

P L D 2002 Supreme Court 208

Present: Sh. Riaz Ahmed, Rana Bhagwan Das and Mian Muhammad Ajmal, JJ

PAKISTAN through Ministry of Finance Economic Affairs and another---Appellants

versus

PECTO BELARUS TRACTORS LIMITED---Respondent

Civil Appeal No. 1176 of 1997 out of Civil Review Petition No.80 of 1999, heard on 26th September, 2000.

(On Review from the judgment of this Court dated 1st of September, 1999 in C.A. No. 1176 of 1997 filed against the judgment of Lahore High Court, Lahore, dated 4-8-1997 passed in I.C.A. No.84 of 1997).

(a) Constitution of Pakistan (1973)---

----Art.188---Supreme Court Rules, 1980, O.XXVI, R.1---Review of Supreme Court judgment---Rearguing the appeal at review stage ---Validity-- Distinction existed between review and rehearing and attempt to reargue the appeal at review stage was not permissible.

1982 SCMR 350; 1982 SCMR 1152; 1983 SCMR 177 and 1986 SCMR 1021 ref.

(b) Constitution of Pakistan (1973)---

----Art.188---Supreme Court Rules, 1980, O.XXVI, R.1---Review of Supreme Court Judgment---Exercise of power by Supreme Court ---Scope-- Where Court had overlooked some material question of fact or of law which would have a bearing on the decision or there was otherwise some mistake or error apparent on the face of the record, the power of review could be exercised.

(c) Supreme Court Rules, 1980---

----O.XXVI, R.I---Review of Supreme Court---Judgment---Expression "mistake or error apparent on the face of the record" used in O.XXVI, R.1, Supreme Court Rules, 1980---Connotation---Such error may be an error of fact or of law but must be self-evident and floating on surface---Orders based on erroneous assumption of material facts, or without advertent to a provision of law, or a departure from undisputed construction of law and Constitution, may, however, amount to error apparent on face of record.

PLD 1979 SC 741; 1975 SCMR 115; PLD 1984 SC 67 and Sikandar Abdul Karim v. The State 1998 SCMR 908 ref.

(d) Customs Act (IV of 1969)---

----Ss.19 & 31A---Exemption, withdrawal of---Provisions of S.31-A of Customs Act, 1969---Nature---Taking effect of withdrawal/modification of exemption---Scope---Provisions of S.31-A, Customs Act, 1969 is declaratory provision of law legislated to nullify dictum of law laid down by the Supreme Court in Al-Samrez's case (1986 SCMR 1917)---Withdrawal of exemption or concession by S.31-A of the Customs Act, 1969 has a reference to provision of S.19 of Customs Act, 1969---Non obstante clause in S.31-A of Customs Act, 1969, has the effect of setting at

naught the effect of Supreme Court judgment in Al-Samrez's case---Consequences that follow from the Act of withdrawal or modification of exemption notification under S.31-A of Customs Act, 1969, take effect with reference to the dates of its issue irrespective of the fact that the contract for the import of goods and the letter of credit had come into existence prior to such date-- Courts have to give effect to such withdrawal or modification of concession, notwithstanding the decision of Supreme Court in Al-Samrez's case.

Al-Samrez's case 1986 SCMR 1917; Yaseen Sons v. Federation of Pakistan PLD 1989 Kar.361; Hajira Rashid Gardezi v. The Deputy Collector of Customs PLD 1989 Lah. 38; Federation of Pakistan v. Amjad Hussain Dilawari 1992 SCMR 1270 and Molasses Trading & Export Limited v. Federation of Pakistan 1993 SCMR 1905 ref.

(e) Customs Act (IV of 1969)---

----S.31-A---Sales Tax Act (VII of 1990), S.3---Notification S.R.O. No.1189(1)/94, dated 11-12-1994---Exemption, withdrawal of---Sales tax, levy of---Import of tractors was exempted from payment of sales tax vide Notification S.R.O. No.1189(1)/94, dated 11-12-1994---Petitioner had concluded the contract with the exporter in respect of the imported goods and letter of credit had also been opened in favour of the supplier ---Authorities issued notices for recovery of sales tax for such import---Validity---Contract had already been concluded between the importer and the supplier of the tractors, therefore, subsequent withdrawal of exemption from sales tax could not be pressed into service for protecting the levy of sales tax by the latter: Notification and provisions of S.31-A of Customs Act, 1969, could not be invoked for the protection of levying of sales tax.

Yaseen Sons v. Federation of Pakistan 1990 CLC 1989; Crescent Pak Industries v. Central Board of Revenue 1990 PTD 29 and Muhammad Abdullah v. Government of Pakistan PLD 1992 Kar. 266 ref.

(f) Constitution of Pakistan (1973)---

----Art.188---Supreme Court Rules, 1980, O.XXVI, R.1---Review of Supreme Court judgment---Escaping of an important legal aspect is an error apparent on the face of record which can be set right and such aspect can be reviewed.

(g) Estoppel---

----'Promissory estoppel', doctrine of---Concept---Doctrine of promissory estoppel has been variously called 'promissory estoppel', 'requisite estoppel', 'quasi-estoppel' and 'new estoppel'---Doctrine is evolved by equity to avoid injustice and though commonly named 'promissory estoppel', it is neither in the realm of contract nor in realm of estoppel ---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 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 the same, 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---Doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term---Promissory estoppel is an equitable principle evolved by the Courts for doing justice and the same should be given only a limited application by way of defence, furthermore, the principle is available as a cause of action.

