
I.T.C. Limited Vs Union of India (UOI) and Another

Writ Petition No. 1967 of 1996

Court: Madras High Court

Date of Decision: Jan. 20, 2004

Acts Referred:

Central Excise Rules, 1944 & Rule 57G(2)#Constitution of India, 1950 & Article 14

Citation: (2004) 93 ECC 569

Hon'ble Judges: P. Sathasivam, J

Bench: Single Bench

Advocate: Sriram Panchu, for T. Mohan, for the Appellant; K. Veeraraghavan, Senior Central Govt. Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Sathasivam, J.

I.T.C. Limited has filed the above writ petition for declaration, declaring Second Proviso to Rule 57G(2) of the Central

Excise Rules inserted by M.F. (D.R.) Notification No. 28/95-CE (NT) dated 29.6.95 as ultra vires or in the alternative declare that the Second

Proviso to Rule 57G(2) of the Central Excise Rules, inserted by M.F. (D.R.) Notification No. 28/95-CE (NT) dated 29.6.95 has no application in

respect of inputs in respect of which the relevant documents specified in the first proviso to Rule 57G of the Central Excise Rules was issued prior

to 29.6.95.

2. The case of the petitioner is briefly stated hereunder:

The petitioners are manufacturers of printed paper board cartons falling under chapter heading 4819.12 of the Central Excise Tariff. For the

manufacture of these printed paper board cartons, the petitioners import inputs from the market on which the customs duty is paid. From the year

1986, manufactures became eligible for credit of excise duty and additional duty of customs paid on inputs when used in the manufacture of

excisable final products. This scheme came into force after the announcement of the Finance Minister as part of the 1986 budget proposals and

was called a modified system of value added tax or ""Modvat"" for short. The scheme provided for instant credit of the excise duty and additional

duty of customs (countervailing duty) paid on inputs when used in or in relation to the manufacture of the final products. Modvat enables a

manufacturer to obtain instant and complete reimbursement of the specified duties paid on the inputs. The scheme would avoid payment of duties

of earlier duties paid. Rules 57A to 57J of the Central Excise Rules provide legal backing for giving Modvat credit and also prescribe the

procedure to be followed. The manufacturer has to file only a declaration under Rule 57G of the Central Excise Rules to the concerned Assistant

Collector about the goods (inputs) in respect of which he proposes to have Modvat credit and the final product (output) which he will be

manufacturing out of the inputs. The manufacturer can start availing of Modvat (credit) as soon as he obtains as acknowledgement of this

declaration. The said Rule was intended to benefit the manufacturer of excisable final products and prevent cascading effect of taxation on inputs.

The said rule also lays down procedure to avail Modvat credit. Until 29.6.95 the procedure that was required to be followed by the manufacturer

intending to take credit of the duty paid on inputs under Rule 57A was that a declaration had to be filed with the Central Excise Authorities

indicating the description of the final product manufactured and the inputs used in the manufacture of each final product. After obtaining a dated

acknowledgement from the Central Excise Authorities credit could be taken of the duty paid on inputs received by the manufacturer. No credit

could be availed unless the inputs were received against an invoice issued under 57A or a copy of the bill of entry or a certificate issued by the

appraisal of customs or any other prescribed document evidencing payment of duty on such inputs. After the inputs were received under

documents evidencing duty payment, credit could be taken any time subsequently. By notification dated 29.6.95 the Central Government amended

Rule 57G(2) introducing a proviso to Rule 57G(2) which says that the manufacturer shall not take credit after six months of the date of issue of any

of the documents specified in first proviso to this sub-rule.

3. Prior to the said notification, the petitioners had imported against several bills of entry namely (i) printing ink; (ii) water based varnishes; and (iii)

styrofoam. These goods were imported against the bills of entry. I.T.C. also took credit in respect of these inputs in their RG23A Part II during the

months of August and September, 1995. While so, on 21.11.95 the petitioners were served with a show cause notice issued by the second

respondent threatening recovery or denial of the duty above-mentioned under Rule 57I of the Central Excise Rules, 1944. The Notification No.

