

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).2982-2985/2005

THE COMMISSIONER OF CENTRAL EXCISE

APPELLANT(S)

VERSUS

LINDE (INDIA) LTD.

RESPONDENT(S)

O R D E R

C.A. Nos. 2982-2985/2005:

Being aggrieved by the order dated 08.11.2004 passed by the Customs, Excise & Service Tax Appellate Tribunal, E.Z.B., Kolkata EDM-218-221-03, the Revenue has preferred these appeals.

We have heard learned counsel Mr. Rupesh Kumar for the appellant-Revenue and learned Senior Counsel Mr. S.K. Bagaria for the respondent-assessee.

During the course of submissions, learned senior counsel brought to our notice the fact that the dispute in these appeals relates to the period from July 2000 to December 2001 i.e. about eighteen months only and subsequently from the year 2017 onwards the GST regime is in operation and the respondent-assessee is covered under the GST regime.

Learned Senior Counsel Mr. Bagaria submitted that although the dispute between the parties was adjudicated before the respective authorities and ultimately the Tribunal has held in favour of the respondent-assessee, which is assailed by the Revenue in these appeals, nevertheless, the assessee has paid the excise duty of

Rs.3,96,30,288.68 demanded under the five Show Cause Notices, impugned by the assessee, "under protest". Further learned counsel has instructions to submit that the assessee would not seek refund of the said amount. He further submitted that a sum of Rs.14,27,384.00 being facility charges demanded in the five Show Cause Notices has not been paid under protest owing to the fact that it is the contention of the assessee that there was no sale and supply of gas or any facility provided as the agreements between the assessees and the buyers were terminated even prior to the period under dispute. He submitted that the aforesaid outstanding amount cannot be contested by the Revenue in these appeals owing to low tax effect.

In the circumstances, it was the submission of learned senior counsel Mr. Bagaria that the consideration of these appeals would be wholly academic inasmuch as the Revenue is not at all prejudiced in view of the fact that the respondent-assessee is not seeking any refund of the amount paid under protest even on the premise that it would be successful in these appeals. Therefore, the appeals could be disposed of accordingly.

By way of response, learned counsel for the appellant-Revenue submitted that if the statement of learned senior counsel made on instructions of the assessee is recorded and adhered to, then, all contentions which arise in these matters may be kept open to be agitated in any other appropriate case and insofar as the period under consideration is concerned, the appeals may be concluded on the basis of the submissions made by learned senior counsel for the respondent-assessee.

We have considered the respective submissions made by learned senior counsel for the respondent-assessee as well as on behalf of the appellant-Revenue,. We find that having regard to the disputed period being July 2000 to December 2001 under consideration, in respect of which, the outstanding demands made under the five impugned Show Cause Notices have been complied with inasmuch as the amount has been paid and in view of the categorical submissions made by learned senior counsel to the fact that the assessee would not claim refund of the said amount, we find that the Revenue would not in any way be prejudiced if the submission of assessee is accepted, the appeals would not call for further consideration at the hands of this Court.

Secondly, insofar as the demand of Rs.14,27,384/- is concerned, which is towards facility charges, without going into the details of the said demand, it can be stated that on account of the low tax effect, it would not be necessary to consider the said aspect of the matter on merits in these appeals.

Consequently, these appeals are disposed of having regard to the submissions noted above, leaving all substantial questions of law, if any, which arise in these appeals to be agitated in any other case and not to be re-agitated insofar as these appeals are concerned.

It is also recorded that the Tribunal has granted relief to the respondent-assessee by setting aside the order imposing penalty and interest. The said order would not call for any interference in view of the low tax effect and the submissions made above.

Pending application(s), if any, shall stand disposed of.

.....J.  
( B.V. NAGARATHNA )

.....J.  
( S.V.N. BHATTI )

NEW DELHI;  
NOVEMBER 02, 2023

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SCIVIL APPEAL NO(S).2982-2985/2005

THE COMMISSIONER OF CENTRAL EXCISE

Appellant(s)

VERSUS

LINDE (INDIA) LTD.

Respondent(s)

WITH

C.A. No. 2363/2010 (XVI)

Date : 02-11-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE S.V.N. BHATTI

For Appellant(s) Mrs. Sheela Goel, AOR

Mr. Balbir Singh, A.S.G.  
Mr. Arijit Prasad, Sr. Adv.  
Mr. Mukesh Kumar Maroria, AOR  
Mr. Prahlad Singh, Adv.  
Mr. V.C. Bharathi, Adv.  
Ms. Gargi Khanna, Adv.  
Mr. H.R. Rao, Adv.  
Mr. Rupesh Kumar, Adv.  
Ms. Alka Agarwal, Adv.  
Ms. Gargi Khanna, Adv.  
Ms. Sarita Gautam, Adv.  
Mr. Raghvender Rao, Adv.

For Respondent(s) Mr. Mukesh Kumar Maroria, AOR

Mr. S. K. Bagaria, Sr. Adv.  
Mr. S Sukumaran, Adv.  
Mr. Anand Sukumar, AOR  
Mr. Ajit Singh, Adv.  
Mr. Bhupesh Pathak, Adv.  
Mrs. Ruche Anand, Adv.

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

**C.A.Nos.2982-2985/2005:**

These appeals are disposed of in terms of the signed order which is placed on the file.

Pending application(s), if any, shall stand disposed of.

**C.A. No. 2363/2010**

Learned counsel for the appellant(s) sought time to seek further instructions in the matter(s).

Hence, list the matter(s) on 09.11.2023 as item No.101.

(RADHA SHARMA)  
COURT MASTER (SH)

(MALEKAR NAGARAJ)  
COURT MASTER (NSH)