

A STATE OF JHARKHAND AND OTHERS

v.

LINDE INDIA LIMITED AND ANOTHER

(Civil Appeal Nos. 8061-8064 of 2022)

B DECEMBER 02, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

- Bihar Finance Act, 1981: s.13(1)(b) – Benefit of concessional rate of tax under – Entitlement to – Oxygen gas sold by respondent No.1-manufacturer to the respondent No.2, if can be said to be used as “raw material” in the manufacturing process of steel and would be taxed at the rate of 2% of the sales tax, which otherwise is chargeable @ 3% on the sale thereof – Tribunal and the authorities below held that the oxygen is used as goods other than “raw material” in steel making and that it is a ‘refining agent’, ‘reducing agent’ and that 3% tax is to be levied on oxygen –However, the High Court held that the oxygen can be said to be a “raw material” and thus, respondent No. 1 entitled to concessional rate of tax at 2% - On appeal, held: High Court ought to have appreciated the findings by the committee consisting of expert members recorded in the inspection report which was confirmed by the authorities below that the oxygen gas is used as a ‘refining agent’ and its main function is to reduce the carbon content as per the requirement, the oxygen gas cannot be said to be a “raw material” used in the manufacture of the end product-steel – High Court lacks the expertise on deciding the disputed questions and more particularly the technical aspect which could have been left to the Committee consisting of experts – High Court in exercise of powers u/Art. 226 is not sitting as an appellate court against the findings recorded on appreciation of facts and the evidence on record – High Court has seriously erred in holding contrary and by interfering with the concurrent findings recorded by all the three authorities below – Thus, respondents not entitled to the concessional rate of tax @ 2% treating the same as “raw material” in the manufacture of the end product and are liable to pay tax @ 3% on the sale thereof – Impugned judgment and order passed by the High Court is unsustainable and set aside – Constitution of India – Art. 226.*

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Allowing the appeals, the Court A

HELD: 1.1 It is required to be noted that an inspection and enquiry was carried out by a six members expert committee who submitted a detailed report wherein it was found that the ‘oxygen gas’ is not a direct ‘raw material’ of steel product and the work of the oxygen gas is only of a ‘refining agent.’ As per the report, the function of the oxygen is to reduce the carbon content as per the requirement and the same is not a direct “raw material” of steel. By submitting a detailed report and after considering the relevant documents/literature produced by respondent Nos. 1 & 2, the Committee considered the detailed process for manufacture of steel and the function of the oxygen gas used. The Committee also considered the entire process of steel manufacturing. That thereafter it was concluded that the oxygen gas used is only a ‘refining agent’ and the main function of it is to reduce the carbon content as per the requirement and thus, the oxygen gas cannot be said to be a direct “raw material” of steel. On the basis of the said inspection report by the committee consisting of six expert members, the assessing officer passed an assessment order holding that the respondents are not entitled to concessional rate of tax at the rate of 2% and that 3% tax is to be levied on oxygen. The findings of fact recorded by the assessing officer which were based upon a detailed inspection report by a six members expert committee came to be confirmed by the Deputy Commissioner and thereafter by the Joint Commissioner-Revisonal Authority. The findings of fact recorded by the three authorities below have been upset by the High Court in exercise of powers under Article 226 of the Constitution of India. [Para 6][870-A-D; 872-C-E] F

1.2 The High Court in exercise of powers under Article 226 of the Constitution of India is not sitting as an appellate court against the findings recorded on appreciation of facts and the evidence on record. The High Court ought to have appreciated that there was a detailed inspection report by a six members committee who after detailed enquiry and inspection and considering the process of manufacture of steel specifically came to the conclusion that the work of oxygen is only of a ‘refining G

