(2015) 08 JH CK 0051

In the Jharkhand High Court

Case No : W.P. (T) Nos. 1929, 1939, 1940 and 1941 of 2015 and I.A. No. 3604 of 2015 in WP(T) No. 1929/15, I.A. No. 3603 of 2015 in WP(T) No. 1939/15, I.A. No. 3605 of 2015 in WP(T) No. 1940/15 and I.A. No. 3602 of 2015 in WP(T) No. 1941/15

Linde India Limited APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Citation : (2016) 1 AJR 193 : (2016) 1 JLJR 326

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : A.R. Choudhary, Advocate, for the Appellant; Rajesh Shanker, G.A., for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.

W.P.(T) No. 1929 of 2015

1. This writ petition has been preferred challenging the judgment and order dated 30.3.2015 passed by the Commercial Taxes Tribunal, Ranchi in Revision Case No. 132 of 2013 for the period 2003-04 as well as Appellate order passed by the Joint Commissioner, Commercial Taxes (Appeal), Jamshedpur dated 7.6.2013 and also the order dated 1.10.2011, passed by the Deputy Commissioner of Commercial Taxes, Jamshedpur Circle, Jamshedpur. This petitioner has also challenged the Demand Notice dated 10.10.2011, issued by the Deputy Commissioner, Commercial Taxes, Jamshedpur Circle, Jamshedpur, which is a consequential order of the earlier three orders, passed by the Assessing officer, Appellate authority and Revisional Authority. The petitioner is also seeking a declaration that the Oxygen Gas used by Tata Steel Ltd., which is being supplied by this petitioner for the purposes of manufacturing of Steel through Basic Oxygen Steel Method (a method of steel making) is a raw material, required directly for use in manufacturing or processing of Steel.

2. FACTUAL MATRIX:

"This petitioner who was previously known as B.O.C. India Ltd. is supplying oxygen gas to respondent No. 11- M/s. Tata Steel Ltd. This oxygen gas, if used as a material in manufacturing process of Steel, the petitioner has to pay 3% of Sales Tax on the sale price of oxygen and if this oxygen which is sold by this petitioner to M/s. Tata Steel Ltd. is used as one of the raw materials in manufacturing process of Steel then the rate of Sales Tax will be 2% of the sale price of oxygen and this was the bone of contention in the previous round of litigation, which has reached upto Hon''ble the Supreme Court and now in this writ petition the issue involved is whether oxygen sold by this petitioner to respondent No. 11- Tata Steel Ltd. is used as a material in manufacturing process of steel or is used as a raw material in manufacturing process of Steel.

? In the previous round of litigation this very petitioner which was known as B.O.C. India Ltd., at the relevant time in the year 2008 preferred a writ petition bearing W.P.(T) No. 4693 of 2005.

? In the said writ petition assessment order passed by the Assessing Officer under Bihar Finance Act, 1981 was challenged on the basis of certain notifications, which are as under:

a. Notification dated 15th December, 1976;

b. Notification bearing SO No. 604 dated 12th April, 1982

c. Notification bearing SO No. 1096 dated 9.9.1983 and

d. Notification bearing SO No. 154 dated 3rd February, 1986.

? Declaration was made by respondent No. 11-M/s. Tata Steel Ltd. under Rule 6 of the Bihar Sales Tax Rules, 1983, annexed as Annexure A and B. In Annexure A the goods which are used as a raw material in manufacturing process of Steel through Basic Oxygen Steel Method (hereinafter referred to as "BOS method") have been mentioned whereas in Annexure B other materials which are used in manufacturing process of Steel through BOS method have been mentioned. In an application preferred by respondent No. 11-M/s. Tata Steel Ltd. having a declaration as required under Rule 6 of Bihar Sales Tax Rules, 1983, oxygen gas is referred in Annexure B. This declaration has been read and re-read by the counsels for both sides, repeatedly.

? In earlier round of litigation a writ petition was preferred by this petitioner in the name and style of M/s. B.O.C. India Ltd., which was dismissed by this Hon''ble Court vide order dated 2nd November, 2007, as reported in B.O.C. India Ltd. Vs. The State of Jharkhand and Others, , mainly on the following grounds:

(a) This petitioner has no locus standi;

(b) The goods viz. Oxygen Gas, as referred at Annexure B to the declaration, which is annexed with an application preferred by M/s. Tata Steel Ltd. under Rule

6 of Bihar Sales Tax Rules, 1983 reveals that Oxygen is not a raw material for manufacturing of Steel, through BOS method, but, the oxygen which is mentioned in Annexure B, simply states that it is one of the materials or goods, used in steel manufacturing process.

? The aforesaid decision was challenged by the petitioner before Hon''ble Supreme Court in Civil Appeal No. 1538 of 2009. Similarly Tata Steel Ltd. had also challenged the aforesaid decision before the Hon''ble Supreme Court in Civil Appeal No. 1540 of 2009.Both these Appeals were decided by the Hon''ble Supreme Court vide common order dated 5.3.2009. So far as locus standi is concerned, it is permitted to this petitioner as per Para Nos. 20-21 to the judgment reported in BOC India Ltd. Vs. State of Jharkhand and Others, and so far as 2nd point on which the writ petition was dismissed by this Court, which is reported in B.O.C. India Ltd. Vs. The State of Jharkhand and Others, , it has been pointed out by Hon''ble the Supreme Court at Paragraph No. 33 that whether Oxygen is a raw material or not in manufacturing process of Steel, shall be decided by the Assessing Authority on the basis of materials on record. It has been mentioned in Para 28 of the aforesaid decision of Hon''ble the Supreme Court that the Assessing authority shall visit the place of manufacturing and see whether Oxygen is used as raw material essentially for manufacturing of the Steel or not?

? Keeping in mind Para 28 of the decision of the Hon''ble Supreme Court, a Committee was constituted by the Assessing Officer, who visited the place where Steel is manufactured by using oxygen and the members of the said Committee were as under:

(a) Dr. Bhawani Shankar, Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur;

(b) Sri Ranjan Kumar Sinha, Deputy Commissioner, Commercial Taxes, Jamshedpur Circle, Jamshedpur;

(c) Sri Yugual Kumar Chanani, Assistant Commissioner, Commercial Taxes, Jamshedpur Circle, Jamshedpur;

(d) Sri Ramdeo Prasad Singh, Assistant Commissioner, Commercial Taxes, Jamshedpur, Circle, Jamshedpur;

(e) Sri Rajesh Kumar, Commercial Taxes Officer, Urban Circle, Jamshedpur; and

(f) Sri Ratan Lal Gupta, Deputy Commissioner, Commercial Taxes, Jamshedpur Circle, Jamshedpur.

? Aforesaid Committee of six high ranking officers of the State visited the place of manufacturing of Steel at Tata Steel Ltd., Jamshedpur on 4.2.2010, who has given its report, in which the use of Oxygen made by respondent No. 11 for manufacturing of Steel through BOS method is mentioned.