M.P. Sugar Mills v. State of UP AIR 1979 SC 621 and Robertson v. Ministry of Pensions (1948) 2 All ER 767 ref.

(h) Estoppel--

----Promissory estoppel, doctrine of---Applicability---Principles.

Following are the principles to elaborate doctrine of promissory estoppel:

- (1) Doctrine of promissory estoppel cannot be invoked against the Legislature or the laws framed by it because the Legislature cannot make a representation.
- (2) Promissory estoppel cannot be invoked for directing the doing of the thing which was against law when the representation was made or the promise held out.
- (3) No agency or authority can be held bound by a promise or representation not lawfully extended or given.
- (4) Doctrine of promissory estoppel will not apply when no steps have been taken consequent to the representation or inducement so as to irrevocably commit the property or the reputation of the party invoking it; and
- (5) The party which has indulged in fraud or collusion for obtaining some benefit under the representation cannot be rewarded by the enforcement of the promise.

Pakistan through Secretary, Ministry of Commerce and 2 others v. Salah-ud-Din and others PLD 1991 SC 546 ref.

(i) Customs Act (IV of 1969)---

----Ss.19 & 31-A---Notification SRO No.1189(1)/94, dated 11-12-1994-- Sales Tax Act (VII of 1990), S.3---Supreme Court Rules, 1980, O.XXVI, R.1---Constitution of Pakistan (1973), Art.188---Review of Supreme Court judgment---Customs duty and sales tax, levy of--Withdrawal of exemptions- Promissory estoppel, doctrine of---Applicability---Import of tractors was exempted from payment of sales tax vide Notification SRO No.1189(1)/94, dated 11-12-1994---Importer had concluded the contract with the exporter in respect of the imported goods and letter of credit had also been opened in favour of the supplier---Authorities issued notices for recovery of customs duty and sales tax for such import---Validity---Where under the authorization letter the importer was bound down to sell the tractor at a particular price with exemption from payment of customs duty and sales tax, import by the said importer could not be subjected to customs duty on the principle of promissory estoppel based upon justice and equity---Importer would suffer if on the one hand he had to pay the customs duty and sales tax and on the other hand he could not increase the price of the tractor---Importer in view of its clear representation and fixation of price by the Competent Authority could not be allowed to suffer injustice at the hands of Government-- Government itself, after the withdrawal of Notification had resiled from the same to the extent of the import to be undertaken by the importer---Importer being protected by the doctrine of estoppel and under the Economic Reforms Act, 1992, sales tax like customs duty could not be levied upon the import by the said importer---Judgment of Supreme Court was reviewed and that of High Court was restored.

Al-Samrez's case 1986 SCMR 1917 fol.

Collector of Central Excise and Land Customs and others v. Azizuddin Industries Ltd. PLD 1970 SC 439; Mian Nazir Sons Industries Ltd. and another v. The Government of Pakistan and others 1992 SCMR 883; Pakistan through Secretary, Ministry of

Commerce and 2 others v. Salah-ud-Din and others PLD 1991 SC 546; Union of India v. Godfrej Philips India Ltd. AIR 1986 SC 806; Motilal Padampat Sugar Mills Ltd. v. State of UP AIR 1979 SC 621; Muhammad Abdullah v. Government of Pakistan PLD 1992 Kar. 266; PLD 1990 SC 399 and The Fecto Cement v. The Collector of Customs (Appraisement) and another 1994 MLD 1136 ref.

(j) Customs Act (IV of 1969)---

----S.31-A---Levy of customs duty---Exemption---Importer had acted upon the decision of the Government and in the light of the authorization had opened letter of credit---Effect---Importer having had acquired a vested right, provisions of S.31-A of Customs Act, 1969, could not be pressed into service to withdraw the exemption.

(k) Constitution of Pakistan (1973)---

----Art.188---Supreme Court Rules, 1980, O.XXVI, R.1---Review of Supreme Court judgment---Earlier decisions of Supreme Court---Failure to consider earlier decisions of Supreme Court---Effect---Where in the judgment under review, the earlier judgments of Supreme Court were not taken into consideration, review of such judgment was justified.

(1) Interpretation of statutes---

---- Statute having overriding effect---Interpretation---Piece of legislation having overriding effect has to be interpreted in the light of phraseology and the language used by the Legislature.

(m) Interpretation of statutes---

----Fiscal statute--- Expression 'economic activity'---Scope---While interpreting laws relating to economic activity the Courts should view the same with greater latitude than the laws relating to civil rights such as freedom of speech, religion etc. keeping in view complexity of economic problems which do not admit of solution through any doctrine or strait-jacket formula.

Elahi Cotton Mills v. The Federation of Pakistan PLD 1997 SC 582 ref.

Mansoor Ahmad Khan, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Appellant.

Syed Sharifuddin Pirzada, Senior Advocate Supreme Court, Muhammad Akram Sheikh, Senior Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for Respondents.

Date of hearing: 26th September, 2000.

