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**IN THE GAUHATI HIGH COURT**

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,  
Mizoram and Arunachal Pradesh )

**WRIT APPEAL NOS.55, 56, 57, 58, 59, 60, 61,  
62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76,  
77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94,  
95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 110,  
111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123,  
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140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152,  
153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165,  
166, 167, 168, 169, 170, 171 AND 172 OF 2005.**

IN WRIT APPEAL NO.55 OF 2005

Union of India  
Represented by the Secretary, Ministry of  
Finance, Govt. of India, North Block,  
Central Secretariat, New Delhi,  
Through the Commissioner of Central  
Excise of Dibrugarh.

..... Appellant

-Versus-

Assam Brook Ltd. a company duly  
incorporated under the Companies Act, 1956  
having its registered office at 1, Shakespeare  
Sarani, Kolkota owing amongst others  
Tinkharia T.E. at P.O. Dhekiajuli, in the  
District of Sonitpur, Assam.

..... Respondent

IN WRIT APPEAL NO.56 OF 2005

Union of India  
Represented by the Secretary, Ministry of  
Finance, Govt. of India, North Block,  
Central Secretariat, New Delhi,  
Through the Commissioner of Central  
Excise of Dibrugarh.

..... Appellant

Assam Brook Ltd. a company duly incorporated under the companies Act, 1956 having its registered office at 1, Shakespeare Sarani, Kolkata owing amongst others Tinkharia T.E. at P.O. Dhekiajli, in the district of Sonitpur, Assam.

..... Respondent

IN WRIT APPEAL NO.57 OF 2005

Union of India  
Represented by the Secretary, Ministry of Finance, Govt. of India, North Block, Central Secretariat, New Delhi,  
Through the Commissioner of Central Excise of Dibrugarh.

..... Appellant

-Versus-

Krishna Behari Tea Co. (P) Ltd., a company duly incorporated under the Companies Act, 1956 having its registered office at Sibsagar owing amongst others Krishna Behari T.E. at P.O. Demow, in the district Sibsagar, Assam.

..... Respondent

IN WRIT APPEAL NO.58 OF 2005

Union of India  
Represented by the Secretary, Ministry of Finance, Govt. of India, North Block, Central Secretariat, New Delhi,  
Through the Commissioner of Central Excise of Dibrugarh.

..... Appellant

-Versus-

Hanuman Texnit & Industries Ltd. a company duly incorporated under the companies Act, 1956, owing amongst others Hanuman Texnit & Industries Ltd.

..... Respondent

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-Versus-

Hajarimall Nandlal a company duly incorporated under the companies Act, 1956 having its registered office at Doom Dooma owing amongst others Mankhwa T.E. at P.O. Doom Dooma, in the district of Tinsukia, Assam.

..... Respondent

**P R E S E N T**  
**THE HON'BLE MR. B.K. ROY. CHIEF JUSTICE,**  
**THE HON'BLE MR. JUSTICE D. BISWAS**

For the appellants : Mr. B. Sarma,  
C.G.S.C.  
For the appellants in all the writ appeals.

For the respondents : M/S KN Choudhury,  
SK Kejriwal, Advocates.  
For the respondents in all the writ appeals.

Dates of hearing : 5.4.2005 and 7.4.2005

Date of Judgment and Order : 30.6.05.

**JUDGMENT AND ORDER**

**D. Biswas, J -**

These writ appeals are directed against the common Judgment and Order dated November 29, 2004 passed by the learned Single Judge in a batch of writ petitions filed by the Companies engaged in producing and manufacturing tea within the territorial limits of this Court for declaration that they are not liable to pay the additional duty of excise imposed by the Finance Act, 2003 and for consequential reliefs including refund of excise duty paid.

