question with regard to validity of the notification which withdrew 33.33% of the hill development rebate, on the total amount of electricity bill, granted under the earlier notification. This Court while considering the similar challenge observed thus:

> "33. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the court. However, if it can be shown by the Government that having regard to the facts

as they have subsequently transpired, it would be inequitable to hold 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. Where public interest warrants, the principles of promissory estoppel cannot be invoked. The Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law." (emphasis supplied)

23. It could thus be seen that, this Court again reiterated the position that where public interest warrants, the principle of promissory estoppel cannot be invoked. Observing the aforesaid, the said challenge, as raised by the petitioner, came to be rejected.

24. In the case of Kanak Exports (supra), this Court again while considering the challenge for withdrawal of incentives to the exporters of some specified items held that, the incentive scheme in question was in the nature of concession or incentive which was a privilege of the Central Government. It was for the Government to take a decision to grant such a privilege or not. Grant of exemption, concession or incentive and modification thereof are the matters in the domain of public decisions of the Government. It further reiterated that when the withdrawal of such incentives was shown to have been done in public interest, the courts would not tinker with the policy decisions. This Court, after considering the materials on record as a matter of fact, held that withdrawal of exemption was in the public interest.

25. 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 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.

26. A judicial notice can be taken of the fact that by various scientific studies on betel quid and substitutes, tobacco and their substitutes, i.e., pan masala with tobacco and without tobacco, these products have been found to be one of the main causes for oral cancer. A detailed study has been considered by three Experts, namely, Urmila Nair, Helmut Bartsch and Jagadeesan Nair in the Division of Toxicology and Cancer Risk Factors, German Cancer Research Centre (DKFZ), Heidelberg, Germany. The research paper is titled as "Alert for an epidemic of oral cancer due to use

of the betel quid substitutes gutkha and pan masala: a review of agents and causative mechanisms13". After considering the entire material in detail and considering the various earlier studies, the paper observes thus:

> "Perspectives Banning of gutkha and pan masala has been strongly advocated by oncologists as a preventive measure to reduce oral cavity cancers. Recently, a number of States in India have banned the manufacture and sale of both products and this should reduce the incidence rate. Similar regulations regarding other health-impairing tobacco products which have been on the market for centuries, together with cigarettes and bidis (an indigenous smoking product), should also be reinforced.
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> However, for those who are addicted to these products or are already affected by premalignant lesions, educational interventions to encourage stopping the habit are essential. Additionally, chemopreventive interventions are being explored. Retinoids, NSAIDS and green tea are among the promising agents (Garewal, 1994; IUSHNCC, 1997; Papadimitrakopoulou and Hong, 1997; Lin et al., 2002a). Although a large percentage of lesions did respond to treatment, recurrence after terminating the chemopreventive regime was also observed (Sankaranarayanan et al., 1997), perhaps due in part to continuation of the addictive habit.

As with all cancers, early diagnosis is important for successful treatment of oral cancer, as its prognosis is still very poor. There is, nowadays, a strong drive to apply proteomics technology to molecular diagnosis of cancer. Expression profiling of tumour tissues, molecular classification of tumours and identification of markers to allow early detection, sensitive diagnosis and effective treatment are now being explored for oral cancers. Genes with significant differences in expression levels between normal, dysplastic and tumour samples have been reported and this should help in better understanding the progression of oral squamous cell carcinoma (Kuo et al., 2002; Leethanakul et al., 2003).

DNA aneuploidy in oral leukoplakia in Caucasian tobacco users has been found to signal a very high risk for subsequent development of oral squamous cell carcinomas and associated mortality (Sudbo and Reith, 2003; Sudbo et al., 2004). A risk assessment model to predict progression of premalignant lesions that includes histology and a score combining chromosomal polysomy, expression and loss of heterozygosity on 3p or 9p has also been described (Lee et al., 2000; Rosin et al., 2002). Once diagnosed, these premalignant lesions could be treated at a much earlier stage by chemo preventive agents, surgery, chemotherapy and/or intense radiotherapy to prevent new lesions and premalignant lesions from progressing to invasive cancer.

Conclusions Gutkha and pan masala have flooded the Indian market as cheap and convenient BQ substitutes and become popular across all age groups wherever this habit is practised. There is sufficient evidence that chewing of tobacco with lime, BQ with tobacco, BQ without tobacco and areca nut are carcinogenic in humans (IARC, 1985, 2004). These evaluations in conjunction with the available evidence on the BQ substitutes gutkha and pan masala implicates them as potent

carcinogenic mixtures that can cause oral cancer. Additionally, these products are addictive and enhance the early appearance of OSF, especially so in young users who could be more susceptible to the disease. Although recently some curbs have been put on the manufacture and sale of these products, urgent action needs be taken to permanently ban gutkha and pan masala, together with the other well-established oral cancer- causing tobacco products. Finally, as the consequences of these habits are significant and likely to intensify in the future, an emphasis on education aimed at reducing or eliminating the use of these products as well as home-made preparations should be accelerated."