ORDER

SH. RIAZ AHMED, J.---This appeal out of petition under Article 188 of the Constitution of Islamic Republic of Pakistan, 1973 read with Order XXVI, Rule 1 of the Supreme Court of Pakistan Rules, 1980 seeks review of the judgment of this Court, dated 1-9-1999 delivered in Civil Appeal No. 1176 of 1997. Background of the litigation between the parties is that in 1994, the Government of Pakistan launched the Awami Tractor Scheme under which tractors were to be imported into Pakistan for being supplied to the local farmers and a Notification was accordingly issued to the effect that import of tractors under the said Scheme would be exempted from the payment of customs duty and sales tax etc. and initially the Agricultural Development Bank of Pakistan (ABDP) on behalf of the Government of Pakistan entered into

agreements with the foreign tractor manufacturers including Minsk Tractor Works for the purchase of the tractors by directly opening Letters of Credit imported 20,000 tractors and supplied the same amongst the local farmers on credit basis though the Government had received over 120,000 applications/bookings for the purchase of the said imported tractors.

2. After the completion of the first phase of the Awami Tractor Scheme, the Federal Government proposed a second phase in 1996. The petitioner which is a public limited company engaged in the manufacturing, assembling and sale of Belarus Model Tractors being one of the interested parties made proposals for the second phase of the Awami Tractor Scheme. On 16th of June, 1996, a meeting was held chaired by the Secretary, Ministry of Food, Agricultural and Livestock at Islamabad wherein the petitioner besides others also participated. Petitioner was intimated that the Government had approved the second phase of Awami Tractor Scheme which was to be processed on the terms and conditions noted below:

(a) A base price of Rs.2,30,000 ex-Karachi was fixed for the petitioner. Different phases prices were fixed for different parties. The petitioner price was one of the lowest offered.

(b) If Letter of Credits were opened by 30th of June, 1996, sales tax at 18 % would be exempted on the import of tractors, and

(c) All concessions provided under the first phase of the scheme would be available.

3. As stated above the concession provided in the first phase of the scheme included complete exemption from the payment of customs duty and sales tax in terms of SRO No. 921(1)/94, dated 22-9-1994 and SRO 1189(1)/94, dated 11-12-1994 which was modified by Ministry of Finance, Revenue and Economic Affairs, Pakistan vide Notification No.SRO 388(1)/96 and SOR 414(1)/96, dated 13th of June, 1996 imposing 10% customs duty and 18% sales tax on the import of tractors generally.

4. Pursuant to the decision taken in the meeting, dated 16th of June, 1996 (ibid) specifying the conditions for the import of tractors under the second phase, the petitioner was issued Letter of authorization on 26th of June, 1996 by Ministry of Food Agricultural and Livestock Pakistan and was permitted to import 11000 Belarus Tractors Model MTZ-50 providing expressly that all concessions provided under the first phase of the scheme would be available to the petitioner as well. The petitioner, however, was bound down to sell the tractors at the rate of Rs.2,30,000 and had to open the Letter of Credit before 30th of June, 1996. The said authorization letter did not at all specify that 11000 tractors should be imported physically until 31st of December. 1996.

5. Subsequently, on 27th of June, 1996, Ministry of Food, Agricultural and Livestock Pakistan issued a corrigendum directing that the authorization letter issued in favour of the petitioner qua the second phase of Awami Tractor Scheme was subject to amendment to the extent that the fixed price of the tractor would be enhanced in the event of any fluctuation in the exchange rate of US dollar over Rs.35.72. Furthermore, it was also clarified that price of Rs.2,30,000 as agreed upon by the petitioner was on the assumption that no sales tax had been imposed and that concession provided under SRO No. 921(1)/94, dated 22-9-1994 would continue in favour of the petitioner for the import of the said tractors.

6. Grievance of the petitioner was that on the basis of the aforesaid letter of authorization granting concession for the import of these tractors in terms of Notification SOR 921(1)/94 and SRO 1189(1)/94 having the effect of grant of concession through statutory order on behalf of the Federal Government, it opened the Letter of Credits, entered into agreements for the import of tractors to Pakistan and

spent huge amount of money, yet the Ministry of Finance Pakistan was bent upon to impose sales tax @ 18 % on the import of the said tractors, customs duty @ 10% and service charges @ 2% respectively and obviously due to the imposition of the aforesaid duties, petitioner was absolutely unable to supply the tractors at the rate of Rs.2,30,000 per unit.

7. In the circumstances narrated above, the petitioner invoked the Constitutional jurisdiction of the Lahore High Court with an unambiguous prayer that:

"Respondents 1 and 2 may be restrained from attempting to withdraw or amend the concessions granted under the second phase of the Awami Tractor Scheme in so far as they relate to the import of 10,000 tractors by the petitioner as per authorization granted to the petitioner under SRO No.921(1)/94. It is further prayed that respondents 1 and 2 may be directed not to impose any further customs duty, sales tax, regulatory duty, service charge and any other tax or duty on the 10,000 tractors being imported by the petitioner in the public interest. ,

Any other relief which this Hon'ble Court may find just and necessary may also be granted."

8. A learned Single Judge of the Lahore High Court disposed of the aforesaid writ petition as having become infructuous as the learned Deputy Attorney-General representing the Federation of Pakistan had apprised the Court that the matter in issue was examined by the Economic Coordination Committee and the attention of the Court was drawn to the approval granted by the competent Authority whereby certain adjustments had taken place for the Awami Tractor Scheme, therefore, it was left open for the petitioner to file fresh petition to call in question the aforesaid adjustments.