? Before the Assessing Officer, materials have been placed, including the visit report, given by the aforesaid Committee and detailed manufacturing process of Steel has also been pointed out by this petitioner as well as by respondent No. 11. Several Text Books have also been referred and the detailed list of documents given by this petitioner is annexed as Annexure 23 to the supplementary affidavit, filed on behalf of this petitioner dated 7th May, 2015 and thereafter, the Assessing Officer-Deputy Commissioner of Commercial Taxes, Jamshedpur Circle, Jamshedpur has passed a detailed speaking order dated 1.10.2011, holding that oxygen gas sold by this petitioner is not used by respondent No. 11 as a ''raw material'' for manufacturing of Steel through BOS method, but, it is used merely as a ''refining agent '' to reduce carbon. Heavy reliance has been placed by this Assessing Officer upon the detailed report, given by the Committee comprising of six officers, as stated herein above, who visited the manufacturing place on 4.2.2010 (Annexure A to the affidavit filed by the respondent-State)

? The order passed by the Assessing Officer-Deputy Commissioner of Commercial Taxes, Jamshedpur, Circle, Jamshedpur is under Section 17 of Bihar Finance Act, 1981.

? Against the aforesaid order, this petitioner has preferred an Appeal U/s 45 of the Bihar Finance Act, 1981 before the Joint Commissioner of Commercial Taxes (Appeals), Jamshedpur Division, Jamshedpur bearing Appeal No. J.R. VATA 70 of 2011-12, which was dismissed by the Appellate Authority vide order dated 7.6.2013.

? Being aggrieved and dissatisfied with the appellate order, this petitioner has preferred a Revision Application Under Section 46of the Bihar Finance Act, 1981 before the Commercial Taxes Tribunal, Ranchi being Revision Case No. 132 of 2013, which also was dismissed vide order dated 30.3.2015.

? Being aggrieved with all the three orders i.e. the orders passed by Assessing Officer, Appellate Authority and Revisional Authority, the petitioner has preferred the present writ petition with a further prayer to declare that Oxygen gas supplied by the petitioner and used by respondent No. 11 after purchasing the same, is a basic raw material, used in manufacturing of steel through BOS method and, hence, the petitioner is liable to make payment of Sales Tax @ 2 % of the sale price and not @ 3 % of the sale price of Oxygen.

? In financial year 2003-04, oxygen worth Rs. 129,38,04612/- (One hundred twenty nine crores, thirty eight lacs, four thousand six hundred and twelve) has been sold by this petitioner and purchased by respondent No. 11 for manufacturing of steel through BOS method."

3. ARGUMENTS CANVASSED BY COUNSEL FOR THE PETITIONER:

? "Counsel for the petitioner submits that the petitioner (who was formerly known as M/s. B.O.C. India Ltd.) has been selling oxygen gas to respondent No. 11-M/s. Tata Steel Ltd., which uses the same as. essential raw material for manufacturing of steel through B.O.S. method. This aspect of the matter has not been properly appreciated by the authorities concerned under the Bihar Finance Act, 1981.

? In the earlier round of litigation the petition preferred by the petitioner in the name and style of M/s. B.O.C. India Ltd., was dismissed on the ground that this petitioner had no locus standi. The locus standi has been approved by Hon''ble the Supreme Court, as per reported decision in the case of BOC India Ltd. Vs. State of Jharkhand and Others, , especially Para 20 and 21 thereof. Therefore, this petition has been preferred by this petitioner challenging the orders, passed by Assessing Officer, Appellate Authority and the Revisional Authority-Commercial Taxes, Tribunal, Ranchi.

? The Hon''ble Supreme Court had remanded the matter for fresh decision by the Assessing Officer after visiting the place of manufacturing of steel. Pursuant thereto, a Committee was constituted by the Assessing Officer and the said committee on perusal of BOS method used by respondent No. 11 for manufacturing of steel, has narrated in detail, in its report, the manufacturing process. Learned counsel for the petitioner submitted that even as per the report of the said committee, oxygen is used as basic raw material without which steel cannot be manufactured.

? It is submitted by counsel for the petitioner in detail that what is the manufacturing process of steel and what is the use of Oxygen in that process has also been mentioned in the report given by the Committee constituted by Assessing Officer who had visited the place of manufacturing. The detailed report is given by the Committee dated 26.4.2010. The petitioner has sold oxygen worth Rs. 129,38,04612/- (One hundred twenty nine crores, thirty eight lacs, four thousand six hundred and twelve) to respondent No. 11 in the year 2003-04. Several Annexures and several materials have been referred to by the counsel for the petitioner, including Text Books, which speak about the use of Oxygen in manufacturing of steel through BOS method and it is submitted by counsel for the petitioner that looking to the notification dated 3.2.1986 bearing SO No. 154, if the Oxygen is used as a raw material directly in the manufacturing process of the steel through BOS method, the petitioner is liable to make payment of only 2% of the Sales Tax and not @ 3%. This aspect of the matter has not been properly appreciated by the authorities under the Bihar Finance Act, 1981. It is submitted by counsel for the petitioner that the respondent-authorities may replace the Oxygen, but, in that case the steel will not be manufactured. Steel is manufactured by respondent No. 11 through BOS method, in which use of oxygen cannot be replaced. This fact reveals that Oxygen is a basic raw material used in manufacturing process of steel. Oxygen cannot be replaced by any other element from the whole periodic table. It is further submitted by counsel for the petitioner that there may be a manufacturing process, stagewise i.e. initially oxygen might not have been added in the Furnace, but, there may be an addition of oxygen at a later stage of manufacturing process. Counsel for the petitioner has explained in detail the manufacturing process of steel through BOS method and it is submitted that a stage will come when Pig Iron will be manufactured, which is having approximately 4% of carbon and now the oxygen is being added to remove the carbon so that A+B=C (Pig iron+ Oxygen Gas=Steel) (manufacturing process through BOS method). It is submitted by counsel for the petitioner that every manufacturing is not over in one reaction. There may be chain of reactions in manufacturing process. There can be further addition of the basic raw material in second reaction or third reaction also. Thus, C+D=E and after E is evolved in manufacturing process, there may be a need of addition of further raw material. This is how in the last chain of reaction i.e. in Pig Iron, oxygen gas is added which gives final product i.e. steel. In fact, Oxygen is being added through high pressure injectors. Pressure etc. has to be maintained so as to penetrate Pig Iron which is, in fact, in a semi-solid state, having approximately 4% of carbon. This Oxygen injected with a heavy pressure injector will penetrate Pig Iron, which will remove the carbon contents and ultimately steel will be manufactured after chemical reaction with carbon and in this process oxygen gas will be converted into Carbon Monoxide (CO) and/or Carbon Dioxide (CO2). It is submitted by counsel for the petitioner that merely because oxygen gas is injected in last chain reaction, it cannot be labelled as "refining agent"-a terminology used in the report given by the aforesaid Committee and the terminology as used by all the authorities under the Bihar Finance Act, 1981. Counsel for the petitioner submitted that whatever may be the nomenclature given by the respondents to the oxygen, but, the fact remains that it is inevitably used in the manufacturing process of steel, and, therefore, it is a basic raw material, without usage of which, desired end product-"steel" cannot be manufactured. Oxygen is such a basic raw material that no steel can be manufactured without usage thereof through B.O.S. method. Pig Iron having approximately 4% of Carbon content has to have a chemical reaction with oxygen gas, in the B.O.S. method and, therefore, oxygen gas is injected with high pressure injectors. The Government of Jharkhand cannot replace oxygen with any other element from the whole periodic table and the Government cannot suggest that if another method of manufacturing of steel would have been followed, oxygen would not have been needed, at all. This is not permissible in the eyes of law, because the selection of end-product and selection of manufacturing process thereof is left at the discretion of the manufacturer and, therefore, if the steel is to be manufactured through BOS method only, then Oxygen is a basic raw material- without which never a Pig Iron can be converted into steel. Even if oxygen gas is added in the last chain of reaction, that does not mean that oxygen is not a basic raw-material. It may happen that initially all the raw materials might not have been used in manufacturing process. Raw materials can be added stage-wise in manufacturing process also. Initially there may be an addition of hematite (it is excavated from the earth). Steel manufacturing process is a very complex process. In first stage there may be addition of certain raw materials and at a later stage, there will be further addition of the raw materials, but, the fact remains that without addition of oxygen, through high pressure injectors in a highly sophisticated furnace where liquid Pig Iron is present, carbon cannot be separated. Carbon can be separated after reacting with oxygen gas and left out product is known as Steel and carbon is converted into Carbon Monoxide and Carbon Dioxide. Other products may also come out during this process like P2O5 etc. We are not concerned with CO, CO2, P2O5 etc. It is submitted by counsel for the petitioner that without there being use of oxygen as a raw material, steel cannot be manufactured. This aspect of the matter has not been properly appreciated by all the authorities under the Bihar Finance Act, 1981 and hence, this writ petition has been preferred.