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- A agent' and its main function is to reduce the carbon content as per the requirement. The said findings accepted by the assessing officer and confirmed up to the Joint Commissioner-Revisional Authority were not required to be interfered with by the High Court in exercise of powers under Article 226 of the Constitution.
- B The High Court lacks the expertise on deciding the disputed questions and more particularly the technical aspect which could have been left to the Committee consisting of experts. [Para 7][872-E-G]
 - 1.3 Even otherwise on merits also, in light of the findings recorded by the committee, accepted by the assessing officer and confirmed up to the Joint Commissioner-Revisional Authority, it is required to be considered, whether the oxygen gas used in the manufacture of processing of goods, the same can be said to be a "raw material" for the manufacture of the end product-steel. [Para 8][872-H; 873-A]
- D 1.4 Applying the law laid down by this Court in the case of *Thomas Stephen & Co. Ltd.*'s case to the facts of the case on hand and the findings by the committee consisting of six expert members recorded in the detailed inspection report and when it has been found that the oxygen gas is used as a 'refining agent'
- E and its main function is to reduce the carbon content as per the requirement, the oxygen gas cannot be said to be a "raw material" used in the manufacture of the end product – steel. Under the circumstances, the respondents are not entitled to the concessional rate of tax @ 2% treating the same as "raw material" in the manufacture of the end product and are liable to
- F pay tax @ 3% on the sale thereof. The High Court has seriously erred in holding contrary and by interfering with the concurrent findings recorded by all the three authorities below. The impugned judgment and order passed by the High Court is unsustainable. Furthermore, prior to the bifurcation of the State of Bihar, tax
- G was being paid at 3%. No dispute was raised at that time. The impugned judgment and order passed by the High Court is quashed and set aside and the assessment order passed by the assessing officer, confirmed up to the revisional authority-Joint Commissioner is restored. [Paras 10-12][875-B-F]
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Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s Thomas Stephen & Co. Ltd. (1988) 2 SCC 264 : [1988] 3 SCR 248 – relied on.

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BOC India Limited v. State of Jharkhand and Others (2009) 15 SCC 590 : [2009] 4 SCR 253; *State Bank of India v. K.S. Vishwanath* 2022 SCC OnLine SC 667; *Collector of Central Excise, New Delhi v. Ballarpur Industries Limited* (1989) 4 SCC 566 : [1989] 1 Suppl. SCR 323 – referred to.

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<u>Case Law Reference</u>		
[2009] 4 SCR 253	referred to	Para 2.3
[1989] 1 Suppl. SCR 323	referred to	Para 4.4
[1988] 3 SCR 248	relied on	Para 10

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8061- 8064 of 2022.

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From the Judgment and Order dated 03.08.2015 of the High Court of Jharkhand at Ranchi in Writ Petition (T) Nos. 1929, 1939, 1940 and 1941 of 2015.

Arunabh Chowdhury, Sr. Adv., Shantanu Sagar, Abhishek Roy, Karma Dorjee, Dechen W. Lachungpa, Aniruddha M. Sethi, Sidharth Sarthi, Prabhat R. Raj, Advs. for the Appellants.

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S. Ganesh, Sr. Adv., Ajay Aggarwal, Rajan Narain, Advs. for the Respondents.

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The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 03.08.2015 passed by the High Court of Jharkhand at Ranchi in Writ Petition Nos. 1929 of 2015 and other allied writ petitions, preferred by the respondents, by which the High Court has allowed the said writ petitions and has quashed and set aside the order dated 30.03.2015 passed by the Commercial Taxes Tribunal, Ranchi and has also interfered with the concurrent findings of fact recorded by the three authorities and has also quashed the demand notice, holding

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- A that the respondents are entitled to benefit of concessional rate of duty at 2% as the use of oxygen can be said to be a “raw material” for the purpose of end product of steel, the State of Jharkhand and other authorities have preferred the present appeals.

