THE HIGH COURT OF TRIPURA
A G A R T A L A
W. A. No. 38 of 2009

Appellants :

1. The Union of India,
Through the Secretary, Ministry of Finance, (Department of Revenue), North Block, Central Secretariat, New Delhi – 110 011.

2. The Commissioner of Central Excise,
Shillong, having office at Morello Compound, Shillong-1.

3. The Deputy Commissioner of Central Excise & Service Tax Division,
Joynagar, Agartala.

By Advocate :

Mr. P. Dutta, Adv.

Respondents :

1. Dharampal & Premchand Ltd.,
(Agartala Unit) a Company incorporated under the provision of Companies Act, 1956 and having its registered office at 4873. Chandni Chawk, Delhi-110 006.

2. M/s. Abhisar Buildwell (P) Ltd.,
Agartala Unit, a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 17.11m S.P Mukherjee Marg, Delhi- 110 006.

Proforma-Respondents :

3. Ministry of Commerce,
Through the Secretary (INC), Government of India, Udyog Bhawan, New Delhi.

4. The State of Tripura,
Through the Secretary, Excise & Taxation Department, Government of Tripura, Agartala.

5. Department of Industries & Commerce,
Through the Commissioner & Secretary (INC), Government of Tripura, Agartala.

By Advocates :

Dr. A. K. Saraf, Sr. Adv.
Mr. A. Bhowmik, Adv.
Mr. A. Goyal, Adv.
Mr. S. Tyagi, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing &
Judgment & Order : **24th August, 2015.**

Whether fit for reporting **:**

Yes	No
	√

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

The main question which is involved in this writ appeal is whether the State was estopped on the basis of application of doctrine of promissory estoppel from curtailing the benefit of excise exemption granted to the Units set up in the North Eastern States including the State of Tripura for a period of 10(ten) years.

[2] A learned Single Judge of this Court vide a very elaborate judgment in ***Herbo Foundation(P) Ltd. Vrs. Union of India : (2011) 1 GLR 781*** has discussed the entire matter and in para 156 held as follows:

> **"156. As already indicated above, in the present case, when the Government , after a decade of experience, announced its industrial policy in the year 2007, it chose to promise the investors complete exemption from payment of excise duty, in respect of specified gods, if a manufacturer, in the specified areas, carried on industrial activity, which is not peripheral in nature. Thus, the Government has reiterated, in the IPR 2007, the promise of complete exemption from payment of excise duty, as the Government had announced and promised in the 1997 IPR. Hence, when the Government had chosen to reiterate its promise of complete exemption from payment of excise duty in the y ear 2007, and when the petitioners claim to have altered their position, to their detriment, relying upon the promise made by the Government in the 1997 IPR and /or 2007 IPR, it no longer remains open to the Government to withdraw the incentives so promised unless it can show that public interest, supervening in nature, requires that the Government, notwithstanding the promises made by it, be held not bound by its promise. In the present case, though the**

> **Government has not, even for a moment, categorically admitted that the impugned notifications have reduced the promised incentives and though the Government still insists that whatever incentives were available, in the 1997 IPR, have remained available to an investor even after the impugned notifications have been issued, this contention of the Government, as already pointed out above, is wholly incorrect. Thus, the Government has not boldly taken the stand that it has withdrawn the incentives, if not completely, at least, partially, the fact of the matter remains that the Government has gone back on its promise made in the 1997 IPR as well as 2007 IPR. The Government's basis for showing overriding public interest in withdrawing the promises have also remained as already discussed above, unproved; rather the stand of the Government is belied and disapproved as already discussed above. Moreover, the Government has not as already held above, taken into account all relevant factors into consideration before reaching the decision to issue the impugned notifications. In such circumstances, Government cannot be freed from the promises, which it had made in the said two industrial policies."**

[3] The aforesaid judgment of the learned Single Judge was challenged by filing a writ appeal. That writ appeal was dismissed and against the writ appeal a special leave petition was filed in the Apex Court which is still pending.

[4] As far as the present writ appeal is concerned the learned Single Judge has just followed the judgment in ***Herbo Foundation (supra)*** and has decided the writ petition in favour of the petitioners (respondents herein).

[5] This writ appeal has been pending for the last six years. We cannot permit it to remain pending in view of the law laid down by the learned Single Judge which law has been affirmed by a Division Bench in Writ Appeal***(The Union of India & Others Vrs. Modi Revlon Pvt. Ltd. & 19 others: W. A No. 243 of 2009)***. We are bound to follow the same judgment.

[6] There is no dispute that the issue involved in this case is identical to the issue involved in the earlier cases referred to above.

[7] Therefore, we dismissed the writ appeal. No costs.

JUDGE **CHIEF JUSTICE**