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**(2007) 11 JH CK 0037**  
**In the Jharkhand High Court**

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| B.O.C. India Ltd.                 | Vs | APPELLANT  |
| The State of Jharkhand and Others |    | RESPONDENT |

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**Date of Decision :** 02-11-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2008) 1 JCR 473 : (2009) 21 VST 475

**Hon'ble Judges :** M. Karpaga Vinayagam, C.J.; Amareshwar Sahay, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

M. Karpaga Vinayagam, C.J.—B.O.C India Ltd., petitioner herein, has filed this writ petition seeking for issuance of a writ of certiorari for quashing the order as contained in letter No. 2432 dated 25.7.2005 issued by the Deputy Commissioner, Commercial Taxes, Jamshedpur, respondent No. 4, directing the petitioner company to deposit an amount of Rs 1,02,45,572/- being the differential amount of 1% sales tax on sale of Oxygen Gas to Tata Iron & Steel Company, respondent No. 7 herein.

2. The short facts leading to filing of this writ petition are as follows:

(A) The petitioner is the producer and supplier of gases like oxygen gas etc. for industrial and medical use. Tata Iron & Steel Company (TISCO), respondent No. 7 herein, is one of the major purchasers and consumers of the products of the petitioner, mainly oxygen gas. On 16.3.1983, M/s. TISCO, respondent No. 7, was granted certificate u/s 13(1)(b) of the Bihar Finance Act, 1981, (hereinafter referred to as the Act) wherein it is mentioned that M/s. TISCO would be liable to pay sales tax @ 3% on the oxygen gas purchased by it. In the certificate granted to it u/s 13(1)(b) of the Act, there are two lists of goods. Annexure - A contains the raw materials on which concessional rate of tax @ 1% was to be paid. Annexure - B contains list of various goods taxable @ 3%. Oxygen gas was mentioned as goods in Annexure - B. Hence sale of oxygen gas was taxable @

3%. The certificate was issued for charging concessional rate of tax @ 3% on oxygen gas supplied to TISCO as per notification No. 1415 dated 15.12.1976. TISCO has been purchasing oxygen gas since 1983 by paying sales tax @ 3%.

(B) On 12.4.1982, the Government of Bihar notified through notification No. 604 that the sales tax on raw materials payable u/s 13(1)(b) of the Act contained in Annexure - A was fixed at 1%.

(C) At the time of issuance of certificate on 16.3.1983, raw materials were specifically mentioned in Annexure - A for which concessional rate @ 1% was to be charged. In the list of raw materials in Annexure - A, Oxygen Gas was not mentioned. Oxygen Gas is mentioned as goods in Annexure - B taxable at the concessional rate of 3% as per notification dated 15.12.1976. Thereupon the notification in S.O. No. 1096 dated 9.9.1983 was issued fixing the rate of 2% for raw materials required for manufacture and processing of the goods for sale. This is affirmed by yet another notification with modification in subsequent notification through S.O. No. 1054 dated 3.2.1986.

(D) Though the petitioner had collected sales tax @ 3% from the beginning for sale of oxygen gas to TISCO, respondent No. 7 herein, as per the certificate, on coming to know the contents of the relevant notifications dated 9.9.1983 and 3.2.1986, the petitioner felt that the liability to pay sales tax on the goods being raw material sold to TISCO would be @ 2% only and not 3%. Therefore, the petitioner sold the good to TISCO at the rate of tax at 2%, in view of the aforesaid two notifications. Since sales tax @ 3% was not collected and paid, road permits were not issued to the petitioner, Therefore, the petitioner filed writ petition before the High Court in W.P.(T) No. 1195/2004, which was disposed of by the High Court directing the respondents to issue road permits. In the meantime, respondent No. 7 also filed writ petition seeking for exemption from payment of sales tax @ 3% and also sought for direction to pay sales tax at the concessional rate of 2% under Jharkhand Industrial Policy. However, the favourable orders were not obtained from the High Court and so the respondent No. 7 moved the Hon"ble Supreme Court. The petitioner also went to Supreme Court and filed necessary application seeking for the said relief. However, both the matters were dismissed by the Supreme Court. Thereafter on 20.4.2005 and 29.6.2005, the Department issued notices to the petitioner demanding a sum of Rs. 1,02,45,572/-, being the differential amount of tax, i.e. 3% - 2%, on the ground that S.L.Ps filed by it and respondent No. 7 were dismissed and informing that on failure to pay, penal proceeding u/s 16(9) of the Act would be initiated.