2. The facts leading to the present appeals in nutshell are as under:

- B A certificate (Form VI-B) under Section 6 of the Bihar Finance Act, 1957 was issued in the name of erstwhile India Oxygen Limited, which was subsequently re-named as Linde India Limited. The State Government *vide* notification dated 12.04.1982 under Section 13(1)(b) of the Bihar Finance Act, 1981, notified a special rate of tax at 1% for “raw material inputs”. However, the rate of tax for other than “raw material inputs” continued at 3%. A certificate (Form VI-B) under Section 8 of the Bihar Finance Act, 1981 was issued in the name of respondent No.2 herein - M/s Tata Iron and Steel Company (for short, ‘Tata Steel’). As per Annexure-B of the certificate, “oxygen gas” was to be taxed at 3%, which respondent No.2 herein – Tata Steel continued to pay at 3%.
- C 2.1 The State Government issued a fresh notification dated 9.9.1983 directing that the rate of tax payable under section 13(1)(b) on raw materials for use in the manufacture or processing of goods for sale in the State or in course of Inter-State trade or commerce excluding such raw materials which have already undergone any manufacturing or production process and which are required for further assembly, shall be at the rate of 2%. *Vide* notification dated 3.2.1986, the State Government deleted the term “or in the course of interstate trade or commerce”.
- D 2.2 Respondent No.1 herein, who is a manufacturer of pure oxygen sold the oxygen to respondent No.2 – Tata Steel. Respondent No.1 raised a dispute with respect to the rate of concessional rate of tax. According to respondent No.1, the pure oxygen sold to respondent No.2 – Tata Steel was used as a “raw material” in production of steel through basic oxygen steelmaking (BOS method). The Assessing Authority disputed the sale of oxygen by respondent No.1 in favour of respondent No.2 at 2% on the ground that such sale is not of “raw material” but of goods other than raw materials and as such the concessional rate of tax applicable to such sale under Section 13(1)(b) would be 3%, rather than 2%.
- E 2.3 In a writ petition preferred by respondent No.1, the High Court of Jharkhand dismissed Writ Petition No. 4963/2005 by holding that

respondent No.1 has no *locus* to file the writ petition as the tax was payable by respondent No.2 – Tata Steel, who is the purchaser of oxygen produced by respondent No.1. The judgment and order passed by the High Court was the subject matter of Civil Appeal Nos. 1538/2009 and 1540/2009 before this Court. The said appeals came to be allowed by this Court *vide* reported judgment and order in the case of **BOC India Limited v. State of Jharkhand and Others, (2009) 15 SCC 590**. This Court remanded the matter to hold an enquiry and consider, whether the oxygen sold by respondent No.1 to respondent No.2 can be said to be “raw material” for the manufacture of steel. The matter came to be remanded to the assessing authority. That thereafter, a six member committee was constituted to enquire into whether the pure oxygen sold can be said to be “raw material”. A detailed inspection report pertaining to inspection and inquiry of Tata Steel, by a six member committee, was submitted and it was found that ‘oxygen gas’ is not a direct “raw material” of steel production and the work of oxygen is only of a refining agent. It was opined that the main function of the oxygen is to reduce the carbon content as per requirement and as such oxygen gas is not a direct “raw material” of steel. The report also stated that the use of oxygen to reduce quantity of carbon from iron cannot be a ground to say that oxygen is a “raw material” of steel. Based on the inspection report dated 4.2.2010, the assessing officer issued notice to respondent No.1 dated 11.6.2010 seeking clarification as to why oxygen may not be considered to be a ‘refining agent’. The assessing officer passed an order of assessment dated 1.10.2011 relating to financial years 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06 holding that the oxygen is used as goods other than “raw material” in steel making and that it is a ‘refining agent’, ‘reducing agent’ and that 3% tax is to be levied on oxygen. On the basis of the order of assessment, the Deputy Commissioner, Commercial Taxes, Jamshedpur Circle issued a demand notice dated 10.10.2011 against respondent No.1 – Linde India Limited.

2.4 Tata Steel assailed the assessment order by way of writ petition before the High Court. The High Court relegated the Tata Steel to file an appeal under Section 45 of the Bihar Finance Act, 1981. That thereafter, respondent No.1 – Linde India Limited filed an appeal under Section 45 of the Bihar Finance Act, 1981 before the Joint Commissioner, Commercial Taxes (Appeals). The Joint Commissioner dismissed the said appeal *vide* order dated 7.6.2013. Revision application came to be dismissed against the order passed by the first appellate authority, by