28/95 does not state that it is intended to have retrospective operation. Therefore, it cannot have the effect of denying credit in respect of inputs

imported against bills of entry and received in the factory prior to 29.6.95 viz., the date of publication of Notification No. 29.6.95. The said

Notification No. 28/95 cannot operate retrospectively. The petitioners were under the legitimate expectation that since no time limit had been fixed

or availment of credit after declarations had been filed with the authorities in respect of duty paid inputs they would be allowed to avail the Modvat

credit on these inputs. The notification does not apply to manufacturers claiming input credit on capital goods under Rule 57T. There is no reason

to treat inputs under 57G on a different footing from capital goods under Rule 57T and deny the benefit of input credit only to time bound Rule

57G utilisation and not capital goods utilisation under Rule 57T. On this ground of unreasonable classification and hostile discrimination, the

notification deserves to be struck down. Once a declaration as contemplated under 57G(i) has been filed a right inheres in the assessee to utilise

credit. Such a right cannot be so arbitrarily taken away from the assessee. A proper construction of the notification would be either that the

notification did not apply to inputs in respect of which declarations had been filed prior to 29.6.95 or that the assessees were entitled to a period of

6 months from the date of notification within which to take credit in their RG23A register in respect of inputs covered under declarations filed

under Rule 53G(1) prior to 29.6.95.

4. Assistant Commissioner of Central Excise (Legal) in the office of the Commissioner of Central Excise, Madras-34 has filed a counter-affidavit

on behalf of the respondents wherein it is stated that the petitioner company avails of the Modified Value Added Tax (Modvat) facility, which is in

effect from 1986 onwards. Under this Modvat facility, they are availing the credit of Excise Duty and Additional Duty of Customs (called as

Counter Vailing Duty) paid on the indigenous and imported inputs, as the case may be, used in or in relation to the manufacturer of final products

declared by them. The credit of duty is taken based on the copy of the invoice/Bill of entry evidencing the payment of duty on such inputs. Chapter

V-AA envisaging Rules 57A of 57J of the Central Excise Rules, 1944 stipulate the procedural regulations and statutory requirements in this regard.

5. The first respondent, in exercise of the powers conferred by Section 37 of the Central Excises and Salt Act, 1944 (Act 1 of 1944), made

amendment to the Central Excise Rules, 1944 viz., Central Excise (Ninth) Amendment Rules, 1995, notified on 29.6.95 to the effect that taking of

credit of duty paid on inputs on the basis of documents evidencing the payment of duty on such inputs is allowed till six months from the date of

issue of the said documents. The petitioner company took credit of duty paid on certain imported inputs on 22.8.95 and 30.9.95 on the basis of

bills of entry dated as early as 15.11.94, 17.11.94, 8.12.94, 11.1.95 and 20.1.95, in contravention of the law. Following the principles of natural

justice in all fours, the second respondent issued a show cause notice to the petitioners answerable within 30 days to the proper Adjudicating

authority viz., Assistant Commissioner of Central Excise, Madras III Division, on 21.11.95. The petitioner company, instead of answering to the

proper officer, has filed the above writ petition.

6. The impugned notification simply allows the Modvat credit till six months from the date of issue of such documents. The question of

retrospective operation, as raised by the petitioner does not arise. The stated declaration envisages only the intention of/declaration by the

petitioner about the general particulars of inputs and final products with which he is concerned and this filing of the said declaration is a one time

affair only. Under Modvat scheme, the petitioner-manufacturer, who has filed a declaration under Rule 57G(1), is allowed to take credit any time

and every time he receives inputs covered by valid duty paid document. He is required only to maintain R.G.23A Register in Part I regarding

recording the quantity of inputs received and utilised; and in Part II regarding taking of credit and debit utilised based on duty paid on the inputs

procured. The impugned notification is issued in public interest and the first respondent is fully empowered u/s 37 of the Central Excise and Salt

Act, 1944, to make such rules. Any attempt to curtail the application of the impugned notification in respect of documents issued prior to 29.6.95

will result only against the petitioner's interests. There is no legal ground to support the claim of the petitioner.