(E) Again on 25.7.2005 another notice was issued against the petitioner stating that TISCO is liable to pay taxes @ 3% and not 2% as in the certificate issued to it u/s 13(1)(b) of the Act, it was specifically mentioned that the Company is liable to pay sales tax @ 3% and further directing the petitioner to pay the entire differential amount, failing which other modes of recovery will be adopted against it.

Challenging those notices, the petitioner has filed this writ petition.

3. The crux of the submissions made by the learned Senior Counsel appearing for the petitioner is as follows:

(a) The petitioner started manufacturing Oxygen Gas from 1998. The petitioner has been selling the Oxygen Gas to TISCO from 1998 onwards. Though for some years, the petitioner has collected and paid sales tax @ 3% on the sale of Oxygen Gas to TISCO in view of the certificate issued in favour of TISCO u/s 13(1)(b) of the Act, the petitioner later realized that it was a mistake of law under which 3% rate of tax was collected and paid and the correct rate of tax would be 2% on the basis of the notifications dated 9.9.1983 and 3.2.1986. Thereupon from the year 2000, the petitioner started collecting concessional rate of sales tax of 2% for sale of Oxygen Gas treating the same as raw material from TISCO. The two notifications, on the basis of which the petitioner claims payment of sales tax @ 2%, clearly used the same expression as is used in Section 13(1)(b) of the Act, namely, such rate of tax will be on the sale of raw materials required directly for use in manufacture or processing of any goods for sale. These notifications would apply to the present case because Oxygen Gas, for which concessional rate of tax is claimed, is raw material and the said raw material is required directly for use in manufacture or processing of goods for sale by TISCO.

(b) There is no dispute in the fact that Oxygen Gas is directly used for manufacture of steel products and thereby included in the List No. 4 in Annexure - B to the registration certificate issued u/s 13(1)(b) of the Act. If the said Oxygen Gas is held to be raw material, there is no difficulty in holding that those notifications would apply to Oxygen Gas, especially when it is admitted that the raw material is required directly for manufacture of steel products by TISCO. Once it is established that Oxygen Gas falls under the category of raw material and is directly used for manufacture of steel products, it is immaterial whether the same was required to be amended in the registration certificate issued u/s 13(1)(b) of the Act. Mere fact that then; was no amendment in the List as contained in Annexure - B to the registration certificate does not change its nature and character of the raw material. So when those notifications dated 9.9.1983 and 3.2.1986 are applicable to the facts of the present case, the petitioner is liable to pay only 2% sales tax and not 3%. Therefore, demand for differential amount is not valid in law.

The learned Counsel for the respondent No. 7 also made submissions in support of the claim made by the petitioner by adopting the arguments advanced on his behalf.

4. The reply given by the learned Counsel appearing for the State is as follows:

(i) The petitioner had already raised the same issue under Jharkhand Industrial Policy, 2001 and the issues raised there were rejected by the Department as well as by the Supreme Court. Hence, the petitioner cannot raise such a dispute again