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- A order dated 30.03.2015. The order passed by the revisional authority was the subject matter of present writ petition before the High Court. By the impugned common judgment and order, the High Court has allowed the said writ petition and set aside the orders passed by all the authorities below, holding that as the function of the oxygen is to convert pig iron into steel by reducing the percentage of carbon dioxide by converting it to carbon monoxide which is necessary for the purpose of manufacture of the end product – steel and therefore the oxygen can be said to be a “raw material” and therefore respondent No.1 is entitled to concessional rate of tax at 2%. The impugned common judgment and order passed by the High Court is the subject matter of present appeals.
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- C 3. Shri Arunabh Chowdhury, learned Senior Advocate appearing on behalf of the appellants – State of Jharkhand has vehemently submitted that in the facts and circumstances of the case, the High Court has seriously erred in interfering with the concurrent findings recorded by all the three authorities below, while exercising the powers under Article
- D 226 of the Constitution of India.
 - 3.1 It is submitted that the findings recorded by all the authorities below that oxygen can be said to be a ‘refining agent’ and its main role is to reduce carbon content up to the desired level and therefore the oxygen does not fall in the category of other goods used in the
 - E manufacturing process of steel and considering the detailed inspection report given by a six member committee, the findings recorded by all the authorities below were not required to be interfered with by the High Court in exercise of powers under Article 226 of the Constitution of India. Reliance is placed on the decision of this Court in the case of ***State Bank of India v. K.S. Vishwanath, 2022 SCC OnLine SC 667.***
 - F 3.2 It is submitted that even otherwise on merits also, the oxygen sold by respondent No.1 to respondent No.2 – Tata Steel cannot be said to be “raw material” for the purpose of manufacture of steel. It is vehemently submitted that the oxygen used can be said to be a part of manufacturing process at the most while in any case it cannot be said to be a “raw material” for the purpose of manufacture of the end product – steel.
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 - H 3.3 It is submitted that as observed and held by this Court in the case of ***Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s Thomas Stephen & Co. Ltd., (1988) 2 SCC 264,*** goods used for ancillary purposes like fuel in the process of

the manufacture cannot be said to be “raw material” for manufacture of A goods.

3.4 It is submitted that in the present case, the fact-finding committee consisting of experts submitted a detailed inspection report and it was specifically found that the oxygen gas is not a direct “raw material” of steel production and the work of oxygen is only a refining agent and its main function is to reduce carbon content as per requirement and as such, oxygen gas is not a direct “raw material” of steel. It is submitted therefore that once that is the position, ‘oxygen gas’ cannot be said to be a “raw material” in manufacture of the steel and therefore the rate of tax at 3% would be leviable.

3.5 It is submitted that in fact the 3% tax was paid by the respondents on the pure oxygen till the bifurcation of the State of Bihar into State of Bihar and State of Jharkhand and no dispute at any point of time was raised by the respondents. The respondents continued to pay the rate of tax at 3%. However, a dispute was raised only when the State of Jharkhand came into existence and they demanded the rate of tax at 3%.

3.6 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeals and quash and set aside the impugned common order passed by the High Court.

4. The present appeal is vehemently opposed by Shri S. Ganesh, learned Senior Advocate appearing on behalf of the respondents – Linde India Limited & Tata Steel.

4.1 Shri S. Ganesh, learned Senior Advocate appearing on behalf of the respondents has submitted that the issue involved in the present appeals is, as to whether the oxygen gas supplied by respondent No.1 (Linde India Limited) to respondent No.2 (Tata Steel) is used as a “raw material” in the manufacturing process of steel, so as to entitle respondent No.1 to pay concessional rate of tax on the same under Section 13(1)(b) of the Bihar Finance Act, 1981 (as applicable to the State of Jharkhand). It is submitted that if the oxygen gas is used as a “raw material”, the same would be taxed @ 2% of sales tax, which is otherwise chargeable @ 3% on sale thereof.

4.2 It is submitted that the oxygen supplied by Linde India Limited to Tata Steel is directly used by Tata Steel in the manufacture of steel making and therefore the same is “raw material” and consequently H