7. In the light of the above pleadings, I have heard Mr. Sriram Panchu, learned senior counsel for the petitioner and Mr. K. Veeraraghavan,

learned senior Central Government Standing counsel for the respondents.

8. The writ petition challenges the constitutional validity of the second proviso to Rule 57G(2) of the Central Excise Rules, 1944 (hereinafter

referred to as "the Rules"). Under the Modvat scheme, duty paid on inputs can be set off against the duty payable on the final product. When the

inputs are received at the factory of the manufacturer, entry should be made in the Register RG 23A Part I. The Register RG 23A Part II is the

entry book of duty credit showing the opening balance, fresh credit allowed, debit (against duty payable on final product) and the balance of credit.

Prior to 29.6.95, there was no time limit for the taking of the credit. The second proviso to Rule 57G was introduced by Notification dated

29.6.95 u/s 37 of the Central Excise and Salt Act, 1944 (hereinafter referred to as "the Act"). The proviso introduced a limitation on the taking of

credit. As per the said proviso, credit should be taken within six months of the date of invoice or bill of entry in respect of the inputs. Rule 57G is

extracted hereunder :

Rule 57G, Procedure to be observed by the manufacturer. -- (1) Every manufacturer intending to take credit of the duty paid on inputs under

Rule 57A, shall file a declaration with the Assistant Commissioner of Central Excise having jurisdiction over his factory, indicating the description of

the final products manufactured in his factory and the inputs intended to be used in each of the said final products and such other information as the

said Assistant Commissioner may require, and obtain a dated acknowledgement of the said declaration.

(2) A manufacturer who has filed a declaration under Sub-rule (1) may, after obtaining the acknowledgement aforesaid, take credit of the duty

paid on the inputs received by him:

Provided that no credit shall be taken unless the inputs are received in the factory under the cover of an invoice, issued under Rule 52A, an AR-1,

or triplicate copy of a bill of Entry, a certificate issued by an Appraiser of Customs posted in Foreign Post Office or any other document as may be

prescribed by the Central Government by notification in the Official Gazette in this behalf evidencing the payment of duty on such inputs:

Provided further that the manufacturer shall not take credit after six months of the date of issue of any of the documents specified in first proviso to

this sub-rule."" [Inserted by M.F.(D.R.) Notification No. 28/95-CE (NT), dated 29.6.1995]

9. According to the petitioner, in respect of three bill of entries (i). B/E No. H 1101593 dated 17.11.94; (ii). B/E No. H 200790 dated 8.12.94;

(iii). B/E No. HD 1001113 dated 15.11.94 the six month time period has already elapsed on 29.6.95. Therefore, the proviso extinguishes a

vested right which the petitioner had for claiming credit of duty paid on inputs. It is also the claim of the petitioner that the time limit fixed is

arbitrary, unreasonable; hence violates Article 14 of the Constitution of India. Learned senior counsel for the petitioner also contended that Article

14 is also violated on the ground of discrimination and bad classification since the proviso treats unequals the same way. He further contends that

Section 37 of the Act does not give power to make a rule with retrospective effect. Therefore, the proviso cannot affect past acts, rights accrued

and the operation of the earlier schemes. As an alternative argument, learned senior counsel for the petitioner submits that the proviso may be read

down for the purpose of harmonious construction, safeguarding the acts done prior to 29.6.95.

10. It is the case of the Revenue that there is no violation of Article 14 of the Constitution of India and neither the subordinate Legislation 57G(2) is

arbitrary or discriminatory.