? It is further submitted by counsel for the petitioner that merely because respondent No. 11 has filed a declaration in an application under Rule 6 of the Bihar Sales Tax Rules, 1983, inadvertently stating therein that Oxygen is one of the ''goods'' used in manufacturing of steel in Annexure B, instead of one of the ''raw materials'' used in manufacturing process of steel, that does not mean that this petition cannot be filed. The respondents-State authorities should appreciate the manufacturing process of steel through BOS method and not a mistaken declaration or declaration made by inadvertence. This argument of the State has already been canvassed in the earlier round of litigation and has been dealt with by Hon''ble the Supreme court while deciding the case of this writ petitioner, as reported in BOC India Ltd. Vs. State of Jharkhand and Others, , especially in paragraph No. 29 and 32 thereof. In this matter also, the respondents have raised some objections and the counsel for the petitioner has placed reliance on para Nos. 29 and 32 of the aforesaid decision that a mistaken declaration has got no value and tax liability cannot be imposed upon a mistaken declaration by the assessee.

? Counsel for the petitioner has also submitted that if the Mass-Balance Equation for manufacturing of the steel is seen, it will reveal that huge quantity of Oxygen is being utilized for manufacturing of steel through BOS method. Generally catalyst is used in a very small quantity and it never reacts by itself. It remains as it is even after completion of the reaction, whereas huge quantity of a raw material-oxygen is participating in a chemical reaction and it converts not only by itself, but, it also converts Pig Iron into steel. Thus, Oxygen is converted into CO and CO2 and Pig Iron is converted into steel. Thus, reagent and reactants both are changing their physical and chemical properties. This is a test whether the material used is a raw-material or not. Catalysts never changes by itself and, therefore, it is not a raw material, but, when reagent is changing its own physical and chemical properties, while reacting with another material and when it is used in a huge quantity, then it is a raw material, especially when without use of it no desired end-product can be obtained. It is reiterated by counsel for the petitioner that huge quantity of oxygen gas (449,438,281 Nm3) has been utilized for manufacturing of steel, which is sold by this petitioner and purchased by respondent No. 11-M/s. Tata Steel Ltd. This aspect of the matter has also not been appreciated by the authorities under the Bihar Finance Act, 1981 and hence, the orders impugned may be quashed and set-aside and oxygen sold by this petitioner and purchased by respondent No. 11 may be declared as ''raw material'', used by respondent No. 11 for manufacturing of steel through BOS method.

? Counsel for the petitioner has placed reliance on a decision rendered by Hon''ble the Supreme court in the case of Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd., , especially upon paragraph Nos. 13 to 19 thereof and has submitted that in manufacturing process of Paper, Sodium Sulphate (Na_2SO_4) is used by the manufacturer as a basic raw material. In detail, reasons have been given by Hon''ble the Supreme Court in the aforesaid paragraphs. If the same analogy is applied in the facts of the present case, the case of this petitioner stands on better footing. Oxygen is used in manufacturing of steel through BOS method, in a huge and large quantity and Oxygen itself is changing its physical and chemical properties, while reacting with the reactants i.e. Pig Iron and is converting Pig Iron into steel and converting carbon into other chemicals. This characteristic of oxygen, its quantity and chemical reaction reveals that oxygen is used as a basic raw material for manufacturing of steel through BOS method and, therefore, all the essentials, enumerated in the notification bearing SO No. 154 dated 3.2.1986 have been fulfilled and, hence, Sales Tax leviable is only at the rate of 2% and not @ 3 %."

4. ARGUMENTS CANVASSED BY COUNSEL FOR THE RESPONDENT NO.11-M/S TATA STEEL LTD.

? "Counsel for respondent No. 11 has submitted that Oxygen purchased by Tata Steel Ltd. through this petitioner is certainly used as a basic raw material for manufacturing of steel through BOS method. Oxygen has been purchased in huge quantity i.e. 449,438,281 Nm3. Counsel for respondent No. 11 further pointed out the whole manufacturing process followed by respondent No. 11 and submitted that merely because Oxygen is added at a later stage of manufacturing process, it does not mean that it is simply "goods used in manufacturing process namely steel". Even if Oxygen is added in the last chain of reaction for manufacturing of desired end-product namely, Steel, the use of oxygen is inevitable. This characteristic makes Oxygen, even though used in a last chain of reactions, a basic raw material. It cannot be labelled merely as a ''refining agent'' instead of basic ''raw material''. Raw material can be added at any stage of manufacturing process. Even a last chain of reaction is equally important, which cannot be neglected by the respondent-State.

? Counsel for respondent No. 11 has also elaborated non-replaceable and inevitable usage of oxygen in manufacturing process of steel through BOS method. Counsel for respondent No. 11 while adopting all arguments canvassed by counsel for the petitioner, submitted that Oxygen cannot be labelled by the respondents-State as merely a refining agent. By any name it may be called, but, it remains a basic raw material looking to the aforesaid quality and quantity of the usage of Oxygen in manufacturing of steel. Removing the Oxygen and replacing it by any other material in a last chain of reaction viz. reaction of pig iron with any other element form the whole periodic table (there are total 110 elements on this earth), no steel can be manufactured through BOS method. The manufacturing process cannot be altered by the State. These aspects of the matter have not been properly appreciated by the authorities under the Bihar Finance Act, 1981 and, hence, all the earlier orders passed by the Assessing Officer, Appellate Authority and Revisional Authority may be quashed and set-aside and it may be declared that oxygen gas used by respondent No. 11 in manufacturing of steel through BOS method is a basic raw material and hence, upon sale of oxygen only 2% of Sales Tax is leviable instead of 3%.

? It is further submitted by counsel for respondent No. 11 that for subsequent assessment years, Oxygen has already been treated as basic raw material, used in manufacturing process of steel through BOS method by the Assessing Officer i.e. for assessment years 2009-10 onwards."

5. ARGUMENTS CANVASSED BY THE STATE OF JHARKHAND :

? "Counsel for respondent Nos. 1 to 10 i.e. State authorities submitted that the use of Oxygen in manufacturing process of steel through BOS method is not denied, but, the Oxygen is not used as a raw material. Oxygen is utilized as one of the commodities or goods in the manufacturing process of steel through BOS method and all the goods which are used in manufacturing of steel are not the raw materials and, therefore, the benefit of notification bearing SO No. 154 dated 3.2.1986 cannot be given to this petitioner.