27. Recently, the Department of Oral Medicines and Radiology, Dental Institute, Rajendra Institute of Medical Sciences, Ranchi has through its experts, namely, Anjani Kumar Shukla, Tanya Khaitan, Prashant Gupta and Shantala R. Naik conducted a study on the subject "Smokeless Tobacco and Its Adverse Effects on Hematological Parameters: A Cross-Sectional Study14". The study paper considered the consumption of smokeless tobacco (SLT) in various forms in India such as pan (betel quid) with tobacco, zarda, pan masala, khaini, areca nut. After conducting an in-depth analysis, the paper concludes and recommends as under" "Conclusion and Recommendation SLT use has severe adverse effects on hematological parameters. The present study might serve as an early diagnostic tool in any systemic diseases and be helpful in spreading awareness on the deleterious effect in the populace consuming SLT. Timely intervention among students can prevent the initial experimentations with tobacco from developing into addiction in adulthood. People should be counselled to avoid all habits of tobacco and undergo nicotine replacement therapy along with antioxidants. Knowledge and awareness about systemic and oral ill effects of tobacco should be spread through tobacco control programs in the pursuit for a tobacco-free world."

28. It was sought to be argued on behalf of the manufacturers of pan masala without tobacco, that the pan masala without tobacco stands on a different pedestal than the pan masala with tobacco. It was sought to be argued that, pan masala without tobacco cannot be considered to be hazardous to health. The Department of Head and Neck Surgery, Tata Memorial Hospital, Mumbai 14 Advances in Preventive Medicine 2019 through its experts Garg A, Chaturvedi P. Mishra A. and Datta S. had conducted a study on "A review on Harmful Effects of Pan Masala15". It is to be noted that this study is of 'pan masala without tobacco'. It will be apposite to refer to the following observations of the said report:

> "Policy Issues Concerning Pan Masala Pan masala use is rampant in India by all the sections and age groups of the society. It has emerged as a major cause of oral cancer in India. National Family Health Survey-2 showed that 21% of people over 15 years of age consumed PM or tobacco. Study in the state of Tamil Nadu showed that the age at which people start consuming areca nut products ranges from 12 to 70 years. 58% of the subjects chewed the products more than twice a day. Advertising tobacco products including PM containing tobacco is banned in India since May 1, 2004. To bypass this ban tobacco companies are advertising PM ostensibly without tobacco, heavily in all forms of media. PM is surrogate for tobacco products as the money spent on marketing, and advertising is many times of the revenue generated from the sale of PM. In Mumbai after the ban on PM and gutka the sale has come down and

> the percentage of users quitting and reducing the habit was 23.53% and 55.88% respectively. The main reason of quitting and reduction in consumption was non availability of these products. In spite of the ban gutka was still available but in different forms or at increased cost. Strict law in the form of Cigarettes and other Tobacco Products Act 2003 has been made in India, but the enforcement and compliance is lax. There is a need for strong enforcement and compliance of laws throughout the country. The genotoxic, carcinogenic properties and numerous other harmful effects of PM need immediate and strict action by the government on PM without tobacco as it has banned PM with tobacco. The consumers should also be made aware

15 Indian Journal of Cancer (October-December 2015) Volume 52, Issue 4 of the harmful effects of PM as they are under a false impression that it is not harmful. “Conclusion Pan masala is widely used across all the strata of society and is freely available in many parts of the country. It is carcinogenic, genotoxic, and has harmful effects on the oral cavity, liver, kidneys and reproductive organs. Government action is immediately required to restrict the consumption and to make the people aware about its harmful effects.”

29. The study which has been conducted in 2004, found that gutkha and pan masala have been one of the major causes of oral cancer. The Oncologists as early as in 2004 had strongly advocated banning of gutkha and pan masala. They further find that banning the manufacture and sale of these products would reduce oral cancer incidence rates. It is found that gutkha and pan masala have flooded the Indian markets and become popular amongst all age groups. It is observed that pan masala with tobacco as well as without tobacco have been found to be having a potent carcinogenic mixtures that can cause oral cancer. It further found that, these products are an addictive and enhance the early appearance of oral sub-mucous fibrosis (OSMF). It is especially so in the young users who could be more susceptible to the disease.

30. The report further finds that, in the National Family Health Survey-2, it has been found that 21% of people over 15 years of age consumed pan masala or tobacco. The report finds that, though advertising tobacco products including pan masala containing tobacco is banned in India since 01.05.2004, to bypass this ban, tobacco companies are advertising pan masala ostensibly without tobacco, heavily in all forms of media. It has been found that, after the ban on pan masala and gutkha, the sale has come down. The 2016 report finds that, in Mumbai, after the ban on pan masala and gutkha, the sale has come down and the percentage of users quitting and reducing the habit was 23.53% and 55.88% respectively.