11. The core of the issue is whether the proviso included in Rule 57G-vide Notification No. 28/95 C (M) dated 29.6.95 making a procedural

restriction on 29.6.95 onwards, restricting the period for taking credit as six months is constitutionally valid or not. Before considering the said

issue it is relevant to refer the general and well established principle namely in economic and taxation sphere a larger latitude should be allowed. In

the case of R.K. Garg and Others Vs. Union of India (UOI) and Others, , the Supreme Court had held that every Legislation, particularly in

economic matters is essentially empiric and it is based on experimentation. There may be crudities, inequities and even possibilities of abuse but on

that account alone it cannot be struck down as invalid. These can always be set right by the Legislature by passing amendments. The Court must

therefore adjudge the constitutionality of such legislation by the generality of its provisions. Laws relating to economic activities should be viewed

with greater latitude than laws touching civil rights such as freedom of speech, religion etc. The following law declared by the Supreme Court is to

be taken note of while considering the laws relating to economic activities; (paras 7 and 8)

7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well

established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The

first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that

there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that

the Legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience

and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court

may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of

facts which can be conceived existing at the time of Legislation.

8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights

such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. That the Legislature should be allowed some play in

the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is

particularly true in case of Legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with,

greater play in the joints has to be allowed to the Legislature. The court should feel more inclined to give judicial deference to legislative judgment

in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more

feliciously expressed than in *Money v. Doud* 354 US 457: 1 LEd 2d 1485 1957 where Frankfurter, J. said in his inimitable style:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment.

The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When there are added to

the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the

Judges have been overruled by events-self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

The Court must always remember that ""Legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex

that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be

measured by abstract symmetry""; ""that exact wisdom and nice adoption of remedy are not always possible"" and that ""judgment is largely a

prophecy based on meagre and uninterpreted experience"". Every Legislation particularly in economic matters is essentially empiric and it is based

on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible

abuses. There may be crudities and inequities in complicated experimental economic Legislation but on that account alone it cannot be struck down

as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secretary to Agriculture v. Central Reig Refining Company* 94

L Ed 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of

itself be a ground for invalidating the Legislation, because it is not possible for any Legislature to anticipate as if by some divine prescience,

distortions and abuses of its Legislation which may be made by those subject to its provisions and to provide against such distortions and abuses.

Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a Legislation which is not capable of being abused

by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not

by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light,

the Legislature can always step in and enact suitable amendatory Legislation. That is the essence of pragmatic approach which must guide and

inspire the legislature in dealing with complex economic issues.

12. With these principles and observations of the Apex Court, let me now proceed to examine the constitutional validity of Second proviso to Rule

57G(2) of the Rules. Mr. Sriram Panchu, learned senior counsel for the petitioner, at the foremost very much relied on a decision of the Apex

Court in *Eicher Motors Limited and Another Vs. Union of India and Others Etc.*, . In this case, the validity and application of the scheme as

modified by introduction to Rule 57F (read as 57F (4-A) of the Central Excise Rules, 1944 under which credit which was lying unutilised on 16th

March, 1995 with the manufacturers, stood lapsed in the manner set out therein is questioned. Learned senior counsel has pressed into service the

following observation/conclusion of the Supreme Court; (paras 4 and 5)

4.....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 right, which had accrued to a party such as availability of a scheme, is affected and, in

particular, it loses sight of the fact that 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 assessee 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 assessee had

availed of the credit facility for payment of taxes. It is on the earlier scheme necessarily 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 assessee.

5. 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.

13. The other decision relied on by Mr. Sriram Panchu, learned senior counsel for the petitioner is in the case of Collector of Central Excise, Pune

Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., , In that case, the manufacturers purchased raw material and used the same in the manufacture of an

intermediate product and, in turn, used the intermediate product in the manufacture of the final product. The raw material and the intermediate

product were liable to excise duty and they were specified goods for the purposes of the Modvat Scheme. The assessable value of the

intermediate product for the purposes of excise duty in the instant case was admittedly to be determined on the basis of its cost which necessitated

the taking into account of the cost of the raw material. The Revenue contended that the excise duty paid by the seller on the raw material was also

to be included in the cost of the excisable goods (the intermediate product) in this case. On the other hand, the manufacturers contended

otherwise. The Supreme Court rejected the contentions of the Revenue and held, (paras 18 and 19)

18. It is clear from these rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in

the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgment thereof. It is entitled to use

the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provisions in the rules which provides

for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if

utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer

without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is,

therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit

can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken

against the excise duty on a final product manufactured on the very day that it becomes available.