? Counsel for the respondent-State submitted that, in fact, the aforesaid Notification is last in number, but, if the Notification dated 15th December, 1976 is seen, the words "goods required directly for use in manufacturing" have been utilized in the said Notification. Thereafter, there is a change in the wordings of the said Notification in the subsequent Notification bearing SO No. 1096 dated 9.9.1983 and lastly the wordings were changed in Notification bearing SO No. 154 dated 3.2.1986. These aspects of the matter have been properly appreciated by the authorities under the Bihar Finance Act, 1981.

? It is submitted by counsel for the respondent-State that oxygen is used as a goods, required directly for use in manufacturing of steel through BOS method. Oxygen gas is not used as a basic raw material for the manufacturing of steel through BOS method. These words which are used in Notification dated 15th December, 1976 are taking proper care of usage of oxygen, but, this goods required directly for use in manufacturing is different from raw material, required for manufacturing of steel and hence, sales tax leviable upon the oxygen gas is @ 3% instead of 2%.

? It is submitted by counsel for the State that looking to the detailed report given by Committee constituted by Assessing Officer, who had visited the manufacturing place, the oxygen gas used by respondent No. 11-Tata Steel Ltd. in manufacturing of steel, is merely a refining agent to reduce the carbon contents from the Pig Iron and nothing beyond that. Therefore, it cannot be treated as a basic raw material, used in manufacturing process. This aspect of the matter has also been properly appreciated by all the authorities under Bihar Finance Act, 1981 and, hence, this writ petition may not be entertained by this Court.

? Counsel for the respondent-State authority submitted that there is a declaration made by the respondent No. 11- M/s. Tata Steel Ltd. at Annexure B. The said declaration reveals that even as per M/s. Tata Steel Ltd., oxygen is not a basic raw material, used for manufacturing of steel, but, it is used as goods, which is required directly for manufacturing of steel and, therefore, oxygen is mentioned in Annexure B. As such, no error has been committed by the authorities under the Bihar Finance Act, 1981 to treat Oxygen as goods, required directly for usage in manufacturing process of steel instead of goods used as raw material in manufacturing process.

? Counsel for respondent State has also relied upon analogy given in the order passed by the Assessing Officer dated 1.10.2011 that in manufacturing process of Hydrogen Gas or Oxygen Gas through electrolysis of water always H2SO4 is being added. Merely because H2SO4 is essential, that does not mean that it is a raw material. If this analogy is applied to the Oxygen in manufacturing of steel, then Oxygen is not a basic raw material, but, it will be one of the goods used in the manufacturing process. If any goods used in manufacturing process is not a raw material, then Sales Tax leviable upon the sale of the said goods will be @ 3%, but, if any goods used in manufacturing process is raw material, then the Sales Tax leviable upon said goods will be only 2 %. In the facts of the present case, oxygen is used only as a refining agent, to reduce the carbon contents and that too at the fag end of the reaction, which makes Oxygen only goods used in manufacturing process and, thus, it cannot be said that Oxygen is used as a raw material in manufacturing process of steel and, hence, this writ petition may not be entertain by this Court.

? Counsel for the respondents has also relied upon Form No. 23 which is used for getting Form No. C under the Central Sales Tax Act, for levy of concessional rate of Central Sales Tax and in the said Act it has been mentioned that for manufacturing of steel, Oxygen is not a raw material. This aspect of the matter has been referred to by the counsel for the State at Annexure 8 to the counter affidavit, filed by the State authority.

? It is submitted by State authority that in subsequent assessment years Oxygen has been treated as raw material in the new provision enacted under the Value Added Tax Act, 2005, especially U/s 18(4) thereof, which includes input tax credit upon the goods used in manufacturing process. Hence, no benefit may be given to this petitioner for the assessment years 2002-03 to 2005-06.

? Counsel for the respondents has also relied upon the decision, as reported in Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd., , upon which reliance has also been placed by counsel for the petitioner, especially paragraph Nos. 13, 15 and 19 thereof, as well as a decision rendered by Hon''ble the Supreme Court, as reported in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, , especially para 9 thereof."

6. FINDINGS:

"Having heard counsel for both the sides and looking to the facts and circumstances of the case, we, hereby, quash and set-aside the order passed by the Commercial Taxes Tribunal, Ranchi in Revision Case No. 132 of 2013 dated 30th March, 2015, order passed by the Joint Commissioner of Commercial Taxes (Appeals), Jamshedpur, in Appeal Case No. JR VATA 70 of 2011-12 dated 7th June, 2013 as well as the order passed by the Assessing Officer-Deputy Commissioner of Commercial Taxes, Jamshedpur Circle, Jamshedpur dated 1st October, 2011 and we also, hereby, quash and set aside the demand notice, which is consequential order passed by the respondent-State authority dated 10.10.2011 (Annexure 15 to the memo of this writ petition), mainly for the following facts, reasons and judicial pronouncements:

(i) One of the notifications, which has been relied upon by the counsel for both sides repeatedly, is dated 15.12.1976, second is dated 12.4.1982, third is dated 9.9.1983 and fourth one is dated 3.2.1986. These notifications are as under:

"1. Notification dated 15th December, 1976;

2. Notification bearing SO No. 604 dated 12th April, 1982;

3. Notification bearing SO No. 1096 dated 9th September, 1983; &

4. Notification bearing SO No. 154 dated 3rd February, 1986."

(ii) It has been argued by counsel for both sides that under the Bihar Finance Act, 1981 to be read with the aforesaid notifications if any goods is used other than raw materials in the manufacturing process, it will fetch 3% of sales tax upon the sale of such item, whereas if any goods is used as a raw material in manufacturing process, the sale thereof will fetch 2% of the Sales Tax under Section 13 (1)(b) of the Act, 1981 to be read with aforesaid notification. It is submitted by counsel for the petitioner that Oxygen Gas sold by the petitioner to respondent No. 11-M/s. Tata Steel Ltd. is a raw material, directly used in manufacturing process of steel through BOS method. The quantity of Oxygen Gas sold by the petitioner to respondent No. 11 is very huge, which is for the year 2003-04. This petitioner has sold Oxygen Gas for total value of approximately Rs. 1,293,804,612/-. 70 k.g. of Oxygen is required for manufacturing of 1000 k.g. of steel whereas it is a major contention of the State that Oxygen may be one of the goods, directly used in manufacturing process of steel, but, it is not a raw material for manufacturing of steel and, therefore, sale of oxygen will fetch 3% of Sales Tax.

(iii) Previously also this issue had arisen before this Court in a writ petition preferred by the very same petitioner bearing W. P. (T) No. 4693 of 2005, in the name and style of M/s. B.O.C. India Ltd. This writ petition was dismissed mainly on the following grounds:

(a) That petitioner has no locus standi;

(b) Tata Steel Ltd. has declared Oxygen as one of the goods used for manufacturing of steel in Annexure B to the declaration, which was annexed with the application preferred by respondent No. 11 under Rule 6 of the Bihar Sales Tax Rules, 1983. Annexure A is pertaining to the raw materials, which are used for manufacturing of steel through BOS method. Thus, on the basis of the declaration of respondent No. 11 itself, oxygen is not a basic raw material; and

(c) Oxygen Gas is not a raw material used for manufacturing of steel through BOS method.