- A entitled to the benefit of concessional rate of tax under Section 13(1)(b) of the Bihar Finance Act, 1981, r/w applicable notification, adopted in the State of Jharkhand.
 - 4.3 It is submitted that the High Court in its impugned judgment has in great detail noted the process of manufacture of steel by Tata Steel, which is called Basic Oxygen Steel Method (BOS method). It is submitted that the High Court has noted the two stages of operation, the first being operation in blast furnace and second being operation in L D vessel. It is submitted that the High Court has described them as chemical reaction no.1 and chemical reaction no. 2. The High Court has also noted the use of the oxygen in both the stages in both the operations. It is submitted that thereafter the High Court has come to the conclusion that use of the oxygen in steel making is as “raw material” and “raw material” is not anti-thesis to it being a “refining agent.” That the High Court has rightly observed that it is a wrong notion in the mind of the authorities below that a ’refining agent’ cannot be a “raw material.” It is submitted that the High Court has rightly held that ‘refining agent’ can also be a “raw material”, if it is indispensable, non-replaceable, used in large quantity, which is inevitable to be used.
 - 4.4 It is submitted that the High Court, while holding so, has relied upon the principle laid down by this Court in the case of *Collector of Central Excise, New Delhi v. Ballarpur Industries Limited, (1989) 4 SCC 566*. It is submitted that in the case of *Ballarpur Industries Limited (supra)*, the issue was, as to whether input of sodium sulphate used in the manufacture of paper would cease to be a raw material by reason alone of the fact that in the course of chemical reactions the ingredient is consumed and burnt up. In the said case, this Court laid down the test in paragraphs 13 & 14 about what constitute raw material in the absence of a definition in the statute and held that the same would be as per common parlance of the people who deal with the matter. It is submitted that in the aforesaid decision, it is further observed and held that the stage of manufacture is not decisive about the use of “raw material.”
 - 4.5 It is further submitted that as such the State of Jharkhand has admitted before the High Court that oxygen is used in the manufacture process of steel. However, it is case of the State that the oxygen is used as a ‘refining agent’ and not as a “raw material.” It is submitted that the same has been rightly rejected by the High Court, by the impugned judgment and order.

4.6 It is submitted that the manufacturing process for making steel adopted by Tata Steel is known as BOS method. It is submitted that the method by which the steel is made is the Basic Oxygen Steel Method, obviously enough, steel cannot be made without oxygen. If that is so, it is but obvious that the oxygen is “raw material” used in this method for manufacturing steel. It is submitted that in other words, but for oxygen, the steel cannot be manufactured.

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4.7 Now so far as the submission on behalf of the State that the assessee is not entitled to the benefit of exemption notification dated 3.2.1986 bearing SO No. 154 is concerned, it is submitted that such a contention was never raised earlier by the State and such a contention is being raised for the first time before this Court and therefore such a contention ought not to be allowed to be raised for the first time before this Court.

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4.8 It is submitted that even if such a contention is to be considered, the same is stated to be rejected in view of the fact that the notification in question only excludes such raw materials which have already undergone any manufacturing or production process and which are required for further assembly. It is submitted that the condition of exclusion clause in the notification is cumulative in nature and unless the excluded raw material, which is manufactured or processed is used for assembly, the exclusion clause will not be triggered. It is submitted that in the present case, Linde India Limited has manufactured-produced pure oxygen but the same is not used for any assembly by Tata Steel. The use of oxygen is well documented on record and well described and considered in the impugned judgment. It is submitted that therefore the question of use of oxygen in any assembly, whatsoever, nature does not arise. It is submitted that therefore the contention of the State qua notification dated 3.2.1986 is untenable.

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4.9 Now so far as the contention of the State regarding declaration in Annexure B by Tata Steel is concerned, it is submitted that the said contention was earlier raised by the State in the first round of litigation between the parties, which culminated in the judgment of this court in the case of **BOC India Limited (supra)**. It is submitted that in the said judgment, this Court had specifically overruled such an objection of the State which was based upon an inadvertent incorrect declaration. It is submitted that this Court noticed that there is no prohibition or estoppel in this regard and the matter is required to be considered independent of the same.

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- A 4.10 Shri S. Ganesh, learned Senior Advocate appearing on behalf of the respondents has submitted that the contention raised by the State that the oxygen is used as a ‘refining agent’ and not as a “raw material” may not be accepted for the following reasons,
- B i) refining agents and raw materials are not mutually exclusive or opposite to each other. A particular product can be raw material, even if it is also a refining agent;
- C ii) in order to find out whether a particular product is raw material, the test is the indispensability of the said product in the manufacturing process. If the end product cannot be manufactured without the use of a particular product, the same would definitely constitute a raw material;
- D iii) the importance of the product used as a raw material is to be seen. The importance of the product lies in the fact not in its absence in the end product but its presence at the delivery end of the process;
- E iv) the quantity of the raw material used is also significant inasmuch as for manufacturing 1000kg of steel, 70kg of oxygen is required. This by no means is insignificant quantity;
- F v) irreplaceability of the raw material is to be considered. In the present case, as rightly noted by the High Court in its impugned judgment, the use of the oxygen gas cannot be replaced by any other element from the periodic table of elements;
- G vi) the use of raw material is to be noticed. The function of the oxygen in the present case is to reduce the percentage of carbon, so as to make steel from pig iron. Higher the percentage of carbon in pig iron, the farther it is from steel. The reduction of percentage of carbon from the pig iron converts pig iron into steel;
- H vii) the function of the raw material itself. In the present case, the raw material is not only changing pig iron into steel, it itself is getting converted into carbon dioxide and carbon monoxide. Does the function of oxygen is not merely to act as catalyst but it itself is participating in the chemical reaction in the manufacturing process; and

