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**(2004) 08 SC CK 0134**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 487 Of 2003 With Slps (C) Nos. 2899-2900 Of 2004

Commissioner of C. Ex., Mumbai

APPELLANT

Vs

Mahindra and Mahindra Ltd.

RESPONDENT

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**Date of Decision :** 12-08-2004

**Acts Referred:**

**Citation :** (2005) 99 ECC 17 : (2004) 171 ELT 159 : (2005) 10 SCC 251

**Hon'ble Judges :** S. N. Variava, J;Arijit Pasayat, J

**Bench :** Division Bench

**Advocate :** Anoop G. Chaudhary, Nisha Bagchi, Sanjiv Sen, P. Parmeswaran and B. Krishna Prasad, for the Appellant; Anil B. Diwan R. Nambirajan, Alok Yadav and Rajesh Kumar, for the Respondent

**Final Decision :** Disposed Of

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## **Judgement**

1. In these matters, the Tribunal has allowed the Appeal only on the ground that credit was available to the Respondents (herein) and therefore there could be no suppression of duty. The view of the Tribunal is sought to be supported by a Judgment of this Court in the case of AMCO Batteries Limited v. Collector of Central Excise, Bangalore reported in 2003 (55) RLT 272 (S.C.) Also reported in Amco Batteries Limited, Bangalore Vs. Collector of Central Excise, Bangalore, , the relevant paragraph of which reads as follows :-

"10. In the present case also there is no material on record from which it could be inferred or established that duty of excise was not levied or paid by reason of any fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or the Rules made thereunder with intent to evade payment of duty. It was a bona fide belief on the part of the appellant that scrap and waste, which was recovered while manufacturing batteries, was exempt from levy of excise duty.

Further, appellant was entitled to get benefit of MODVAT scheme, therefore, there was no justifiable reason for the appellant to suppress any fact." (emphasis

supplied)

2. We find that in many cases, including this case, it is urged that above quoted observations lay down the principle that whenever benefit of MODVAT scheme is available then, irrespective of any other fact, there can be no suppression. The above highlighted observations do support such an interpretation,

3. We, however, find that in paragraphs 7 and 8 of this Judgment Court had concluded that there was no sale in that case. Court had concluded that the entire movement of scrap had been recorded in the regular books of accounts and proper documentation was maintained. It appears to us that the observations made in paragraph 10 set out herein above that the Appellants were entitled to get benefit of MODVAT scheme and that therefore there was no justifiable reason to suppress the fact is based on facts i.e. there was no material on record to infer or establish that excise duty had not been levied or paid by reason of any fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of any Rules. However, it is regularly urged that this authority lays down that, irrespective of facts, if a party is entitled to get benefit of a MODVAT scheme, then there can be no suppression and the above highlighted observations are capable of such an interpretation.

4. In our view the above would not be correct law. In our view whether there is suppression or not is a question to be decided on facts of each case and has nothing to do with available credit or a party having benefit of MODVAT scheme e.g. a party having credit or benefit of a MODVAT scheme may by suppression undervalue goods in order to clear a larger number of goods on his available credit. The above judgment being of two Judges it is not possible for us to take a contrary view. Judicial discipline requires that the case be referred to a Larger Bench to decide whether in every case, where a party has credit or benefit of a MODVAT scheme, it must be presumed that there can be no suppression.

5. The papers may be placed before the Hon'ble the Chief Justice of India for necessary orders.