(iv) Against the aforesaid decision rendered by the Division Bench of this Court in W.P.(T) No. 4693 of 2005 dated 2.11.2007, as reported in (2008)1 JCR 473(Jhr) , S.L.P. (Civil) was preferred by this petitioner as well as another S.L.P. (Civil) was preferred by respondent No. 11. Both were admitted by Hon''ble Supreme Court and were converted into Civil Appeals Nos. 1538 of 2009 and 1540 of 2009. They were decided by the Hon''ble Supreme Court on 5.3.2009. The said decision has been reported in BOC India Ltd. Vs. State of Jharkhand and Others, . Hon''ble the Supreme Court has allowed the locus standi in favour of this petitioner. Thus, to the aforesaid extent, the decision of this Court was quashed and set-aside. The observations about grant of locus standi to this petitioner are at Paragraph Nos. 20 and 21 thereof, which read as under:

"20. BOC admittedly is the manufacturer of oxygen gas. It is a dealer within the meaning of the provisions of the Act being a supplier of its product. It, thus, comes within the purview of "dealer" as contained in Section 2(e) of the Act as it carries on the business of buying, selling, supplying or distributing goods for cash or for deferred payment or for commission, remuneration or other valuable consideration. It is an assessee. It even as an agent of the State is bound to collect taxes on its behalf and deposit the same in accordance with law. Non - compliance therewith would lead to penal actions. Even in the demand made by the Deputy Commissioner, Commercial Taxes, Jamshedpur Circle, Jamshedpur dated 22.7.2005 it was threatened with proceedings for recovery of the differential amount unless it produced the evidence of deposit thereof. Thus, a demand has been made on BOC. Hence, the opinion of the High Court that it did not have any locus standi to maintain the writ application cannot be accepted.

21. It may be true that the consumer of oxygen gas is TISCO. It was also entitled to purchase the said goods at a concessional rate. If the material is used for manufacture, the rate of tax is three percent whereas if the material is used as raw material for processing and/or manufacturing of the end product, indisputably, the rate of tax would be two per cent. Ultimately, BOC may be

entitled to recover the differential amount of tax from TISCO, but, the same by itself would not mean that it is a busybody. Not only the penal proceedings but also other proceedings could be initiated against it for non deposit of the aggregate amount of tax within the prescribed period. If an order of assessment is passed against the assessee, the only remedy before it is to prefer an appeal/ revision in terms of the provisions of the Act. Thus, in our opinion, it was a person aggrieved to maintain a writ application."

(Emphasis supplied)

(v) Hon''ble Supreme Court has dealt with point No. (b) as stated in Para (iii), in Paragraph Nos. 4, 11, 15, 16, 18(i), 18(iii), 29 and 32 and it has been held that declaration by respondent No. 11-M/s. Tata Steel Ltd. under Rule 6 of Bihar Sales Tax Rules, 1983 has no bearing upon this case at all, but, it all depends upon the facts and circumstances of the case, especially whether oxygen is used as one of the raw materials for manufacturing of Steel or not ?

(vi) So far as Point No. (c) as mentioned in Para (iii) is concerned, Hon''ble the Supreme Court in the aforesaid decision i.e. BOC India Ltd. Vs. State of Jharkhand and Others, in paragraph Nos. 28, 32 and 33 has held as under:

"28. Whether oxygen gas can be considered to be a raw material is essentially a question of fact. Evidence is required to be adduced. Such evidence although may be in possession of TISCO. In the event, such a question is raised by the assessee, namely, BOC, the assessing authority must go therein. For the purpose of claiming exemption from payment of tax and/or special rate of tax applicable to a particular gas or commodity or goods, the assessee itself must bring on record sufficient materials to show that it comes within the purview of the notification. Both in Ballarpur Industries Ltd. and TELCO the question as to whether sodium sulphate and /or batteries, tyres, tubes were raw materials or not could be determined by this Court as such a question had been raised by the assessing authority.

32. For the selfsame reasons, we are of the opinion, that it is not necessary to go into the question as to whether a person even if he proves that he inadvertently did not claim the benefit of a notification would depend upon the facts and circumstances of each case as no such rule in absolute terms can be laid down therefor. We may, however, notice that this Court in Share Medical Care V. Union of India has opined as under : (SCC p.577, para 15)

"15. From the above decisions, it is clear that even if an applicant does not claim benefit under a particular notification as the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage."

33. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeals are allowed. The demand made on the appellant is also set aside. The question, as to whether oxygen gas is a raw material for the manufacture of steel or not may be determined by the

assessing authority on the basis of the material(s) which may be brought on record by the parties. All contentions raised by the parties on the said question shall remain open. The assessing authority is hereby directed to give an opportunity to the parties to adduce evidence in this behalf. All other consequential proceedings may follow on the basis of the determination on the said question."

(Emphasis supplied)

In view of the aforesaid observation it has been held by Hon''ble Supreme Court that whether oxygen is used as raw material in manufacturing of steel by M/s. Tata Steel Ltd. shall now be again decided by the Assessing Officer who shall also visit said place of manufacturing. Thus, on third point the matter was remanded by the Hon''ble Supreme Court.

(vii) On the basis of the aforesaid direction given by Hon''ble the Supreme Court, the Assessing officer i.e. Deputy Commissioner of Commercial Taxes, Jamshedpur Circle, Jamshedpur started hearing and a Committee was constituted by the Assessing Officer, in which six officers of the State were the members, as stated herein above. The Committee consisting of six high ranking Administrative Officers of Commercial Taxes Department has visited the place of manufacturing of steel on 4th February, 2010 and has given a detailed report about the use of oxygen by respondent No. 11- M/s. Tata Steel Ltd., for manufacturing of steel through BOS method. The said report is at Annexure A to the counter affidavit, filed on behalf of respondent Nos. 1 to 10-the State authorities. Looking to the report given by the said Committee, it appears that officers of Tata Steel Ltd. as well as the officers of this petitioner''s company were also present at the time of visit by the Committee. In the said report the manufacturing process has also been mentioned in detail. After narrating the manufacturing process of steel through BOS method it has been mentioned that oxygen is used as a ''refining agent'' to reduce the percentage of carbon from Pig Iron. This has also been incorporated in the order passed by the Assessing Officer dated 1.10.2011 whereas the petitioner and respondent No. 11 have contended that looking to the manufacturing process of steel through BOS method, oxygen is used as an essential raw material in manufacturing process and, therefore, this Court will narrate from the documents on record what is the manufacturing process of steel through BOS method.

(Viii) NARRATION OF MANUFACTURING PROCESS OF STEEL THROUGH BOS METHOD:

Before we narrate the manufacturing of steel through BOS method, it ought to be kept in mind that manufacturing process may take place through more than one chemical reaction. Iron Ore (hematite) is not available in its pure form in the nature. It is always available in compound form, known also as oxides. These oxides are containing several other impurities. Iron Ore is mainly known as Fe203. There are other oxides also. Oxygen has to be removed at the initial stage, which is known as ''Reduction Process'', for which a Blast Furnace is required. This Blast Furnace is charged with coke, iron ore etc. and the hot air along with low pressure pure oxygen is injected therein for preparation of hot metal. But, this iron ore has more percentage of carbon. The molten iron obtained through first chemical reaction in Blast Furnace is known as Reduction of Iron Ore, but, still, steel is not manufactured and what is manufactured is Pig Iron, having approximately 4% of Carbon. This is chemical reaction No. 1, which is normally being done in a Blast Furnace. It ought to be kept in mind that the desired end-product is not being manufactured in one chemical reaction. There will be more than one chemical reaction to get the desired end-product.