viii) the application of the raw material. In the present case, A
the oxygen is injected with high pressure so that the oxygen
gas penetrates the semi liquid material, i.e., pig iron, out of
which steel is manufactured.

It is submitted that therefore the use of the oxygen in the present B
case is “raw material” and the respondents are entitled to the
concessional rate of tax at 2% on purchase of oxygen by Tata Steel
from Linde India Limited as the same is being used as “raw material”.

4.11 Now so far as the reliance placed upon the decision of this C
Court in the case of *Thomas Stephen & Co. Ltd. (supra)*, relied upon
by the learned counsel on behalf of the State is concerned, it is submitted
that the said judgment does not advance the case of the State in any
manner. The said judgment had already been considered and distinguished
by this Court in the case of *Ballarpur Industries Limited (supra)*.

4.12 Making the above submissions and relying upon the decision D
of this Court in the case of *Ballarpur Industries Limited (supra)*, it is
prayed to dismiss the present appeals.

5. We have heard learned counsel for the respective parties at E
length.

The short question which is posed for the consideration of this F
Court is, as to whether the oxygen gas supplied by respondent No.1 to
respondent No.2 is used as “raw material” in the manufacturing process
of steel, so as to entitle respondent No.1 to pay concessional rate of tax
on the same under Section 13(1)(b) of the Bihar Finance Act, 1981. This
may be noted that only in a case where oxygen gas is used as “raw
material”, the same would be taxed at the rate of 2% of the sales tax,
which otherwise is chargeable @ 3% on the sale thereof.

5.1 One another question which may fall for consideration would G
be, whether in the facts and circumstances of the case and faced with
a detailed inspection report pertaining to inspection and enquiry of
respondent No.2 by a six members expert committee, upon which
reliance was placed by the assessing officer holding that oxygen gas is
a ‘refining agent’, confirmed up to the revisional authority, was it open
for the High Court to upset the concurrent findings recorded by all the
three authorities below, while exercising powers under Article 226 of
the Constitution?

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- A 6. At the outset, it is required to be noted that pursuant to the earlier order passed by this Court, the matter was remanded to consider the question, as to whether oxygen gas is a “raw material” for the manufacture of the steel. That thereafter on remand, an inspection and enquiry was carried out by a six members expert committee who submitted a detailed report wherein it was found that the ‘oxygen gas’ is not a direct ‘raw material’ of steel product and the work of the oxygen gas is only of a ‘refining agent.’ As per the report, the function of the oxygen is to reduce the carbon content as per the requirement and the same is not a direct “raw material” of steel. By submitting a detailed report and after considering the relevant documents/literature produced by respondent Nos. 1 & 2, the Committee considered the detailed process for manufacture of steel and the function of the oxygen gas used. The Committee also considered the entire process of steel manufacturing. That thereafter it was concluded that the oxygen gas used is only a ‘refining agent’ and the main function of it is to reduce the carbon content as per the requirement and therefore the oxygen gas cannot be said to be a direct “raw material” of steel. While holding so, the Committee analysed as under:

- E “In order to understand this case well, it is necessary to discuss extraction of iron from its ore and alloying first. At the outset, M/s Tata Steel Ltd. causes a hot air blast of iron ore (oxide of iron) by mixing it with lime stone and coke in its blast furnace. Iron oxide is reduced at various temperature ranges. Main objective of this blasting is removing oxygen from iron ore. In this process, oxygen is removed from iron ore but quantity of carbon exceeds the permissible range. The molten iron received from this furnace is called pig iron. M/s Tata Steel does not require oxygen purchased from M/s BOC till this stage. Lime stone is used in this furnace to remove Silica Impurities and coke is used to remove oxygen from iron ore.
- G Quantity of carbon in Molten Iron, received from this blast furnace, can stay up to 4%. More quantity of carbon, it is very hard and brittle. Other impurities (e.g., SP Si, Mg) are found mixed in molten iron. In order to refine it, M/s. Tata Steel uses pure oxygen in its L.D. converter. In the Steel Making Heading (Annexure A/4) of the documents submitted by M/s B.O.C., it is called Refining Process, and its main objective is to reduce carbon contents. The
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pure oxygen used in Refining process is called raw-material by M/s Tata Steel and M/s B.O.C. It is clear from the above mentioned facts that pure oxygen is not being used as raw-material in extraction of iron, and it is used in the Refining Process to increase the quality of production. A

Before considering whether the used oxygen is raw material or not, it is necessary to consider the various ingredients of steel. It is to be mentioned here that Steel is nothing but Alloys of Iron & Alloying is method of improving the properties of the material by adding metal or non-metal. Various alloys of iron are as given below: - B

Iron + Carbon (.1 to 1.5%) =Steel C

Iron + Carbon + Chromium + Nickel = Stainless Steel = used for cycles, utensils, pens etc.

Iron + Nickel + Aluminum + Co= Alnico – for permanent magnet D

Iron + Chromium = Chrom - used for cutting tools and crushing machine.

Iron is not used in pure form because it is soft and readily stretchable upon heating, however, if 0.1 +1.5% carbon is mixed in it, it becomes hard and strong and ready to use. E

Here it is also to be noted that in this Refining Process, Slag (SiO_2 , P_2O_5) is formed which is unwanted waste product because of presence of oxygen in it and is not targeted product. Hence, on this ground also, oxygen cannot be held constituents of its End Product Steel. F

It is necessary to see the following chemical reaction to understand as to whether oxygen is raw-material of steel or not? G

Electrolysis



It means, Electrolysis of water by passing current gives us “Hydrogen & Oxygen”. To complete this Electrolysis process, it is necessary to mix few drops of H_2SO_4 (Sulfuric Acid). Thus, H_2SO_4 (Sulfuric Acid) cannot be held raw-material of Hydrogen or Oxygen only on this ground. H

- A Similarly, use of Oxygen to reduce quantity of carbon from iron cannot be a ground to say that oxygen is raw material of steel. It is evident from the above mentioned facts that Oxygen used by M/s Tata Steel is only a Refining Agent, the main function of which is to reduce carbon contents as per the requirements, which means Oxygen is not a direct raw-material of steel. It is, of course, used in the manufacturing of steel but it does not come under the category of direct raw-material and is placed under the category of other material used in this process.”
- B On the basis of the aforesaid inspection report by the committee consisting of six expert members, the assessing officer passed an assessment order holding that the respondents are not entitled to concessional rate of tax at the rate of 2% and that 3% tax is to be levied on oxygen. The findings of fact recorded by the assessing officer which were based upon a detailed inspection report by a six members expert committee came to be confirmed by the Deputy Commissioner and thereafter by the Joint Commissioner – Revisional Authority. The findings of fact recorded by the three authorities below have been upset by the High Court in exercise of powers under Article 226 of the Constitution of India.
- C 7. As per the settled position of law, the High Court in exercise of powers under Article 226 of the Constitution of India is not sitting as an appellate court against the findings recorded on appreciation of facts and the evidence on record. The High Court ought to have appreciated that there was a detailed inspection report by a six members committee who after detailed enquiry and inspection and considering the process of manufacture of steel specifically came to the conclusion that the work of oxygen is only of a ‘refining agent’ and its main function is to reduce the carbon content as per the requirement. The said findings accepted by the assessing officer and confirmed up to the Joint Commissioner – Revisional Authority were not required to be interfered with by the High Court in exercise of powers under Article 226 of the Constitution. The High Court lacks the expertise on deciding the disputed questions and more particularly the technical aspect which could have been left to the Committee consisting of experts.
- D 8. Even otherwise on merits also, in light of the findings recorded by the committee, accepted by the assessing officer and confirmed up

to the Joint Commissioner – Revisional Authority, it is required to be considered, whether the oxygen gas used in the manufacture of processing of goods, the same can be said to be a “raw material” for the manufacture of the end product – steel.