19. It is, therefore, that in the case of Eicher Motors Limited and Another Vs. Union of India and Others Etc., this Court said that a credit under

the Modvat Scheme was ""as good as tax paid.

14. With the above principles, it is the claim of the petitioner that the newly added proviso extinguishes a vested right which the petitioner had for

claiming credit of duty paid on inputs. With reference to the factual details, it is the claim of the petitioners that three bills of entries, namely, (i) B/E.

H 1101593 dated 17.11.94; (ii) B/E No. H 200790 dated 8.12.94; and (iii) B/E No. HD 11001113 dated 15.11.94, the six months time period

has already elapsed on 29.6.95 and in respect of other three bills of entries, there is no time for complying with the proviso, taking into account

reasonable time required for knowledge of the proviso and reasonable time for compliance. By pointing out that the notification itself contemplates

six months as reasonable time, whereas the time left for three bills is 12 days for B/E. No. H 0101089 and B/E. No. H 0101088 dated 11.1.95

and 21 days for B/E No. H0104318 dated 20.1.95.

15. Now I shall consider the latest decision of the Apex Court in Osram Surya (P) Ltd., v. CCE, Indore, 2002(91) ECC465 : 2002 (102) ECR

515 in which the Supreme Court considered the very same second proviso to Rule 57G which is under challenge in this writ petition. In regard to

the interpretation of the second proviso to Rule 57G, two different Benches of the Customs, Excise and Gold [Control] Appellate Tribunal have

taken conflicting views consequent to which the issue came to be referred to a Larger Bench of the Tribunal which by its order dated 11.7.2000

made in Appeal No. E/273/99-NB and other connected matters took the view that after the introduction of the said proviso, a manufacturer

cannot take the Modvat credit after six months from the date of the documents specified in the first proviso to Rule 57G of the Rules. Being

aggrieved by the said order of the Tribunal, the appellants [Osram Surya (P) Limited] have preferred appeals before the Supreme Court,

questioning the correctness of that order. It is true that the appellants therein have not challenged the validity of the said proviso, accordingly the

Hon^{ble} Supreme Court proceeded on the basis that the proviso in question is a valid one. In that context, the Supreme Court considered whether

the proviso to the Rule in question is applicable to the cases of manufacturers who had received their inputs prior to the introduction of the said

proviso and are seeking to take credit in regard to the said inputs beyond the period of six months. The following conclusion of Their Lordships is

relevant: (paras 7, 8 and 9)

7. Having heard the arguments of the parties and after considering the Rule in question, we think that by introducing the limitation in the said

proviso to the Rule, the statute has not taken away any of the vested rights which had accrued to the manufacturers under the Scheme of Modvat.

That vested right continues to be in existence and what is restricted is the time within which the manufacturer has to enforce that right. In support of

their arguments, they have placed reliance on a judgment of this Court in Eicher Motors Limited and Another Vs. Union of India and Others Etc.,

wherein this Court had held that a right accrued to an assessee on the date when it paid the tax on the raw-materials or the inputs would continue

until the facility available thereto gets worked out or until those goods existed. In that background, this Court held that by Section 37 of the Act,

the authorities concerned cannot make a Rule which could take away the said right on goods manufactured prior to the date specified in the

concerned Rule. In the facts of Eicher's case (supra) it is seen that by introduction of Rule 57F(4A) to the Rules, a credit which was lying

unutilized on 16.3.1995 with the manufacturer was held to have lapsed. Therefore, that was a case wherein by introduction of the Rule a credit

which was in the account of the manufacturer was held not to be available on the coming into force of that Rule, by that the right to credit itself was

taken away, whereas in the instant case by the introduction of the second proviso to Rule 57G, the credit in the account of a manufacturer was not

taken away but only the manner and the time within which the said credit was to be taken or utilized alone was stipulated. It is to be noted at this

juncture that the substantive right has not been taken away by the introduction of the proviso to the Rule in question but a procedural restriction

was introduced which, in our opinion, is permissible in law. Therefore, in or (sic) opinion, the law laid down by this Court in Eicher's case (supra)

does not apply to the facts of these cases. This (sic, is) also the position with regard to the judgment of this Court in CCE, Pune and Ors. v. Dai

Ichi Karkaria Ltd. and Ors., 1999 (65) ECC 354 : 1997 (7) SCC 448.