31. It could thus be seen that, by a scientific research conducted by Experts in the field, it has been found that the consumption of pan masala with tobacco as well as pan masala sans tobacco is hazardous to health. It has further been found that, the percentage of teenagers consuming the hazardous product was very high and as such exposing a large chunk of young population of this Country to the risk of oral cancer. Taking into consideration this aspect, if the State has decided to withdraw the exemption granted for manufacture of such products, we fail to understand as to how it can be said to be not in the public interest.

32. The Sikkim High Court has observed that the appellant herein has been unable to establish any overriding public interest, which would make the doctrine of promissory estoppel inapplicable. It has further observed that, the pan masala has not been declared as hazardous to health by any notification or order of the Government of India or the State Government. It found that, no material or scientific report had been placed on record to demonstrate that the pan masala is a health hazard. We find that the reasoning arrived at by the Sikkim High Court is totally erroneous.

33. Insofar as the Gauhati High Court is concerned, the learned Single Judge by an elaborate reasoning had found that the notifications impugned before it was in the public interest and further observed that in view of the overriding public interest, the doctrine of promissory estoppel could not be invoked. Not only that, but the learned Single Judge in the judgment has specifically observed thus:

> "Having regard to the background that had preceded the Policy 2007 and the curtailment of the benefits of exemption earlier granted by the Policy 1997 through various instruments of law in the form of Section 154 of the Finance Act 2003 read with Schedule 9 thereto as well as the notifications under Section 5A of the Central Excise Act and other related legislations it would be in defiance of logic to conclude that all these notwithstanding, with the specific intention of excluding the industries engaged in the manufacture of goods under Chapter 24 and pan masala under Chapter 21 of the First Schedule to the Tariff Act, 1985, these would still continue to avail the benefits/incentives under the Policy 1997 only because the units concerned had commenced commercial production on and from 31/3/2007."

34. The learned Single Judge has also specifically observed in his judgment that the vires of Section 154 of the Finance Act, 2003 vide which the exemption granted to the manufacturers of cigarette was rescinded with retrospective effect, has been upheld by this Court in the case of R.C. Tobacco (P) Ltd. and Another Vs. Union of India and Another, reported in 2005(7)SCC 725. We are surprised at the approach of the Appellate Bench of the Gauhati High Court. It is pertinent to note that the contention of the learned A.S.G. appearing on behalf of the Union of India to the following effect have been specifically recorded by the Judges of the Appellate Bench of the High Court in paragraph 14 of the judgment, which reads thus:

> "that the legality of the withdrawal of the benefit granted to the tobacco manufacturing units such as the appellant under the 1997 Industrial Policy by Section 154 of the Finance Act, 2003 was already upheld the Apex Court in R. C. Tobacco (P) Ltd. vs. Union of India, (2005)7 SCC 725."

35. The Appellate Bench of the High Court observed that some of the notifications providing modalities for exemption were issued subsequent to the enactment of Section 154 of the Finance Act, 2003 and, therefore, Section 154 of the Finance Act, 2003 has no relevance in the said case. However, the Appellate Bench does not find it necessary to even make a reference to the judgment of this Court which was relied on by the learned Single Judge while dismissing the writ petitions and which is specifically put in service by the Union of India. We are unable to appreciate as to how the

Appellate Bench of the Gauhati High Court finds that withdrawal of exemption in respect of 'pan masala with tobacco' is not in the public interest. The legislative policy as reflected in Section 154 of the Finance Act was to withdraw the exemption granted to the manufacturers of cigarettes as well as pan masala with tobacco and that too with retrospective effect. Apart from the fact that, it is a common knowledge that tobacco is highly hazardous, the legislative intent was also unambiguous. In these circumstances, the finding of the High Court that the withdrawal of exemption for tobacco products was not in the public interest, to say the least is shocking. We find that the approach of the Appellate Bench of the High Court was totally unsustainable.

36. As already discussed hereinabove, we have no hesitation to hold that the withdrawal of the exemption to the pan masala with tobacco and pan masala sans tobacco is in the larger public interest. As such, the doctrine of promissory estoppel could not have been invoked in the present matter. The State could not be compelled to continue the exemption, though it was satisfied that it was not in the public interest to do so. The larger public interest would outweigh an individual loss, if any. In that view of the matter we find that the appeals deserve to be allowed. Civil Appeal arising out of S.L.P.(C) No. 36926 of 2012:

37. The appeal is allowed. The judgment and order passed by the High Court of Sikkim dated 11.05.2012 is quashed and set aside.

38. No order as to costs.

Civil Appeal Nos. 2345 of 2017 and 2346 of 2017:

39. The appeals are allowed. The judgments and orders passed by the Appellate Bench of the Gauhati High Court dated 20.04.2016 and 25.05.2016 are quashed and set aside. The Order passed by the learned Single Judge dated 10.12.2010 dismissing the writ petitions is upheld.

40. No order as to costs.

.....J. [ARUN MISHRA] .....J. [M. R. SHAH] .....J. [B.R. GAVAI] NEW DELHI;

SEPTEMBER 19, 2019.