# Eicher Motors Ltd. And Anr vs Union Of India And Ors. Etc on 28 January, 1999

## Equivalent citations: AIR 1999 SUPREME COURT 892, 1999 (2) SCC 361, 1999 AIR SCW 563, 1999 (1) ADSC 391, 1999 (1) SCALE 230, 1999 (1) LRI 161, 1999 ADSC 1 391, (1999) 1 JT 205 (SC), (1999) 106 ELT 3, (1999) 81 ECR 7, (1999) 1 SCALE 230, (1999) 152 CURTAXREP 273

## Bench: S.P. Bharucha, K. Venkataswami, S. Rajendra Babu

CASE NO.:
Transfer Case (civil) 7-8 of 1998

PETITIONER:
EICHER MOTORS LTD. AND ANR.

RESPONDENT:
UNION OF INDIA AND ORS. ETC.

DATE OF JUDGMENT: 28/01/1999

BENCH:
S.P. BHARUCHA & K. VENKATASWAMI & S. RAJENDRA BABU

JUDGMENT:

JUDGMENT 1999 (1) SCR 295 The Judgment was delivered by RAJENDRA BABU, J.

RAJENDRA BABU, J. -

In these petitions, the validity and application of the Scheme, as modified by introduction to Rule 57-F [read as 57-F(4-A)] of the Central Excises and Salt Act, 1944, under which credit which was lying unutilised on 16-3-1995 with the manufacturers, stood lapsed in the manner set out therein is questioned

2. The relevant Rule read as follows "57-F. (4-A) Notwithstanding anything contained in sub-rule (4), or sub-rule (1) of Rule 57-A and the notifications issued thereunder, any credit of specified duty lying unutilised on the 16th day of March, 1995 with a manufacturer of factors, falling under Handing No. 87.01 or motor vehicles falling under Heading No. 87.02 and 87.04 [or chassis of such tractors or such motor vehicles under Heading No. 87.06] of the Schedule to the Central Excise Traffic Act, 1985 (5 of 1986) shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export Provided that nothing contained in this sub-rule shall apply to credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock on the 16th day of March, 1995."

3. There are three assessee before us keeping for quashing of the said Rule. The grounds in support of the challenge to the validity of the said Rule are as follows

1. MODVAT credit lying in balance with the assessee as on 16-3-1995 represents a vested right accrued or acquired by the assessee under the existing law and such right is sought to be taken away by the impugned Rule 57-F(4-A) and the Central Government has no powers under Section 37 of the Central Excise Act, 1944 (hereinafter referred to as "the Act") or any other provision thereof to frame such a rule

2. The impugned Rule is arbitrary and unreasonable as the same has been framed without due application of mind to the relevant facts and it has been exercised on the basis of non-existent facts or which are patently erroneous

3. Section 37 of the Act does not enable the Central Government to frame a rule enabling the lapsing of the balance MODVAT account and is therefore ultra vires the rule-making power

4. The Rule is vitiated on the grounds of promissory estoppel and/or the doctrine of legitimate expectation

4. On behalf of the respondent, it is submitted that the impugned Rule 57- F(4-A) is only a part of a Scheme providing for giving concessions under the taxation enactment. The Scheme need not be continued for all time to come and could be put to an end at any time and thus all that has happened is that the Scheme which was available earlier is no longer available and, therefore, it is not open to contend that the Scheme affects any vested right; and, that under the Scheme, it is only a mode of adjustment of taxes which were provided and there is no vested right accrued to the assessee. Thus a rule which merely lapsed does not give rise to the contention advanced on behalf of the petitioners and the withdrawal of concessions at any rate is not retrospective in effect to apply either the principle of promissory estoppel and/or the doctrine of legitimate expectation or even the rule that a vested right cannot be taken away. It is further made clear that a credit facility which is made available could not be allowed to perpetuate and the entire Rule is in the form of a package and it makes it clear that there shall be no credit by rationalising the duty structure making it clear that addition of any input can be utilised up to a particular point of time. Certain anomalies were noticed in the implementation of the scheme inasmuch as, if the benefit of concession had been extended, though on the original item manufactured, a duty was liable to be paid and the ultimate product remains a duty-free product and thus led to a situation whereon the item originally manufactured which was used as an input was paid only in order to avoid payment of duty on the ultimate goods manufactured by them. In the original Scheme introduced, there was a nexus between the input and the output but the result of the application of that Scheme led to a situation where such a nexus was lost between the input and the output leading to a anomalous situation pointed out above. It is, therefore, submitted that it was permissible for the authorities to frame the Rule in question which fell within the scope of Section 37 of the Act