8. It is vehemently argued on behalf of the appellants that in effect by introduction of this Rule, a manufacturer in whose account certain credit

existed, would be denied the right to take such credit consequently, as in the case of Eicher (supra), a manufacturer's vested right is taken away,

therefore, the Rule in question should be interpreted in such a manner that it did not apply to cases where credit in question had accrued prior to

the date of introduction of this proviso. In our opinion, this argument is not available to the appellants because none has questioned the legality or

the validity of the Rule in question, therefore, any argument which in effect questions the validity of the Rule, cannot be permitted to be raised. The

argument of the appellants that there was no time whatsoever given to some of the manufacturers to avail the credit after the introduction of the

Rule also is based on arbitrariness of the Rule, and the same also will have to be rejected on the ground that there is no challenge to the validity of

the Rule.

9. Without such a challenge, the appellants want us to interpret the Rule to mean that the Rule in question is not applicable in regard to credits

acquired by a manufacturer prior to the coming into force of the Rule. This we find difficult, because in our opinion the language of the proviso

concerned is unambiguous. It specifically states that a manufacturer cannot take credit after six months from the date of issue of any of the

documents specified in the first proviso to the said sub-rule. A plain reading of this sub-rule clearly shows that it applies to those cases where a

manufacturer is seeking to take the credit after the introduction of the Rule and to cases where the manufacturer is seeking to do so after a period

of six months from the date when the manufacturer received the inputs. This sub-rule does not operate retrospectively in the sense it does not

cancel the credit nor does it in any manner affect the rights of those persons who have already taken the credit before coming into force of the Rule

in question. It operates prospectively in regard to those manufacturers who seek to take credit after the coming into force of this Rule. Therefore,

in or (sic, our) opinion, the Tribunal was justified in holding that the Rule in question only restricts a right of a manufacturer to take the credit

beyond the stipulated period of six months under the Rule. Therefore, this appeal will have to fail.

Though the validity of the Rule has not been challenged, it is clear that the Hon"ble Supreme Court has upheld the decision arrived at by the

Tribunal holding that the rule in question only restricts a right of a manufacturer to take the credit beyond the period of six months under the Rule

and consequently dismissed the appeal. It is also clear from the above decision that even after the introduction of the Rule, the substantive right has

not been taken away, but a procedural restriction alone was introduced. This was permissible in law (vide para 7 of their order).

16. In the case of Eicher, the Supreme Court categorically relied the law that once both the RG 23A Part I and Part II are entered the credit is

available for his utilization (adjustment) for his payment of duty on his manufactured final products. Unless he takes the credit of duty in the RG

23A Part I and Part II he does not have a vested right. In the instant case, the writ petitioner never took credit till 29.6.95. As rightly contended by

the learned Senior Central Government Standing Counsel, there is a fine distinction between taking credit and utilization of the same. It is the

definite case of the Revenue that no vested right accrues before taking credit. When the procedural restriction was made on 29.6.95 any assessee

taking credit after the relevant date has to take credit on the strength of the documents dated six months prior to the date of taking credit. Since

Modvat is only a specialised benefit given to the assessee to avoid cascading effect on the duty paid on inputs, it could be impossible to monitor

the physical stock if long period is passed. The rule making authority after going through the trial and error method in the fiscal management

introduced the Rule 57G(2) to have procedural restriction so that the Modvat facility may not be misused or to put it differently used in the right

way in tune with the policy.