9. The order of the learned Single Judge of the Lahore High Court, dated 24th of February, 1997 in Writ Petition 21972 of 1996 was assailed in an Intra-Court Appeal which was accepted by learned Judges of the Lahore High Court in terms of their order, dated 4-8-1997 whereby order of the learned Single Judge was set aside and it was declared that petitioner was entitled to avail all concessions as regards exemption from the payment of the Customs Duty, Sales Tax, Service Charges and other taxes in the same manner and to the same extent which were made available under the original Awami Tractor Scheme qua the import of 10000 tractors by it under the authorization, dated 26-6-1996. As a consequence of the aforesaid direction, respondents 1 and 2 (in the I.C.A.) were restrained from withdrawing or amending the same to the disadvantage of the petitioner.

10. The respondents called in question the aforesaid order of the learned Judges of the Lahore High Court and vide order, dated 9th of October, 1997 this Court granted leave to appeal against the aforesaid judgment of a Division Bench of the Lahore High Court passed in I.C.A No.84 of 1997 to consider as to whether keeping in view inter alia the above Notifications, respondent No. 1, viz. Fecto Belarus Tractors Limited is liable to pay any Customs Duty and Sales Tax and finally in view of the acceptance of the appeal by this Court, judgment of the Lahore High Court was set aside in terms of judgment, dated 1-9-1999 which is under review before us.

11. Before proceeding further it would be necessary to examine the scope of review conferred upon this Court by virtue of Article 188 of the Constitution and the relevant provision contained in Order XXVI, Rule 1 of the Supreme Court Rules, 1980 reads as under:

"Subject to the law and practice of the Court, the Court may review its judgment or order in a civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code and in a criminal proceeding on the ground of an error apparent on the face of the record."

Order XLVII, rule 1 of the Code of Civil Procedure reads as follows:

"Application for review of judgment.---(1) Any person considering himself aggrieved--

(a) .

(b) .

(c) .

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent, on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

12. It may be submitted that there is distinction between the review and rehearing and the attempt to reargue the appeal at review stage is not permissible. We are fortified in this view by the judgment of this Court reported as 1982 SCMR 350 and 1152, 1983 SCMR 177 and 1986 SCMR 1021. However, if the Court has overlooked some material questions of fact or of law which would have a bearing on the decision or there is otherwise some apparent mistake or error on the face of the record, then of course the power of review can be exercised. As far as error apparent on the face of the record is concerned, it should be so manifest, so clear as could not be permitted by any Court to remain on record. Such error may be an error of fact or of law but must be self-evident and floating on surface. The orders based on erroneous assumption of material facts, or without advertent to a provision of law, or a departure from undisputed construction of law and Constitution, may, however, amount to error apparent on face of record. It must have also a material bearing on the fate of the case. These propositions were enunciated by this Court in the judgment reported as PLD' 1979 SC 741, 1975 SCMR 115 and PLD 1984 SC 67. In another case reported as 1998 SCMR 908 (Sikandar Abdul Karim v. The State) the expression "error apparent on the face of record" was interpreted. While discussing its connotation, it was held that where an error of law or fact is discovered in an order by reading the order itself without reference to any other material, such an error would fall within the category of "an error apparent on the face of record. Failure of the Court while passing an order to notice or take into consideration a statutory provision, which if so considered would have changed the final outcome of the case would also amount to an error apparent on the face of the order".

13. Obviously, the case in hand seeking review of the judgment of this Court is to be decided in the light of the principles enumerated above. The precise question to be considered by this Court in deciding this Review Petition revolves around the construction of the authorization letter, dated 26-6-1996 and the legal implications arising therefrom in the light of the Economic Reforms Act, 1992 and also to explain the applicability of section 31-A of the Customs Act. In addition thereto, we have also to examine whether the doctrine of promissory estoppel can be invoked and as to whether there is a provision pari materia to section 31-A of the Customs Act in the , Sales Tax Act. The case of the respondent Federal Government as canvassed in this Court was that in the light of the provision of section 31-A of the Customs Act, the petitioner was liable to pay the customs duty and other charges at the rate obtaining at the time of the import of tractors in terms of section 31rA of the Customs Act which reads as under:--

"Effective rate of duty.--(1) Notwithstanding anything contained in any other law for the time being in-force or any decision of any Court, for the purposes of sections 30

and 31, the rate- of duty applicable to any goods shall include any amount of duty imposed under section 18, section 2 of the Finance Ordinance, 1982 (XII of 1982), and section 5 of the Finance Act, 1985 (I of 1985), and the anti-dumping or countervailing duty imposed under the import of goods. Anti-dumping, and Countervailing Duties, Ordinance, 1983 (III of 1983), and the amount of duty that may have become payable ; in consequence of the withdrawal of the whole or any part of the exemption or concession from duty whether before or after the conclusion of a contract or agreement for the sale of such goods or opening of a letter of credit in respect thereof.

(2) For the purpose of determining the value of any imported : or exported goods, the rate of exchange any foreign exchange is to be converted into Pakistan currency shall be the rate of exchange in force,--

(a) in the case of goods refereed to in clause (a) of section 30, on the date (preceding the date) referred to in that clause;

(b) in the case of goods referred to in clause (b) of the aforesaid section, on the date (preceding the date) referred to in that clause; and

(c) in the case of goods referred to in section 31, on the date referred to in that section."