on the same issue. Section 13(1)(b) of the Act authorizes the registered dealer to purchase goods required by him directly for use in the manufacture or processing of any goods for sale at the concessional rate of tax to be notified by the State Government in respect of goods for which purchaser has been granted a certificate by the prescribed authority in- the prescribed manner. If any claim for concessional rate is made, the purchasing dealer is required to furnish a written declaration to the selling dealer that he is entitled to concessional rate. Thereafter the prescribed authority may require the selling dealer to satisfy himself that the sale was made to the purchaser as per the certificate granted u/s 13(1)(b) of the Act. Therefore, the selling dealer before realizing the tax at concessional rate u/s 13(1)(b) of the Act is required to satisfy itself that the goods sold by it to the purchasing dealer is mentioned in the certificate granted to the purchasing dealer by the prescribed authority. The selling dealer cannot decide that the goods sold by it to the purchasing dealer will be used by it as raw material. For this reason, the purchasing dealer is required to apply before the prescribed authority for including a particular goods in the category of raw materials after producing relevant materials before the prescribed authority to satisfy itself that a particular goods is required by it for manufacture as raw materials or otherwise. After making enquiry, the prescribed authority may allow the claim and include the goods as raw material in the certificate issued u/s 13(1)(b) of the Act by making necessary modification

(ii) In this case, admittedly Oxygen Gas has been mentioned in Annexure - B, which is the list of goods taxable @ 3%. Therefore, TISCO is authorized to purchase Oxygen Gas from the petitioner only at concessional rate of 3% and not at the rate of 2%, claiming that the said Oxygen Gas is being used as raw materials. Whether it is a raw material or not is to be decided by the prescribed authority and after such a decision, the required certificate can be issued. So far as the petitioner, the selling dealer, is concerned, it is bound by the certificate granted to TISCO u/s 13(1)(b) of the Act. The purchasing dealer or the selling dealer cannot decide the issue on their own. Further, whether Oxygen Gas is a raw material or not, cannot be decided by the Court and the same has to be decided by the prescribed authority on the basis of the materials placed before it. In the absence of any claim for modification of the certificate issued by the prescribed authority, the selling dealer cannot assume the jurisdiction of the prescribed authority and hold that the purchasing dealer is liable to pay sales tax only @ 2% and not 3%, despite the certificate issued u/s 13(1)(b) of the Act in favour of the purchasing dealer specifically mentions that Oxygen Gas is listed in Annexure - B not as a raw material but as goods. Therefore, the demand notices are justified.

5. The learned Counsel for the parties on either side cited a number of authorities. The authorities cited by the learned Senior Counsel for the petitioner are as follows:

Share Medical Care Vs. Union of India (UOI) and Others,

77 STC 282 (SC) (Collector of Central Excise, New Delhi v. Ballarpur Industries Ltd.)

125 STC 212 (SC) (Commissioner Of Sales Tax v. Rewa Coal Fields Ltd. and Anr. )

96 STC 211 (SC) (Tata Engineering & Locomotive Company Ltd. v. State of Bihar and Anr. )

137 STC 93 (SC) (Tata Iron & Steel Co. Ltd. v. State of Jharkhand and Ors.)

140 STC 284 (SC) (Tata Iron & Steel Co. Ltd. v. State of Jharkhand and Ors.)

137 STC 537(Pat) (Reckitt Benckiser (India) Ltd. v. State of Bihar and Ors.)

The authority cited by the learned Counsel appearing for the respondent State is as follows:

Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon,

6. We have heard learned Senior Counsel appearing for the petitioner and learned Counsel appearing for the respondents. We have also given our anxious consideration to the rival contentions.

7. Before deciding the issue in question, we have to bear in mind the following factors:

(A) The certificate u/s 13(1)(b) of the Act was issued to TISCO, 7th respondent herein, on 16.3.1983. In that certificate, the prescribed authority mentioned Oxygen Gas in Annexure - B, which contains list of goods at the concessional rate of 3%. Annexure - A contains the list of raw materials, Admittedly Oxygen Gas was not mentioned as a raw material. As per the said certificate, TISCO has been paying sales tax @ 3% for purchase of Oxygen Gas from the selling dealer. It never claimed that Oxygen Gas was being used as raw material and therefore, it must be mentioned in Annexure - A and not in Annexure - B.