(ix) Now after getting Pig Iron from Blast Furnace after reduction of iron ore, which contains approximately 4% of carbon, still there is requirement of further chemical reactions. Steel Manufacturing process has crossed half the way. Now, the crucial part starts, upon which lengthy arguments have been canvassed by both sides in second round of litigation. Now there will be usage of huge quantity of oxygen to convert Pig Iron into Steel. Now in second reaction pure oxygen has to be injected with heavy pressure so that oxygen gas will penetrate Pig Iron. This Pig Iron is in a liquid state whereas oxygen is in its gaseous form. Gas will never enter into a semi liquid type of Pig Iron so easily and, therefore, with a very high pressure injector is to be utilized so that oxygen may have a reaction with Molten Iron or Pig Iron. This whole process is being done in L.D. Vessel and, therefore, the 2nd half of the manufacturing process of steel through BOS method is also technically known as L.D. Vessel Operation.

(x) The second half of the chemical reaction, which is known as L.D. Vessel Operation, is also a very complex chemical reaction, in which oxygen gas is required in a very huge quantity, which is inevitable. Words "huge in quantity" are used in contradiction with smaller quantity of Catalyst. The replacement of oxygen by any other element from the whole periodic table is not possible. In the world as on today, there are approximately 110 elements and the oxygen is one of them. If steel is to be manufactured through BOS method, in second reaction, which is also known as L.D. Vessel Operation, if oxygen is replaced by Nitrogen-N, Krypton- Kr, Argon- Ar. and Neon-Ne etc., which all are known as gases, steel cannot be obtained from Pig Iron. In short oxygen gas cannot be replaced by any other material, which is available on this earth, in the form of element, to convert Pig Iron into steel through BOS method. This is the importance of usage of oxygen in second reaction of manufacturing process, which is also known as L.D. Vessel Operation.

(xi) Thus, oxygen is used in a very huge and large quantity in second chemical reaction for manufacturing of steel through BOS method. Moreover, usage of oxygen is inevitable. The usage of oxygen is not replaceable by any other element. The usage of oxygen is must in second chemical reaction, for manufacturing of steel which is also known as L.D. Vessel Operation. The function of oxygen in second chemical reaction is to convert Pig Iron into steel, by reducing the percentage of carbon by converting carbon into Carbon-dioxide (CO_2) and Carbon Monoxide (CO). Merely because oxygen is reducing the percentage of carbon, it cannot be labelled by the State of Jharkhand that oxygen is used only as "refining agent". Looking to the orders passed by the Assessing Officer, Appellate Authority and Revisional Authority-Commercial Taxes Tribunal, it appears that they all have narrated use of oxygen as "refining agent" as per the terminology, which the Committee has used in its report dated 26.4.2010. The terminology used by the Committee narrating oxygen as a refining agent has been utilized in verbatim in the orders passed by them, but, they have failed to appreciate that in second chemical reaction, while manufacturing steel through BOS method, which is also known as L.D. Vessel operation, the use of oxygen is must and is inevitable and oxygen cannot be replaced by any other element and t he fact remains that the oxygen is used in L.D. Vessel Operation in a very huge quantity i.e. 449438281 Nm^3, which, if converted in terms of money, will be Rs. 1,293,804,612/- for the financial year 2003-04. Here oxygen is reacting with Pig Iron. Oxygen is changing Pig Iron into Steel and oxygen itself is also converted into CO and CO_2. These aspects of the matter have not been properly appreciated by the authorities under the Bihar Finance Act, 1981, while passing the impugned orders which are under challenge in this writ petition.

(Xii) Very vehemently it has been contended by the counsel for the respondent-State that what is initially added is an iron ore in the Blast Furnace along with coke and, therefore, oxygen is not a raw material used for manufacturing of steel and it is further contended that oxygen is used only to remove the carbon or to reduce the percentage of carbon from the Pig Iron and, therefore, oxygen is used as a "refining agent" and not as a "raw material".

We are not in agreement with this contention, mainly for the following reasons:

(a) All raw materials are not necessarily added at the very first reaction, especially when manufacturing process is taking place in more than one chemical reactions.

(b) Counsel appearing for both sides have argued in detail, which are being narrated in the Classes of M.Sc. with Inorganic Chemistry or B.E.-Metallurgical, but, we are not writing paper of Final Year of B.E. and, therefore, we restrain ourselves from going into detail reactions of manufacturing process of steel. For easy understanding of the manufacturing process, we have divided the whole manufacturing process in chemical reaction No. 1 and chemical reaction No. 2. The first reaction is taking place in "Blast Furnace" whereas second reaction takes place in "L.D. Vessel Operation".

(c) In the "Blast Furnace" what is added is Iron Ore, Coke, Silicon and Flux and hot air with low pressure of pure oxygen. All these are injected in Blast Furnace. Iron Ore is normally iron oxides i.e. Fe_2O_3. In this Blast Furnace reduction takes place. There are a very complex chemical reactions in this Blast Furnace. Several other oxides are also reduced with which we are not concerned. Thus, in a Blast Furnace, added raw materials are, iron ore, coke etc. but these are not the only raw materials. Second stage of manufacturing process of steel, is yet to come.

(d) In second stage of reaction for manufacturing of steel, through BOS method, what is obtained from Blast Furnace (known as "molten iron -Pig Iron") will now have further reaction in "L.D. Vessel Operation". Here again there will be another type of Furnace. Here huge quantity of oxygen is being utilized as a raw material. This oxygen has to be added in L.D. Vessel Operation and that too in a huge quantity. In second chemical reaction Pig Iron will be normally in semi liquid state for any effective reaction with the oxygen gas in L.D. Vessel. It is injected with high pressure. Typical types of nossals are also required so that oxygen gas penetrate the semi liquid material i.e. Pig Iron and after this reaction between the pig iron and oxygen, the steel is being manufactured and the carbon is normally converted into Carbon Monoxide (CO) and Carbon Dioxide (CO 2). Here also very complex are the chemical reactions, but, we think that the aforesaid narration is sufficient to decide this matter.

(e) Thus, on perusal of "L.D. Vessel operation" very closely, it appears that the use of oxygen is inevitable. Oxygen is not replaceable by any other element available from whole periodic table, which are 110 in number. Oxygen is used in a very huge and large quantity which is 449438281 Nm3 and if converted into money for the year 2003-2004 it will worth Approximately Rs. 129,38,04612/- (One hundred twenty nine crores, thirty eight lacs, four thousand six hundred and twelve). It is more than certain that if the oxygen gas is not added in L.D. Vessel Operation, steel will never be manufactured, at all, through BOS method. State of Jharkhand cannot replace this oxygen by any other element. This characteristic and usage of oxygen in second chemical reaction in L.D. Vessel operation reveals that oxygen is a basic raw material, used in manufacturing process of steel through BOS method. This aspect of the matter has not been properly appreciated either by Assessing Officer or by Appellate Authority and or by Commercial Taxes Tribunal. We, therefore, quash and set-aside the impugned orders for the aforesaid reasons and the sale of oxygen by this petitioner to respondent No. 11, which is used as a raw material in the manufacturing of steel through BOS method, will fetch 2% of Sales Tax instead of 3%, as per Section 13(b) of Bihar Finance Act, 1981 to be read with notification No. 154 dated 3.2.1986.

(xiii) Counsel for the State has repeatedly argued that oxygen is used as refining agent. The use of oxygen in second reaction i.e. in L.D. Vessel Operation is multipurpose. If we look into the fine nicety of manufacturing process of steel through BOS method, there are varieties of function of this oxygen as raw material.