14. In fact section 31-A of the Customs Act, 1969 was a declaratory provision of law legislated to nullify the dictum of law laid down by the Supreme Court in Al-Samrez's case reported in 1986 SCMR 1917 wherein it was held that exemption from payment of customs duty or any increase in the rate of customs duty etc. cannot be withdrawn or made applicable retrospectively in respect of the consignment of which firm commitments were made by the importer prior to the withdrawal of exemption or increase in the rate of customs duty.

15. It may be stated here that section, 31-A of the Customs Act was inserted into the Customs Act, 1969 by virtue of Finance Act, 1988 (VI of 1988) and became effective on 26th of December, 1988. In the case reported as Yaseen Sons v. Federation of Pakistan PLD 1989 Kar.361, it was held that section 31-A of the Customs Act was a valid piece of legislation and its legality or validity could not be questioned unless and until it was shown that this provision was violative of any provision of the Constitution. Similarly, in another case reported as Hajira Rashid Gardezi v. The Deputy Collector of Customs PLD 1989 Lahore 38, it was laid down that section 30 read with section 31-A of the Customs Act affect the principles behind section 19 of the Customs Act and it cannot, therefore, be said that the liability for payment of the duty would still stand on the basis of the earlier exemption Notification which has been withdrawn. However, in cases reported as Federation of Pakistan v. M. Afzal & Sons and others (C.As. 210 to 215 of 1977), decided on 29-8-1991 following Al-Samrez case 1986 SCMR 1917, the view was modified in the judgment reported as Federation of Pakistan v. Amjad Hussain Dilawari 1992 SCMR 1270. In this case while interpreting the effect of withdrawal of exemption from the payment of customs duty under section 31-A of the Customs Act it was held that where a particular article was exempted from payment of customs duty under section 19 of the Customs Act which exemption was later withdrawn, the benefit of exemption was available only in respect of those goods which were imported between the date, exemption was granted and the date it was withdrawn provided the bill of entry had been filed with the customs authorities before the date of withdrawal of exemption.

16. In the context of the case in hand, vide SRO No.921(1)/94, dated 22-9-1994, the Federal Government exempted tractors and their parts from whole of customs duty and sales tax if imported by the importer authorized by the Ministry of Food, Agriculture and Livestock. Further on 11-12-1994 in terms of SRO No.1189(1)/94 CKD components of tractors were exempted from whole of customs duty and sales tax if imported by local manufacturers.

17. The provisions of section 31-A with reference to section 19 of the Customs Act were again interpreted by this Court in the judgment reported as *Molasses Trading and Export Limited v. Federation of Pakistan* 1993 SCMR 1905 and it was held that merely because section 19 of the Customs Act, 1969 has not been mentioned in section 31-A (ibid) would not mean that the legal effect of the exercise of power under section 19 of the Customs Act read with section 21 of the General Clauses Act is not within the purview of section 31-A of the Customs Act. Withdrawal of exemption or concession by section 31-A of the Customs Act has a reference to the provision of section 19 of the said Act. Non obstante clause in section 31-A has the effect of setting at naught the effect of Supreme Court judgment in *Al-Samrez Enterprise's* case reported as 1986 SCMR 1917. The consequences that followed from the Act of withdrawal or modification of an exemption notification under section 31-A, Customs Act shall take effect with reference to the date of its issue irrespective of the fact that the contract for the import of goods and the letter of credit had come into existence prior to such date. The Courts would, therefore, have to give effect to this withdrawal or modification of concession, notwithstanding the decision of Supreme Court in the case of *Al-Samrez Enterprise* 1986 SCMR 1917.

18. The next aspect of the case to be considered is whether withdrawal of exemption under section 31-A, Customs Act has any nexus with the payment of sales tax. Answer obviously is in the negative. The import of the tractors by petitioner in the second phase of the scheme had been exempted from the payment of sales tax vide SRO No.1189(1)/94. The petitioner had concluded the contract-with the exporter in respect of the imported goods and the letter of credit had also been opened in favour of the supplier. The subsequent C withdrawal of exemption from' the sales tax could not be pressed into service for protecting the levy of sales tax by the latter Notification because the contract had already been concluded between the importer and the supplier of the tractors, and therefore, the provisions of section 31-A of the Customs Act could not be invoked for the protection of levying the sales tax. We are fortified in this view by the judgment reported as *Yaseen Sons v. Federation of Pakistan* 1990 CLC 1989 and *Al-Samrez* case reported as 1986 SCMR 1917 as also in the case titled *Crescent Pak Industries v. Central Board of Revenue* 1990 PTD 29 relied upon in another judgment reported as *Muhammad Abdullah v. Government of Pakistan* PLD 1992 Kar. 266.

19. Evidently, this important legal aspect escaped the notice of this Court while delivering the judgment sought to be reviewed and, therefore, it is an error apparent on the face of the record which can be set at right and this aspect of the case can be reviewed.

