

# **Setback to Arcelor Mittal: Supreme Court upholds Gujarat Tax Department's levy of Rs 480 cr Purchase Tax**

## **Fact of the Case**

The respondent-assessee Essar Steel Ltd is engaged in the activity of manufacture and sale of Hot Briquetted Iron (HBI) and Hot Rolled Coil (HRC) at its two units located at Hazira in Surat, Gujarat. The respondent holds registration certificate under the Gujarat Sales Tax Act, 1969 and also under the Central Sales Tax Act, 1956. The respondent made eligible investment in Unit No.1 pursuant to Resolution dated 07.05.1986 issued by the Industries, Mines and Energy Department of the Government of Gujarat. Therefore, the respondent was certified as entitled to avail incentives during the eligible period from 01.08.1990 to 31.07.2004 up to the upper monetary limit of Rs.237.59 crores.

The Government of Gujarat vide Resolution dated 26.07.1991 announced a scheme known as "The Scheme for Special Incentives to Prestigious Units 1990-95 (modified)" for attracting investments in core sector industries. Under the said scheme, a prestigious unit was eligible for incentives up to 90% of the fixed capital investment. That pursuant to the said Scheme, the respondent – Essar Steel Ltd. invested approximately Rs.5000 crores for manufacture of HRC. The said exemption was provided as per Entry 255 of the notification issued by the Government of Gujarat under Section 49(2) of the Act, 1969. That the Unit No.2 of the ESL was granted Sales Tax exemption in terms of Entry No.255(2) of the Notification dated 05.03.1992 issued under Section 49(2) of the Act, 1969 for the period from 22.02.1993 to 21.02.2007 up to a maximum monetary limit of Rs. 2050 crores.

As such the EPL, under the incentive scheme, was not eligible at all for exemption from payment of purchase tax as in fact power generating companies were put in the list of 'ineligible industries'. Therefore, by such a modus operandi, the benefit, which was not available to the EPL was made available by such transfer of raw materials by the Essar Steel Ltd. to Essar Power Limited. As observed hereinabove, there is a breach of declaration in Form No.26 also. Therefore, in the facts and circumstances of the case, the levy of penalty is justified and warranted. The Joint Commissioner, the Tribunal as well as the High Court have committed a grave error in quashing and setting aside the penalty imposed by the Assessing Officer.

## **Decision of the Case**

The division bench of Justice M.R.Shah and Justice Sanjeev Khanna held that the respondent, Essar Steel Ltd., the eligible unit was not entitled to the exemption from payment of purchase tax under the original Entry firstly, on the ground that it did not fulfil the eligibility criteria/conditions mentioned in the original Entry No.255(2) dated 05.03.1992 and secondly that there was a breach of declaration in Form No.26 furnished by the respondent – eligible unit – Essar Steel Ltd. The orders setting aside the penalty imposed by the Assessing Officer are also hereby quashed and set aside. The order passed by the Assessing Officer levying the demand of purchase tax and imposing the penalty is hereby restored.

***In a setback to Arcelor Mittal, the Supreme Court has upheld the Gujarat tax department's levy of Rs 480 crore purchase tax.***