(18) For the reasons recorded above, this appeal is accepted leaving the parties to bear their own costs throughout. The judgment and decree of the lower appellate Court are set aside and that of the trial Court, dismissing the suit, are restored.

R.N.R.

Before : G. C. Mital & G. S. Chahal, JJ.

SHASHI KANT VOHRA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 757 of 1988

4th September, 1990

Haryana General Sales Tax Act, 1973—S. 13—Indian Evidence Act, 1872—S. 115—Notification dated 2nd June, 1979 and Exemption Notification dated 30th December, 1987—Rural tiny industrial units granted exemption from payment of tax by 1979 notification—Exemption granted for period of two years—Exemption certificate issued by Industries Department made condition precedent for availing concession—1987 notification laying further condition that such units should have turnover not exceeding 5 lac rupees a year—Validity of 1987 notification—Withdrawal of concession from tiny units with turnover in excess of 5 lac rupees—Violates rules of Promissory estoppel—Exemption cannot be withdrawn—Notification issued under S. 13 is subordinate legislation and not a legislative Act.

Held, that the exemption of tax allowed under the Haryana General Sales Tax Act, 1973 to the tiny industries,—*vide* notification dated 2nd June, 1979 could not be withdrawn by means of the impugned notification dated 30th December, 1987 and the Haryana Government was estopped from withdrawing the concession to the tiny industrial units by the rule of promissory estoppel.

(Para 16)

Haryana General Sales Tax Act, 1973—S. 13—Indian Evidence Act, 1872—S. 115—Notification dated 10th August, 1973 and 30th December, 1987—Exemption granted to Khadi and Village Industries by 1973 notification withdrawn by 1979 notification—Being mere concession, it could be withdrawn at any time—Rule of promissory estoppel does not apply.

Shashi Kant Vohra and others *v.* State of Haryana and another
(G. S. Chahal, J.)

Held, that in the case of Khadi and Village Industries, the rule of promissory estoppel is not attracted. It was a concession allowed to them and it could be withdrawn by the State Government at any time. The impugned notification dated 30th December, 1987 relating to Khadi Udyog is legal and within the powers of the Governor of Haryana. (Para 17)

Petition under Articles 226/227 of the Constitution of India praying that the records relevant to this case may kindly be summoned and after perusing the same this Hon'ble Court may be pleased to:—

(a) *Issue a writ, order or direction in the nature of* mandamus *declaring the notification Annexure P-1, especially the clause restricting the benefit of exemption to the limit of annual turnover of 5 lacs only, as unconstitutional and void.*

(b) *Issue a writ or direction in the nature of prohibition thereby prohibiting the assessing authority from levy, imposition, assessment and recovery of sales/purchase tax.*

(c) *Issue any other appropriate writ, order of direction as may be deemed fit in the circumstances of the case.*

(d) *Dispense with the requirement of the certified copies of the annexures.*

(e) *Dispense with the requirement of serving advance notice of the motion to the respondents.*

(f) *Award the cost of this writ petition.*

It is further prayed that during the pendency of this writ petition the operation of notification (Annexure P-1) may kindly be stayed and the realisation of tax be stayed from the petitioners in the interest of justice.

Govind Goel, Advocate, *for the Petitioners.*

S. C. Mohunta, A.G. Haryana with S. K. Sood, D.A. Haryana, *for the Respondents.*

JUDGMENT

G. S. Chahal, J.

(1) Since common question of law is involved herein, this judgment will dispose of the present writ petition and Civil Writ Petitions No. 1026, 1120, 1123, 1244, 1338, 1396, 1553, 2204, 2292, 2794. 2795, 3449, 3480, 3573, 3574, 3580, 3631, 3644, 3681, 3756, 3921, 3924,

3925, 4146, 4213, 4375, 4753, 4987, 5216, 5285, 5513, 6802, 7265, 7524, 10125 and 10335 of 1988 and 1784 and 2708 of 1989 relating to tiny industries and Khadi Udyog in the State of Haryana. With respect to tiny industries, we will refer to the facts contained in writ petition No. 757 of 1988. The petitioners have challenged the validity of notification dated 30th December, 1987, Annexure P1. According to the facts mentioned, the Governor of Haryana, in exercise of his powers under section 13 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the Act), issued notification dated 2nd June, 1979, Annexure P2 whereby all rural tiny industrial units, set up on or after the date of publication of this notification, whose capital investment on machinery and equipment did not exceed Rs. 1,00,000 were exempted from payment of tax under the Act, subject to their obtaining certificate of genuineness issued by the Industries Department, Haryana and the exemption was for a period of two years. The grant of this benefit for development of rural industries was given wide publicity through the Government media. It was to promote rural economy and employment opportunities for the ruralites. Influenced by the said policy of grant of incentives in the shape of exemption of taxes, the petitioners installed rural tiny industrial units in village Chandi and Madina in District Rohtak for the manufacture and delinting of cotton seed. On applications made by the petitioners, exemption certificate was issued in their favour in terms of the notification. The petitioners gave the following details of the dates on which they were granted exemption certificates.