(B) From the year 2000, petitioner-selling dealer started collecting sales tax only 2% for sale of Oxygen Gas from TISCO and paying the same to the authorities. When it was questioned by the authorities, the petitioner replied that TISCO has already applied for grant of exemption certificate under Clause 28.1 of Jharkhand Industrial Policy, 2001, under which a unit, having exemption certificate, is entitled to get set off the tax paid on raw materials. Admittedly the aforesaid claim by TISCO from the Department was rejected; thereupon TISCO filed writ petition before Jharkhand High Court in W.P (T) No. 2003/2003 and ultimately the same was dismissed. Thereupon TISCO filed S.L.P before Supreme Court and the same was also dismissed. Similarly, petitioner also filed writ petition before Jharkhand High Court in W.P.(T) No. 1195/2004 and thereafter they filed petition before Supreme Court seeking for the said relief and the said applications were also dismissed. Only thereafter the demand notices in question were issued.

(C) There is no dispute in the fact that either in the High Court or in the Supreme

Court, both TISCO as well as the petitioner never claimed that TISCO is entitled to purchase Oxygen Gas only at the concessional rate of 2% on the ground that Oxygen Gas is used by it as a raw material on the strength of the notifications dated 9.9.1983 and 3.2.1986. Similarly they never approached before the prescribed authority raising the said point. Only after receipt of the demand notices, the petitioner claims that TISCO is liable to pay tax @ 2% and not @ 3% in the light of the notifications dated 9.9.1983 and 3.2.1986.

(D) u/s 13(1)(b) of the Act, the registered purchasing dealer can purchase goods required by him directly for the use in manufacture of any goods for sale at concessional rate of tax to be notified by the State Government. For this, the prescribed authority has to issue certificate u/s 13(1)(b) of the Act in the prescribed manner relating to the goods purchased by the registered purchasing dealer from the selling dealer.

(E) Since two rates of tax have been prescribed by the State Government u/s 13(1)(b) of the Act, the prescribed authority is required to mention the nature of goods which the purchasing dealer can purchase at the concessional rate of 2% and other goods which the purchasing dealer can purchase at the concessional rate of 3%. One rate of tax is in relation to the raw materials and another rate of tax is in relation to the goods which are directly used for manufacture. Before grant of certificate u/s 13(1)(b) of the Act, the prescribed authority has to follow the procedures as contemplated under rule 6 of the Bihar Sales Tax Rules, 1983. As per the procedures, the prescribed authority has to make an enquiry to satisfy itself with reference to the nature of goods and to find out whether the goods is a raw material or other goods and only after being satisfied, it will grant a certificate to the purchasing dealer u/s 13(1)(b) of the Act.

(F) Therefore, there are two lists of goods. Annexure - A deals with the raw material; and Annexure - B deals with the goods. In order to know whether a particular goods will come under Annexure - A or B, the prescribed authority has to satisfy itself whether the goods required by the purchasing dealer is a raw material or other goods directly used for manufacture. Only after verification, the certificate could be issued by the authorities. Further it must be specifically mentioned in the certificate whether a particular goods purchased by the purchasing dealer is raw material under Annexure -A or goods under Annexure - B.

(G) Therefore, the selling dealer before collecting tax from the purchasing dealer at the concessional rate is bound to satisfy himself that the goods sold by him to the purchasing dealer is mentioned in the certificate granted to the purchasing dealer by the prescribed authority in Annexure - A or in Annexure - 8.

(H) Section 13(1)(b) of the Act would indicate four aspects - (i) the purchasing dealer can purchase goods required by him directly for use in manufacture or for processing of goods for sale in respect of which purchasing dealer has been granted a certificate by the prescribed authority in the prescribed manner; (2)

the concessional rate of tax leviable u/s 13(1)(b) of the Act is to be notified by the State Government; (iii) u/s 13(2)(i) of the Act, purchasing dealer is required to furnish a declaration to the selling dealer and (iv) the prescribed authority may require the selling dealer to satisfy himself that the sale was made to the purchasing dealer on the basis of the certificate granted to him u/s 13(1)(b) of the Act.

