

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4306-4307 OF 2004

Commnr. Of Central Excise, Indore and Anr. Appellant(s)

VERSUS

M/s. Gas Authority of India Ltd. Respondent(s)

WITH

CIVIL APPEAL NO. 941 OF 2005 AND 3315/2008

O R D E R

In C.A.Nos. 4306-4307/2004 and 941/2005

After hearing the arguments at length made by counsel on either side, we are of the firm opinion that the Tribunal has rightly come to the conclusion that the issue involved is covered by its earlier judgment rendered in the case of Oil India Ltd.; 2002 (51) R.L.T. 1030 (CEGAT). We may only note that the appeal against the said judgment was dismissed by this Court on merits, albeit in limine.

We, thus, are of the opinion that the order of the CESTAT does not call for any interference. These appeals are accordingly dismissed.

In C.A.No. 3315/2008

This appeal is filed by the appellant/ONGC against orders dated 16.7.2007 passed by the CESTAT. By the said orders appeal of the appellant had been dismissed which was preferred against the Order-in-Original passed by the Commissioner. The issue in question was as to whether Lean Gas is exigible to excise duty. According to the appellant lean gas is nothing but natural gas and therefore attracts 'nil' duty. This contention is not accepted by the Tribunal in the impugned judgment.

We find that this very issue came up before the Tribunal in another case, namely, Oil India Ltd. vs. Commissioner of Central Excise, Shillong 2002 (148) E.L.T. 802 and was answered in favour of the assessee therein holding that lean gas is nothing but natural gas. The relevant discussion in the said judgment runs as follows:

"With effect from 1.3.86 natural gas and other gaseous hydrocarbon were classified under Heading 27.11. Notification No.179/85 was amended to include the new tariff headings of goods produced in mines and included under sub-heading 2711.21. The assessee took the stand that natural gas after extraction of LPG, remains natural gas and, therefore, lean gas is also to be classifiable under sub-heading 2711.21 and entitled to the exemption under Notification No.179/85. Show cause notice dated 27.5.91 was issued

under proviso to Section 11A of the Central Excise Act proposing to charge duty on lean gas by classifying the same under sub-heading 2711.29 of the tariff, namely, other than natural gas. The adjudicating authority confirmed the demand under order dated 15.1.92 which is under challenge in this appeal.

The appeal against that judgment was dismissed by this Court affirming the decision of the CESTAT. In view thereof, we are of the opinion that the appellant is right in contending that Lean Gas is in fact natural gas and therefore would attract nil duty.

The appeal is accordingly allowed by setting aside the impugned order passed by the Tribunal.

.....J.
(A.K.SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi;
Date: 9.4.2015.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4306-4307/2004

COMMNR. OF CENTRAL EXCISE, INDORE & ANR.

Appellant(s)

VERSUS

M/S. GAS AUTHORITY OF INDIA LTD.

Respondent(s)

(with appln. (s) for stay and office report)

WITH

C.A. No. 941/2005

(With Office Report)

C.A. No. 3315/2008

(With Office Report)

Date : 09/04/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. N.K.Kaul, ASG.
Mr. K.Radhakrishnan, Sr. Adv.
Ms. Nisha Bagchi, Adv.
Mr. Nitesh Daryanani, Adv.
Ms. Pooja Sharma, Adv.
Mr. B. Krishna Prasad, Adv.

Mr. Lakshmi Kumaran, Adv.
Mr. K. R. Sasiprabhu, Adv.
Mr. Vishnu Sharma, Adv.

For Respondent(s) Mr. V.Lakshmikumaran, Adv.
Mr. M.P.Devanath, Adv.
Mr. Vivek Sharma, Adv.
Ms. L.Charanaya, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. R.Ramachandran, Adv.
Mr. Hemant Bajaj, Adv.
Mr. Ambarish Pandey, Adv.
Mr. Anandh K., Adv.
Mr. Rajesh Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In C.A.Nos. 4306-4307/2004 and 941/2005

The appeals are dismissed in terms of the signed order.

In C.A.No. 3315/2008

The appeal is allowed in terms of the signed order.

(SUMAN WADHWA)
AR-cum-PS

(SUMAN JAIN)
COURT MASTER

Signed order is placed on the file.