Sr. No.	Name of petitioner	Date w.e.f. exemption certificate granted
1.	Amar General Mills, Chandi	11-11-1987
2.	Ankur Cotton Seed and Oil Industries, Mauja Kutana	25-9-1987
3.	Diamond Delinter Industries, Madina	3-4-1987

The certificate of exemption was initially for a period of one year, but was extendable for another year in conformity with the Exemption Notification Annexure P2.

(2) The Governor of Haryana issued a fresh notification dated 30th December, 1987, Annexure P1, superseding all the previous notifications, including Exemption Notification dated 2nd June, 1979 Annexure P2, and thereby provided that the units of the type covered by Annexure P2, are entitled to the exemption of only upto the turn-over of Rs. 5,00,000 and that the exemption already granted shall be deemed to be modified in terms of the new notification. The following clause in the impugned notification has adversely affected the rights of the petitioners :—

"———

(3) Such units shall be entitled to exemption on the turnover not exceeding rupees five lakh in a year.

——— ——— ———

2. In case of those units in whose favour the exemption certificates have already been granted by the assessing authorities, such exemption certificates shall be deemed to have been modified in accordance with the terms of this notification as if such certificates were issued under this notification. ———"

The turnover of 5 lacs is attained by the petitioners' units every month, but since the units installed have the capacity of producing 6 tonnes of cotton seeds every day. This target is also required to be achieved in order to make the units economically viable, as prescribed by the banks and various institutions, including Haryana Financial Corporation. The impugned notification, as in force, will give exemption to the petitioners only for one month in a year.

(3) The respondent-authorities contested the writ petitions by way of filing written statements. The facts were not disputed, but it was pleaded that there could be no rule of estoppel against a statute and there could be no restriction placed on the powers of the State Government to collect the tax. The exemption was in the form of concession and it could be withdrawn without violating the rule of promissory estoppel.

(4) In *CWP* 3644 of 1988 the petitioners have pleaded that they were Khadi and Village Industries and that they had been exempted

from payment of tax for the promotion of the same. This exemption was claimed under notification dated 10th August, 1973, Annexure P2 and the tax exemption was allowed. Under the impugned notification dated 30th December, 1987, the previous notification was superseded and it was provided as follows:—

> "———The Governor of Haryana being satisfied that it is necessary and expedient so to do in the interest of cottage industries hereby exempts with effect from 1st day of January, 1988.
>
> (a) all classes of Co-operative Societies and persons, excepting the Khadi Ashram Panipat and its decentralised units functioning within the State of Haryana, the Co-operative Societies and persons running brick-kilns or hydraulic sulphur Sugar Plants, so long as their turnover does not exceed rupees five lakhs in a year;
>
> (b) The co-operative Societies and persons, "running brick-kilns or hydraulic sulphur sugar plants, so long as their turnover remains below seventy five thousand rupees in a year;
>
> (c) the Khadi Ashram Panipat and its decentralised units functioning within the State of Haryana, in those cases there is no maximum limit of turnover in a year; ———"

These petitions have also been contested by the respondents on similar grounds as those of the tiny industries.

(5) The validity of the notification dated 30th December, 1987, Annexure P1 which became effective from 1st January, 1988 was considered by a Single Judge in *Satgur Oil Mills and others* v. *State of Haryana and others* (1), and while allowing the writ petition, it was held that the notification dated 30th December, 1987 did not apply to the industrial units of the petitioners and they would be entitled to two years exemption from payment of tax on the basis of the exemption certificate in their favour issued by the Assessing Authority. In view of certain observations made in the Supreme Court judgment, *M/s Bharat General and Textile Industries* v. *State of Maharashtra* (2), the writ petitions were referred to a larger Bench and that it how, these writ petitions have come up before us.

(1) I.L.R. (1989)1 Punjab and Haryana 175.
(2) 1988 (III) SVLR (T) 120.