7. In the light of the above factors, let us go into the issue in question.

(i) According to the learned Senior Counsel appearing for the petitioner, the Oxygen Gas is used as raw material by TISCO for manufacture of steel products and therefore, the petitioner is liable to collect sales tax only @ 2% and not 3% on the basis of the notifications dated 9.9.1983 and 3.2.1986. On the other hand, the learned Counsel appearing for the respondents submits that the question whether Oxygen Gas is being used as raw material or not cannot be decided by the Court in the present writ petition and the same could be decided only by the prescribed authority on being approached either by the purchasing dealer or by the selling dealer.

(ii) It cannot be debated that both purchasing dealer and selling dealer are bound by the certificate granted to the purchasing dealer u/s 13(1)(b) of the Act. It also cannot be disputed that Oxygen Gas, which is sold by the selling dealer to the purchasing dealer, has been treated as goods mentioned at serial No. 4 of Annexure - B as one of the goods taxable @ 3% and not treated as raw materials mentioned in Annexure - A. Similarly, there is no dispute in the fact that the selling dealer from the beginning upto 2000 has been collecting 3% sales tax from the purchasing dealer on sale of Oxygen Gas treating as goods and not as a raw material and collecting and depositing the same as per the certificate issued In favour of the purchasing dealer.

(iii) It is not the case of the purchasing dealer that at the time of issuance of certificate on 16.3.1983, it was pleaded before the prescribed authority that Oxygen Gas was only purchased as raw material and therefore, it must be mentioned in Annexure -- A and not in Annexure - B. Admittedly even thereafter no steps have been taken by the purchasing dealer pleading before the prescribed authority for modification of the certificate dated 16.3.1983 to the effect that Oxygen Gas is being used as raw material and as such, the purchasing dealer is liable to pay sales tax only @ 2%.

(iv) If the selling dealer or purchasing dealer realized that Oxygen Gas is to be treated as raw material and tax is to be collected only at the concessional rate of 2%, then the selling dealer or purchasing dealer is required to plead before the prescribed authority for inclusion of Oxygen Gas in the category of raw materials in Annexure - A by producing the relevant materials to satisfy the authority that Oxygen Gas is purchased by the purchasing dealer for manufacture of steel products only as raw materials.

(v) Only at the instance of the parties, namely, the purchasing dealer or selling

dealer, making the said plea, the prescribed authority will conduct enquiry and if it is satisfied that on the basis of materials produced before it by the parties that it is used as raw material may allow the claim and include the goods as raw material in Annexure - A in the certificate by making necessary modification in the certificate granted u/s 13(1)(b) of the Act. Admittedly, this has never been done by either of the parties. There is no reason whatsoever as to why they did not do the same. If that be so, how could the selling dealer, instead of adopting the required procedure, usurp the jurisdiction of the prescribed authority and form an opinion on its own that the purchasing dealer would be liable to pay only 2% sales tax and not 3% sales tax? Admittedly, there is no provision permitting the parties to form their own opinion without approaching the prescribed authority.

(vi) As indicated above, in the earlier writ petitions filed by the selling dealer or the purchasing dealer seeking for payment of concessional rate of sales tax @ 2%, both of them have never raised the issue that Oxygen Gas is a raw material, which is to be mentioned in Annexure - A and not in Annexure- B on the basis of the notifications dated 9.9.1983 and 3.2.1986, On the other hand, the earlier stand taken by the parties before the High Court as well as Supreme Court is that TISCO is entitled to avail of the benefit of industrial Policy of Jharkhand, 2001 and as such, they are entitled to claim concessional rate of tax @ 2%. Admittedly the said writ petition was ultimately dismissed by the Supreme Court holding that TISCO is not entitled to the said benefit. Thus, it is clear that both the dealers, namely, the purchasing dealer and selling dealer, having failed to avail the said benefit of concessional rate of tax @ 2% under Jharkhand Industrial Policy, 2001, have now claimed before this High Court that they are entitled to avail the benefit of the concessional rate of tax @ 2% under the notifications dated 9.9.1983 and 3.2.1986, since Oxygen Gas is a raw material.

