

SUPREME COURT OF INDIA

Collector of Central Excise, Patna

Vs.

Bansal Indus. Gases Bihar Ltd.

(M Shah, A Pasayat and D Dharmadhikari JJ.)

14.11.2002

ORDER

1. Heard the learned Counsel for the parties.
2. In Civil Appeal No. 236/1991, this Court passed the following order on 20th August 1997:

"The question in these cases is whether the sludge manufactured by the Asiatic Oxygen Limited is marketable or not. The Tribunal has not given any finding on this question. We set aside the order of the Tribunal and remand the case back to the Tribunal to give a decision on the question of marketability of sludge. The Tribunal will, thereafter, decide whether it is an excisable goods and, if so, under which heading will it fall? The parties will be at liberty to adduce evidence to prove in support of their contention. The appeals are disposed of. Each party will pay their own costs."

3. After remand also the appellant has not led any evidence to conclusively prove that the sludge which was manufactured by the appellant was in any way marketable. The Tribunal after considering the evidence on record arrived at the conclusion that Acetylene gas is manufactured by the interaction of calcium carbide with water in a chamber specifically made for the purpose. While the gas generated is drawn from the top of the chamber the residual sludge mixed with the water in liquid state is discharged at intervals from the bottom of the chamber into the drain for being collected into pits. That sludge thereafter is removed from the factory. It arrived at the conclusion that the said sludge is not marketable and, therefore, no excise duty can be levied. In our view, the said finding of fact does not call for interference in these appeals. Hence, these appeals are dismissed.