(6) In the exemption notification dated 2nd June, 1979, Annexure P2, the Governor of Haryana, while granting the exemption, had *inter alia* directed :

> "———being satisfied that it is necessary and expedient so to do, in the interest of rural industries, hereby exempts all rural tiny "industrial units, set up on or after the date of publication of this notification, in the official gazette, whose capital investment on machinery and equipment does not exceed rupees one lac and in whose favour certificate of genuineness is issued by the industries department of Haryana State, from the payment of tax under the Haryana General Sales Tax Act, 1973, on the purchase or sale of any good. ———"

This exemption was subject to two conditions :

1. An exemption certificate in the form annexed in this notification is obtained by them from the assessing authority of the district concerned, on an application made to such authority in this behalf;
2. The exemption shall be for a period of two years from the date of issue of the exemption certificate.———"

Vide notification dated 30th December, 1987, Annexure P1, the Governor of Haryana issued the notification in the following terms:—

> "———being satisfied that it is necessary and expedient so to do, in the interest of rural industries hereby exempts, with effect from the first of January, 1988, all rural tiny industrial units, set up on or after the 22nd June, 1979, whose capital investment on machinery and equipment, does not exceed rupees one lakh and in whose favour certificate of genuineness is issued by the Industries Department of Haryana State, from the payment of tax under the Haryana General Sales Tax Act, 1973.———"

The further conditions for availing of the concession were to obtain an exemption certificate; the exemption was for two years and the exemption was on the turnover not exceeding Rs. 5,00,000 in a year. The validity of this notification has been challenged on the basis that the petitioners having acted upon the promise made in Annexure

P2, the State Government was bound by the rule of promissory estoppel and the period of exemption could not be curtailed, nor could the restriction over the total turnover be fixed. The impugned notification also has retrospective effect and it virtually amounted to withdrawal of all concessions.

(7) The respondent-State has not challenged the case of the petitioners on facts, but it has been claimed that the State Government has exercised its sovereign powers of legislation and it could withdraw the concessions made in the exemption notification, Annexure P2, Further that the notification was prospective in character and did not offend any provision of law.

(8) The principles of promissory estoppel were exhaustively considered by their Lordships of the Supreme Court in *M/s Motilal Padmapal Sugar Mills* v. *State of U.P.*, (3) and so far as the same are relevant for the decision of this case, we quote the extracts thereof from head-note (C) as under :

> "———The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the 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, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or Principle why promissory estoppel should also not be available as a cause of action, if necessary, to satisfy equity. It is not necessary, in order

(3) A.I.R. 1979 S.C. 621.

to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise.

The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

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 any equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government should be held bound the promise made by it.

If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government.

There can also be 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. ——"

When the above principles are kept in view, the respondents have no escape from the applicability of the rule of promissory estoppel. The respondents have placed no material on the record to show that it was so inequitable that the Government should have been relieved of the liability under the promissory estoppel. It was necessary for the respondents to have placed on the record of these writ petitions the material to confirm that the tax concession should be reduced to the limit of a turnover of Rs. 5,00,000 in a year.

(9) The ratio of *M.P. Sugar Mills case* (supra) was applied by their Lordships of the Supreme Court in *Pournami Oil Mills* v. *State of Kerala* (4). In that case also the exemption relating to the purchase tax was allowed by a notification for a period of 5 years and,—*vide* a subsequent notification, reduction was made in the concession granted. On these facts, their Lordships while applying the principle of promissory estoppel, directed that the exemption would continue for the full period, as specified in the earlier notification.

(10) In *Bharat General and Textile Indus. Ltd. and others* v. *State of Maharashtra and others* (5), the facts were different. The exemption notification had been issued u/s 41 of the Bombay Sales Tax Act. The Legislature, however, amended the Act and introduced section 41-A. Since it was the passing of the provision by the Legislature, the principle of promissory estoppel would not apply and that position of law had been explained by their Lordships in *M.P. Sugar Mills' case* (supra) from which the relevant extracts we have already quoted.

(11) In *Shri Bakul Oil Industries* v. *State of Gujarat* (6), their Lordships did not lay down any different principle. Their Lordships did hold that the exemption granted by the Government was only by way of concession and that the State Government had the power to withdraw or revoke the concession. Their Lordships further clarified that this power of revocation or withdrawal would be subject to one limitation, *viz.* the power cannot be exercised in violation of the rule of promissory estoppel. The Government could withdraw the exemption granted by it earlier only if the same could be done without offending the rule of promissory estoppal and depriving the industries to claim exemption from the payment of the said tax.

(4) A.I.R. 1987 S.C. 590.
(5) Judgment Today 1988 (4) S.C. 204.
(6) A.I.R. 1987 S.C. 142.

(12) In Bindra's Interpretation of Statutes (7th Edn., Ch. XXIX, at p. 810) "Committee on Ministers" Power Report, commenting on the powers delegated by the Parliament, as subordinate power, recorded as follows :

> ".....The power to legislate, when delegated by Parliament, differs from Parliament's own power to legislate. Parliament is Supreme and its power to legislate is, therefore, unlimited. It can do the greatest things; it can do the smallest. It can make general laws for vast Empire, it can make a particular exception out of them in favour of a particular individual. It can provide and has in fact provided for the payment of old age pension to all who fulfil the statutory conditions; it can also provide and has in fact provided for boiling the Bishop of Rochester's Cook to death. But any power delegated by Parliament in necessarily a subordinate power, because it is limited by the terms of the enactment whereby it is delegated."