(vii) As correctly pointed out by the learned Counsel appearing for the respondents, the prescribed authority, at the time of issuance of the certificate in favour of TISCO, decided and mentioned Oxygen Gas; as goods in Annexure - B. If the purchasing dealer wants to make out a new claim that Oxygen Gas is a raw material and the same is to be mentioned in Annexure - A in order to avail the benefit under notifications, he ought to have approached the prescribed authority who is competent to consider the claim of the purchasing dealer and to find out whether Oxygen Gas is a raw material and whether notifications would apply in this case on the basis of the materials produced. Admittedly, either of the parties never approached the prescribed authority

(viii) As admitted by both the petitioner and respondent No. 7, both the selling dealer and our chasing dealer have been paying sales tax @ 3% from the beginning on sale of Oxygen Gas, treating as goods as per Annexure - B. It is also admitted that only from the year 2000, the petitioner started collecting sales tax on sale of Oxygen Gas @ 2% on the basis of his own interpretation of the notifications. As indicated above, this point has never been raised either before

the prescribed authority or in the earlier writ petitions in the High Court or in the Supreme Court. On the other hand, as mentioned above, the petitioner has raised this point for the first time before this Court, that too on receipt of the demand notices consequent upon the dismissal of S.L.P in the Supreme Court.

(ix) Even according to the petitioner, It is collecting tax @ 3% from the year 1998 on the basis of the rates mentioned in the certificate, treating Oxygen Gas as goods. Only, later on, in the year 2000, it realized the mistake of law under which sales tax was collected @ 3% and correct rate should be 2% in pursuance of the notifications dated 9.9.1983 and 3.2.1988 and thereupon the petitioner started collecting concessional rate of sales tax @ 2%. This submission regarding belated realization is quite strange. If the petitioner had actually felt that it was a mistake, he should have immediately taken steps to approach the prescribed authority seeking for modification. Similarly if he felt that by mistake, he collected sales tax @ 3%, he should have taken steps to get back the excess amount paid to the authorities. This was not done. Similarly the purchasing dealer also had not made any attempt before the prescribed authority to claim that he is liable to pay sales tax @ 2% in pursuance of the notifications dated 9.9.1983 and 3.2.1986 as Oxygen Gas is a raw material. Why? There is no explanation whatsoever.

(x) Yet another important aspect is to be noticed in this context. Even before filing of the earlier writ petition before the High Court and Supreme Court by the petitioner and 7th respondent, notices were issued by the prescribed authority to the selling dealer asking him as to why he was collecting sales tax @ 2% instead of 3% from the purchasing dealer. In its reply, the petitioner never said that it started collecting sales tax @ 2% in pursuance of the notifications dated 9.9.1983 and 3.2.1986. On the other hand, the petitioner sent a reply to the effect that since TISCO has already claimed exemption before the authorities concerned in pursuance of Jharkhand Industrial Policy, 2001, claiming that he is entitled to pay sales tax @ 2%, the petitioner started collecting 2% sales tax on sale of Oxygen Gas from TISCO.