20. It was vehemently argued that doctrine of promissory estoppel was fully attracted to the facts and circumstances emerging in the instant case. Recapitulating the brief history of the scheme for the import of tractors, for agriculturists, Syed Sharifuddin Pirzada, Senior Advocate Supreme Court contended that in 1994 Awami Tractor Scheme was introduced for the import of tractors without levying the customs duty and the sales tax etc. and thus in this behalf SRO No.921(1)/94 was issued on 22-9-1994 exempting the import of tractors from the payment of customs duty and the sales tax. This decision was taken pursuant to the meeting held by the Secretary Food to the Government of Pakistan which was approved by the then Prime Minister of Pakistan and it was decided that the tractors will not be sold at a price more than Rs.2,30,000 per unit and the letter of credit had to be opened by 30-6-1996. On 26-6-1996 the Cabinet in its meeting decided to approve the scheme, dated 24-6-1996 and it was also decided that 10 % regulatory duty should not be imposed. On 16-6-1996 another Cabinet meeting was held in which it was decided to authorize the petitioner to import the tractors on the same terms and conditions which were made applicable in the case of Agricultural Development Bank of Pakistan while implementing the original first phase and the petitioner had installed the assembling plant for tractors as well. It was further contended that concessions as were applicable in the first phase would be made

available to the petitioner provided letter of credit was opened by 30-6-1996 which the petitioner admittedly had opened on 26-6-1996. It was further asserted that by resiling from these conditions of contract by respondents, it was not possible, for the petitioner to sell a unit of tractor at the rate specified by the Government of Pakistan, and through the applicability of the doctrine of promissory estoppel the Government of Pakistan could not impose the customs duty as well as the sales tax and the regulatory duty. In this behalf, reliance was placed on doctrine of promissory estoppel as well as the Economic Reforms Act XII of 1992.

21. The doctrine of promissory estoppel was attended to in the judgment impugned. In fact, the judicial activism innovated the doctrine of promissory estoppel. One of the earliest judgments on the subject is the case of Collector of Central Excise and Land Customs and others v. Azizuddin Industries Ltd. (PLD 1970 SC 439). In respect of excise duty it was held that the appellant had set up cigarette factory at Chittagong. On the basis of Notification exemption was granted from the payment of whole excise duty leviable thereon in respect of all excisable goods produced or manufactured. It was held that an executive authority cannot in exercise of the rule-making power or the power to amend, vary or rescind an earlier order take away the rights vested in the citizens by law. This doctrine was reiterated and reinforced by this Court in Al-Samrez Enterprises v. Federation of Pakistan 1986 SCMR 1917 wherein it was held that the exemption Notification is the basic right to public-at-large and it will be inequitable and unjust to deprive a person who acts upon such assurance of the right to exemption and expose him unforeseen loss in the business transaction by suddenly withdrawing the exemption after he has made legal commitments. It is in this perspective that a right is created in his favour and a subsequent withdrawal of exemption cannot be given retrospective operation by an executive act 'to destroy this right.

22. As already observed earlier to nullify the dictum of Al-Samrez case. section 31-A was incorporated in 1988 and inserted into the Customs Act., 1969. The provision of section 31-A of the Customs Act was interpreted by this Court in the judgment reported as Mian Nazir Sons Industries Ltd. and another v. The Government of Pakistan and others 1992 SCMR 883 and it was held that doctrine of promissory estoppel could not be invoked against Legislature or law framed by it because the Legislature cannot make a representation. But inapplicability of the doctrine of necessity as against the legislation was also laid down in another case reported as PLD 1991 SC 546.

23. It will be necessary to Coach the true concept of the doctrine of j promissory estoppel. Before proceeding further this doctrine has been variously called 'promissory estoppel' 'requisite estoppel', 'quasi estoppel' and 'new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory estoppel'. it is neither in the realm of contract nor in the realm of estoppel. 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.

24. The Supreme Court of India in the said case reported as M.P. Sugar Mills v. State of UP AIR 1979 SC 621 went further to lay down "that it is not necessary in order 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. But if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then-detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee if the promisor were allowed to go back on the promise".

25. In the case reported as *Robertson v. Ministry of Pensions* (1948) 2 All ER 767 Lord Denning, J. also discussed this principle. Facts of the case are that Colonel Robertson served throughout the 1914-18 War in the military and suffered a disability pursuant to an injury. A Medical Board was held in 1941) and found him unfit for general service and was put in Category B permanently. He wrote to the War Office requesting that the question of attributability in regard to his disability should be solved. In April, 1941 without consulting the Minister of Pensions the War Office replied that claimant's disability had been accepted as attributable to military service. On the faith of that assurance the claimant took no steps to get an independent medical opinion and that at that time the X-ray plates were still available whereas they were subsequently no longer available. The question for determination was whether the assurance contained in the letter from the War Office was binding on the Minister of Pensions. To resolve this question, it was held that the letter from the War Office was on the face of it an authoritative decision intended to be binding and to be acted on and the fact that the claimant had as a result of that letter forborne from getting a medical opinion was sufficient to have made the letter binding if it had been written by a private person. It was further held that since the letter from the War Office was clear and explicit, the doctrine of executive necessity could not be implied therein, so as to entitle the Crown to revoke the decision without cause. It was further held that as the War Office was an agent for the Crown, the Crown was bound by the letter and, therefore, other Government departments, being also agents of the Crown were also bound, and, accordingly the letter was binding on the Minister of Pensions, whose function was to administer the Royal Warrant issued by the Crown so as to honour all assurances given by or on behalf of the Crown.