2. The Government of India in the Ministry of Industries, Department of Industrial Policy and Promotion, by the Office

Policy for development of industries in the North Eastern Region and introduced a new and synergetic intensive package to stimulate development of industries. The Policy, amongst various other incentives and concessions also include exemption from payment of Central Excise in respect of industrial activities relating to manufacture of tea in the North Eastern States for a period of ten years. The petitioners in all the writ petitions are manufactures of tea classifiable under Chapter 9 heading 09.02 sub-heading 09.02.00 of the Central Excise Tariff Act, 1985. No central excise was leviable on tea and tea waste falling under the heading and sub-heading as above. With effect from mid-night of 27/28<sup>th</sup> February, 1999, provisions for payment of excise duty at the rate of Rs.2/- per kilogram on bulk tea was introduced without any exemption to the manufacturers of tea in the North Eastern Region.

3. Being aggrieved, a series of writ petitions were filed before this Court by the manufacturers of tea. Notification No.33 of 1999 was issued on 8.7.1999 under the relevant provisions of the statute in question during the pendency of those petitions. By this notification, amongst other items, tea cleared from a unit in the North Eastern States was exempted from payment of excise duty leviable under the Central Excise Act, 1944, Additional Duties of Excise (Goods of Special Importance) Act, 1957 and the Additional Duties of Excise (Textile and Textile Articles) Act, 1978. The exemption contained in this notification has been given effect to in the following manner :-

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"a) The manufacturers shall submit a statement of the duty paid from the said account current to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7<sup>th</sup> of the next month in which the duty has been paid from the account current.

(b) The Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall refund the amount of duty paid from the account current during the month under consideration to the manufacturer by the 15<sup>th</sup> of the next month.

~~(c) If there is likely to be any delay in the verification, the Assistant Commissioner or Deputy Commissioner~~

Therefore, be impermissible to revive this notification to extend the benefit arising therefrom to cover an additional duty levied by the Finance Act of 2003. There cannot be any mandamus against Legislature. The Doctrine of Promissory Estoppel cannot be invoked against any legislative act of the Legislature unless the Act is declared ultra vires of the provisions of the Constitution. The levy of additional excise duty by way of surcharge (cess) under the Act of the Parliament is within the parameter of the provisions of Article 265 of the Constitution and relatable to Entry 84 of List-I of the Seventh Schedule. Situated thus, we are unable to reconcile our views with the contention of Sri Choudhury that the manufacturers of tea and tea wastes in the North Eastern States are eligible to get refund of the additional duty of excise paid in terms of the Notification No.33/1999.

28. We may recapitulate hereinbelow the features appearing in the instant case from the discussions above.

- (i) The Finance Act of 2003 is within the legislative competence of the Union Parliament and there cannot be mandamus against legislature;
- (ii) The challenge to the vires of the Finance Act, 2003 was not pressed before the learned Single Judge or before this Court;
- (iii) No promise have been made by the Central Government to exempt the tea manufacturers of the North East from payment of additional duty either in the Industrial Policy Resolution of 1997 or in the Finance Act, 2003;
- (iv) The Notification No.33/1999 restricted to the basic excise duty prevailing at the time of issuance of the notification lost its force on abolition of basic excise duty and cannot be stretched to exempt duties imposed later;

- (v) The decision of the learned Single Judge that the additional duty of excise is not covered by the Notification No.33/1999 attained finality for want of cross appeal;
- (vi) Legal right cannot enforced against supervening public interest established on record; and
- (vii) The levy of additional excise duty by way of surcharge (cess) has been in overriding public interest in the sense that the monies to be ploughed back would be evenly supplemented by the Union Government to raise a fund for development of the Industry.

29. For reasons and discussions above, we are of the opinion that the common Judgment and Order dated November 29, 2004 passed by the learned Single Judge warrants reversal. Accordingly, we allow the appeals, set aside the Judgment under appeal and dismiss all the writ petitions.

No order as to costs.

Sd/ D. Biswas  
Judge

Sd/ B. K. Das  
Chief Justice

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*Barbara Ghoshan*  
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Peta no 37/06  
 dtc 19/7/05

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