

# SUPREME COURT OF INDIA

Commissioner of Taxes

Vs.

Bongaigaon Refinery and Petrochemicals Limited

C.A.Nos.919-942 of 2000

(S. H. Kapadia, S. N. Variava and Dr. A.R. Lakshmanan JJ.)

07.04.2005

## ORDER

1. These appeals are against the judgment of the High Court dated March 8, 1999. The question for consideration is whether the appellants are entitled to charge sales tax on the retention price fixed by the Oil Coordination Committee. The High Court has held that sales tax is leviable on the price as fixed between the buyer and the seller as per their agreement. The High Court has held that though such price may be controlled by the Government that still remains the sale price. The High Court has held that the retention price is merely a compensation or a subsidy and that such compensation/subsidies do not form part of the sale price and are therefore not liable for taxes. The view of the High Court is fully supported by a decision of this Court in the case of *Neyveli Lignite Corporation Ltd. v. Commercial Tax Officer reported in*<sup>1</sup>.

2. Strenuous efforts were made to differentiate this judgment. It was submitted that the judgment in *Neyveli Lignite Corporation Ltd.*'s case deals with the subsidy which was paid de hors the actual sales made whereas the retention price, in the present case, is based on the actual sales made. In our view, there is no difference. The retention price remains a compensation or a subsidy as the Government is not permitting the respondent-company to sell beyond the price fixed by it. Therefore, the principles laid down by this court in the aforementioned case fully apply.

3. We thus, see no infirmity in the judgment of the High Court. We see no reason to interfere. The civil appeals are dismissed. There will be no order as to costs.

<sup>1</sup>[2001] 9 SCC 648