(xi) This shows that the petitioner has now taken altogether a different stand to the effect that Oxygen Gas is being used by TISCO as raw material and as such, TISCO is entitled to the benefit of the two notifications dated 9.9.1983 and 3.2.1986. As mentioned above, the petitioner is not the competent authority to decide about the same as per the provision. As a selling dealer, the petitioner has to merely collect sales tax from the purchasing dealer as per the certificate issued to the purchasing dealer and deposit the same with the Government. Instead of doing so, the petitioner got himself involved in the present litigation, which will never be beneficial to the petitioner. On the other hand, TISCO alone will be the beneficiary. As indicated above, TISCO has never disputed the certificate of registration issued u/s 13(1)(b) of the Act, nor made any application for amendment for inclusion of Oxygen Gas as raw material in annexure - A. In the absence of any such dispute between TISCO and the

prescribed authority, it is quite strange to notice the conduct of the petitioner, who is the selling dealer and who has to merely collect the sales tax from the purchasing dealer and to deposit the same with the Government, has approached this Court to raise the issue by filing writ petition under Article 226 of the Constitution of India.

(xii) To put it briefly - the question whether Oxygen Gas should find place in the list of raw materials or not can be raised only by the beneficiary namely TISCO and not by the selling dealer. Similarly, the said question can be decided only by the prescribed authority on the application made by TISCO and not by the selling dealer. According to the Department, Oxygen Gas is not a raw material directly required for manufacture which is apparent from the certificate of registration issued to TISCO u/s 13(1)(b) of the Act. The ceiling rate for goods directly required for manufacture is 3% as contained in S.O. No. 14195 dated 15.12.1976 which is still in force. As indicated above, Oxygen Gas is not used as raw material for TISCO as per its registration certificate. Further perusal of the registration certificate makes it clear that from time to time, several amendments have been made in the certificate as per the applications submitted by TISCO and it is renewed and valid as on date. Even though TISCO held enough opportunity to have the Oxygen Gas listed in Annexure - A, as a raw material, by establishing the same, TISCO for the best reasons known to it had not taken steps in this regard to include Oxygen Gas in Annexure - A. On the other hand, it has been paying the tax continuously at the concessional rate of 3% for a long number of years, treating as goods mentioned in Annexure - B.

(x) As indicated above, only respondent No. 7, TISCO, alone is competent to explain to the prescribed authority as to how Oxygen Gas, which was all along treated and mentioned as goods as per Annexure - B, has suddenly become raw material. In the same way, the prescribed authority alone is competent to decide about the same, Hence, the petitioner's claim, on the basis of the notifications referred to above, which is quite contrary to the earlier stand, is not sustainable under law. We think it fit not to refer to any of the authorities cited by both the parties as those decisions would be of no use as the specific issue in question has not been dealt with therein.

8. In view of the discussions made in the preceding paragraphs, we conclude as follows:

As per the registration certificate issued u/s 13(1)(b) of the Act, Oxygen Gas was treated as goods as mentioned in Annexure - B. Endorsing the same, the purchasing dealer has been paying the tax at the concessional rate of 3% for a long number of years treating Oxygen Gas as goods. The selling dealer is bound by the said certificate. Accordingly, he has been collecting sales tax @ 3% from the beginning till 2000 and thereafter he started collecting sales tax @ 2% treating the same as raw material. Neither the purchasing dealer, nor the selling dealer can decide the nature of the goods on their own, unless the certificate is modified by the prescribed authority to that effect, treating Oxygen Gas as raw

material, on being approached by purchasing dealer. The purchasing dealer has to pay sales tax @ 3% treating Oxygen Gas as goods mentioned in Annexure - B and the selling dealer has to merely collect and deposit the same as per the certificate with the Government. Unless it is established before the prescribed authority, which, in turn, will decide the nature of the goods, the purchasing dealer cannot claim payment of sales tax at the concessional rate of 2% treating Oxygen Gas as raw material under the garb of the two notifications dated 9.9.1983 and 3.2.1986. Therefore, demand notices are perfectly justified.

9. Thus, there is no merit in the contentions urged by the learned Senior Counsel appearing for the petitioner as well as learned Counsel appearing for respondent No. 7. This petition is dismissed. There is no order as to costs.

Amareshwar Sahay, J.

10. I agree.