5. Rule 57-F(4-A) was introduced into the Rules pursuant to the Budget for 1995-96 providing for lapsing of credit lying unutilised on 16-3-1995 with a manufacturer of tractors falling under Heading

No. 87.01 or motor vehicles falling under Heading Nos. 87.02 and 87.04 or chassis of such motor vehicles under Heading No. 87.06. However, credit taken on inputs which were lying in the factory on 16-3-1995 either as parts or contained in finished products lying in stock on 16-3-1995 was allowed. Prior to the 1995-96 Budget, the Central excise/additional duty of customs paid on inputs was allowed as credit for payment of excise duty on the final products, in the manufacture of which such inputs were used. The condition required for the same was that the credit of duty paid on inputs could have been used for discharge of duty/liability only in respect of those final products in the manufacture of which such inputs were used. Thus it was claimed that there was a nexus between the inputs and the final products. In the 1995-96 Budget, the MODVAT Scheme was liberalised/simplified and the credit earned on any input was allowed to be utilised for payment of duty on any final product manufactured within the same factory irrespective of whether such inputs were used in its manufacture or not. The experience showed that credit accrued on inputs is less than the duty liable to be paid on the final products and thus the credit of duty earned on inputs gets fully utilised and some amount has to be paid by the manufactured by way of cash. Prior to the 1995-96 Budget, the excise duty on inputs used in the manufacture of tractors and commercial vehicles varied from 15% to 25%, whereas the final products attracted excise duty of 10% or 15% only. The value addition was also not of such a magnitude that the excise duty required to be paid on final products could have exceeded the total input credit allowed. Since the excess credit could not have been utilised for payment of the excise duty on any other product, the unutilised credit was getting accumulated. The stand of the assessees is that they have utilised the facility of paying excise duty on the inputs and carried the credit towards excise duty payable on the finished products. For the purpose of utilisation of the credit, all vestitive (sic) facts or necessary incidents thereto have taken place prior to 16-3-1995 or utilisation of the finished products prior 16-3-1995. Thus the assessees became entitled to take the credit of the input instantaneously once the input is received in the factory on the basis of the existing Scheme. Now by application of Rule 57- F(4-A), the credit attributable to inputs already used in the manufacture of the final products and the final products which have already been cleared from the factory alone is sought to be lapsed, that is, the amount that is sought to be lapsed relates to the inputs already used in the manufacture of the final products but the final products have already been cleared from the factory before 16-3-1995. Thus the right to the credit has become absolute at any rate when the input is used in the manufacture of the final product. The basic postulate that the Scheme is merely being altered and, therefore, does not have any retrospective or retroactive effect, submitted on behalf of the State, does not appeal to us. As pointed out by us that when on the strength of the Rules available, certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the Scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that the right, which had accrued to a party such as the availability of a scheme, is affected and, in particular, it loses sight of the fact that the provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assesses concerned. Therefore, the Scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier Scheme was applied under which the assessees had availed of the credit facility for payment of taxes. It is on the basis of the earlier Scheme necessarily that the taxes have to be adjusted and payment made complete. Any manner or mode of application of the said Rule would result in affecting the rights of the assessees

6. We may look at the matter from another angle. If on the inputs, the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the Rule cannot be applied to the goods manufactured prior to 16-3-1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods

7. There are several decisions referred to by the learned counsel on either side but we do not think that those decisions have any relevance to the point under discussion

8. We allow the petitions filed by the assessees and declare that the said Rule cannot be applied except in the manner indicated by us above. No orders as to costs