9. The High Court as well as learned counsel appearing on behalf of the respondents have heavily relied upon the decision of this Court in the case of **Ballarpur Industries Limited (supra)**, more particularly the observations made in paragraphs 13 & 14. In the case before this Court, the question was, whether the input of sodium sulphate used in the manufacture of paper would cease to be a “raw material” by reason alone of the fact that in the course of chemical reactions this ingredient is consumed and burnt up. While analysing the entire manufacturing process, this Court opined in paragraph 14 that the sodium sulphate used in the manufacture of paper can be said to be a “raw material”. While holding so, it was observed in paragraph 14 as under:

“14. The ingredients used in the chemical technology of manufacture of any end product 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 ingredient goes into the making of the end product

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- A 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 utilisation is in the manufacturing process as distinct from the manufacturing apparatus.”
- B At this stage, it is required to be noted that attention of this Court was also drawn to the decision of this Court in the case of *Thomas Stephen & Co. Ltd. (supra)* and in fact pressed into service on behalf of the revenue. However, the said decision came to be distinguished by this Court while observing in paragraph 15 as under:
- C “**15.** The decision of this Court in *Dy. CST v. Thomas Stephen & Co. Ltd.* [(1988) 2 SCC 264, 267 para 9 : 9:8 SCC (Tax) 190 : JT (1988) 1 SC 631, 634] relied upon by Shri Ganguly, does not really advance the appellant’s case. The observations therein to the effect that “consumption must be in the manufacture of raw material or of other component which go into the making of end product” (SCC p. 267, para 9) were made to emphasise the distinction between the “fuel” used for the kiln to impart the heat treatment to ceramics and what actually went into the manufacture of such ceramics. The observations, correctly apprehended, do not lend themselves to the understanding that for something to qualify itself as a “raw material” it must necessarily and in all cases go into, and be found, in the end product.”
- E As such, the decision of this Court in the case of *Thomas Stephen & Co. Ltd. (supra)* has not been overruled by this Court in the case of *Ballarpur Industries Ltd. (supra)* and therefore the decision of this Court in the case of *Thomas Stephen & Co. Ltd. (supra)* still is a good law. In the case of *Thomas Stephen & Co. Ltd. (supra)*, it was a case of fuel like in the present case which was used for the kiln to impart the heat treatment to ceramics and what actually went into the manufacture of such ceramics.
- G In the case of *Thomas Stephen & Co. Ltd. (supra)*, the cashew shells had been used as fuel in the kiln. It was found that cashew shells did not get transformed into the end product. The same was not used as raw material in the manufacture of the goods and it was found that these have been used only as an aid in the manufacture of the goods by the assessee. To that it was observed that consumption must be in the manufacture as raw material or of other components which go into the

making of the end product. It was found that cashew shells do not tend to the making of the end product. It was observed that goods used for ancillary purposes like fuel in the process of the manufacture do not fall within Section 5-A(1)(a) of the Kerala General Sales Tax Act, 1963 and cannot be said to be used as a “raw material”.

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10. Applying the law laid down by this Court in the case of *Thomas Stephen & Co. Ltd. (supra)* to the facts of the case on hand and the findings by the committee consisting of six expert members recorded in the detailed inspection report and when it has been found that the oxygen gas is used as a ‘refining agent’ and its main function is to reduce the carbon content as per the requirement, the oxygen gas cannot be said to be a “raw material” used in the manufacture of the end product – steel. Under the circumstances, the respondents are not entitled to the concessional rate of tax @ 2% treating the same as “raw material” in the manufacture of the end product and are liable to pay tax @ 3% on the sale thereof. The High Court has seriously erred in holding contrary and by interfering with the concurrent findings recorded by all the three authorities below. The impugned judgment and order passed by the High Court is unsustainable.

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11. At this stage it is to be noted that prior to the bifurcation of the State of Bihar, tax was being paid at 3%. No dispute was raised at that time.

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12. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court is hereby quashed and set aside and the assessment order passed by the assessing officer, confirmed up to the revisional authority – Joint Commissioner is hereby restored. The present appeals are accordingly allowed. However, there shall be no order as to costs.

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