26. The doctrine of promissory estoppel was again debated by this Court in the case reported as PLD 1991 SC 546 *Pakistan through Secretary, Ministry of Commerce and 2 others v. Salahud Din and others* and it was held that doctrine does not extend to legislative and sovereign functions but executive actions are not excluded from its operation. This Court again discussed this principle and the following principles to elaborate this doctrine were laid:--

- (1) The doctrine of promissory estoppel cannot be invoked against the Legislature or the laws framed by it because the Legislature cannot make a representation.
- (2) Promissory estoppel cannot be invoked for directing the doing of the thing which was against law when the representation was made or the promise held out.
- (3) No agency or authority can be held bound by a promise or representation not lawfully extended or given:
- (4) The doctrine of promissory estoppel will not apply where no steps have been taken consequent to the representation or inducement so as to irrevocably commit the property or the reputation of the party invoking it; and
- (5) The party which has indulged in fraud or collusion for obtaining some benefit under the representation cannot be rewarded by the enforcement of the promise.

27. The doctrine of promissory estoppel was disallowed to be invoked in the light of section 31-A of the Customs Act on the ground that such doctrine could not be invoked against the Legislature. There is no cavil with the proposition but the crucial aspect of the case is that the customs duty and the sales tax were imposed by virtue of Notification; dated 13-6-1996 in suppression of the earlier Notification which had allowed the exemption but three days thereafter i.e., on 16-6-1996 decision was made and the import of tractors under the second phase was sanctioned and the authorization was issued on 26-6-1996 permitting the petitioner to import 11000 Belarus. Tractors providing expressly that all concessions provided under the first phase of the scheme would be available to the petitioner as well, subject to the condition that petitioner would sell it not more than a price of Rs.2,30,000 per unit and he had to open the letter of credit before 30-6-1996. The position which emerges in the present case is that the Federal Government fully knew that the exemption Notification had been withdrawn and the customs and sales tax had been imposed but despite that in the light of the decision aforementioned it will be deemed that the exemption was granted to the petitioner, and therefore, the letter, dated 26-6-1996 would be deemed to have been issued under section 19 of the Customs Act allowing the exemption to the petitioner from the payment of customs duty and the sales tax. The respondent thus cannot resile because the petitioner had changed its position by complying with all the conditions as represented.

28. The decision to allow the petitioner to import the tractors with exemption from the payment of customs duty as well as the sales tax was taken by the Federal Cabinet--the Constitutional repository of the executive power of the Federation which consciously took up the decision to exempt the second phase of the "Awami Scheme" for the import of the tractors from the customs duty as well as the sales tax and, thereafter, the authorization letter was issued to the importers. The executive authority and the Federation taking such decision to allow, the importers to import the tractors and issuance of authorization letter clearly conferred a concession upon the petitioner and other importers. Obviously, the executive authority and the Federation had such authority under the Customs Act as well as the Sales Tax Act. As already observed this significant aspect of the matter escaped the notice of the Court while delivering the judgment under review, as such this was an error apparent on the face of the record justifying the review of the judgment .

29. The leaned counsel for the petitioner also pointed out that the judgments cited at the bar reported as Union of India v. Godfrej Philips India Ltd. (AIR 1986 SC-806) Motilal Padampat Sugar Mills Ltd. v. State of UP (AIR 1979 SC 621) were not properly attended to in the judgment of this Court under review, inasmuch as the following paragraph clinches the entire issue:

"The Government was, therefore, bound on the principle of promissory estoppel to make good the representation made by it. Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the Statute, but since section 4 of the U . P. Sales Tax Act, 1948 confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign and Governmental function but for reasons which we have, already discussed, no distinction can be made between the exercise of sovereign or Governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever, be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case, the Government was bound to exempt the appblant from payment of sales tax in respect of sales of Vansapati effected by it in the

State of Uttar Pradesh for the period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant."

30. In this view of the matter, we are of the view that import of tractors by petitioner cannot be subject to the customs duty on the principle of promissory estoppel based upon justice and equity, inasmuch as under the authorization letter issued the petitioner was bound down to sell the tractor at a particular price with exemption from the payment of customs duty and the sales tax. Obviously, petitioner would suffer if on the one hand he has to pay the customs duty and the sales tax and on the other hand he cannot increase the price of the tractor. The petitioner in such circumstances cannot be allowed to suffer injustice at the hands of the Government in view of its clear representation and fixation of price by the competent Authority.

31. Adverting to the sales tax the doctrine of promissory estoppel is fully applicable with full force. The ratio in *Al-Samrez* case 1986 SCMR 1917 is squarely attracted in the instant case and the petitioner having acted upon the decision of the Cabinet-and in the light of the authorization letter opened the letter of credit as a precondition to import the tractors without payment of excise duty and the sales tax and thus a vested right had been acquired by the petitioner, and by no stretch of imagination section 31-A of the Customs Act can be pressed into service to withdraw the said exemption obviously because there is no *pari materia* provision in the sales tax like the one as contained in the Customs Act. We are fortified in this view by the judgment in *Al-Samraz* case referred to above and the judgment reported as *Muhammad Abdullah v. Government of Pakistan* (PLD 1992 Kar.266), PLD 1990 SC 399 and 1994 MLD 1136 (*Fecto Cement's* case).

