

CASE NO.:
Transfer Petition (civil) 23-26 of 2003

PETITIONER:
BOC India Limited

RESPONDENT:
Assistant Commissioner & Ors

DATE OF JUDGMENT: 21/02/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
JUDGMENT
O R D E R

TRANSFERRED CASES NOS.23-26 OF 2003

These cases were transferred to this Court by an order dated March 13, 2003 passed in Transfer Petitions Nos.704-707 of 2002 and directed to be heard along with Civil Appeal No. 2468 of 2002 titled Indian Oxygen Ltd. vs. State of Tamil Nadu.

These cases arise from a common order dated 20th August, 1999 passed by the Tamil Nadu Taxation Special Tribunal, Chennai (for short 'the Tribunal') in which the Tribunal held that the cylinder holding charges are taxable under Section 3A of the Tamil Nadu General Sales Tax Act, 1959 (for short 'the Act').

Civil Appeal No. 2468 of 2002 with which these cases were ordered to be heard relates to the provisions of the Central Sales Tax Act, 1956 which are materially different than the provisions of the Tamil Nadu General Sales Tax Act with which we are concerned in these cases. Accordingly, these cases are segregated from Civil Appeal No. 2468 of 2002 and are being disposed of by this order.

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Heard learned counsel for the parties.

Counsel appearing for the respondent has brought to our notice that the point involved in these cases is concluded by a judgment of this Court in the case of Aggarwal Bros. vs. State of Haryana reported in (1999) 9 SCC 182, the ratio of which was applied in a recent decision in the case of State of Orissa & Another vs. Asiatic Gases Ltd. reported in (2007) 5 SCC 766.

According to the counsel for the appellant, the decisions in the cases of State of A.P.& Anr. vs. Rashtriya Ispat Nigam Ltd. reported in (2002) 3 SCC 314 and Bharat Sanchar Nigam Ltd.vs. UOI & Ors. reported in (2006) 3 SCC 1 are in conflict with the aforesaid two decisions of Aggarwal Bros and Asiatic Gases Ltd.(supra) and has urged before us to refer the matter to a larger Bench.

We do not find any conflict in the two sets of cases. The point in issue is squarely covered by the decision of this Court in case of Asiatic Gases Ltd. (supra). The facts are similar.

The provisions of Orissa Sales Tax Act are pari materia with the provisions of Tamil Nadu General Sales Tax Act.

Following the decision of this Court in the case of State of Orissa & Another vs. Asiatic Gases Ltd. reported in (2007) 5

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SCC 766, we dismiss these transferred cases leaving the parties to bear their own costs. Consequently, the writ petitions which have been transferred to this Court stand disposed of in these terms.

JUDIS