It ought to be kept in mind by the State authority that what is added in the second reaction i.e. in L.D. Vessel Operation is not for only one purpose. Oxygen injected through high pressure not only reduces the percentage of carbon from

Pig Iron, but, it also generates heat which is also must in L.D. Vessel Operation. There are several other impurities in Pig Iron. The multipurpose use of oxygen is to react with Pig Iron and to give steel. One of the usages of oxygen is to reduce the percentage of carbon. All the authorities under the Bihar Finance Act, 1981 have looked at the usage of oxygen only for one purpose i.e. reduction of carbon percentage. This is an error apparent on the face of the record. Even otherwise also, if refining agent is used in large quantity and its use is inevitable and non-replaceable, in such circumstances, even the refining agent is a basic raw material. "Raw Material" and "Refining Agent" are not mutually exclusives nor they are opposites to each other i.e. if a refining agent is used, it cannot be labelled as a raw material and if the raw material is used it cannot be labelled as a refining agent. This is a wrong notion in the mind of the authorities who have passed the orders, which are under challenge in this writ petition. Even a refining agent can be a basic raw material.

* What is to be seen, is the importance of material added in chemical reaction.

* What is to be seen, is inevitable use of such material in chemical reaction.

* What is to be seen, is the quantity of the material used in the reaction. Catalyst may be added in a small quantity which is never participating in the chemical reaction and hence, it may not be termed as a raw material.

* What is to be seen, is whether the added material is getting reacted by itself or not. Here oxygen is taking part in the chemical reaction and oxygen is now converted into Carbon Monoxide and Carbon Dioxide.

* What is to be seen, is whether reagent is reacting with reactant or not ? Here oxygen is reacting with Pig Iron. Oxygen is also being converted into Carbon Monoxide (CO) and Carbon dioxide (CO2) and Pig Iron is being converted into steel.

* What is to be seen, is whether in absence of oxygen, the presence of end-product (steel) is possible.

* What is to be seen, is its (oxygen''s) importance and indispensability for the process = (BOS Method).

Thus, both the materials which are predominantly taking part in chemical reaction in L.D. Vessel are:

(a) Pig Iron &

(b) Oxygen gas, injected through high pressure and, therefore, oxygen is a basic raw material used for manufacturing of steel through BOS method.

These aspects of the matter have neither been properly appreciated by the Assessing Officer nor by the Appellate Authority nor by the Commercial Taxes Tribunal, while passing the impugned orders and, hence, we hereby quash and set aside these orders.

(xiv) The Hon''ble Supreme Court in the case of Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd., , especially at paragraph Nos. 13 and 14 thereof, has held as under:

"13. The question in the ultimate analysis, is whether the input of sodium sulphate in the manufacture of paper would cease to be a "raw material" by reason alone of the fact that in the course of the chemical reactions this ingredient is consumed and burnt up. The expression "raw material" is not a defined term. The meaning to be given to it is the ordinary and well accepted connotation in the common parlance of those who deal with the matter.

14. The ingredients used in the chemical technology of manufacture of any end produce might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end product; those which, as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end products and those, as here, which might be burnt up or consumed in the chemical reactions. The question in the present case is whether the ingredients of the last mentioned class qualify themselves as and are eligible to be called "raw material" for the end product. One of the valid tests, in our opinion, could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end product, but the dependence of the end product for its essential presence at the delivery end of the process. The ingredients goes into the making of the end product in the sense that without its absence the presence of the end product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilization is in the manufacturing process as distinct from the manufacturing apparatus."

(Emphasis supplied)

In view of the aforesaid decision, in manufacturing process of paper, Sodium Sulphate (Na2SO4) was used and the question arose whether Na2SO4 is a raw material or not and, as stated herein above, in chemical reaction Na2SO4 is participating and in its absence, there cannot be presence of end product and, therefore, it was a raw material. Applying the same analogy to the usage of oxygen gas in manufacturing process of steel through BOS method, in second stage of reaction, namely, L.D. Vessel Operation, here also, oxygen is taking full participation in chemical reaction. Oxygen converts itself into ''carbon monoxide'' and '' carbon dioxide'' and it also converts Pig Iron into Steel. Moreover, huge quantity is to be utilized (so as to contradict usage of smaller quantity of catalyst). Oxygen cannot be replaced by any other element. Usage of oxygen in second stage of reaction is inevitable. This usage of oxygen because of its particular chemical properties, makes the oxygen a basic raw material, without which, steel cannot be manufactured through BOS method, especially in L.D. Vessel operation. Merely because it is reducing the percentage of carbon, it cannot be labelled, only as a ''refining agent''. One of the usages of the oxygen is as a refining agent, but, as stated herein above, use of oxygen in L.D. Vessel Operation is multipurpose. It generates enough heat in chemical reaction, without which the reaction is not possible, at all. This cannot be done in absence of usage of oxygen. There are other impurities also with the Pig Iron and oxygen is the only element, which can remove these impurities from Pig Iron and, therefore, wrongly it has been narrated and labelled by the respondent-State authorities as a "refining agent" and, therefore, it is not "a raw material".

This logic is not accepted by this Court.

As stated herein above, both these terms are not mutually exclusive or opposites to each other. Even "a refining agent" can also be "a raw material" if the aforesaid criteria are fulfilled, as stated in Para (xiii), in detail.

(xv) It has been contended by counsel for the respondent- State that under the Central Sales Tax Act for giving benefit of Form C etc. it has been mentioned that in steel manufacturing process the raw materials are Coke, Hematite i.e. iron ore etc. and oxygen is not referred to as raw material and, therefore, in the facts of the present case also, the oxygen cannot be treated as a raw material.

The above contention is not accepted by this Court, mainly for the reason that Central Sales Tax Act never prescribes or confines certain raw material for manufacturing of steel. If we look at Annexure R-11/A annexed with the reply filed by respondent No. 11, in reply to the counter-affidavit filed by the respondent- State authority, it appears that the Circular issued by the Central Government is only by way of illustration. In the said Circular, they have also mentioned about other raw materials, given in the said list, for manufacturing of steel, which is not exhaustive. Thus the list is merely indicative in nature and not exhaustive in nature. This Circular issued by some Central Government Officer cannot be heavily relied upon by the State authorities, while judging whether oxygen is a raw material or not. What is to be seen, is the usage of oxygen in the chemical reaction, its inevitability, its quantity, its usage in chemical reaction and its reactivity in chemical reaction i.e. oxygen itself is converted into other compound (which never happens with a catalyst). These are the guiding factors and not the Circular issued by the Central Government Officer and, hence, the aforesaid arguments canvassed by counsel for the State is not accepted by this Court.

(xvi) Counsel for the State has relied upon the following decisions, rendered by Hon''ble the Supreme Court, as reported in:

(a) Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd., &

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

None of these decisions are helpful to the State in view of usage of oxygen in L.D. Vessel Operation and also the reactivity of the oxygen and its inevitable usage and also looking to Para Nos. 13 and 14 of the decision rendered by the Hon''ble Supreme Court in Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd., .

(xvii) Counsel for the State has further submitted that there is one more method of manufacturing of steel which is Electric Arc Furnace Method. If this alternative method is used by Tata Steel Ltd., it would not have needed oxygen, at all and further it has been submitted by counsel for the respondent Nos. 1 to 10 that raw material is common in all the methods, which is indispensable, irrespective of change of method of manufacturing.

It is submitted by counsel for respondent No. 11- M/s. Tata Steel Ltd. that State Government cannot sit over the chair of Directors of M/s. Tata Steel Ltd. and direct Tata Steel Ltd. which method should be adopted for manufacturing of steel.