32. In the case reported as *The Fecto Cement Ltd. v. The Collector of Customs (Appraisement)* and another (1994 MLD 1136) by virtue of Notification goods were exempted from the sales tax but the said Notification was subsequently withdrawn and was substituted by a subsequent Notification. Petitioners acting upon the initial notification being exempted from the payment of sales tax had opened the letter of credit and imported the goods in question. After withdrawal of the Notification, sales tax was demanded which was resisted and the controversy became the subject of adjudication and it was held that petitioners were entitled to avail the benefit under the earlier notification notwithstanding its supersession by subsequent notification for vested right had been acquired by petitioners and the provision of section 31-A of the Customs Act could not be pressed into service nullifying the effect of exemption granted by earlier notification.

33. While delivering the judgment under review the judgments cited above with regard to the petitioner having acquired a vested right were not taken into consideration and, therefore, in our view the review of the judgment is fully justified. At this stage it may also be observed that provisions of Economic Reforms Act, 1992 in the context of the circumstances of this case were not correctly appreciated and interpreted in its true perspective. The scheme approved by the Federal Cabinet obliging the importer not to sell the tractors at more than a fixed price, by competent Authority was exclusively meant for the benefit of the agriculturists/farmers of this country, and, therefore, an incentive was given to the importers to invest money for the import of tractors by opening the letter of credit by 30th of June, 1996 and the same petitioner did open.

34. It was argued that in view of the provision of section 6 of the Economic Reforms Act, 1992 the exemption could not be withdrawn because the matter related to the economic reform. The-expression 'economic reform' has been defined in section 2(b) which includes "economic policies and programmes, laws and regulations announced, promulgated or implemented by the Government on and after the 7th day of November, 1990, relating to privatization of public sector enterprises and nationalized banks, promotion of savings and investments, introduction of fiscal incentives for

industrialization and deregulation of investment, banking, finance, exchange and payments systems, holding and transfer of currencies; and .

(d) all other expressions used in this Ordinance shall have the meanings respectively assigned to them under the relevant laws."

Section 3 of the Protection of Economic Reforms Act; 1992 is in nature of a rider which reads as under:

Act to override other law---The provisions of this Act shall have effect notwithstanding anything contained in the Foreign Exchange Regulation Act, 1947 (VII of 1947) the Customs Act, 1969 (IV of 1969) the Income Tax Ordinance, 1979 (XXXI of 1979) or any other law for the time being in force.

Section 6 of the Act reads as under:-----Protection of fiscal incentives for setting up of industries. The fiscal incentives for investment provided by the Government through the statutory orders listed in the Schedule or otherwise notified shall continue in force for the term specified therein and shall not be altered to the disadvantage of the investors.

35. This piece of legislation having an overriding effect has to be interpreted in the light of phraseology and the language used by the Legislature. The "key words" in the definition of Economic Reforms include the Policy and Programmes, Regulations, promotion of saving and investment introduction of fiscal incentive etc. The protection is provided in section 6 and the Act protects the "Fiscal Incentives for investment" provided by the Government through the Statutory Orders listed in the Schedule or otherwise notified have to continue in force. The Economic Reforms Act; 1992 in fact encourages the promotion of economic activity. The question is what is "Economic Activity". The expression was discussed by this Court in the case reported as *Elahi Cotton Mills v. The Federation of Pakistan* PLD 1997 SC 582 and held that while interpreting laws relating to the economic activity the Courts should view the same with greater latitude than the laws relating to the civil rights such as freedom of speech, religion etc. keeping in view complexity of the economic problems which do not admit of solution through any doctrinaire or strait-jacket formula.

36. The applicability of this piece of legislation known as Economic Reform Act (XII of 1992) and its section 6 was also interpreted by this Court in the case referred to above (*Elahi Cotton Mills' case*). In relation to the interpretation of section 80-D of the Income Tax Ordinance it was held that an assessee who fulfils the conditions of the Notification referred to in the Schedule to section 6 of the Economic Reforms Act, 1992 was entitled to protection. It was laid down that since the provisions of Economic Reforms Act, 1992 are subsequent in time and as they are contained in a special Statute they shall prevail over the provisions of section 80-D of the Income Tax Ordinance which was enacted through the Finance Act, 1991 which was an earlier Statute and which was a part of general Statute. In this view of the matter, the assessee who fulfils the conditions of the Notification referred to in the Schedule to section 6 of the Economic Reforms Act (XII of 1992) are entitled to protection. It is thus clear that approval of the second phase of the scheme for the import of tractors was subject to the exemption from the customs duty and other taxes so made at the time when it was well-known that the said exemption had been withdrawn few days before the approval so accorded.

37. To sum up, it is crystal clear that withdrawal of SRO exempting the payment of customs duties and the sales tax would not be applicable to the second phase of the scheme for the import of tractors because the Government itself after the withdrawal of Notification had resiled from it to the extent of the import to be undertaken by the petitioner. Secondly, relying upon *Al-Samrez* case referred to hereinabove, the sales tax like the customs duty could not be levied upon the import by the petitioner because the

petitioner is protected on the doctrine of estoppel as well as under the Economic Reforms Act, 1992.

For the foregoing reasons, we would review the judgment with the result that the judgment of the Lahore High Court, dated 4th of August, 1997 is restored, earlier judgment of this Court, dated 1st. of September, 1999 rendered in C.A. No. 1176 of 1997 recalled and. appeal dismissed with costs.

Q.M.H./M.A.K./F-32/S Petition allowed