17. As rightly argued on the side of the Revenue, only on practical application certain defects can be found out and those defects can be cured or

filled up by the rule making authorities by making appropriate rules and Rule 57G(2) is one among such rules and they have the power u/s 37 of the

Central Excise Act. The argument of the petitioner-manufacturer that he had been discriminated does not hold any water for the reason that there

had always been only one category of Modvat availing manufacturers before and after 29.6.95. Before the date 29.6.95 all manufacturers were

allowed to take Modvat credit on prescribed documents without any time limit, whereas from 29.6.95 all manufacturers availing Modvat facility

can take the credit of duty paid on inputs based on the prescribed documents within six months from the date of issue of the document. Therefore,

as rightly argued by the Revenue, there has been no discrimination as contended by the petitioner.

18. The submission of the Revenue is that the Supreme Court of India categorically considered the aspect of taking credit and utilization of credit

as two different stages and declared the law that, utilization of accrued credit is a vested right. From the said decision, it has to be logically

concluded that without taking credit in the RG 23A Part I and Part (II) registers it will not be a vested right. In this regard, learned Senior Central

Government Standing Counsel has very much relied on a decision in *Tungabhadra Indus. Ltd. Vs. Union of India and Others*, . In this decision,

Their Lordships have considered the dictum laid down in *Eicher's* case (cited supra). The theory "vested right" has been diluted by the Apex Court.

It is clear that even a vested right can be controlled by Notifications. There may be several cases the assessee may purchase the input and use for

manufacture of exempted products for which no Modvat facility is available; hence the vested right of Modvat facility is not available for all the

inputs the moment the inputs are purchased as alleged.

19. The other claim of the petitioner is that though Section 37 of the Act contains the rule making power, it does not give a power to make a rule

with retrospective effect. According to the petitioner, the proviso cannot affect past acts, rights accrued and the operation of the earlier schemes.

The Revenue did not make a case that the proviso to Rule 57G(2) is retrospective. But only states that the six months restriction runs from 29.6.95

onwards. In the instant case the assessee belongs to the category of manufacturer taking Modvat credit after 29.6.95. Since they have taken credit

on the basis of documents which are issued more than six months back, they become ineligible. The details of date of documents and dates of

taking credit are shown below:

Sl. Bill Entry No. Date Date of taking the Date of taking credit in Last date for

No. quantity in RG 23 Part I RG 23A PartII taking credit.

1. H0101089/11.1.1995 17.8.1995 22.8.1995 10.7.1995

2. H0101088/11. 1.1995 17.8.1995 22.8.1995 10.7.1995

3. H1101593/17.11.1994 17.8.1995 22.8.1995 16.5.1995

4. H1200790/8.12.1994 17.8.1995 22.8.1995 7.6.1995

5. H0104318/20.1.1995 - 30.9.1995 19.7.1995

6. H011001113/15.11.1994 - 30.9.1995 14.5.1995

The information furnished by the Revenue shows that in respect of the above cases the documents are issued in November 94, December 94 and

January 95 and the credits for the same have been taken during August 95 and September 1995 only which was after expiry of limitation time of 6

months [Rule 57G(2)] which came into effect from 29.6.1995.

20. Though Mr. Sriram Panchu, learned senior counsel for the petitioner, has cited several decisions in support of the plea namely the constitutional

vires of proviso to Rule 57G(2), as rightly contended by the Revenue, if the entire pleading is perused, it will only show that their grievance is that

there is a vested right even before taking credit which was repelled by the Supreme Court by making comparative distinction between Eicher case

and Osram Surya case. In Eicher case, the Supreme Court held that after taking credit a vested right accrued and that right may not be interfered

or tinkered. But, subsequently even the proposition of law in Eicher case was diluted in the case of Tungabhadra Industries (cited supra) wherein

Their Lordships ruled the law that even accumulated credit is subject to restrictions. From this it follows that when the writ petitioner having not

taken the credit no vested right accrued to him at all and even in cases where credit is taken that is also subject to control and hence in Modvat

facility no vested right is there so as to challenge the constitutional vires especially because no substantive right is interfered but procedural

restriction alone is made to regulate the fiscal management after going through the trial and error methods. Accordingly, I am in agreement with the

contention of the Revenue that basically there is no violation of any fundamental right since taking credit is only a procedural right and not

substantive right.