The contention raised by the State i.e. respondent Nos. 1 to 10 is also not accepted by this Court, mainly for the following reasons:

(a) What would be the methodology of manufacturing of steel is always left at the discretion of the manufacturer;

(b) Here the steel is being manufactured by Tata Steel Ltd. through BOS method and the same cannot be changed by the State Government.

(c) What is to be seen by this Court and by all the authorities is whether in manufacturing process selected by the manufacturer, the use of oxygen is inevitable or not? Whether the use of oxygen is replaceable or not ? Whether oxygen itself is participating in chemical reaction or not (in contrary to the inactive substance like Catalyst) ? What is to be seen, is quantity of the material used (here very huge and large quantity of oxygen is used) ? what is to be seen, is whether oxygen can be replaced by any other element available from the whole periodic table ? What is to be seen, is whether without oxygen, Pig Iron can be converted into steel or not ?

(d) If the method of manufacturing is changed as suggested by counsel for the State, it is but obvious that the raw material will be changed. Raw material always depends upon method of manufacturing e.g. Phenol can be manufactured by half a dozen different methods i.e. it can be manufactured by using Benzene and by addition of various other raw materials, which depends upon the manufacturing process of phenol. If the manufacturing process of phenol is changed, the basic raw material will be changed. The manufacturing process is being selected by the manufacturer, depending upon the easy availability of raw material in the nearby surrounding area or in the near vicinity. The Government cannot change the manufacturing process adopted by the manufacturer. If this is allowed, then raw material will always be changed. What is to be seen by this Court and by the authorities under Bihar Finance Act, 1981 is in a given manufacturing process adopted by the manufacturer whether oxygen is a raw material or not? If whole method of manufacturing of steel is replaced with Electric Arc Furnace Method, there must be another raw material to be used.

(e) In the Electric Arc Furnace Method, oxidation used to take place with the help of usage of electricity by Anode and Cathode, which may not be easily available with the manufacturer and, therefore, another method might have been chosen by the manufacturer after consultation with several experts, including persons of Chemical Engineering side and also in view of easy availability of raw materials the BOS method might been adopted. Respondent No. 11 has followed manufacturing of steel by BOS method and not by Electric Arc Furnace method and if in the BOS method of manufacturing of steel, oxygen is a raw material then certainly this petitioner will be entitled to get the benefit of Section 13(1)(b) of the Bihar Finance Act, 1981 to be read with Notification bearing SO No. 154 dated 3.2.1986.

(xviii) Counsel for the State-Respondent Nos. 1 to 10 has submitted that to check whether oxygen is used in BOS Method as a raw material or not, this Court has to look at the raw materials used in common parlance and, therefore, oxygen is not a raw material in the facts of the present case.

This contention of the State is not accepted mainly for following reasons:

(a) It has been held by the Hon''ble Supreme Court in the case of BOC India Ltd. Vs. State of Jharkhand and Others, , Paragraph No. 24 whereof reads as under:

"24. The expression "raw material" is not defined. It has to be given its meaning as is understood in the common parlance of those who deal with the matter. Oxygen gas when used would admittedly be burnt up. Would it mean that it ceases to be a raw material is the question ?"

(emphasis supplied)

(b) Thus, in view of aforesaid paragraph No. 24 of the decision rendered by Hon''ble Supreme Court, the word "raw material" is to be understood in a common parlance of those who deal with the matter. If we ask any common man who has nothing to do with any manufacturing process of steel then he may give any other answer, but, this is not a test at all. Common parlance is to be used of the persons, who are dealing with manufacturing of steel and if those persons are narrating oxygen as a raw material, it will be one of the factors for arriving at the conclusion, otherwise, we have already pointed out weighing factors in Para (xiii) of this judgment.

(c) As stated hereinabove what is to be seen by this Court, is inevitable use of the material in chemical reaction, non-replaceability of the said material in chemical reaction, whether this material is participating in a chemical reaction or not, whether oxygen is converted into any other material or not in a chemical reaction (here oxygen is converted into Carbon Dioxide and Carbon Monoxide) in L.D. Vessel Operation-second reaction in the manufacturing process of steel. What is to be seen is huge quantity of material added for chemical reaction. These are the guiding factors. If all these tests are applied to the usage of oxygen in second chemical reaction in manufacturing process of steel through BOS method i.e. in L.D. Vessel Operation, certainly, oxygen is a basic raw material without which steel cannot be manufactured through BOS method."

7. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we, hereby, quash and set aside the orders passed by the Deputy Commissioner of Commercial Taxes, Jamshedpur Circle, Jamshedpur dated 1.10.2011(Annexure 16 to the memo of this petition) relating to financial year 2003-04. We also, hereby, quash and set aside the order passed by Joint Commissioner, Commercial Taxes (Appeals), Jamshedpur Division, Jamshedpur in Appeal Case No. JR VATA 70 of 2011-12 dated 7.6.2013 (Annexure 20 to the memo of this petition) as well as the order passed by Commercial Taxes Tribunal, Jharkhand, Ranchi in Revision Case No. 132 of 2013 dated 30th March, 2015 (Annexure 22 to the memo of this order) as also the consequential order passed by the respondents which is a demand notice dated 10.10.2011 (Annexure 15) issued by Deputy Commissioner, Commercial Taxes, Jamshedpur Circle, Jamshedpur. We hold that oxygen gas sold by this petitioner and purchased by respondent No. 11 is used as a basic raw material in manufacturing process of steel through Basic Oxygen Steel Method.

8. This writ petition is, thus, allowed and disposed of. The amount already deposited by respondent No. 11 which is a differential amount and was realized by respondent Nos. 1 to 10, shall be adjusted towards future Tax liability of the petitioner or towards other financial liabilities of the petitioner. Similarly, if any amount has been realized by respondent Nos. 1 to 10 from any bank account of the petitioner, the same shall be adjusted towards the future tax liability or other financial liability of the petitioner and we hold that oxygen is a basic raw material and, therefore, the tax leviable shall be at the rate of 2% as per Section 13(1)(b) of the Bihar Finance Act, 1981 r/w Notification bearing S.O. 154 dated 3.2.1986.

W.P.(T) No. 1939 of 2015 with W.P.(T) No. 1940 of 2015 with W.P. (T) No. 1941 of 2015:

9. The writ petition bearing W.P.(T) No. 1939 of 2015 is for the assessment year 2002-03 whereas W.P.(T) No. 1940 of 2015 is for the year assessment year 2004-05 and W.P.(T) No. 1941 of 2015 is for the assessment year 2005-06. This is the only change, otherwise there is no change in the manufacturing process, in the usage of oxygen gas, nor there is any change in the facts and law. Therefore, in all the aforesaid writ petitions also, the orders, passed by the Assessing Officer, the Appellate Authority and the Revisional Authority as also the demand notice in different Appeals, Revision applications preferred by this petitioner, as stated herein above, are hereby quashed and set-aside and in these cases also, the amount already deposited by respondent No. 11 shall be adjusted towards

the future tax liability or towards other financial liability of the petitioner, as stated herein above.

I.A. No. 3604 of 2015 in WP(T) No. 1929/15 with I.A. No. 3603 of 2 015 in WP(T) No. 1939/15 with I.A. No. 3605 of 2015 in WP(T) N o.1940/15 with I.A. No. 3602 of 2015 in WP(T) No. 1941/15

10. These interlocutory applications also stand disposed of, in view of the final order passed by this Court in the aforesaid writ petitions.