(13) In re The Delhi Laws Act, 1912, (1951) SCR 747 (at p. 997), Mukherjea, J. observed that what can be delegated by the Legislature is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. The legitimacy of delegation depends entirely upon its use as an ancillary measure which the Legislature considers to be necessary for the power of exercising its legislative power effectively and completely.

(14) Craies on "Statute Law", Sixth Edition (1963) by SGG Edgar (p. 297) drew the distinction between subordinate legislation and the statute law :

> "The initial difference between subordinate legislation (of the kind dealt within this chapter) and statute law lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority, and that courts of law, as a general rule, will not give effect to the rules, etc., thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled. The validity of statutes cannot be canvassed by the courts, the validity of delegated legislation as a general rule can be. The Courts therefore (1) will require due proof that the rules have been made and promulgated in accordance

with the statutory authority, unless the statute directs them to be judicially noticed; (2) in the absence of express statutory provision to the contrary, may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, either with respect to the procedure adopted, the form or substance of the regulation, or the sanction, if any, attached to the regulation; and it follows that the court may reject as invalid and *ultra vires* a regulation which fails to comply with the statutory essentials."

(15) The law, thus, draws a distinction between the powers of the legislature and the authority which exercises only delegated powers of legislation. The delegatee cannot claim same sovereign authority as the legislature itself. The argument of the learned Advocate General, Haryana that the impugned notification Annexure P1 amounts to a legislative Act at par with a statute when examined in the light of the above discussion, cannot be accepted. The Governor of Haryana, while issuing the notifications Annexure P1 and P2 had acted in exercise of his powers under section 13 of the Act and this was only a subordinate legislation and could not be equated with a statute framed by Legislature.

(16) We are, thus, of the considered view that the judgment of the learned Single Judge in *Satgur Oil Mill's case* (supra) lays down the correct law and the exemption of tax allowed under the Act to the tiny industries,—*vide* notification, Annexure P2 could not be withdrawn by means of the impugned notification Annexure P1 and the Haryana Government was estopped from withdrawing the concession to the tiny industrial units by the rule of promissory estoppel.

(17) The case of the Khadi and Village Industries stands on a different footing. The rule of promissory estoppel is not attracted to the facts of those cases. It was a concession allowed to them and it could be withdrawn by the State Government at any time. The impugned notification Annexure P1 in the cases relating to Khadi Udyog is legal and within the powers of the Government of Haryana.

(18) In view of the above discussion, we quash the notification Annexure P1 dated 30th December, 1987; allow writ petitions relating to the tiny industries, i.e. CWPs No. 757, 1026, 1120, 1123, 1244, 1338, 1396, 1553, 2204, 2292, 2794, 2795, 3573, 3574, 4753, 5513,

6802, 7265, 7524 of 1988 and CWP 2708 of 1989 and dismiss CWPs No. 3449, 3480, 3580, 3631, 3644, 3681, 3756, 3921, 3924, 3925, 4146, 4213, 4375, 4987, 5216, 5285, 10125, 10335 of 1988 and CWP 1784 of 1989 relating to Khadi Udyog. No costs.

R.N.R.

Before : G. R. Majithia, J.

PURAN SINGH AND OTHERS,—*Appellants.*

versus

AJAIB SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1799 *of* 1978

18th September, 1990

Code of Civil Procedure, 1908—*O.* 1, *R.* 8—*Suit by worshippers—Property belonging to idol*—Locus standi *of worshippers to file the suit.*

Held, that it is open to the idol to bring a suit to defend its own interest. However, it does not exclude the rights of others, including the worshippers, interested in the maintenance of the religious institution and preservation of the property attached to it, to bring a suit in their own right relating to the matter. The rights of the plaintiff as a worshipper is not a right through the idol. It is, no doubt, a right which is inseparably bound to an idol and appertains to it the right of the worshipper to maintain a suit against the person who commits an injury to property which belonged to the idol.

(Para 7)

Regular Second Appeal from the decree of the Court of Sh. D. B. Gupta, Addl. District Judge, Ludhiana, dated the 28th day of February, 1978 reversing that of Sh. N. D. Bhatara, Sub-Judge Ist Class, Jagraon dated the 30th October, 1976 and dismissing the suit of the plaintiffs, leaving the parties to bear their own costs.

CLAIM:—Suit under Order 1, rule 8 C.P.C. for a decree for declaration that there is no validly elected Managing Committee of Gurdwara Sahib, Ghalib Kalan, Tehsil Jagraon and the entries in the column of ownership in the Jamabandi of village Ghalib Kalan, Tehsil Jagraon for the year 1956-57 or in the previous or subsequent Jamabandis appearing after the words "Gurdwara Sahib Waqya Deh Haza" and