21. It is settled law that in the case of subordinate legislation the authorities were given power to fill up the gaps when on working they found some

areas are left open. The very purpose of subordinate legislation is to only achieve this since it may not be possible for the Parliament to make

amendatory laws frequently. In the case of *The State of Bihar and Others Vs. Charusila Dasi*, , the Supreme Court has held that ""it is now well

settled that there is general presumption that the legislature does not intend to exceed its jurisdiction and it is a sound principle of construction that

the Act of a Sovereign legislature should if possible receive such an interpretation as will make it operative and not inoperative. In the case of *R.K.*

Garg v. Union of India, AIR 1981 SC 2138 the Supreme Court has ruled that every Legislation particularly in economic matters is essentially

empiric and it is based on experimentation or what one may call trial and error method it cannot anticipate all possible abuses. There may be

crudities and inequities in complicated experimental economic Legislation, but on that account alone it cannot be struck down as invalid. It is also

relevant to note that in the case of *Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd. and Ors.*, 1999 (65) ECC 354 : 1997 (7) SCC

448, in which the Supreme Court ruled the law that once the credit has taken validly the right is indefeasible and in the instant case the writ

petitioner never taken any credit and naturally he did not have any indefeasible right. In the case of *Tungabadra Industries v. Union of India* (cited

supra), the Supreme Court approved the view taken by the Karnataka High Court in the case of *Union of India Vs. Modern Mills Ltd.*, in which it

was ruled that accumulated credit could be utilized only subject to the conditions of the Notification and thus even in the case of accumulated credit

no vested right accrued. It is to be noted that the writ petitioner has not even taken the credit and in such a situation there could be no vested right

in him. As stated earlier, in economic and taxation sphere a larger latitude should be allowed. As ruled in *Osram Surya's case* (202) ECR 515 ,

the sub-rule does not operate retrospectively since it does not transfer credits nor does it in any manner affect the rights of those persons who have

already taken the credit before coming into force of the Rule in question. In other words, it operates prospectively in regard to those manufacturers

who seek to take credit after the coming into force of this Rule. In the said decision, the Supreme Court has also clarified that the rule in question

only restricts a manufacture to take the credit beyond six months.

22. Regarding alternative plea, though the learned senior counsel for the petitioner heavily relied on a decision of the Apex Court reported in AIR

1963 SC 1367, admittedly, the said decision relates to the interpretation relating to the Service Rule made in 1979 which limited the time for

correction of date of birth for Government servants within 5 years of entry into date of service. It is true that in that decision, the Supreme Court

held that it would be appropriate and in harmonious construction to hold that those Government servants already in service for 5 years before

1979 may seek correction of date of birth within a reasonable period which should not be more than 5 years. I am of the view that the said

decision is not helpful to the case on hand. As said earlier, and observed in Thungabadra Industries case (cited supra), even accumulated credit is

subject to restrictions. I have already held that by virtue of the impugned notification, no substantive right is interfered, but procedural restriction is

made by the Revenue to regulate the fiscal management after going through the trial and error methods. Further, as the impugned notification simply

allows Modvat credit till six months from the date of issue of such document, the question of retrospective operation, as raised by the petitioner,

does not arise. I am unable to sustain even the alternative relief prayed for by the petitioner.

23. In the light of what is stated above, I hold that the impugned Notification dated 29.6.95 was prima facie issued in public interest and that the

first respondent is fully empowered to issue such Notification. There is no violation of Article 14 of the Constitution of India. The impugned

notification is neither arbitrary nor discriminatory. I am satisfied that the rule making authority, after going through the trial and error method in the

fiscal management, introduced Rule 57G(2) to have procedural restrictions so that the Modvat facility may not be misused or to put it differently

used in the right way in tune with the policy. I am also satisfied that by the impugned notification, no substantive right is interfered, but procedural

restriction alone is made to regulate the fiscal management. The impugned proviso to Rule 57G(2) of the Central Excise Rules, 1944 is

constitutionally valid. The Writ Petition is liable to be dismissed; accordingly dismissed. No costs.