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STATE OF ORISSA AND ORS.

v.

MANGALAM TIMBER PRODUCTS LTD. ETC.

NOVEMBER 11, 2003

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[R.C. LAHOTI AND ASHOK BHAN, JJ.]

*Administrative Law :*

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*Promissory Estoppel—On representation of State Government company established an industry in the State as per terms contained in Industrial Policy—Accordingly, raw material supplied to industry at a fixed price—Industry selling its products at a rate based on price of raw material supplied to it—Later Government proposing to revise retrospectively the price of raw material to the detriment of Industry—Proposal struck down by High Court—*

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*Government contending that as there was no contract in writing principle of promissory estoppel would not apply—Held, State Government having persuaded the company to establish an industry and the latter having acted on the solemn promise, purchased raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of raw material, the former cannot be permitted to revise the terms for supply of raw*

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*material adversely to the interest of the company and effective from back date and place the company in a situation which it will not be able to resolve—Even, prima facie, it was not a case of an error in calculation committed by State Government of which it was not aware—Besides, State cannot take advantage of its own omission.*

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*Sales Tax Officer and Anr. v. Shree Durga Oil Mills and Anr., [1998] 1 SCC 572 and Sharma Transport Rep. By D.P. Sharma v. Govt. of Andhra Pradesh and Ors., [2002] 2 SCC, 188, cited.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10664 of 1996.

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From the Judgment and Order dated 16.5.95 of the Orissa High Court in O.J.C. No. 7341 of 1993.

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C.A. No. 10665 of 1996

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Raj Kumar Mehta for the Appellant in C.A. No. 10664/96.

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Radha Shyam Jena (NP) for the Appellant in C.A. No. 10065/96.

Dushyant A. Dave, Ramesh Singh, Ms. Gauri Rasgotra and Suman J. Khaitan for M/s. Khaitan & Co., for the Respondent in C.A. No.10664/96.

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Ramesh Singh, A.T. Patra and Nipun Malhotra for M/s. O.P. Khaitan & Co., for the Respondent in C.A. No. 10665/96.

The following Order of the Court was delivered :

*C.A. No. 10664/1996*

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A decision taken by the Government of Orissa on 27.4.1989 to revise with effect from back date the terms for making available raw material to the respondent has been struck down by the High Court of Orissa as violative of the principle of promissory estoppel. The state of Orissa is in appeal by special leave.

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On the representation made by the State of Orissa as contained in their Industrial Policy of the year 1980 and 1983 the respondent was persuaded to establish its industry in the state of Orissa. On 27.4.1989 the State Government proposed revision of certain terms which resulted in revision of rate of royalty and the method of stack measurement adversely to the interest of the respondent. The respondent was not obviously agreeable and protested. The representation of the respondent ultimately prevailed with a high level committee of the State Government and on 3.10.1989 a decision was taken to not to alter the terms for supply of raw material on which the respondent had acted and established its industry. The industry continued to function, consumed the raw material and sold its finished products to the buyers in the market. The pricing of the finished product was done by taking into account the rate of royalty and the method of stack measurement as proposed by the respondent and agreed upon between the parties. On 2.9.1993, the State Government again proposed to make a revision with effect from a back date, i.e., 1st April, 1998. This proposal was challenged by the respondent by filing the writ petition in the High Court which has been allowed and the communication dated 2.9.1993 containing the impugned revision has been struck down by the High Court.

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It is submitted on behalf of the State of Orissa that there was an error

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A of calculation made by the State and that what the State proposed to do was only to correct the erroneous method of calculation. Then, the Government of India was not agreeable to re-plantation by private party like the respondent and so the re-plantation had to be undertaken by the State which involved additional cost to it. It is also submitted that striking down the proposal of the State Government made in the year 1993 would be inequitable for the State of Orissa and therefore would not be in public interest. Reliance is placed on the decisions of this Court in *Sales Tax Officer and Anr. v. Shree Durga Oil Mills and Anr.* [1998] 1 SCC 572 and *Sharma Transport Rep. By D.P. Sharma v. Govt. of Andhra Pradesh and Ors.*, [2002] 2 SCC, 188.

C Having heard the learned counsel for the parties, we are satisfied that no case is made out for interference with the judgment of the High Court. Before the High Court, the principal plea of the respondent was that there was no contract in writing and therefore the applicability of the principle of promissory estoppel was not established. The High Court has rightly discarded this plea. To attract the applicability of the principle of estoppel it is not necessary that there must be a contract in writing entered into between the parties. We are not satisfied even *prima facie* that it was a case of an error committed by the State Government of which it was not aware. The State of Orissa should have, while holding out the representation, taken into consideration the fact—who will have to do re-plantation and that the permission of the Government of India would be needed for the purpose. The State cannot take advantage of its own omission. The State Government having persuaded the respondent to establish an industry and respondent having acted on the solemn promise of the state Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of raw material fixed by the State Government and supplied, the State Government cannot be permitted to revise the terms for supply of raw material adversely to the interest of the respondent and effective from a back date and place the respondent in a situation which it will not be able to resolve. The respondent could not have revised their price from a back date and recovered it from innumerable consumers to whom their finished products were supplied at a fixed price.

G No fault can be found with the view taken by the High Court. The appeal is devoid of any merit and is dismissed. The *interim* order dated 17.2.1997 passed by this Court stands vacated. The State Government shall implement the judgment of the High Court expeditiously and in any case within a period of four months from today.

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C.A. No. 10665/1996

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No one is present for the Appellants.

The judgment of the High Court impugned in this appeal was rendered by following its own decision in *Mangalam Timber Products Ltd. v. The State of Orissa* (O.J.C. No. 7341/1993 decided on 16.5.1995). In both the matters it was one and the same decision of the State of Orissa which was impugned. The State Government came in appeal by special leave against the decision in *Mangalam Timber Products Ltd. v. The State of Orissa* (O.J.C. No. 7341/1993 decided on 16.5.1995) which was registered as C.A. No. 10664/1996. By judgment separately pronounced today in the said appeal, the appeal of the State Government has been dismissed and the decision of the High Court has been upheld. Inasmuch as the judgment of the High Court under appeal follows the decision in *Mangalam Timber Products Ltd.*, this appeal is also dismissed. The judgment of the High Court is maintained. The interim order dated 17.2.1997 passed by this Court stands vacated. The State Government shall implement the judgment of the High Court expeditiously and in any case within a period of four months from today.

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Appeal dismissed.